HAROUT MESSRELIAN (SBN: 272020)
MESSRELIAN LAW INC.
500 N. Central Ave., Suite 840
Glendale, CA 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983
E-mail: hm@messrelianlaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ELIZABETH MORA, on behalf of herself, the state of California, and the Aggrieved Employees Plaintiff, vs. IHG MANAGEMENT (MARYLAND) LLC; InterContinental Hotels Group Resources, LLC; Intercontinental Hotels of San Francisco, Inc.; Inter-Continental Hotels Corporation; Six Continents Hotels, Inc.; KHRG Huntington Beach LLC; KHRG Argyle LLC; KHRG Wilshire LLC; KHRG Westwood LLC; KHRG NPC LLC; KHRG Sacramento LLC; KHRG Employer, LLC; KHRG SF Wharf LLC; Kimpton Hotel & Restaurant Group, LLC; KHRG Canary LLC; KHRG La Peer LLC; KHRG SFD LLC; KHRG SF Wharf U2 LLC; KHRG Sutter LLC; KHRG Sutter Union LLC; Holiday Inn Los Angeles Gateway – Torrance; Holiday Inn Express and Suites - San Francisco Fisherman Wharf; Hotel Indigo – Los Angeles Downtown; Hotel Indigo - San Diego Gaslamp Quarter; InterContinental - Los Angeles Downtown; InterContinental - San Diego; InterContinental - San Francisco; InterContinental - Mark Hopkins; Regent - Santa Monica; Kimpton Shorebreak Huntington Beach Resort; Kimpton Everly Hotel; Kimpton Hotel Wilshire; Kimpton Hotel Palomar Los Angeles Beverly Hills; Kimpton Rowan Palm Springs Hotel; Kimpton Sawyer Hotel; Kimpton Alma; Kimpton Alton Hotel; Kimpton Hotel Enso; Kimpton Canary Hotel; and Kimpton La	Case No.: 23STCV13726 **PLAINTIFF'S NOTICE OF UNOPPOSED MOTION AND UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Action filed: 6/14/23 Date: 8/29/24 Time: 8:30am Dept: 55 Reservation ID: 415312841219 Department: 55, Hon. Alison Mackenzie <u>Submitted Herewith Under Separate Cover:</u> 1. Declaration of Harout Messrelian in Support of Unopposed Motion for Approval of PAGA Settlement; Memorandum of Points and Authorities in Support Thereof; 2. [Proposed] Order

Peer Hotel,

Defendants.

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

PLEASE TAKE NOTICE THAT on August 29, 2024 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 55 of the above-entitled Court, located at 111 N. Hill Street, Los Angeles, California 90012, Plaintiff Elizabeth Mora ("Plaintiff") and 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 Defendants (collectively, "the Parties")

This Motion is based on this Notice of Motion and Motion; the attached Memorandum of Points and Authorities; the concurrently-filed Declaration of Harout Messrelian; 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: June 21, 2024

By____________________
Harout Messrelian, Esq.
Attorneys for Plaintiff
ELIZABETH MORA

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff and Defendants have reached an agreement to settle the above-captioned action (the "Action"). Plaintiff and Defendants are collectively referred to as the "Parties" and any one of them individually may be referred to as a "Party." The Parties have memorialized the terms of this settlement in a "Private Attorneys General Act Settlement Agreement" (the "Settlement Agreement" or "Settlement"). Attached as **Exhibit 1** to the Declaration of Harout Messrelian ("Messrelian Decl.") is a true and accurate copy of the Settlement Agreement and the PAGA notice that will be sent to the alleged aggrieved employees covered by the Settlement Agreement, being Plaintiff and all current and former non-exempt employees of Defendants in the State of California from February 17, 2022 through June 6, 2024 ("PAGA Members"), with their payment. By this Motion and pursuant to California Labor Code § 2699(l), Plaintiff seeks an order permitting settlement on the terms outlined in the Settlement Agreement.

