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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11 CHRISTINA FRANCO,

Case No.: 23STCV06880

12 Plaintiff,

13 **PLAINTIFF'S NOTICE OF UNOPPOSED**
14 **MOTION FOR APPROVAL OF PAGA**
15 **SETTLEMENT; MEMORANDUM OF**
16 **POINTS AND AUTHORITIES THEREOF**

Action filed: 3/29/23

17 vs.

Date: 3/27/25
Time: 8:30am
Dept: 48

18 M&B RESTAURANT GROUP; and DOES
19 1 to 25, inclusive,

Reservation ID:
566511937492

20 Defendants.

Department: 48, Hon. Thomas D.
Long

21 Submitted Herewith Under Separate Cover:

- 22
- 23 1. Declaration of Harout Messrelian in Support
 - 24 of Unopposed Motion for Approval of PAGA
 - 25 Settlement; Memorandum of Points and
 - 26 Authorities in Support Thereof;
 - 27 2. [Proposed] Order
- 28

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TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on March 27, 2025 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 48 of the above-entitled Court, located at 111 N. Hill Street, Los Angeles, California 90012, Plaintiff Christina Franco ("Plaintiff") will and hereby does move unopposed, the Court, pursuant to Labor Code § 2698 et seq., for an order approving the Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code § 2698 et seq., settlement agreement between Plaintiff and Defendant M&B Restaurant Group (hereinafter "Defendant" or "M&B") (collectively, "the Parties")

This Motion is based on this Notice, the attached Memorandum of Points and Authorities; the concurrently-filed Declaration of Harout Messrelan, the papers and pleadings on file in this action, any and such other evidence and oral argument as may be presented in connection with the hearing on this Motion.

Respectfully Submitted,

MESSRELIAN LAW INC.

DATED: March 4, 2025

By



Harout Messrelan, Esq.
Attorneys for Plaintiff
CHRISTINA FRANCO

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff and Defendant have reached an agreement to settle the above-captioned action
4 (the “Action”). Plaintiff and Defendant are collectively referred to as the “Parties” and any one
5 of them individually may be referred to as a “Party.” The Parties have memorialized the terms
6 of this settlement in a “Private Attorneys General Act Settlement Agreement” (the “Settlement
7 Agreement”). Attached as **Exhibit 1** to the Declaration of Harout Messrelian (“Messrelian
8 Decl.”) is a true and accurate copy of the Settlement Agreement and the PAGA notice that will
9 be sent to the alleged aggrieved employees covered by the Settlement Agreement, being Plaintiff
10 and all current and former non-exempt employees of Defendant in the State of California from
11 January 23, 2022 through March 1, 2024 (“PAGA Members”), with their payment. By this
12 Motion and pursuant to California Labor Code § 2699(1), Plaintiff seeks an order permitting
13 settlement on the terms outlined in the Settlement Agreement.

14 **II. ALLEGATIONS AND INVESTIGATION**

15 Defendant is in the business of operating “Jack In The Box” fast food chains and has
16 multiple locations. Plaintiff was classified as an hourly, non-exempt employee and worked for
17 Defendant as a crew member from July 2021 through May 2022. *See* Messrelian Decl., ¶4.

18 Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under
19 the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”).
20 On January 10, 2023, Plaintiff Christina Franco on behalf of herself and Defendant’s other
21 California non-exempt employees (hereafter collectively the “Aggrieved Employees”) gave
22 written notice by electronic service to the California Labor and Workforce Development Agency
23 (“LWDA”) and via certified mail to Defendant of their claims against Defendant. In her notice
24 to the LWDA, Plaintiff asserted on behalf of herself and the Aggrieved Employees that
25 Defendant (1) failed to compensate for all hours worked and to pay minimum wages (Labor
26 Code Sections 1194, 1197, 1197.1); (2) failed to pay overtime compensation (Labor Code
27 Section 510); (3) failed to provide rest breaks (Labor Code Section 226.7); (4) failed to provide
28 meal breaks (Labor Code Sections 512, 226.7); (5) failed to timely pay wages due during

1 employment (Labor Code Section 204); (6) failed to provide accurate itemized wage statements
2 (Labor Code Section 226); (7) failed to keep accurate and complete payroll records (Labor Code
3 Section 1174/1174.5);(8) failed to pay wages at the end of employment (Labor Code section
4 203); (9) failed to reimbursement business expenses (Labor Code section 2802); and claims
5 under Industrial Welfare Commission Wage Orders 5-2001. Plaintiff filed her initial lawsuit on
6 March 29, 2023, in the Superior Court for the State of California, County of Los Angeles, Case
7 No. 23STCV06880, with one cause of action for PAGA penalties based on the theories as
8 outlined in the PAGA letter. *See* Messrelian Decl., ¶5.

