

1 HAROUT MESSRELIAN (SBN: 272020)
2 MESSRELIAN LAW INC.
3 101 N. Brand Blvd., Suite 1450
4 Glendale, CA 91203
5 Telephone: (818) 484-6531
6 Facsimile: (818) 956-1983
7 E-mail: hm@messrelianlaw.com

8 Attorneys for Plaintiff

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

10 **FOR THE COUNTY OF SANTA CLARA**

11 JHONY ALEXANDER LOPEZ FLORES,

Case No.: 23CV420534

12 Plaintiff,

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

17 vs.

18 HL PENINSULA PEARL, INC.; MINGIE
19 ZHI MIN LI; and DOES 1 to 25, inclusive,

Date: 7/2/2025

Time: 1:30pm

Dept: 19

20 Defendants.

21 Department: 19, Hon. Hon. Theodore
22 C. Zayner

23 Submitted Herewith Under Separate Cover:

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

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

PLEASE TAKE NOTICE THAT on July 2, 2025 at 1:30p.m., or as soon thereafter as the matter may be heard in Department 19 of the above-entitled Court, Plaintiff Jhony Alexander Lopez Flores ("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 HL PENINSULA PEARL, INC.; MINGIE ZHI MIN LI (hereinafter "Defendant" or "HL Peninsula") (collectively, "the Parties")

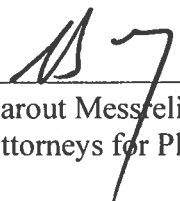
This Motion is based on this Notice, the attached Memorandum of Points and Authorities; the concurrently-filed Declarations of Harout Messrelian and Michael Moore, the papers and pleadings on file in this action, any and such other evidence and oral argument as may be presented in connection with the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

Respectfully Submitted,

MESSRELIAN LAW INC.

DATED: June 9, 2025

By



Harout Messrelian, Esq.
Attorneys for Plaintiff

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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 Defendants 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 PAGA Settlement Agreement (the "Settlement Agreement"). Attached as
7 **Exhibit 2** to the Declaration of Harout Messrelian ("Messrelian Decl.") is a true and accurate
8 copy of the Settlement Agreement and the PAGA notice that will be sent to the alleged aggrieved
9 employees covered by the Settlement Agreement, being Plaintiff and all current and former non-
10 exempt employees of Defendants in the State of California from June 5, 2022 through September
11 4, 2024 ("PAGA Members"), with their payment. By this Motion and pursuant to California
12 Labor Code § 2699(l), Plaintiff seeks an order permitting settlement on the terms outlined in the
13 Settlement Agreement.

14 **II. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT**

15 The Settlement of a PAGA claim requires court approval. Lab. Code §2699(l)(2). The
16 Court necessarily has broad discretion in making the decision to approve or reject a settlement
17 for civil penalties as the statutory scheme authorizes the Court to determine whether, in certain
18 circumstances, penalties should be assessed and, if so assessed, the appropriate amount of
19 penalties based on the facts and circumstances of the particular case. *See id.* at § 2699(e)(1)-(2),
20 Although the PAGA does not set forth the particular standards against which a PAGA settlement
21 should be evaluated, the LWDA has provided guidance for approval that mirrors the standards
22 for evaluating class action settlements. *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*, 2017 U.S. Dist.
23 LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the LWDA's guidance, that approval
24 of PAGA settlements may be had where the statutory requirements of the PAGA are met and the
25 terms of the settlement are fundamentally fair, reasonable, and adequate). The established
26 standards for evaluating whether class action settlements are fair, reasonable, and adequate
27 provide a familiar, useful framework for the Court to evaluate PAGA settlements and have been
28 adopted by several courts. *Id.*, *See Juarez v. Villafan*, 2017 U.S. Dist. LEXIS 137205, *5 n.4

1 (E.D. Cal. 2017) (citing *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San*
2 *Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms, LLC*, 2017 U.S.
3 Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
4 1026 (9th Cir. 1998)); *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7, n.4 (E.D. Cal.
5 2017); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal. 2018); *Rincon*
6 *v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal. 2018).