II. ALLEGATIONS AND INVESTIGATION

Defendants operate different hotel brands with numerous locations in the state of California. Plaintiff Elizabeth Mora was classified as an hourly, non-exempt employee and worked for Defendant IHG Management (Maryland), LLC as a cook at La Boucherie restaurant located at 900 Wilshire Blvd., inside of the InterContinental Hotel in downtown Los Angeles, from approximately December 2022/January 2023 through February 2023. *See* Messrelian Decl., ¶4.

Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. ("PAGA"). On February 17, 2023, Plaintiff Elizabeth Mora on behalf of herself and Defendants' other California non-exempt employees (hereafter collectively the "Aggrieved Employees") gave written notice by electronic service to the California Labor and Workforce Development Agency ("LWDA") and via certified mail to Defendants of their claims against Defendant. In her notice to the LWDA, Plaintiff asserted on behalf of herself and the Aggrieved Employees that Defendant (1) failed to compensate for all hours worked and to pay minimum wages (Labor

Code Sections 1194, 1197, 1197.1); (2) failed to pay overtime compensation (Labor Code Section 510); (3) failed to provide rest breaks (Labor Code Section 226.7); (4) failed to provide meal breaks (Labor Code Sections 512, 226.7); (5) failed to timely pay wages due during employment (Labor Code Section 204); (6) failed to provide accurate itemized wage statements (Labor Code Section 226); (7) failed to keep accurate and complete payroll records (Labor Code Section 1174/1174.5);(8) failed to pay wages at the end of employment (Labor Code section 203); (9) failed to reimbursement business expenses (Labor Code section 2802); (10) Failure to provide tips; and claims under Industrial Welfare Commission Wage Orders 5-2001. Plaintiff filed her initial lawsuit on June 14, 2023, in the Superior Court for the State of California, County of Los Angeles, Case No. 23STCV13726, with a total of 18 causes of action for individual wage and hour violations, PAGA penalties, and individual claims for FEHA sexual harassment/failure to prevent harassment/retaliation, retaliation under Labor Code section 1102.5, and wrongful termination in violation of public policy. *See* Messrelian Decl., ¶5.

On or around April 17, 2024, Plaintiff filed a supplemental notice to the LWDA, adding additional corporate entities, additional alleged violations, and adding additional claims for penalties under the Private Attorneys General Act (PAGA) based on the following legal theories: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide compliant meal periods, or premium pay for non-compliant meal periods; (4) failure to authorize and permit compliant rest periods, or provide premium pay for non-compliant rest periods; (5) failure to provide accurate, itemized wage statements and/or otherwise maintain accurate and complete records; (6) failure to timely pay wages during employment and/or upon separation of employment; (7) failure to reimburse business expenses; (8) failure to provide tips; (9) failure to pay split shift premiums; (10) unlawful deductions; (11) failure to provide personnel file; (12) failure to provide suitable seating and resting facilities; (13) sick leave violations; (14) failure to pay vested vacation/paid time off; and (15) unlawful agreements and unlawful background inquiries. On or around April 22, 2024, Plaintiff filed a First Amended Complaint in this action, which is the operative complaint, alleging one cause of action under PAGA for Labor Code violations based on the legal theories as presented in

Plaintiff's April 17, 2024 supplemental PAGA notice to the LWDA. *See* Messrelian Decl., ¶6.

Through informal discovery, Defendants produced records and represented that it employed approximately 5,259 workers falling within Plaintiff's Aggrieved Employees definition for the period from February 17, 2022 (one year before Plaintiff's initial PAGA notice) through March 2024, who worked approximately 163,323 pay periods that same time period. *See* Messrelian Decl., ¶7.