9 Through informal discovery, Defendant produced records and represented that it
10 employed approximately 215 employees falling within Plaintiff's Aggrieved Employees
11 definition for the period from January 23, 2022 (one year and 65 days before Plaintiff's PAGA
12 complaint filing) through March 1, 2024, and that there are paychecks issued for a total of
13 approximately 3,800 pay periods worked for that same time period. *See* Messrelian Decl., ¶6.

14 The Settlement Agreement covers PAGA Members, which are Aggrieved Employees
15 employed on or after January 23, 2022 through March 1, 2024. *See* Messrelian Decl., ¶7.

16 Defendant denies any liability or wrongdoing of any kind whatsoever associated with
17 the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully, finally,
18 and forever compromise, and discharge all claims known or unknown related to those alleged
19 in Plaintiff's lawsuit. *See* Messrelian Decl., ¶8.

20 The Parties negotiated directly between counsel, and settled the matter. As part of the
21 process, the Parties engaged in informal discovery regarding Defendant's policies, practices,
22 operations, time and payroll information and other topics. Defendant produced Plaintiff's
23 personnel file and time and payroll data for Plaintiff, and time records and payroll records for
24 randomly selected aggrieved employees falling within Plaintiff's Aggrieved Employees
25 definition and during the applicable PAGA period. The latter data was sent to Plaintiff's data
26 expert for analysis and review. Through extensive arm's length negotiations, the Parties agreed
27 to settlement terms. Attached as **Exhibit 1** is a true and accurate copy of the "Private Attorneys
28 General Act Settlement Agreement and Release" (hereinafter "Settlement Agreement") and the

1 PAGA notice that will be sent to the PAGA Members covered by the Settlement Agreement.
2 See Messrelian Decl., ¶9.

3 The Parties conducted investigation of the facts and law both before and after the lawsuit
4 was filed. Counsel for the Parties have further investigated the applicable law as applied to the
5 facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code violations
6 claimed by Plaintiff. Based on their own independent investigations and evaluations, the Parties
7 and their respective counsel are of the opinion that the Settlement for the consideration and on
8 the terms set forth in this Motion are fair, reasonable and adequate and are in the best interests
9 of Plaintiff, the PAGA Members, and Defendant in light of all known facts and circumstances
10 and the risks inherent in litigation, especially in this post-pandemic era when most California
11 businesses, and especially restaurants, are still struggling to remain afloat, much less prosper
12 and make a large profit. See Messrelian Decl., ¶10.

13 The Parties further recognize that the issues presented in the Action are likely only to be
14 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will
15 cause inconvenience, distraction, disruption, delay, and expense disproportionate to the
16 maximum potential benefits, especially in light of the post-pandemic era and the business
17 climate. See Messrelian Decl., ¶11.

18 A. Moreover, Plaintiff is aware of no California state courts awarding Plaintiff
19 multiple PAGA penalties for the same violation for the same pay period under
20 different Labor Code provisions. As such, one of the risks Plaintiff faces is that
21 the Court would refuse to "stack" civil penalties arising under the various Labor
22 Code statutes. Furthermore, judges have awarded extremely small sums to
23 PAGA claimants in the past. Defendant also adamantly disputes all of Plaintiff's
24 allegations in the operative Complaint.

