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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SANTA CLARA**

11 JHONY ALEXANDER LOPEZ FLORES,

12 Plaintiff,

13 vs.

14 HL PENINSULA PEARL, INC.; MINGIE
15 ZHI MIN LI; and DOES 1 to 25, inclusive,
16 Defendants.

Case No.: 23CV420534

17 **DECLARATION OF HAROUT**
18 **MESSRELIAN IN SUPPORT OF**
19 **UNOPPOSED MOTION FOR APPROVAL**
20 **OF PAGA SETTLEMENT**

21 Date: 7/2/25
22 Time: 1:30pm
23 Dept: 19

24 Department: 19, Hon. Theodore C.
25 Zayner

26 Submitted Herewith Under Separate Cover:

- 27 1. Plaintiff's Notice of Unopposed Motion for
28 Approval of PAGA Settlement; Memorandum
of Points and Authorities in Support Thereof;
2. [Proposed] Order

DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF
UNOPPOSED MOTION FOR APPROVAL OF PAGA SETTLEMENT AND RELEASE

I, HAROUT MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Plaintiff JHONY ALEXANDER LOPEZ FLORES ("Plaintiff") in his lawsuit against Defendants HL PENINSULA PEARL, INC.; MINGIE ZHI MIN LI (hereinafter collectively "HL PENINSULA" or "Defendant").

2. I am experienced in handling employment law matters and specifically wage and hour representative and individual actions. My qualifications are as follows: I received my JD from Loyola Law School in 2010. I started my own law firm in 2011 – the Law Offices of Harout Messrelian. Since 2016, I have been the founder and principal attorney at Messrelian Law, Inc. Since 2011, I have filed and handled over 350 civil actions and/or claims involving representative actions under the Private Attorneys General Act ("PAGA") and/or wage and hour claims on behalf of my clients and have been appointed Class Counsel in three class action cases – *Zohrab Mekhitarian v. Triple Play Motors dba Bob Smith Toyota*, Los Angeles Superior Court Case No. 19STCV22411 (ADR Services, Inc., Case Number 20-2668-RWT), *Carina Camberos, on behalf of herself and others similarly situated, v. Great American Chicken Corp, Inc.*, Los Angeles Superior Court Case No. 21STCV32015, and *Robert Garcia, on behalf of himself and others similarly situated v. HD Supply Management Inc.*, San Bernardino Superior Court Case No. CIVSB2028067. I have a practice that encompasses cases in the Los Angeles Superior Courts, the Orange County Superior Courts, the Riverside County Superior Courts, the San Bernardino County Superior Courts, the Alameda County Superior Courts, Santa Clara County Superior Courts, San Mateo County Superior Courts, and the Monterey County Superior Courts.

3. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

Factual and Procedural Background

4. Defendant is in the restaurant industry and owns and operates a Chinese food

1 restaurant in Milpitas, California. Plaintiff was classified as a non-exempt, hourly employee
2 and worked for Defendant from approximately September 2022 through April 2023 as a washer.

3 5. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit
4 under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, et seq.
5 (“PAGA”). On May 9, 2023, Plaintiff on behalf of himself and Defendant’s California non-
6 exempt employees (hereafter collectively the “Aggrieved Employees”) gave written notice by
7 electronic service to the California Labor and Workforce Development Agency (“LWDA”) and
8 via certified mail to Defendant of their claims against Defendant. In his notice to the LWDA,
9 Plaintiff asserted on behalf of himself and the Aggrieved Employees that Defendant (1) failed
10 to compensate for all hours worked and to pay minimum wages (Labor Code Sections 1194,
11 1197, 1197.1); (2) failed to pay overtime compensation (Labor Code Section 510); (3) failed to
12 provide rest breaks (Labor Code Section 226.7); (4) failed to provide meal breaks (Labor Code
13 Sections 512, 226.7); (5) failed to timely pay wages due during employment (Labor Code
14 Section 204); (6) failed to provide accurate itemized wage statements (Labor Code Section 226);
15 (7) failed to keep accurate and complete payroll records (Labor Code Section 1174/1174.5); (8)
16 failed to pay wages at the end of employment (Labor Code section 203); (9) failed to
17 reimbursement business expenses (Labor Code section 2802); (10) failed to provide tips, and
18 claims under Industrial Welfare Commission Wage Orders 5-2001. Attached as **Exhibit 1** to
19 this Declaration is a true and correct copy of Plaintiff’s May 9, 2023 LWDA PAGA Notice.
20 Plaintiff filed his initial lawsuit on August 9, 2023, in the Superior Court for the State of
21 California, County of Santa Clara, Case No. 23CV420534, with multiple individual wage and
22 hour causes of action and a cause of action for PAGA penalties based on the theories as outlined
23 in the PAGA letter.