The Settlement Agreement covers PAGA Members, which are Aggrieved Employees employed on or after February 17, 2022 through June 6, 2024 at the following hotel locations: Holiday Inn Los Angeles Gateway – Torrance; Holiday Inn Express and Suites - San Francisco Fisherman Wharf; Hotel Indigo – Los Angeles Downtown; Hotel Indigo - San Diego Gaslamp Quarter; InterContinental - Los Angeles Downtown; InterContinental - San Diego; InterContinental - San Francisco; InterContinental - Mark Hopkins; Regent - Santa Monica; Kimpton Shorebreak Huntington Beach Resort; Kimpton Everly Hotel; Kimpton Hotel Wilshire; Kimpton Hotel Palomar Los Angeles Beverly Hills; Kimpton Rowan Palm Springs Hotel; Kimpton Sawyer Hotel; Kimpton Alma; Kimpton Alton Hotel; Kimpton Hotel Enso; Kimpton Canary Hotel; and Kimpton La Peer Hotel. *See* Messrelian Decl., ¶8.

The Parties attended a full-day mediation with experienced mediator Louis Marlin, Esq. on March 8, 2024. The Parties ultimately settled the matter through follow-up settlement discussions thereafter with the continued assistance of Mr. Marlin as mediator. Before agreeing to the terms of the Settlement Agreement, the Parties engaged in extensive informal discovery regarding Defendant's policies, practices, operations, time and payroll information and other topics. Prior to negotiation, Defendants produced Plaintiff's personnel file, time and payroll data for Plaintiff, and time records and payroll records for 806 aggrieved employees falling within Plaintiff's Aggrieved Employees definition and during the applicable PAGA period. Through extensive arm's length negotiations and only after extensive discovery and investigation were performed, the Parties agreed to settlement terms. *See* Messrelian Decl., ¶10.

The Parties conducted a thorough investigation of the facts and law both before and after the lawsuit was filed. 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. Based on their own independent investigations and evaluations, the Parties and their respective counsel are of the opinion that the Settlement Agreement for the consideration and on the terms set forth in this Motion are fair, reasonable and adequate and are in the best interests of Plaintiff, the PAGA Members, and Defendants in light of all known facts and circumstances and the risks inherent in litigation, especially in this post-pandemic era when most California businesses are still struggling to remain afloat, much less prosper and make a large profit. *See* Messrelian Decl., ¶11.

The Parties further recognize that the issues presented in the Action 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, especially in light of the post- pandemic era and the business climate. *See* Messrelian Decl., ¶12.

III. FAIRNESS OF THE SETTLEMENT

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

Plaintiff alleges a broad range of PAGA claims but believes that some of the strongest claims are that Plaintiff and other PAGA Members were not provided meal breaks under the law and that Defendants failed to calculate the correct regular rate of pay in paying PAGA members correct overtime compensation under the law for overtime hours worked. Plaintiff's counsel considered various sources of information that enabled Plaintiff's counsel to decipher the key issues regarding labor code compliance in this case. Among other things, Plaintiff's counsel considered the following:

- Defendants produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- Plaintiff's counsel requested that Defendants provide any and all policies, memos, and guides regarding overtime and double-time wages, off the clock work, expense reimbursement, meal periods, rest breaks, meal period waivers and agreements, background checks, suitable seating, arbitration agreements, union agreements, vacation

and sick leave, and compensation plans, among others, in effect during the relevant time period beginning in February 2022. Defendants produced those policies, both independently where they existed, and as part of their employee handbook and/or union agreements.

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

- Plaintiff's counsel requested a sample of time and payroll records for the relevant time period. Defendants provided a sampling of time and pay records for 806 of its employees. This represents approximately 15.3% of the total employees (5259) that Defendants employed during the PAGA Period based on data available at the time.

- Plaintiff's counsel then retained a professional data analyst, James Toney, to examine the records and determine the meal period violation rates, if there was any pay discrepancy in timesheet hours versus paid hours, regular rate of pay violations, and if there was any rounding/time shaving issues.

- 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.

See Messrelian Decl., ¶13.