25 B. PAGA states a court has discretion to award a lesser amount than the maximum
26 penalty. See Lab. Code § 2699(e)(2) ("...a court may award a lesser amount than the
27 maximum civil penalty amount specified by this part if, based on the facts and circumstances of
28 the particular case, to do otherwise would result in an award that is unjust, arbitrary and

1 oppressive, or confiscatory.”); *see also* *Thurman v. Bayshore Transit Management, Inc.* (2012)
2 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
3 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff’s evidence
4 of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
5 (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial court’s heavily
6 discounted award of only \$5 per violation because it was within the Court’s discretion to
7 significantly reduce PAGA penalties even when there is a finding that a violation of the
8 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess
9 of \$70 million and was successful in proving the PAGA claim during a bench trial. However,
10 the trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and
11 stated that this reduction was warranted because imposing the maximum penalty would be
12 “unjust, arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with
13 meal break obligations and because the Court found the violations were minimal. Applying the
14 same formula here and assuming there was one violation during each pay period, the award of
15 civil penalties could not exceed \$19,000 in PAGA penalties (3,800 violations x \$5). As such,
16 this Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington*
17 formula. Defendant has also posed formidable defenses to the Labor Code claims underlying
18 Plaintiff’s allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross
19 Settlement Amount is uncertain.

20 C. The Parties further recognize that the issues presented in the Action are likely
21 only to be resolved with extensive and costly pretrial and trial proceedings, and
22 that further litigation will cause inconvenience, distraction, disruption, delay, and
23 expense disproportionate to the maximum potential benefits to the PAGA
24 Members and Plaintiff from continued litigation.

25 D. The settlement of the Action involves monetary relief to all PAGA Members,
26 Plaintiff, her attorneys, and the State of California.

27 E. Furthermore, Plaintiff recognizes that continued litigation presents significant
28 risks that support a significant downward departure from Plaintiff’s estimated

1 civil penalties amount. In view of the risks, the Settlement represents a fair,
2 adequate, and reasonable compromise amount for these claims and is in the best
3 interest of Plaintiff and PAGA Members and thus, warrants approval. *See*
4 *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
5 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable,
6 adequate, and equitable to Defendant, Plaintiff, and the State, especially in light
7 of the current economic climate, and are the product of good faith, and informed
8 arms-length negotiations between the Parties consistent with public policy and
9 fully comply with applicable provisions of law.

10 F. As such, the settlement of PAGA penalties in the gross sum of \$120,000.00, of
11 which 75% of the net amount after attorney's fees [\$40,000.00], attorney costs
12 [\$1,301.00], and settlement administrator fees [\$4,500.00], which is \$55,649.25
13 will be paid to the LWDA, and 25%, which equates to \$18,549.75, will be
14 distributed to the PAGA Members, is reasonable and appropriate under the
15 circumstances.

16 ***Plaintiff's Individual Settlement***

17 G. Plaintiff did have individual claims for individual labor code violations. The
18 Parties agreed that the consideration Plaintiff received pursuant to an individual settlement
19 agreement was to settle her individual claims. As part of this confidential agreement, Plaintiff
20 also provided Defendant with a general release of all claims, whether known or unknown,
21 including unknown claims covered by Civil Code Section 1542. Plaintiff has no conflict of
22 interest with the absent Aggrieved Employees and is adequate to represent the Aggrieved
23 Employees.

24 ***Attorneys' Fees and Costs***

25 25. I represent Plaintiff on a straight contingency basis. My firm's request for
26 \$40,000.00 in attorney fees and \$1,301.00 in litigation costs is fair and reasonable. To date, I
27 have investigated and prosecuted this matter vigorously, including drafting the initial PAGA
28 notice as well as the original complaint; drafting informal discovery questions, reviewing

1 Defendant's informal data and document production, including wage and hour policies; sending
2 and receiving emails on the case with defense counsel; sending the PAGA data to Plaintiff's
3 expert for review/analysis and reviewing the expert's findings/conclusions; engaging in direct
4 settlement negotiations with defense counsel; and drafting this PAGA approval motion. I also
5 expect to perform additional work on this case if the Court grants final approval of the
6 Settlement, including supervision of the Settlement Administrator's disbursement of the
7 settlement funds to the Aggrieved Employees. "Empirical studies show that, regardless of
8 whether the percentage method or the lodestar method is used, fee awards in class actions
9 average around one-third of the recovery. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 47
10 fn. 11 (quoting *Shaw v. Toshiba America Information Systems, Inc.* (E.D. Tex. 2000) 91
11 F.Supp.2d 942, 972; *See also Lafitte v. Robert Half Int'l Inc.* (Cal. Aug. 11, 2016) 1 Cal.5th 480,
12 503, 376 P.3d 672, 686 (holding that courts can use the percentage method for the calculation
13 of attorneys' fees). This is also consistent with my experience in cases involving PAGA claims.
14 This award is justified here because I achieved a strong result for the PAGA Members and the
15 State while bearing the substantial burdens of contingency representation.