7 In making the determination whether a settlement taken as a whole is fair, reasonable,
8 and adequate, the Court should be careful to still give “proper deference to the private consensual
9 decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual
10 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
11 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
12 collusion between, the negotiating parties” *Hanlon*, 150 F.3d at 1027. The law favors
13 settlement of lawsuits, particularly complex litigation cases where substantial resources can be
14 conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents*
15 *of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992); *In re Synacor ERISA Litigation*, 516 F.3d 1095,
16 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.*, 32 Cal.App.4th 344, 382 (1995).

17 **III. ALLEGATIONS AND INVESTIGATION**

18 Defendant is in the restaurant industry and owns and operates a Chinese food restaurant
19 in Milpitas, California. Plaintiff was classified as a non-exempt, hourly employee and worked
20 for Defendant from approximately September 2022 through April 2023 as a washer. *See*
21 *Messrelian Decl.*, ¶4.

22 Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under
23 the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq. (“PAGA”).
24 On May 9, 2023, Plaintiff on behalf of himself and Defendant’s California non-exempt
25 employees (hereafter collectively the “Aggrieved Employees”) gave written notice by electronic
26 service to the California Labor and Workforce Development Agency (“LWDA”) and via
27 certified mail to Defendant of their claims against Defendant. In his notice to the LWDA,
28 Plaintiff asserted on behalf of himself and the Aggrieved Employees that Defendant (1) failed

1 to compensate for all hours worked and to pay minimum wages (Labor Code Sections 1194,
2 1197, 1197.1); (2) failed to pay overtime compensation (Labor Code Section 510); (3) failed to
3 provide rest breaks (Labor Code Section 226.7); (4) failed to provide meal breaks (Labor Code
4 Sections 512, 226.7); (5) failed to timely pay wages due during employment (Labor Code
5 Section 204); (6) failed to provide accurate itemized wage statements (Labor Code Section 226);
6 (7) failed to keep accurate and complete payroll records (Labor Code Section 1174/1174.5); (8)
7 failed to pay wages at the end of employment (Labor Code section 203); (9) failed to
8 reimbursement business expenses (Labor Code section 2802); (10) failed to provide tips, and
9 claims under Industrial Welfare Commission Wage Orders 5-2001. Plaintiff filed his initial
10 lawsuit on August 9, 2023, in the Superior Court for the State of California, County of Santa
11 Clara, Case No. 23CV420534, with multiple individual wage and hour causes of action and a
12 cause of action for PAGA penalties based on the theories as outlined in the PAGA letter. *See*
13 *Messrelian Decl.*, ¶5.

14 Through informal discovery, Defendant produced records and represented that it
15 employed approximately 313 employees falling within Plaintiff's Aggrieved Employees
16 definition for the period from June 5, 2022 (one year and 65 days before Plaintiff's PAGA
17 lawsuit) through September 4, 2024, and that there are paychecks issued for a total of
18 approximately 5,782 pay periods worked for that same time period. *See Messrelian Decl.*, ¶6.

19 The Settlement Agreement covers PAGA Members, which are Aggrieved Employees
20 employed on or after June 5, 2022 through September 4, 2024. *See Messrelian Decl.*, ¶7.

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

25 The parties attended a full-day mediation with experienced mediator Monique Ngo-
26 Bonnici on September 4, 2024, and settled the matter. Before agreeing to the terms of the
27 Settlement, the Parties engaged in informal discovery regarding Defendant's policies, practices,
28 operations, time and payroll information and other topics. Prior to negotiation, Defendant

1 produced Plaintiff's personnel file, time and payroll data for Plaintiff, and time records and
2 payroll records for 37 aggrieved employees falling within Plaintiff's Aggrieved Employees
3 definition and during the applicable PAGA period. Through extensive arm's length negotiations
4 and only after discovery and investigation were performed, the Parties agreed to settlement
5 terms. As alluded to above, the Parties negotiated the PAGA claims through arms-length
6 negotiation during a private mediation, and only after sufficient discovery was completed,
7 including data being sent to Plaintiff's data expert for analysis/review. *See* Messrelian Decl., ¶9.