Plaintiff contends that the civil penalty statutes applicable to the Action arise from violations of the California Labor Code, including, but not limited to, Labor Code §§ 226.7, 510, 512, and 2699(f)(2). Under these civil penalty statutes, an employee who suffers a Labor Code violation may be awarded a sum of money for each pay period in which he or she was underpaid. However, under Labor Code § 2699(e)(2), the Court can reduce an award of civil penalties if the award is unjust, arbitrary, oppressive, or confiscatory. *See* Messrelian Decl., ¶14.

As it relates to Plaintiff's argument for meal break violations, Plaintiff's data analysis revealed a shift violation rate of <u>3.6%</u> for short, late, or no meal breaks. If you extrapolate the 3.6% shift violation rate, Plaintiff argues this amounts to <u>26.8%</u> of pay periods having at least one meal period violation. As such, the maximum exposure for meal period violations in the PAGA period would be **$4,377,100**, which is calculated as follows: 163,323 pay periods x 26.8% equals 43,771 affected pay periods; 43,771 pay periods x $100/pay period (civil penalty) amounts to $4,377,100 in exposure. The latter potential penalty exposure calculation does not take into account the fact that Defendants had strong, written meal period policies and training, and that the sampling revealed that Defendants paid 3,413 hours of meal period premiums for a total amount of $82,014.00. *See* Messrelian Decl., ¶15.

As it relates to Plaintiff's argument for regular rate of pay violations, Plaintiff's allegation was that bonus/incentive payments were not included in the regular rate of pay calculation for purposes of calculating the correct overtime rates and/or sick pay rates. The sampling received revealed a total of 623 total bonus/incentive payments over the span of 16,500 pay periods, which is approximately 3.8% of the pay periods. If there was a regular rate violation in 3.8% of the pay periods, it would amount to approximately 6,206 pay periods (163,323 x 3.8%) and the exposure would be **$620,630**, which is calculated by multiplying 6,206 pay periods x $100/pay period (civil penalty). The latter calculation assumes that overtime hours were actually worked in each pay period in which an incentive or bonus payment was made, however, this is not in line with reality since the data analysis revealed that 16.8% of workdays were greater than 8 hours. Furthermore, Defendant disputes that any bonus or incentive payments were non-discretionary in nature and disputes that the regular rate calculation was incorrect. Any alleged derivative violation under Labor Code section 226 for regular rate violations would once again amount to **$620,630**, which is calculated by multiplying 6,206 pay periods x $100/pay period (civil penalty). Note that the $100 per pay period calculation is based on *Gunther v. Alaska Airlines* (2021) 72 Cal. App. 5th 334, since a paystub was actually provided by Defendants. *See* Messrelian Decl., ¶16.

As it relates to Plaintiff's other claims, and unlike the arguments for meal period violations and regular rate violations, there would likely be issues with proof. As it relates to Plaintiff's claims for rest period violations and unpaid "off the clock" work, there is no documentary evidence or data at this stage that would support those claims and Defendant has asserted many defenses. Plaintiff recognizes the challenges in proving these alleged violations. As it relates to Plaintiff's claims for minimum wage violations, the data analysis showed minimal, isolated issues, if any, and did not reveal any unlawful group-wide practices, such as rounding, auto-deduction of meal periods, or incomplete/inaccurate records. As it relates to

Plaintiff's claims for overtime compensation, the data analysis of the sampling did not reveal any violations other than the narrow regular rate issue as noted above. Moreover, Defendants provided strong written policies as it related to business expense reimbursement, including the "Dress Code Policy" and "Cell Phone/Mobile Device Policy". Additionally, as further noted below, many employees were union members. Their Collective Bargaining Agreements included provisions covering overtime, meal and rest breaks, and wage calculations, which could be a basis for preemption and weigh against a finding of liability. In many other areas, Defendant also presented evidence that it has either complied with, or made good faith attempts to comply with, California law. The 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 may well be subject to this good faith defense. Moreover, on the issue of accurate, itemized wage statements under Labor Code Section 226, Defendant had timely filed a notice of cure with the LWDA on or around March 22, 2023, wherein Defendant stated that they had inadvertently provided paystubs with the legal name of "IHG Management Maryland LLC" instead of "IHG Management (Maryland) LLC" and that they fixed the typographical error going back 3 years. As to claims for suitable seating violations, unlawful deductions, reporting time violations, sick leave violations, gratuity violations, unpaid vested vacation wages, unlawful agreements, and Labor Code section 208 and 432.6 violations, the records, polices, and investigation did not evidence liability or such claims were likely preempted by the employee's union agreements. *See* Messrelian Decl., ¶17.