16 26. My previous experience in litigating wage and hour actions also supports the
17 reasonableness of the fee request, as does the caliber of opposing counsel. My previous
18 experience in similar matters was integral in evaluating the strengths and weaknesses of the case
19 against Defendant and the reasonableness of the Settlement. Because it is reasonable to
20 compensate me commensurate with my skill, reputation, and experience, attorney's fees of
21 approximately one-third of the Gross Settlement Amount is reasonable. Likewise, the caliber
22 and experience of opposing counsel in labor and employment litigation supports the fairness and
23 reasonableness of the requested fee award.

24 27. The litigation costs expended to aid in the representation of the PAGA Members
25 include the following: lawsuit filing fee of \$454.22; PAGA initial filing fees of \$75.00; expert
26 data analysis fee of \$750.00; and miscellaneous filing fees of \$21.78 for a total of \$1,301.00.
27 All of these costs are documented and reasonably incurred.

28 ***Settlement Administration Costs***

1 28. With regard to the settlement administration costs provision, it is reasonable.
2 Before agreeing to Phoenix Settlement Administrators (“Phoenix”), the Parties sought and
3 reviewed bids from other reputable third-party administrators, including ILYM Group and CPT,
4 and Phoenix’s bid was comparable. Phoenix’s bid has been attached as **Exhibit 2** to this
5 declaration.

6 ***Notice of Settlement to the LWDA***

7 29. Pursuant to Lab. Code § 2699(l)(2), my firm submitted a copy of the Settlement
8 with the LWDA at the same time the Settlement is being filed with the Court. True and correct
9 copies of this submission with the LWDA and the confirmation email are collectively attached
10 as **Exhibit 3** to this declaration. My firm will further provide a copy of the Court’s Order and
11 Judgment to the LWDA within ten (10) calendar days after entry of said judgment or order as
12 required by Labor Code sections 2699(l)(2)-(3).

13 **III. FAIRNESS OF THE SETTLEMENT**

14 While this Action is a representative PAGA claim, the Parties are not obligated to follow
15 the class action procedural rules for obtaining approval of this settlement. *Arias v. Superior Court*
16 (*Angelo Dairy*) (2009) 46 Cal.4th 969.

17 Plaintiff alleges that the strongest claims are that Plaintiff and other PAGA Members
18 were not provided meal and rest breaks under the law. *See* Messrelian Decl., ¶12.

19 Plaintiff contends that the civil penalty statutes applicable to the Action arise from
20 violations of the California Labor Code, including, but not limited to, Labor Code §§ 512, 558,
21 1197, 1197.1, and 2699(f)(2). Under these civil penalty statutes, an employee who suffers a
22 Labor Code violation may be awarded a sum of money for each pay period in which he or she
23 was underpaid. However, under Labor Code § 2699(e)(2), the Court can reduce an award of
24 civil penalties if the award is unjust, arbitrary, oppressive, or confiscatory. *See* Messrelian Decl.,
25 ¶13.

26 As it relates to Plaintiff’s argument for meal break violations, Plaintiff’s data analysis
27 revealed a shift violation rate of 5.4% for short, late, or no meal breaks for shifts over 5 hours
28 long (which comprised 95.7% of the overall shifts in the sample). If you extrapolate the 5.4%

1 shift violation rate, it amounts to 36.5% of pay periods having at least one meal period violation.
2 As such, the maximum exposure for meal period violations in the PAGA period would be
3 \$66,350.00, which is calculated as follows: 3,800 total pay periods x 95.7% equals 3,636 pay
4 periods at issue as far as meal period violations are concerned. 3,636 pay periods x 36.5% pay
5 period violation rate equals 1,327 affected pay periods; 1,327 pay periods x \$50/pay period (civil
6 penalty) amounts to \$66,350 in exposure. The latter exposure calculation does not take into
7 account the fact that Defendant had strong, written meal period policies and that the sampling
8 did have a meal period premium payment. *See Messrelian Decl.*, ¶14.