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

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

23 **IV. FAIRNESS OF THE SETTLEMENT**

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

27 Plaintiff alleges that the strongest claims are that Plaintiff and other PAGA Members
28 were not provided meal and rest breaks under the law and that Defendant rounded work hours

1 for a portion of the PAGA period. *See* Messrelian Decl., ¶12.

2 Plaintiff contends that the civil penalty statutes applicable to the Action arise from
3 violations of the California Labor Code, including, but not limited to, Labor Code §§ 226.7,
4 512, 558, and 2699(f)(2). Under these civil penalty statutes, an employee who suffers a Labor
5 Code violation may be awarded a sum of money for each pay period in which he or she was
6 underpaid. However, under Labor Code § 2699(e)(2), the Court can reduce an award of civil
7 penalties if the award is unjust, arbitrary, oppressive, or confiscatory. *See* Messrelian Decl., ¶13.

8 As it relates to Plaintiff's argument for meal break violations, Plaintiff's data analysis
9 revealed a shift violation rate of 13.6% for short, late, or no meal breaks for shifts that were 5
10 hours or greater. The data revealed that 71.4% of shifts in the sample were 5 hours or greater.
11 As such, we are dealing with alleged violations covering 4,128 pay periods [5,782 total pay
12 periods x 71.4%]. If you extrapolate the 13.6% shift violation rate, it amounts to 64.5% of pay
13 periods having at least one meal period violation. As such, the maximum exposure for meal
14 period violations in the PAGA period, which Plaintiff understands Defendant disputes, would
15 be \$133,150, which is calculated as follows: 4,128 pay periods x 64.5% equals 2,663 affected
16 pay periods; 2,663 pay periods x \$50/pay period (civil penalty) amounts to \$133,150 in
17 exposure. The latter exposure calculation does not take into account the fact that Defendant paid
18 meal period premiums during the PAGA period. *See* Messrelian Decl., ¶14.

19 As it relates to Plaintiff's argument for rest break violations, Plaintiff extrapolated the
20 meal break violation and used it for the rest break analysis. The data revealed that 95.0% of
21 shifts in the sample were 3.5 hours or greater. As such, we are dealing with alleged violations
22 covering 5,493 pay periods [5,782 pay periods x 95.0%]. If you extrapolate the 13.6% shift
23 violation rate for meal periods discussed above, which Plaintiff recognizes Defendant disputes,
24 it amounts to 64.5% of pay periods having at least one rest period violation. As such, the
25 maximum exposure for rest period violations in the PAGA period would be \$354,300, which is
26 calculated as follows: 5,493 pay periods x 64.5% equals 3,543 affected pay periods; 3,543 pay
27 periods x \$100/pay period (civil penalty) amounts to \$354,300 in exposure. The latter exposure
28 calculation does not take into account the fact that there was no evidence on paper of rest period

1 violations since rest periods were not tracked by Defendant's timekeeping system – nor does the
2 law require tracking – as is common for most businesses in California. *See Messrelian Decl.*,
3 ¶15.

4 As it relates to Plaintiff's argument that Defendant engaged in rounding, Plaintiff's
5 expert data analyst found unfavorable rounding in 2.6% of the pay periods. 2.6% of the pay
6 periods equate to 150 pay periods [5,782 pay periods x 2.6%]. As such, the maximum exposure
7 for minimum wage violations in the PAGA period based on the rounding theory would be
8 \$15,000, which is calculated as follows: 150 pay periods x \$100/pay period (civil penalty)
9 amounts to \$15,000 in exposure. Moreover, Defendant transferred to a digital time clock during
10 the PAGA period to prevent any further potential rounding issues. *See Messrelian Decl.*, ¶16.