The other major risk in this case revolves around the fact that Plaintiff and a majority of other Aggrieved Employees in the PAGA period are union members. The latter translates to there being arbitration provisions in the respective Collective Bargaining Agreements that would potentially prevent a PAGA action in Court prior to individual arbitration of PAGA penalties. Furthermore, there would certainly be an argument for preemption under Section 301 of the Labor Management Relations Act (LMRA) as it relates to the claimed Labor Code violations, particularly those involving overtime, meal and rest breaks, and regular rate of pay. Also, it may be harder for Plaintiff to demonstrate that legal violations occurred on a widespread basis if no union employee ever filed a grievance or complaint as to the alleged issues. *See* Messrelian Decl., ¶18.

Based on the above calculations, Plaintiff's aggregate potential exposure for the strongest disputed claims would be **$5,618,360**. 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. Based on the above analysis, a gross settlement in the amount of $1,250,000 is a strong result, especially in light of the risk factors as discussed above. *See* Messrelian Decl., ¶19.

Moreover, Plaintiff is aware of no California state courts awarding Plaintiff multiple PAGA penalties for the same violation 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. Furthermore, judges in some cases have awarded extremely small sums to PAGA claimants in the past, where the employees received less than $5 per pay period. Defendants also adamantly dispute all of Plaintiff's allegations in the operative Complaint, and presented many potential defenses at the mediation. *See* Messrelian Decl., ¶20.

PAGA states a court has discretion to award a lesser amount than the maximum penalty. *See* Lab. Code § 2699(e)(2) ("…a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."); *see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful and intentional conduct. *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. Defendants argued the same reduction in PAGA penalties should be applied in this case. Applying the same formula here and assuming there was one violation during each pay period, the award of civil penalties could not exceed $816,615.00 in PAGA penalties (163,323 violations x $5). As such, this Settlement is a great result based solely on the risk the Court chooses to apply the *Carrington* formula. Defendant has also posed formidable defenses to the Labor Code claims underlying Plaintiff's allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement Amount is uncertain. *See* Messrelian Decl., ¶21.

The Parties further recognize that the issues presented in the Action 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 PAGA Members and Plaintiff from continued litigation. *See* Messrelian Decl., ¶22.

The settlement of the Action involves monetary relief to all PAGA Members, Plaintiff, her attorneys, and the State of California. *See* Messrelian Decl., ¶23.

Furthermore, Plaintiff recognizes that continued litigation presents significant risks that support a significant downward departure from Plaintiff's estimated potential 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 PAGA Members 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 Defendant, 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. *See* Messrelian Decl., ¶24.

IV. TERMS AND PROCEDURES OF THE SETTLEMENT

The Settlement Agreement covers all claims, charges, complaints, liens, demands, causes of action, obligations, and liabilities, whether known or unknown, against the Released Parties (as defined in the Settlement Agreement) for civil penalties predicated on any of the alleged violations of the California Labor Code, Industrial Welfare Commission Wage Orders, regulations, and/or other provisions of law that were alleged or asserted in the Action or any PAGA notices filed by Plaintiff, or that could have been asserted in the Action or any PAGA notice filed by Plaintiff based on any facts or allegations therein, with respect to PAGA Members from February 17, 2022 through June 6, 2024. *See* Messrelian Decl., **Exhibit 1,** page 1.