9 As it relates to Plaintiff's argument for rest break violations, since there was no actual
10 clock-in and clock-out records for rest breaks, Plaintiff extrapolated the 36.5% pay period
11 violation rate for rest breaks. The number of pay periods at issue for the rest break claim would
12 be 3,754 pay periods since 98.8% of the shifts were over 3.5 hours long. As such, the maximum
13 exposure for rest period violations in the PAGA period would be \$137,000, which is calculated
14 as follows: 3,754 pay periods x 36.5% pay period violation rate equals 1,370 affected pay
15 periods; 1,370 pay periods x \$100/pay period (civil penalty) amounts to \$137,000 in exposure.
16 The latter exposure calculation does not take into account the fact that Defendant had strong,
17 written rest period policies. *See Messrelian Decl.*, ¶15.

18 As it relates to Plaintiff's other claims, and unlike the arguments for meal/rest period
19 violations, there would be issues with proof. The sampling did not reveal any rounding as hours
20 were paid to the second decimal point. There would be no regular rate issue, since there were
21 no bonus payments seen in the sample. As it relates to any overtime issues, the data showed the
22 average work day was 7.3 hours, which means that overtime pay was not a major issue, however,
23 when employees worked over 8.0 hours, they were paid 1.5 times their regular rate. Moreover,
24 Defendant provided overall strong written policies as it related to wage and hour practices and
25 showed that Plaintiff acknowledged the policies. As it relates to Plaintiff's claim of business
26 expense reimbursement, Defendant had a strong "no cell phone use" policy at the workplace
27 and did not require Plaintiff and others to use their phones for work purposes. As it relates to
28 uniforms, portions of the uniform were provided by Defendant and any other articles of clothing

1 that were worn by aggrieved employees were not of a specific or distinctive design and could
2 be worn outside of work as well. Plaintiff's other claims for violations of Labor Code sections
3 203, 204, and 226 (for not being paid all wages owed every pay period or at the end of
4 employment as well as not receiving accurate, itemized wage statements) would not be triggered
5 since they are derivative claims, and no rounding/overtime issues were identified. *See*
6 *Messrelian Decl.*, ¶16.

7 Based on the above calculations, Plaintiff's aggregate exposure for the strongest disputed
8 claims would be \$203,350. Assuming that Plaintiff's calculations and analysis are accurate, the
9 maximum exposure presumes that the Court will not reduce the penalty award as unjust,
10 arbitrary, oppressive, or confiscatory. Based on the above analysis, a gross settlement in the
11 amount of \$120,000, which represents 59% of the maximum penalty calculation, is a very strong
12 result, especially in light of the risk factors as discussed above. *See Messrelian Decl.*, ¶17.

13 Moreover, Plaintiff is aware of no California state courts awarding Plaintiff multiple
14 PAGA penalties for the same violation for the same pay period under different Labor Code
15 provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack" civil
16 penalties arising under the various Labor Code statutes. Furthermore, judges have awarded
17 extremely small sums to PAGA claimants in the past. Defendant also adamantly disputes all of
18 Plaintiff's allegations in the operative Complaint. *See Messrelian Decl.*, ¶18.

19 PAGA states a court has discretion to award a lesser amount than the maximum
20 penalty. *See Lab. Code § 2699(e)(2)* ("...a court may award a lesser amount than the maximum
21 civil penalty amount specified by this part if, based on the facts and circumstances of the
22 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
23 or confiscatory."); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203
24 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
25 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence
26 of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
27 ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
28 discounted award of only \$5 per violation because it was within the Court's discretion to

1 significantly reduce PAGA penalties even when there is a finding that a violation of the
2 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess
3 of \$70 million and was successful in proving the PAGA claim during a bench trial. However,
4 the trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and
5 stated that this reduction was warranted because imposing the maximum penalty would be
6 “unjust, arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with
7 meal break obligations and because the Court found the violations were minimal. Applying the
8 same formula here and assuming there was one violation during each pay period, the award of
9 civil penalties could not exceed \$19,000 in PAGA penalties (3,800 violations x \$5). As such,
10 this Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington*
11 formula. Defendant has also posed formidable defenses to the Labor Code claims underlying
12 Plaintiff’s allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross
13 Settlement Amount is uncertain. *See* Messrelian Decl., ¶19.