11 As it relates to Plaintiff's other claims, there would be substantial issues with proof. In
12 terms of any potential regular rate issue as it relates to overtime or meal/rest period premiums
13 based on bonuses or commissions, there were no bonuses or commission payments seen in the
14 sample. As it relates to straight overtime issues, the data showed that overtime hours were paid
15 correctly when employees did in fact work overtime. Regardless, per the data, the average hours
16 worked per day was 6.8 hours, which is less than the 8-hour overtime threshold for daily
17 overtime. As it relates to Plaintiff's claim of business expense reimbursement, Defendant argued
18 that portions of the uniform were provided by Defendant and any other articles of clothing that
19 were worn by aggrieved employees were not of a specific or distinctive design and could be
20 worn outside of work as well. Plaintiff's claim for failure to pay tips would also likely fail based
21 on a lack of evidence showing any violation. Plaintiff's other claims are derivative claims for
22 violations of Labor Code sections 203, 204, and 226 for not being paid all wages owed every
23 pay period or at the end of employment as well as not receiving accurate, itemized wage
24 statements. The latter would not be triggered since meal and rest period violations do not trigger
25 these derivative claims. *See Messrelian Decl.*, ¶17.

26 Based on the above calculations, Plaintiff's aggregate exposure for the strongest disputed
27 claims, which again Plaintiff understands Defendant disputes, would be \$502,450. Assuming
28 that Plaintiff's calculations and analysis are accurate, the maximum exposure presumes that the

1 Court will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. Based
2 on the above analysis, a gross settlement in the amount of \$285,000 is a very strong result,
3 especially in light of the risk factors as discussed above. *See* Messrelian Decl., ¶18.

4 Moreover, Plaintiff is aware of no California state courts awarding Plaintiff multiple
5 PAGA penalties for the same violation for the same pay period under different Labor Code
6 provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to “stack” civil
7 penalties arising under the various Labor Code statutes. Furthermore, judges have awarded
8 extremely small sums to PAGA claimants in the past. Defendant also adamantly disputes all of
9 Plaintiff’s allegations in the operative Complaint. *See* Messrelian Decl., ¶19.

10 PAGA states a court has discretion to award a lesser amount than the maximum
11 penalty. *See* Lab. Code § 2699(e)(2) (“...a court may award a lesser amount than the maximum
12 civil penalty amount specified by this part if, based on the facts and circumstances of the
13 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
14 or confiscatory.”); *see also* *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
15 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
16 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff’s evidence
17 of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
18 (“*Carrington*”) illustrates this. In that case, the Court of Appeal affirmed a trial court’s heavily
19 discounted award of only \$5 per violation because it was within the Court’s discretion to
20 significantly reduce PAGA penalties even when there is a finding that a violation of the
21 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess
22 of \$70 million and was successful in proving the PAGA claim during a bench trial. However,
23 the trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and
24 stated that this reduction was warranted because imposing the maximum penalty would be
25 “unjust, arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with
26 meal break obligations and because the Court found the violations were minimal. Applying the
27 same formula here and assuming there was one violation during each pay period, the award of
28 civil penalties could not exceed \$28,910 in PAGA penalties (5,782 violations x \$5). As such,

1 this Settlement is a great result based solely on the risk the Court chooses to apply the Carrington
2 formula. Defendant has also posed defenses to the Labor Code claims underlying Plaintiff's
3 allegations. Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement
4 Amount is uncertain. *See* Messrelian Decl., ¶20.

5 The Parties further recognize that the issues presented in the Action are likely only to be
6 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will
7 cause inconvenience, distraction, disruption, delay, and expense disproportionate to the
8 maximum potential benefits to the PAGA Members and Plaintiff from continued litigation. *See*
9 Messrelian Decl., ¶21.

10 The settlement of the Action involves monetary relief to all PAGA Members, Plaintiff,
11 his attorneys, and the State of California. *See* Messrelian Decl., ¶22.

12 Furthermore, Plaintiff recognizes that continued litigation presents significant risks that
13 support a significant downward departure from Plaintiff's estimated civil penalties amount. In
14 view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount
15 for these claims and is in the best interest of Plaintiff and PAGA Members and thus, warrants
16 approval. *See* Laguna v. Coverall N. Am., Inc., Case No. 12-55479 (9th Cir. June 3, 2014) 2014
17 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable, adequate, and
18 equitable to Defendant, Plaintiff, and the State, especially in light of the current economic
19 climate, and are the product of good faith, and informed arms-length negotiations between the
20 Parties consistent with public policy and fully comply with applicable provisions of law. *See*
21 Messrelian Decl., ¶23.