Defendants agree to pay $1,250,000.00 toward the Settlement (the "Gross Settlement Amount" or "GSA") which will be distributed as follows:

i. $416,666.67 (33 1/3% of the GSA) in attorneys' fees to Harout Messrelian, Esq. of Messrelian Law Inc.

ii. $10,639.48 in attorney litigation costs to Harout Messrelian, Esq. of Messrelian Law Inc.

iii. $19,775.00 in PAGA Settlement Administrator costs to the Settlement Administrators (Apex).

iv. $802,918.92 (the "Net Settlement Amount" or "NSA") will be divided as follows:

   a. $602,189.19 (75% of "NSA") to the LWDA, which represents civil penalties payable to the LWDA under the Labor Code Private Attorneys General Act ("PAGA"), Labor Code section 2698, *et seq.*; and

   b. $200,729.73 (25% of NSA) (the "PAGA Members Amount") to the PAGA Members which represents civil penalties payable to the PAGA Members as civil penalties that are allegedly owed in the Action for the period from February 17, 2022 through June 6, 2024. *See* Messrelian Decl., **Exhibit 1,** Article III, section 3.03(a)(4).

Plaintiff and each PAGA Member shall receive a portion of the Aggrieved Employee

Amount on a pro-rata basis by multiplying the PAGA Members Amount by the ratio of (i) the number of pay periods worked by the PAGA Member during the release period and (ii) the total number of pay periods worked by all PAGA Members during the release period. *See* Messrelian Decl., **Exhibit 1,** Article III, section 3.03(a)(5).

For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved Employee Settlement Award shall be considered to be a civil penalty and shall not be subject to withholding, unless otherwise required by law. *See* Messrelian Decl., **Exhibit 1**, Article III, section 3.03(a)(8).

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

Plaintiff's counsel represents Plaintiff on a straight contingency basis. Plaintiff's counsel's request for $416,666.67 in attorney fees and $10,639.48 in litigation costs is fair and reasonable. "Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 47 fn. 11 (quoting *Shaw v. Toshiba America Information Systems, Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also Lafitte v. Robert Half Int'l Inc.* (Cal. Aug. 11, 2016) 1 Cal.5th 480, 503, 376 P.3d 672, 686 (holding that courts can use the percentage method for the calculation of attorneys' fees). This is also consistent with Plaintiff's Counsel's experience in cases involving PAGA claims. This award is justified here because Plaintiff's counsel achieved a strong result for the PAGA Members and the State while bearing the substantial burdens of contingency representation. *See* Messrelian Decl., ¶¶27-28.

It is an accepted practice in wage and hour class and representative 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, 230, 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.)

The litigation costs expended to aid in the representation of the PAGA Members include the following: lawsuit filing fee of $454.22; service of lawsuit fee of $75.00; PAGA initial filing fees of $75.00; expert data analysis fee of $950.00; mediation fee of $9,000.00; and miscellaneous filing fees of $85.26 for a total of $10,639.48. All of these costs are documented and reasonably incurred. *See* Messrelian Decl., ¶29.

VI. NO ADMISSION OF LIABILITY OR WRONGDOING

The payment of consideration or any other obligation are not and shall not be construed in any way as an admission of wrongdoing or liability on the part of Defendants, or any other person or business entity. Defendants adamantly deny all allegations of wrongdoing arising out of the employment relationship between the Parties and the PAGA Members. The Parties intend merely to avoid the expense, delay, uncertainty and burden of continued litigation. *See* Messrelian Decl., **Exhibit 1** at Article II, Section 2.01(b).

VII. PAGA SETTLEMENT ADMINISTRATION

The Parties agree to use Apex Class Action LLC aka Apex Class Action Administrators to handle the administration of this Settlement. *See* Messrelian Decl., **Exhibit 1** at Article III, Section 3.04.