24 6. Through informal discovery, Defendant produced records and represented that it
25 employed approximately 313 employees falling within Plaintiff’s Aggrieved Employees
26 definition for the period from June 5, 2022 (one year and 65 days before Plaintiff’s PAGA
27 lawsuit) through September 4, 2024, and that there are paychecks issued for a total of
28 approximately 5,782 pay periods worked for that same time period.

1 7. The Settlement Agreement covers PAGA Members, which are Aggrieved
2 Employees employed on or after June 5, 2022 through September 4, 2024.

3 8. Defendant denies any liability or wrongdoing of any kind whatsoever associated
4 with the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully,
5 finally, and forever compromise, and discharge all claims known or unknown related to those
6 alleged in Plaintiff's lawsuit.

7 9. The parties attended a full-day mediation with experienced mediator Monique
8 Ngo-Bonnici on September 4, 2024, and settled the matter. Before agreeing to the terms of the
9 Settlement, the Parties engaged in informal discovery regarding Defendant's policies, practices,
10 operations, time and payroll information and other topics. Prior to negotiation, Defendant
11 produced Plaintiff's personnel file, time and payroll data for Plaintiff, and time records and
12 payroll records for 37 aggrieved employees falling within Plaintiff's Aggrieved Employees
13 definition and during the applicable PAGA period. Through extensive arm's length negotiations
14 and only after discovery and investigation were performed, the Parties agreed to settlement
15 terms. Attached as **Exhibit 2** is a true and accurate copy of "PAGA Settlement Agreement"
16 (hereinafter "Settlement Agreement") along with the notice that will be sent, with payment, to
17 the PAGA Members covered by the Settlement Agreement. As alluded to above, the Parties
18 negotiated the PAGA claims through arms-length negotiation during a private mediation, and
19 only after sufficient discovery was completed, including data being sent to Plaintiff's data expert
20 for analysis/review.

21 10. The Parties conducted investigation of the facts and law both before and after the
22 lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied
23 to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
24 violations claimed by Plaintiff. Based on their own independent investigations and evaluations,
25 the Parties and their respective counsel are of the opinion that the Settlement for the
26 consideration and on the terms set forth in this Motion are fair, reasonable and adequate and are
27 in the best interests of Plaintiff, the PAGA Members, and Defendant in light of all known facts
28 and circumstances and the risks inherent in litigation, especially in this post-pandemic era when

1 most California businesses, especially in the food/restaurant industry, are still struggling to
2 remain afloat, much less prosper and make a large profit.

3 11. The Parties further recognize that the issues presented in the Action are likely
4 only to be resolved with extensive and costly pretrial and trial proceedings, and that further
5 litigation will cause inconvenience, distraction, disruption, delay, and expense disproportionate
6 to the maximum potential benefits, especially in light of the post- pandemic era and the business
7 climate.

8 12. Plaintiff alleges that the strongest claims are that Plaintiff and other PAGA
9 Members were not provided meal and rest breaks under the law and that Defendant rounded
10 work hours for a portion of the PAGA period.

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

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

28 15. As it relates to Plaintiff's argument for rest break violations, Plaintiff

1 extrapolated the meal break violation and used it for the rest break analysis. The data revealed
2 that 95.0% of shifts in the sample were 3.5 hours or greater. As such, we are dealing with alleged
3 violations covering 5,493 pay periods [5,782 pay periods x 95.0%]. If you extrapolate the 13.6%
4 shift violation rate for meal periods discussed above, which Plaintiff recognizes Defendant
5 disputes, it amounts to 64.5% of pay periods having at least one rest period violation. As such,
6 the maximum exposure for rest period violations in the PAGA period would be **\$354,300**, which
7 is calculated as follows: 5,493 pay periods x 64.5% equals 3,543 affected pay periods; 3,543
8 pay periods x \$100/pay period (civil penalty) amounts to \$354,300 in exposure. The latter
9 exposure calculation does not take into account the fact that there was no evidence on paper of
10 rest period violations since rest periods were not tracked by Defendant's timekeeping system –
11 nor does the law require tracking – as is common for most businesses in California.