22 **V. TERMS OF THE SETTLEMENT**

23 The Settlement Agreement covers all claims against the Released Parties (as defined in
24 the Settlement Agreement) arising during the Settlement Period for civil penalties under PAGA
25 that were asserted or could reasonably have been asserted based on the facts alleged or that could
26 have been alleged in the Action and/or the PAGA letter submitted by Plaintiff to the LWDA with
27 respect to PAGA Members from June 5, 2022 through September 4, 2024, including Defendant's
28 alleged failure to pay for all time worked, including minimum wages, straight time wages, and

overtime compensation; failure to provide meal periods and pay meal period premiums; failure to authorize and permit rest periods and pay rest period premiums; failure to timely wages during employment; failure to pay all wages due to discharged and quitting employees; failure to provide accurate itemized wage statements; failure to maintain accurate records; failure to reimburse necessary expenditures; failure to provide tips; violations of California Labor Code §§ 201, 202, 203, 204, 204(b), 210, 226, 226(a), 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802; and violations of Wage Order No. 5. See Messrelian Decl., **Exhibit 2**, paragraph 5.2.

Defendant agrees to pay \$285,000.00 toward the Settlement (the “Gross Settlement Amount” or “GSA”) which will be distributed as follows:

- i. \$95,000.00 (1/3 of the GSA) in attorneys’ fees to Harout Messrelian, Esq. of Messrelian Law Inc.
- ii. \$12,118.60 in attorney litigation costs to Harout Messrelian, Esq. of Messrelian Law Inc.
- iii. \$5,500.00 in PAGA Settlement Administrator costs to the Settlement Administrators (Phoenix).
- iv. \$172,381.40 (the “Net Settlement Amount” or “NSA”) will be divided as follows:
 - a. \$129,286.05 (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. \$43,095.35 (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 June 5, 2022 through September 4, 2024. See Messrelian Decl., **Exhibit 2**, paragraph 3.2.3.

Plaintiff and each PAGA Member shall receive a portion of the PAGA Members Amount in proportion to the number of pay periods employed in California during the Settlement Period. See Messrelian Decl., **Exhibit 2**, paragraph 3.2.3.1.

1 For purposes of computing taxes, one hundred percent (100%) of the Aggrieved
2 Employee Settlement Award shall be considered to be a civil penalty and shall be reported on a
3 federal form 1099. *See* Messrelian Decl., **Exhibit 2**, paragraph 3.2.3.2.

4 **VI. 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 \$95,000.00 in attorney fees and \$12,118.60 in litigation costs is fair and reasonable.

9 It is an accepted practice in wage and hour class action settlements to award attorneys'
10 fees to Plaintiff's counsel based on a percentage of the total settlement value agreed upon by the
11 parties. California courts have long recognized that an appropriate method for awarding
12 attorneys' fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest*
13 (1977) 20 Cal.3d 25, 48-49 ["when a number of persons are entitled in common to a specific
14 fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation
15 or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the
16 fund"]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial*
17 *California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.)

18 California courts have the discretion to employ (or decline to employ) a "lodestar cross-
19 check" on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern, Inc.* (2016)
20 1 Cal. 5th 480, 505 ("*Laffitte*"). However, the California Supreme Court in *Laffitte* has now made
21 clear that this cross-check is not required and approved one-third of the class action settlement
22 fund as reasonable attorney fees as "[t]he percentage of the fund method survives in California
23 class action cases...." *Id.* at 574. As other courts have acknowledged since *Laffitte*, "California
24 courts routinely award attorneys' fees of one-third of the common fund." *Lopez v. Mgmt. &*
25 *Training Corp.*, 2020 U.S. Dist. LEXIS 70029. The *Lopez* court explained that it need not "engage
26 in a full-blown lodestar analysis when the primary basis remains the percentage method..." The
27 lodestar calculation is merely a "useful perspective on the reasonableness of a given percentage
28 award." *Id.* *See also Austin v. Foodliner, Inc.*, 2019 U.S. Dist. LEXIS 79638 ("Trial courts 'also

1 retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
2 reasonableness of a requested percentage fee.”¹ *Id.* (citing *Laffitte*)).