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

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

Within 30 business days after the Court's approval of the Settlement, Defendants will provide to the Settlement Administrator a list of Aggrieved Employees, in Microsoft Office Excel, showing each individual's full name, employee ID number, last known mailing address, Social Security number, and number of PAGA Pay Periods, to aid the Settlement Administrator in preparing the Notice of PAGA Settlement and calculating the individual share of the PAGA settlement payment to Aggrieved Employees. For purposes of this Agreement, the list provided by Defendants shall be the official information to be used for this Settlement. The list of Aggrieved Employees shall be provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain its confidentiality. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Settlement.

Settlement Payment Procedures.

(a) Payment of PAGA Settlement Sum and Notice to Aggrieved Employees.

(1) Defendants agree to pay the PAGA Settlement Sum to settle, resolve, and fully discharge the Claims. The PAGA Settlement Sum is all-inclusive, meaning it shall cover, resolve, and fully satisfy any and all amounts owed to Plaintiff, the Aggrieved Employees, the State of California, the Settlement Administrator, and Plaintiff's Counsel, including all amounts allocated to attorneys' fees and costs.

(2) This Agreement contemplates a separate, additional settlement agreement for Plaintiff's individual claims ("Individual Settlement Agreement") in exchange for a general release of claims from Plaintiff. If the court requires an additional amount to secure court approval of this PAGA settlement, Defendants shall not be required to contribute any additional amount. Any additional amount required to secure PAGA settlement approval shall be deducted from the amounts set forth in the Individual Settlement Agreement.

(3) The Parties agree there are no circumstances that would require Defendants to pay any amount greater than the PAGA Settlement Sum in connection with this Agreement, except as set forth in Section 3.02 (Escalator Clause). In the event this Agreement is canceled, rescinded, terminated, voided or nullified, however that may occur as permitted herein, or the settlement is barred by operation of law, invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendants shall have no obligation to pay any of the PAGA Settlement Sum and the Parties' respective positions shall be restored to their respective positions prior to mediation. Further, in that event, nothing in this Agreement, the negotiations leading to this settlement, nor any papers prepared in connection with this Agreement shall be admissible in any proceeding for any purpose whatsoever.

(4) The "Net Settlement Fund" shall be calculated by deducting from the PAGA Settlement Sum up to 33 1/3% of the PAGA Settlement Sum (projected to be $416,666.67) for the payment of Plaintiff's Counsel's fees; up to $17,500.00 for the payment of Plaintiff's

Counsel's costs; and up to $19,775 for Settlement Administration Costs, all of which are subject to the Court's approval. The Net Settlement Fund is estimated to be approximately $796,058.33. Seventy-five percent (75%) of the Net Settlement Fund, or approximately $597,043.75, shall be distributed to the LWDA, and the remaining twenty-five percent (25%) of the Net Settlement Fund, or approximately $199,014.58, shall be distributed to the Aggrieved Employees. This is a non-reversionary settlement and any amount not approved by the Court including for Plaintiff's Counsel's fees or costs and/or Settlement Administration Costs, shall be added to the Net Settlement Fund for distribution as set forth herein and shall not be a basis to revoke or object to the Settlement.

(5) <u>Payments to Aggrieved Employees</u>. The twenty-five percent (25%) of the Net Settlement Fund to be distributed to the Aggrieved Employees will be divided by the total number of pay periods worked by all Aggrieved Employees during the Release Period to yield the "Pay Period Value." Each Aggrieved Employee will be paid an amount equal to their individual number of pay periods worked in California during the Release Period multiplied by the Pay Period Value. A "PAGA Pay Period" is a bi-weekly pay period during the Release Period in which an Aggrieved Employee worked at least one day during the pay period.

