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individually and on behalf of all Aggrieved Employees

10 **IN THE SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12
13 IAN WILSON DECOSTA, individually and on
behalf of all Aggrieved Employees,

14 Plaintiff,

15 v.

16
17 BARKLEY & ASSOCIATES, INC; and DOES 1
through 100,

18 Defendants.

Case No. 23STCV14292

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES;**

Date: March 26, 2025

Time: 9:00 a.m.

Department: 52

Reservation ID: 281720743783

*[Filed concurrently with Declaration of Theodore
Tang, Declaration of Ian Decosta, Declaration of
Lisa Mullings, and [Proposed] Order]*

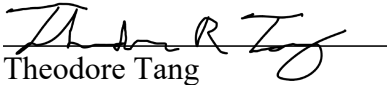
1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 26, 2025, at 9:00 a.m. or as soon thereafter as may be
3 heard in Department 52 of the Superior Court of California for the County of Los Angeles, located
4 at 111 N. Hill Street, Los Angeles, CA 90012, Plaintiff IAN WILSON DECOSTA will and hereby
5 does move the court for an order approving the settlement of the PAGA action.

6 This motion is based on this notice, the memorandum of points and authorities, the
7 declarations of Theodore Tang, Lisa Mullins, and Ian DeCosta, the pleadings and other papers in
8 the Court file, and whatever other such evidence and argument as may be properly placed before the
9 Court at or before the hearing.

10
11 DATED: January 30, 2025

FRONTIER LAW CENTER

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14 Theodore Tang
15 Attorney for Plaintiff
16 Ian Wilson DeCosta
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Private Attorney General Act case relates to allegations that defendant Barkley & Associates, Inc. (“Defendant”) violated the California Labor Code with regard to meal breaks, rest breaks, waiting time, and wage statements from at least March 29, 2022. Plaintiff Ian Wilson Decosta (“Plaintiff”) worked for Defendant from approximately September 7, 2022, to February 27, 2023.

Defendant denies all wrongdoing or underpayment. However, in an effort to resolve the case, the Parties engaged in informal discovery into, inter alia, the number of Aggrieved Employees and PAGA Pay Periods. Given the relatively small number of employees who worked for Defendant in the PAGA period, and the relatively small number of total PAGA Pay Periods involved, it appeared to the parties that this was a good case to attempt to resolve without incurring the sizeable expense of a formal mediation. Through arm’s-length discussions, the Parties resolved the case for a Gross Settlement Amount of \$70,000. Declaration of Theodore Tang at ¶ 9.

Under Labor Code section 2699(1)(2), “The superior court shall review and approve any settlement of any civil action filed pursuant to this part.” Plaintiff requests the Court to approve the settlement of the PAGA claims asserted in this action. Plaintiff expects this motion to be uncontested.

II. PROCEDURAL HISTORY

On March 29, 2023, Plaintiff, through counsel, uploaded a notice of PAGA Violations to the Labor and Workforce Development Agency (LWDA) via its online portal and cc’d Defendant via certified mail. In his letter, Plaintiff asserted that Defendant violated Labor Code sections 201, 202, 203, 226, 226.7, and 512. Specifically, the letter alleged that Defendant had a policy of prohibiting its employees from taking off-duty meal and rest breaks despite shifts lasting up to six and a half hours. Plaintiff further alleged that, due to these violations, Defendant had failed to provide accurate and complete wage statements and failed to pay all wages due upon termination.

On June 23, 2023, Plaintiff filed a complaint alleging the above violations. In his Complaint, Plaintiff also brought a claim for violation of the Unfair Competition Law, and a claim for PAGA Penalties based on these violations.

1 Shortly after service of the Complaint, the Parties began talking about paths to resolution.
2 The Parties entered into a stipulated protective order, pursuant to which Defendant informally
3 produced confidential documents, including Plaintiff's employee file, and data regarding employee
4 hours worked and amounts paid.

5 Given the relatively small number of Aggrieved Employees and pay periods involved, the
6 parties were able to come to a resolution without the assistance (or added cost) of a mediator.