14 The Parties further recognize that the issues presented in the Action are likely only to be
15 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will
16 cause inconvenience, distraction, disruption, delay, and expense disproportionate to the
17 maximum potential benefits to the PAGA Members and Plaintiff from continued litigation. *See*
18 Messrelian Decl., ¶20.

19 The settlement of the Action involves monetary relief to all PAGA Members, Plaintiff,
20 her attorneys, and the State of California. *See* Messrelian Decl., ¶21.

21 Furthermore, Plaintiff recognizes that continued litigation presents significant risks that
22 support a significant downward departure from Plaintiff’s estimated civil penalties amount. In
23 view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount
24 for these claims and is in the best interest of Plaintiff and PAGA Members and thus, warrants
25 approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
26 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable, adequate, and
27 equitable to Defendant, Plaintiff, and the State, especially in light of the current economic
28 climate, and are the product of good faith, and informed arms-length negotiations between the

1 Parties consistent with public policy and fully comply with applicable provisions of law. *See*
2 Messrelian Decl., ¶22.

3 **IV. TERMS AND PROCEDURES OF THE SETTLEMENT**

4 The Settlement Agreement covers all claims against the Released Parties (as defined in
5 the Settlement Agreement) arising during the Settlement Period for civil penalties under PAGA
6 that were asserted or could reasonably have been asserted based on the facts alleged or that could
7 have been alleged in the Action and/or the PAGA letter submitted by Plaintiff to the LWDA with
8 respect to PAGA Members from January 23, 2022 through May 1, 2024. *See* Messrelian Decl.,
9 **Exhibit 1**, pages 1-2.

10 Defendant agrees to pay \$120,000.00 toward the Settlement (the “Gross Settlement
11 Amount” or “GSA”) which will be distributed as follows:

- 12 i. \$40,000.00 (33 1/3% of the GSA) in attorneys’ fees to Harout Messrelian, Esq. of
13 Messrelian Law Inc.
- 14 ii. \$1,301.00 in attorney litigation costs to Harout Messrelian, Esq. of Messrelian
15 Law Inc.
- 16 iii. \$4,500.00 in PAGA Settlement Administrator costs to the Settlement
17 Administrators (Phoenix).
- 18 iv. \$74,199.00 (the “Net Settlement Amount” or “NSA”) will be divided as follows:
 - 19 a. \$55,649.25 (75% of “NSA”) to the LWDA, which represents civil
20 penalties payable to the LWDA under the Labor Code Private Attorneys
21 General Act (“PAGA”), Labor Code section 2698, *et seq.*; and
 - 22 b. \$18,549.75 (25% of NSA) (the “PAGA Members Amount”) to the PAGA
23 Members which represents civil penalties payable to the PAGA Members
24 as civil penalties. *See* Messrelian Decl., **Exhibit 1**, paragraph 5.

25 Plaintiff and each PAGA Member shall receive a portion of the PAGA Members Amount
26 in proportion to the number of pay periods employed in hourly, non-exempt positions in
27 California during the Settlement Period. *See* Messrelian Decl., **Exhibit 1**, paragraph 7.

28 For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved

1 Employee Settlement Award shall be considered to be a civil penalty and shall, if required by
2 applicable state and/or federal law, be reported on a federal form 1099. *See* Messrelian Decl.,
3 **Exhibit 1**, paragraph 9.

4 **V. THE PROPOSED FEE AMOUNT FOR ATTORNEY'S FEES AND COST**
5 **AMOUNT FOR LITIGATION EXPENSES IS FAIR, ADEQUATE, AND REASONABLE**
6 **AND SHOULD BE APPROVED**

7 Plaintiff's counsel represents Plaintiff on a straight contingency basis. Plaintiff's counsel's
8 request for \$40,000.00 in attorney fees and \$1,301.00 in litigation costs is fair and reasonable.
9 "Empirical studies show that, regardless of whether the percentage method or the lodestar method
10 is used, fee awards in class actions average around one-third of the recovery. *Chavez v. Netflix,*
11 *Inc.* (2008) 162 Cal.App.4th 43, 47 fn. 11 (quoting *Shaw v. Toshiba America Information Systems,*
12 *Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also Lafitte v. Robert Half Int'l Inc.* (Cal. Aug.
13 11, 2016) 1 Cal.5th 480, 503, 376 P.3d 672, 686 (holding that courts can use the percentage method
14 for the calculation of attorneys' fees). This is also consistent with Plaintiff's Counsel's experience
15 in cases involving PAGA claims. This award is justified here because Plaintiff's counsel achieved
16 a strong result for the PAGA Members and the State while bearing the substantial burdens of
17 contingency representation. *See* Messrelian Decl., ¶¶25-26.