(6) Upon the later of thirty (30) business days after the Effective Date or fourteen (14) business days of the Settlement Administrator (defined below) establishing a qualified settlement fund ("QSF") pursuant to this Agreement, Defendants shall pay the entire PAGA Settlement Sum into the QSF established by the Settlement Administrator. Payment shall be made via wire, bank transfer, or other means acceptable to the Settlement Administrator on or before the scheduled due date. If the due date lands on a Saturday, Sunday, or holiday, the due date shall roll over to the following business day that is not a Saturday, Sunday, or holiday. The Settlement Administrator will provide to Defendants' Counsel an IRS Form W-9 for the QSF prior to their funding of the PAGA Settlement Sum.

(7) The Settlement Administrator shall disburse court-approved amounts from the PAGA Settlement Sum to: (a) Aggrieved Employees; (b) the LWDA; (c) Plaintiff's Counsel; and (d) itself, no later than fifteen (15) business days after Defendants' deposit of the PAGA Settlement Sum. The Settlement Administrator shall transmit the "Notice of PAGA Settlement" (in substantially the same form as **Exhibit "A"** attached hereto), together with settlement checks containing their individual settlement amounts, with no claims process required, to all Aggrieved Employees by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to forward the Notice of PAGA Settlement and return those that are undeliverable. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security

number of the Aggrieved Employee involved, and will then perform a single re-mailing. Checks will remain negotiable for 180 days after their issuance. After the 180 day-period, the Settlement Administrator shall remit any unclaimed funds to the California State Controller as unclaimed property in the name of each such Aggrieved Employee, unless otherwise ordered by the Court.

Settlement Administration Costs.

The Parties will retain Apex Class Action LLC as the third-party settlement administrator ("Settlement Administrator"). The Settlement Administrator will be responsible for establishing the QSF and issuing notices, payments and appropriate tax forms to Aggrieved Employees, the LWDA, Plaintiff, and Plaintiff's Counsel, pursuant to this Agreement and as approved by the Court. The Settlement Administration Costs shall be paid from the PAGA Settlement Sum. Settlement Administration Costs are estimated to be $19,775.

See Messrelian Decl., **Exhibit 1**, Article III, sections 3.02-3.04.

VIII. CONCLUSION

Plaintiff respectfully requests that the Court grant this Motion; approve the Settlement Agreement as fair, reasonable, and adequate; and enter an order and judgment on same.

Respectfully Submitted,

MESSRELIAN LAW INC.

DATED: June 21, 2024

By____________________
HAROUT MESSRELIAN, ESQ.
Attorneys for Plaintiff

PROOF OF SERVICE
Mora v. IHG Management (Maryland) LLC et al.
Los Angeles County Case No.: 23STCV13726

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

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

On June 21, 2024, I served the foregoing **PLAINTIFF'S NOTICE OF UNOPPOSED MOTION AND UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** thereon fully prepaid, in the United States mail at Glendale, California, and/or by following one of the methods of service as follows:

Marlene Moffitt
Spencer Skeen
OGLETREE DEAKINS
Marlene.moffitt@ogletreedeakins.com
Spencer.Skeen@ogletreedeakins.com
Attorneys for Defendants

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

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

Executed on June 21, 2024, at Glendale, California.

Harout Messrelian

Journal Technologies Court Portal

Make a Reservation

ELIZABETH MORA vs IHG MANAGEMENT (MARYLAND) LLC

Case Number: 23STCV13726 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2023-06-14 Location: Stanley Mosk Courthouse - Department 55

Reservation

Case Name:
ELIZABETH MORA vs IHG MANAGEMENT (MARYLAND) LLC

Case Number:
23STCV13726

Type:
Motion for Order (Approving PAGA Settlement)

Status:
RESERVED

Filing Party:
Elizabeth Mora (Plaintiff)

Location:
Stanley Mosk Courthouse - Department 55

Date/Time:
08/29/2024 8:30 AM

Number of Motions:
1

Reservation ID:
415312841219

Confirmation Code:
CR-GRK5AT3PHWT2RAFRX

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:
1969-12-31

Print Receipt   Reserve Another Hearing   View My Reservations

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