3 “[R]egardless whether the percentage method or the lodestar method is used, fee awards
4 in class actions average around one-third of the recovery.” (See *Chavez v. Netflix, Inc.* (2008)
5 162 Cal.App.4th 43, 66, fn.11 (“*Chavez*”)); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d
6 373, 379 (“*Pacific*”) [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.*
7 (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total fund amount).) This is
8 also consistent with Plaintiff’s Counsel’s experience in wage and hour class and PAGA
9 settlements. See Messrelian Decl., ¶28.

10 Should the Court elect to use Plaintiff’s Counsel’s lodestar as the method for awarding
11 fees, notwithstanding courts’ clear preference for the percentage method, Plaintiff’s counsel’s
12 request for attorney’s fees of \$95,000.00 (1/3 of the Gross Settlement Amount) is fair and
13 reasonable based on Plaintiff’s counsel’s lodestar as cross-checked against the percentage of the
14 recovery. See Messrelian Decl., ¶¶26-27. Plaintiff’s counsel’s previous experience in litigating
15 wage and hour class actions and the caliber of opposing counsel also support the reasonableness
16 of the fee request. See Messrelian Decl., ¶28. The award of attorneys’ fees sought is also justified
17 by the contingency nature of the attorney-client relationship, the risks of non-payment and non-
18 reimbursement, the delay in payment and cost reimbursement, and the great results Plaintiff’s
19 Counsel has achieved for the Aggrieved Employees. See Messrelian Decl., ¶¶26-28.

20 In addition, Plaintiff’s Counsel incurred substantial costs, \$12,118.60 to date, including
21 the costs of a mediator, to aid in the representation of the Aggrieved Employees. See Messrelian
22 Decl., ¶29. All of these costs are documented and reasonably incurred. *Id.* Accordingly, they
23 warrant the Court’s approval.

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27 ¹ The prohibition on citing unpublished California decisions (Cal. Rules of Court, rule 8.1115(a)) does not apply to
28 unpublished decisions from the lower federal courts. (*Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1096, fn.
18 [“Citing unpublished federal opinions does not violate our rules.”].) Like published decisions of the lower federal
courts, unpublished decisions are not binding on us even on questions of federal law, but they are persuasive
authority. (*Western Heritage Ins. Co. v. Frances Todd, Inc.* (2019) 33 Cal.App.5th 976, 989, fn. 6.)

1 **VII. NO ADMISSION OF LIABILITY OR WRONGDOING**

2 This Settlement represents a compromise and settlement of highly disputed claims. The
3 Parties expressly recognize that the making of this agreement does not in any way constitute an
4 admission or concession of wrongdoing on the part of Defendant or the Released Parties. *See*
5 *Messrelian Decl.*, **Exhibit 2**, paragraph 10.1.

6 **VIII. PAGA SETTLEMENT ADMINISTRATION**

7 The Parties agree to use Phoenix Class Action Administrators to handle the
8 administration of this Settlement. *See Messrelian Decl.*, **Exhibit 2**, paragraph 1.2.

9 Aggrieved Employee Data. Within 30 days, Defendants will deliver the Aggrieved
10 Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To
11 protect Aggrieved Employee' privacy rights, the Administrator must maintain the
12 Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for
13 purposes of this Settlement and for no other purpose, and restrict access to the
14 Aggrieved Employee Data to Administrator employees who need access to the
15 Aggrieved Employee Data to effect and perform under this Agreement. Defendants
16 have a continuing duty to immediately notify PAGA Counsel if they discover that the
17 Aggrieved Employee Data omitted employee identifying information and to provide
18 corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without
19 any extension of the deadline by which Defendants must send the Aggrieved Employee
20 Data to the Administrator, the Parties and their counsel will expeditiously use best
21 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing
22 or omitted Aggrieved Employee Data.

23 Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement
24 Amount by transmitting the funds to the Administrator no later than 30 days after the
25 Effective Date.