18 It is an accepted practice in wage and hour class action settlements to award attorneys'
19 fees to Plaintiff's Counsel based on a percentage of the total settlement value agreed upon by the
20 Parties. California courts have long recognized that an appropriate method for awarding
21 attorneys' fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest*
22 (1977), 20 Cal.3d. 25, 48-49 ["when a number of persons are entitled in common to a specific
23 fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation
24 or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the
25 fund"]; *Wershba v. Apple Computer, Inc.* (2001), 91 Cal.App.4th, 230, 254; *Lealao v. Beneficial*
26 *California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.)

27 The litigation costs expended to aid in the representation of the PAGA Members
28 include the following: lawsuit filing fee of \$454.22; PAGA initial filing fees of \$75.00; expert

1 data analysis fee of \$750.00; and miscellaneous filing fees of \$21.78 for a total of \$1,301.00.
2 All of these costs are documented and reasonably incurred. *See* Messrelian Decl., ¶27.

3 **VI. NO ADMISSION OF LIABILITY OR WRONGDOING**

4 This Settlement represents a compromise and settlement of highly disputed claims. The
5 Parties expressly recognize that the making of this agreement does not in any way constitute an
6 admission or concession of wrongdoing on the part of Defendant or the Released Parties. *See*
7 Messrelian Decl., **Exhibit 1**, paragraph 16.

8 **VII. PAGA SETTLEMENT ADMINISTRATION**

9 The Parties agree to use Phoenix Settlement Administrators to handle the administration
10 of this Settlement. *See* Messrelian Decl., **Exhibit 1** at paragraph 12.

11 Pursuant to the terms of the Settlement Agreement, the Parties are hereby presenting the
12 Settlement Agreement to the Court and requesting that the Court issue an order and judgment of
13 Settlement Approval, approving and incorporating by reference the terms and conditions of the
14 Settlement Agreement to the extent necessary to effectuate this Settlement Agreement.

15 Pursuant to the Settlement Agreement, the following outlines the procedure for funding
16 and distribution of the PAGA settlement funds in this matter:

- 17 a. Within thirty (30) calendar days of the Effective Date, Defendant shall deposit the
18 Gross Settlement Amount with the Settlement Administrator. Within thirty (30)
19 calendar days of the Effective Date, Defendant shall also provide the Settlement
20 Administrator with a list of all Aggrieved Employees with each listed employee's
21 full name, last known mailing address, last known telephone number, social
22 security number, the actual number of compensable pay periods worked by them
23 during the PAGA Period. The Settlement Administrator shall run all the addresses
24 of Aggrieved Employees through the United States Postal Service NCOA
25 database to obtain current address information and shall skip trace and re-mail all
26 returned, undelivered mail within ten (10) days of receiving notice that a notice
27 was undeliverable.
- 28 b. Within fifteen (15) calendar days from the date the Gross Settlement Amount has
been deposited with the Settlement Administrator as well as the information
provided in Paragraph 11 (a), the Settlement Administrator shall:
 - i. Distribute a total of Twenty-Five percent (25%) of the PAGA Fund
to the Aggrieved Employees, along with the Notice of PAGA
Representative Action Settlement (attached hereto as **Exhibit A**).
Aggrieved Employees shall not be required to make claims to

1 receive their share of the PAGA settlement. The payment checks
2 shall be sent to each Aggrieved Employee by U.S. First Class mail
3 to the Aggrieved Employee's last known mailing address with
4 directions to the Postmaster to forward the payment checks and
5 return all undeliverable payment checks to the Settlement
6 Administrator. It will be conclusively presumed that an Aggrieved
7 Employee's individual settlement payment check was received if
8 the payment check has not been returned within thirty (30) days of
9 the original mailing. All uncashed settlement checks shall be sent
10 to the California Controller's Unclaimed Property Fund to be held
11 in the name of the alleged aggrieved employee. .