7 **III. LEGAL ARGUMENT AND PAGA PENALTY CALCULATION**

8 *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal. App. 4th 116 stated the requirement that
9 additional information be presented to the Court in representative action settlements "to ensure that
10 the recovery represents a reasonable compromise, given the magnitude and apparent merit of the
11 claims being released, discounted by the risks and expenses of attempting to establish and collect on
12 those claims by pursuing the litigation" *Id.* at 129. While PAGA claims are not class actions,
13 courts often look at the same factors, where applicable, in determining whether or not PAGA claims
14 are fair and reasonable.

15 **a. Investigation of Claims**

16 As stated above, prior to settlement, Defendant provided Plaintiff with Plaintiff's employee
17 file and date regarding the Aggrieved Employees, including information about time worked and
18 amounts paid, and information regarding Defendant's written policies. Based on this information,
19 Plaintiff was able to evaluate the number of individual impacted, the number of pay periods at issue,
20 and information regarding the likely evidentiary issues and other risks Plaintiff may have
21 encountered.

22 **b. Value of the Claims**

23 PAGA permits an aggrieved employee to sue an employer for civil penalties associated with
24 the employer's alleged violation of various Labor Code provisions. Labor Code section 2699(a).
25 Pursuant to the statute, of the amount paid to settle a claim for PAGA penalties, twenty-five percent
26 (25%) is payable to the Aggrieved Employees and seventy-five percent (75%) is payable to the
27 LWDA. Labor Code section 2699(i). The penalties being sought as part of this settlement are
28 derived from the labor code violations referenced above. Each is discussed briefly in turn below.

1 The following analysis is based on 34 Aggrieved Employees working a total of 713 PAGA Pay
2 Periods.

3 **i. Failure to Provide Complaint Rest Breaks**

4 Labor Code section 226.7 and the Wage Orders require an employer to provide a 10-minute
5 off-duty rest break for every 4 hours worked or major fraction thereof. Employers are required to
6 relinquish control over their employees during their 10-minute rest breaks. *Augustus v. ABM Sec.*
7 *Servs., Inc.*, 2 Cal. 5th 257, 269 (2016).

8 Plaintiff alleges that Defendant prohibited Plaintiff and the Aggrieved Employees from
9 leaving the work site for rest breaks, and required them to remain on call.

10 Plaintiff alleges that all rest breaks were noncompliant due to the Aggrieved Employees
11 having to remain on the premises and generally on call during their rest breaks. The PAGA Penalty
12 applicable to rest break violations is found in Labor Code section 2699, which is \$100 for initial
13 violations and \$200 for subsequent violations. Plaintiff estimated the maximum liability for rest
14 break violations was approximately (713 pay periods x \$100) **\$71,300**.

15 **ii. Failure to Provide Complaint Meal Periods**

16 An employer provides compliant meal breaks when “it relieves its employees of all duty,
17 relinquishes control over their activities and permits them a reasonable opportunity to take an
18 uninterrupted 30-minute break, and does not impede or discourage them from doing so.” *Brinker*
19 *Restaurant Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, 1040. Plaintiff alleges that Defendant
20 had a policy of not allowing Aggrieved Employees to take compliant meal breaks for shifts less
21 than 6.5 hours.

22 The PAGA Penalty applicable to meal break violations is found in Labor Code section 558,
23 which is \$50 for initial violations and \$100 for subsequent violations. Plaintiff estimated the
24 liability for meal break violations was approximately (713 pay periods x \$50) **\$35,650**.

25 **iii. Wage Statement and Waiting Time Penalties.**

26 Plaintiff’s Wage Statement and Waiting Time Penalties are derivative of the meal and rest
27 break claims.¹ Plaintiff alleges that rest and meal break violations occurred on each and every pay

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¹ While the PAGA was later amended to exclude such derivative claims, that amendment was not retroactive to cases, like this one, filed prior to June 1, 2024.