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

19 17. As it relates to Plaintiff's other claims, there would be substantial issues with
20 proof. In terms of any potential regular rate issue as it relates to overtime or meal/rest period
21 premiums based on bonuses or commissions, there were no bonuses or commission payments
22 seen in the sample. As it relates to straight overtime issues, the data showed that overtime hours
23 were paid correctly when employees did in fact work overtime. Regardless, per the data, the
24 average hours worked per day was 6.8 hours, which is less than the 8-hour overtime threshold
25 for daily overtime. As it relates to Plaintiff's claim of business expense reimbursement,
26 Defendant argued that portions of the uniform were provided by Defendant and any other
27 articles of clothing that were worn by aggrieved employees were not of a specific or distinctive
28 design and could be worn outside of work as well. Plaintiff's claim for failure to pay tips would

1 also likely fail based on a lack of evidence showing any violation. Plaintiff's other claims are
2 derivative claims for violations of Labor Code sections 203, 204, and 226 for not being paid all
3 wages owed every pay period or at the end of employment as well as not receiving accurate,
4 itemized wage statements. The latter would not be triggered since meal and rest period violations
5 do not trigger these derivative claims.

6 18. Based on the above calculations, Plaintiff's aggregate exposure for the strongest
7 disputed claims, which again Plaintiff understands Defendant disputes, would be **\$502,450**.
8 Assuming that Plaintiff's calculations and analysis are accurate, the maximum exposure
9 presumes that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or
10 confiscatory. Based on the above analysis, a gross settlement in the amount of \$285,000 is a
11 very strong result, especially in light of the risk factors as discussed above.

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

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

1 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
2 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
3 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated
4 that this reduction was warranted because imposing the maximum penalty would be “unjust,
5 arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break
6 obligations and because the Court found the violations were minimal. Applying the same formula
7 here and assuming there was one violation during each pay period, the award of civil penalties
8 could not exceed \$28,910 in PAGA penalties (5,782 violations x \$5). As such, this Settlement is
9 a great result based solely on the risk the Court chooses to apply the *Carrington* formula.
10 Defendant has also posed defenses to the Labor Code claims underlying Plaintiff’s allegations.
11 Thus, the chance of Plaintiff recovering a higher amount than the Gross Settlement Amount is
12 uncertain.

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

18 22. The settlement of the Action involves monetary relief to all PAGA Members,
19 Plaintiff, his attorneys, and the State of California.

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

1 provisions of law.

2 24. As such, the settlement of PAGA penalties in the gross sum of \$285,000.00, of
3 which 75% of the net amount after attorney's fees [\$95,000.00], attorney costs [\$12,118.60],
4 and settlement administrator fees [\$5,500.00], which is \$129,286.05 will be paid to the LWDA,
5 and 25%, which equates to \$43,095.35, will be distributed to the PAGA Members, is reasonable
6 and appropriate under the circumstances. With a total of 313 Aggrieved Employees, the average
7 estimated individual PAGA payment for each Aggrieved Employee is approximately \$137.68
8 (25% of the estimated Net Settlement equating to \$43,095.35 as noted above) / 313 Aggrieved
9 Employees). This is a great result given the uncertainties of litigation.

10 ***Plaintiff's Individual Settlement***

11 25. Plaintiff did have individual claims for labor code violations as alleged in the
12 operative complaint, that were also settled by the parties. The parties agreed that the
13 consideration Plaintiff received pursuant to an individual settlement agreement was to settle his
14 individual claims. As part of this confidential agreement, Plaintiff also provided Defendant
15 with a general release of all claims, whether known or unknown, including unknown claims
16 covered by Civil Code Section 1542. Plaintiff has no conflict of interest with the absent
17 Aggrieved Employees and is adequate to represent the Aggrieved Employees.