12 ii. Distribute a total of Seventy-Five percent (75%) of the PAGA
13 Fund to the LWDA.

14 iii. Distribute PAGA Counsel's fees and costs, as approved by the
15 Court.

16 iv. Distribute payment to itself for services as Settlement
17 Administrator, as approved by the Court.

18 c. Settlement Checks issued to Aggrieved Employees pursuant to this Agreement will
19 expire one hundred and eighty (180) days from the date they are mailed by the
20 Settlement Administrator. All money represented by uncashed settlement checks
21 shall be redistributed to the LWDA and those Aggrieved Employees who have
22 already cashed their checks based on their pro rata share of the PAGA penalties.
23 The Settlement Administrator shall deduct costs of redistribution of those checks
24 prior to calculating the pro rata share of the LWDA and the Aggrieved Employees
25 receiving the second check.

26 d. The Parties and their counsel shall not bear any liability for lost or stolen checks,
27 forged signatures on checks, or unauthorized negotiation of checks. Unless
28 responsible by its own acts of omission or commission, the same is true for the
Settlement Administrator.

See Messrelian Decl., **Exhibit 1**, paragraph 11 .

VIII. CONCLUSION

Plaintiff respectfully requests that the Court grant this Motion.

Respectfully Submitted,

MESSRELIAN LAW INC.

DATED: March 4, 2025

By 
HAROUT MESSRELIAN, ESQ.
Attorneys for Plaintiff

1
2 **PROOF OF SERVICE BY E-MAIL**

3 STATE OF CALIFORNIA)
4)
5 COUNTY OF LOS ANGELES)

6 I, state that I am employed in the aforesaid County, State of California; I am over the age of
7 eighteen years and not a party to the within action; my business address is 500 N. Central Ave.,
Suite 840, Glendale, California 91203.

8 On March 4, 2025, I served the foregoing **PLAINTIFF'S NOTICE OF**
9 **UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT;**
10 **MEMORANDUM OF POINTS AND AUTHORITIES THEREOF; DECLARATION**
11 **OF HAROUT MESSRELIAN IN SUPPORT OF UNOPPOSED MOTION FOR**
12 **APPROVAL OF PAGA SETTLEMENT [PROPOSED] ORDER ON UNOPPOSED**
13 **MOTION FOR APPROVAL OF PAGA SETTLEMENT** thereon fully prepaid, in the
United States mail at Glendale, California, and/or by following one of the methods of service
as follows:

14 FISHER & PHILLIPS LLP
15 Boris Sorsher
bsorsher@fisherphillips.com
16 Lisa Peterson
lpeterson@fisherphillips.com
17 Cynthia Borrayo
cborrayo@fisherphillips.com

18 O'HAGAN MEYER
19 William Richards
20 wrichards@ohaganmeyer.com
21 *Attorneys for Defendants*

22 (X) **BY EMAIL OR ELECTRONIC TRANSMISSION:** Pursuant to CCP 1010.6, I
23 transmitted the document(s) electronically to the person (s) at the email address(es) above. Transmission
24 was reported as complete and without error.

25 I declare under the penalty of perjury under the laws of the State of California, that the
26 foregoing is true and correct.

27 Executed on March 4, 2025, at Glendale, California.

28 

Harout Messrelian



Make a Reservation

CHRISTINA FRANCO vs M&B RESTAURANT GROUP

Case Number: 23STCV06880 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2023-03-29 Location: Stanley Mosk Courthouse - Department 48

Reservation

Case Name: CHRISTINA FRANCO vs M&B RESTAURANT GROUP	Case Number: 23STCV06880
Type: Motion for Order (Approving PAGA Settlement)	Status: RESERVED
Filing Party: Christina Franco (Plaintiff)	Location: Stanley Mosk Courthouse - Department 48
Date/Time: 03/27/2025 8:30 AM	Number of Motions: 1
Reservation ID: 566511937492	Confirmation Code: CR-DRJJBGBUSLTWMM85

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: n/a	

[Print Receipt](#)[+ Reserve Another Hearing](#)