26 Payments from the Gross Settlement Amount. Within 10 days after Defendants fund the
27 Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA
28 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the
PAGA Counsel Fees/Expenses Payment. Disbursement of the PAGA Counsel Litigation
Fees/Expenses Payment shall not precede disbursement of Individual PAGA Payments.

The Administrator will issue checks for the Individual PAGA Payments and send them to
the Aggrieved Employees via First Class U.S. Mail, postage prepaid along with the Notice
of PAGA Representative Action Settlement, attached hereto as Exhibit A. The face of each
check shall prominently state the date (not less than 180 days after the date of mailing)
when the check will be voided. The Administrator will cancel all checks not cashed by the
void date. Before mailing any checks, the Settlement Administrator must update the
recipients' mailing addresses using the National Change of Address Database.

1 The Administrator must conduct an Aggrieved Employee Address Search for all
2 Aggrieved Employees whose checks are returned undelivered without USPS forwarding
3 address. Within [7] days of receiving a returned check the Administrator must re-mail
4 checks to the USPS forwarding address provided or to an address ascertained through the
5 Aggrieved Employee Address Search. The Administrator need not take further steps to
6 deliver checks to Aggrieved Employees whose re-mailed checks are returned as
7 undelivered. The Administrator shall promptly send a replacement check to any
8 Aggrieved Employee whose original check was lost or misplaced, requested by the
9 Aggrieved Employee prior to the void date.

10 For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and
11 cancelled after the void date, the Administrator shall transmit the funds represented by such
12 checks to the California Controller's Unclaimed Property Fund in the name of the
13 Aggrieved Employee.

14 The payment of Individual PAGA Payments shall not obligate Defendants to confer any
15 additional benefits or make any additional payments to the Aggrieved Employees (such as
16 401(k) contributions or bonuses) beyond those specified in this Agreement.

17 See Messrelian Decl., **Exhibit 2**, paragraphs 4.2-4.4.

18 **IX. CONCLUSION**

19 Plaintiff respectfully requests that the Court grant this Motion.

20 Respectfully Submitted,

21 **MESSRELIAN LAW INC.**

22 DATED: June 9, 2025

23 By 
24 HAROUT MESSRELIAN, ESQ.
25 Attorneys for Plaintiff
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3 **PROOF OF SERVICE BY E-MAIL**

4 *Flores v. HL Peninsula Pearl, Inc. et al*
5 *Santa Clara County Case No. 23CV420534*

6 STATE OF CALIFORNIA)
7)
8 COUNTY OF LOS ANGELES)

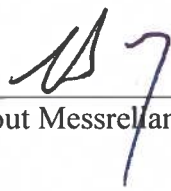
9 I, state that I am employed in the aforesaid County, State of California; I am over the age of
10 eighteen years and not a party to the within action; my business address is 500 N. Central Ave.,
11 Suite 840, Glendale, California 91203.

12 On **June 9, 2025**, I served the foregoing: **PLAINTIFF'S NOTICE OF**
13 **UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT;**
14 **MEMORANDUM OF POINTS AND AUTHORITIES THEREOF; DECLARATION**
15 **OF HAROUT MESSRELIAN IN SUPPORT OF UNOPPOSED MOTION FOR**
16 **APPROVAL OF PAGA SETTLEMENT; DECLARATION OF MICHAEL MOORE;**
17 **[PROPOSED] ORDER ON UNOPPOSED MOTION FOR APPROVAL OF PAGA**
18 **SETTLEMENT** on the interested parties by placing a true copy thereof, enclosed in a sealed
19 envelope with postage thereon fully prepaid, in the United States mail at Glendale, California,
20 and/or by following one of the methods of service as follows:

21 PRUDENTIA LAW CORPORATION
22 Robert Kenny
23 rkenny@prudentiallaw.com
24 *Attorneys for Defendant*

25 (X) **(BY ELECTRONIC TRANSMISSION)** Pursuant to electronic service CCP Sec
26 1010.6, I transmitted the document(s) electronically to the person (s) at the email address(es)
27 above. Transmission was reported as complete and without error.

28 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 9, 2025**, at Glendale, California.

22
23 
24 _____
25 Harout Messrelian
26
27
28