1 period for all Aggrieved Employees within the PAGA period. There is a split of authority as to
2 which penalty applies for Wage Statement Penalties under PAGA. One case holds that the penalties
3 in Labor Code section 226.3 apply to all claims for inadequate wage statements under PAGA. *See*
4 *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 674-675. Applying
5 this statute, Plaintiff estimates the maximum penalties as (713 pay periods x \$250) **\$178,250.**

6 Waiting Time violations do not have a civil penalty specifically enumerated for them, and
7 therefore the penalties in Labor Code section 2699 subd. (f) apply. If all 34 Aggrieved employees
8 were terminated, Plaintiff estimates the PAGA penalties to be (34 employees not paid all wages at
9 termination x \$100) **\$3,400.**

10 **iv. Maximum Liability**

11 Given the numbers expressed above, Plaintiff estimated the maximum liability (before
12 attorney fees and costs) as follows:

- 13 • Rest Break Violations: **\$71,300**
- 14 • Meal Period Violations: **\$35,650**
- 15 • Wage Statement Penalties: **\$178,250**
- 16 • Waiting Time Penalties: **\$3,400**
- 17 • **TOTAL PAGA PENALTIES: \$288,600**

18 **c. Risk Factors**

19 The maximum penalties calculated above are based on the assumption that all issues of fact
20 and law are ruled in Plaintiff's favor for every single Aggrieved Employee for every single pay
21 period. While this is obviously never a realistic assessment of a case, specific factors relating to the
22 litigation in this case are as follows:

23 **i. Meal and Rest Break Violations**

24 One issue Plaintiff would face in proving his claims regarding break periods is that no
25 written policy was discovered that specifically precludes Plaintiff or the Aggrieved Employees from
26 leaving the premises on breaks. Thus, while Plaintiff maintains that that was the policy of
27 Defendant, proof of that would have had to come from (likely contested) witness testimony
28 regarding working conditions. Furthermore, while Defendant was under no requirement to do so,

1 Defendant kept records of not only meal breaks, but rest breaks as well, indicating that employees
2 were, at a minimum recording that they were taking rest and meal breaks.

3 Furthermore, these records, while informative, are not dispositive on the issue of whether or
4 not a compliant break was provided. Even where the records indicate less than 10 minutes were
5 taken for a rest break or less than 30 minutes were taken for a meal period, Plaintiff would still then
6 have to prove that the short breaks were caused by Defendant's action (such as discouraging full
7 breaks or causing Aggrieved Employees to go to break late or come back early) rather than the
8 employee's own decision to take shorter breaks (due to reason such as a desire to get ahead of their
9 work or convenience). Finally, the date provided did not necessarily indicate that each employee
10 worked at least one shift over 6 hours every pay period, or had short or late breaks recorded.

11 **ii. Wage Statements**

12 While 1 case (*Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667)
13 has held that the penalties in Labor Code section 226.3 may be recovered in a PAGA action if wage
14 statements were merely deficient, it is in the minority, as most courts viewing the issue since that
15 time have ruled that the penalties under Labor Code section 226.3 are only available when *no* wage
16 statement is provided at all. *See e.g. Gunther v. Alaska Airline, Inc.* (2021) 72 Cal.App.5th, 334,
17 355 (declining to follow *Raines* on the basis that penalties are still recoverable under Labor Code
18 section 2699 subd. (f)). If Labor Code section 226.3 is not applicable, then the much lower penalty
19 under Labor Code section 2699 subd. (f) of \$100 per pay period (rather than \$250) applies.

20 Furthermore, Defendant could prevail in an argument that any wage statement inaccuracies
21 were not willful or intentional. Plaintiff would have to prove that Defendant knew that its
22 employees were denied complaint rest and meal breaks, and knew that the time worked and
23 penalties earned were not reflected on the wage statement. And, of course, Plaintiff would have to
24 prevail on the underlying break claims in the first instance.

25 **iii. Waiting Time Penalties**

26 Likewise, Defendant could prevail in a defense that there was a good faith dispute over
27 whether or not Defendant failed to provide compliant meal and rest breaks. Even if it was found
28 that they did, Plaintiff would further have to prove that Defendant's position was brought in bad

1 faith.

2 **d. The Amount Recovered**

3 Even giving full faith to the maximum damages calculation, the final settlement of \$70,000
4 is approximately 24% of the maximum amount recoverable before attorney fees and costs, a
5 percentage that is already well within the accepted range of PAGA claim settlement. When reduced
6 for the lower penalty amount for Wage Statements, the maximum penalty number shrinks from
7 \$288,600 to \$181,650, which brings the settlement to approximately 38.5% of the maximum
8 liability before attorney fees and costs, an excellent recovery for a PAGA claim.

9 **e. The Service Award is Fair and Reasonable**

10 In addition to his Aggrieved Employee portion under PAGA, the Settlement contemplates
11 that \$10,000 will be paid to Plaintiff, 25% of which is to be treated as wages for tax purposes. This
12 amount is to compensate Plaintiff for, *inter alia*, release of his own individual claims, execution of a
13 full 1542 waiver, compensation for time spent litigating the case, compensation for any future
14 difficulty becoming hired due to the public nature of these proceedings, and in compensation for the
15 valuable recovery obtained on behalf of the class. Plaintiff believes this amount is fair and
16 reasonable given the amount of time spent on the case, the value of Plaintiff's individual claims,
17 and the excellent result obtained for the approximately 34 Aggrieved Employees and the State.

18 **f. The Attorney Fees and Costs are Fair and Reasonable**

19 PAGA allows a plaintiff to obtain attorneys' fees and costs. (Lab. Code, § 2699(g).) In class
20 actions, California state and federal courts have recognized that an appropriate method for
21 determining an award of attorney fees is based on a percentage of the total value of benefits to class
22 members by the settlement, also called the common fund. (*Wershba v. Apple Computer, Inc.*, 91
23 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) ("Serrano III"); *Vincent*
24 *v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). One of the purposes of this equitable
25 doctrine is to "spread litigation costs proportionally among all the beneficiaries so that the active
26 beneficiary does not bear the entire burden alone." (*Vincent, supra*, 557 F. 2d at p. 769.) Although
27 this is not a class action, the same logic holds true since a PAGA case is also a representative action.
28

1 The Common Fund doctrine is based on the principle that when a litigant's efforts create or
2 preserve a fund from which others derive benefits, he or she may require the passive beneficiaries to
3 compensate those who created the fund. Both California state and federal courts have embraced this
4 doctrine. (*Serrano III, supra*, 20 Cal. 3d at p. 35; *Vincent, supra*, 557 F.2d at p. 769.) Indeed, the
5 California Supreme Court held that the award of attorney fees in common fund wage and hour class
6 action settlements should start with the percentage method. (*Laffitte v. Robert Half Int'l* (2016) 1
7 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding
8 that when class action litigation establishes a monetary fund for the benefit of the class members,
9 and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
10 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund")

11 The Settlement contemplates that Plaintiff's counsel will be paid an attorney fee award of
12 \$24,500 and up to \$1,000 in litigation costs. The amount requested is approximately one third of the
13 common fund, and is in line with similar settlements where, as here, Plaintiff's Counsel took the
14 case on a fully contingency basis. Plaintiff's attorneys have spent over 53 hours on the case, with
15 rates varying by the experience of the attorney, for a total lodestar of well over \$24,500. See
16 Declaration of Theodore Tang at 13. Likewise, Plaintiff requests reimbursement of \$800 for
17 litigation expenses, which represents the \$725.40 spent on filing, service, and related fees, plus a
18 small cushion of \$74.60 to cover costs of filing this motion, including the fee charged by the
19 electronic service provider. Tang Decl. at 16.

20 **g. Settlement Administration Costs are Fair and Reasonable.**

21 ILYM group has been selected as the Settlement Administrator in this case. IYLM was
22 selected through a bidding process, and their capabilities and experience as Settlement
23 Administrators is well documented. Declaration of Lisa Mullins at 2. Their bid to handle
24 administration is \$3,675. *Id* at 6. The administrator's costs are reasonable and should be approved.

25 **h. All Other Procedural Requirements Have Been Met**

26 Per the Declaration of Theodore Tang, the Settlement Agreement, as well as this motion and
27 all other supporting papers, has been uploaded to the LWDA via their website. Counsel for the
28 Parties have conducted a diligent search and reasonable inquiry, and they are not presently aware of

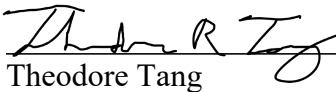
1 any other filed cases that this settlement might extinguish or otherwise materially effect.

2 **IV. CONCLUSION**

3 For the foregoing reasons, the Settlement in this case is fair and reasonable. Plaintiff
4 therefore requests that this Court approve the settlement.

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6 Date: January 30, 2025

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10 Theodore Tang
11 Attorney for Plaintiff
12 Ian Wilson Decosta
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