18 ***Attorneys' Fees and Costs***

19 26. I represent Plaintiff on a straight contingency basis. My firm's request for
20 \$95,000.00 [1/3] in attorney fees and \$12,118.60 in litigation costs is fair and reasonable. To
21 date, I have investigated and prosecuted this matter vigorously, including drafting the initial
22 PAGA notice as well as the original complaint; drafting informal discovery questions, reviewing
23 Defendant's informal data and document production, including their handbook and other written
24 policies; sending and receiving emails on the case with defense counsel; sending the PAGA data
25 to Plaintiff's expert for review/analysis and reviewing the expert's findings/conclusions;
26 preparing for mediation, drafting a mediation brief, and engaging in a private mediation; and
27 drafting this PAGA approval motion. I also expect to perform additional work on this case if
28 the Court grants final approval of the Settlement, including supervision of the Settlement
Administrator's disbursement of the settlement funds to the Aggrieved Employees. "Empirical

1 studies show that, regardless of whether the percentage method or the lodestar method is used,
2 fee awards in class actions average around one-third of the recovery. *Chavez v. Netflix, Inc.*
3 (2008) 162 Cal.App.4th 43, 47 fn. 11 (quoting *Shaw v. Toshiba America Information Systems,*
4 *Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also Lafitte v. Robert Half Int'l Inc.* (Cal. Aug.
5 11, 2016) 1 Cal.5th 480, 503, 376 P.3d 672, 686 (holding that courts can use the percentage
6 method for the calculation of attorneys' fees). This is also consistent with my experience in
7 cases involving PAGA claims. This award is justified here because I achieved a strong result
8 for the PAGA Members and the State while bearing the substantial burdens of contingency
9 representation.

10 27. Should the Court elect to use Plaintiff's Counsel's lodestar as the method for
11 awarding fees, notwithstanding courts' clear preference for the percentage method, my request
12 for attorney's fees of \$95,000 (1/3 of the Gross Settlement Amount of \$285,000) is fair and
13 reasonable based on my firm's lodestar as cross-checked against the percentage of the recovery.
14 To date, I have investigated and prosecuted this matter for over 53.6 hours. My average hourly
15 rate is \$750.00/hour (14th year attorney). My total lodestar amount through June 9, 2025 is
16 \$40,200, which results in a multiplier of 2.36 when compared against the \$95,000.00 request for
17 attorneys' fees.¹ Moreover, I will have waited for over two years to be awarded attorneys' fees
18 for work performed since April 2023, when Plaintiff first contacted my office, compared to
19 Defendant's counsel who have been paid as they performed work during this case. The below
20 chart summarizes my attorney hours worked as it relates to various different categories.

21 ///

22 ///

23
24 ¹The multiplier of 2.36 is supported by California case law. Under California law, lodestar multipliers can range
25 from 2 to 4 or even higher. *See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 49; *Wershba v. Apple Computer,*
26 *Inc.*, 91 Cal.App.4th at p. 255; *Natural Gas Anti-Trust Cases I, II, III & IV* (Cal. Sup. Ct. 2006) 2006 WL 5377849,
27 *4 ("This Court and numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding
28 fees."); *In re California Indirect Purchases* (Cal. Sup. Ct. 1998) 1998 WL 1031494, *10 (citing *Wilson v. Bank of*
America Nat'l Trust & Sav. Ass'n., (Cal Sup. Ct. 1982) No. 643872 (multiplier of 10 times the hourly rate awarded)
(cited in 3 Newberg & Conte, *Newberg on Class Actions*, section 1403, at 14-5 n. 21), and *Glendora Community*
Redevelopment Agency v. Demeter (Cal. App. 2 Dist., 1984) 155 Cal. App. 3d 465, 479 (approving fee award 12
times estimated lodestar multiplier).

ATTORNEY/MAJOR TASKS	HOURS	FEES
HAROUT MESSRELIAN		
Pre-Litigation Investigation and Evaluation of Claims & Case Setup	2.9	\$2,175.00
Complaints, Pleadings, LWDA, and Miscellaneous Filings (including review)	3.7	\$2,775.00
Case Management (including communications with defense, legal assistants, court clerk, attorney service)	14.3	\$10,725.00
Client Communications	5.8	\$4,350.00
Informal Discovery/Data Analysis/Mediation/Settlement Agreement	22.4	\$16,800.00
Settlement Approval Process – Motion for PAGA Approval	4.5	\$3,375.00
TOTALS:	53.6	\$40,200.00

28. My previous experience in litigating wage and hour actions also supports the reasonableness of the fee request, as does the caliber of opposing counsel. My previous experience in similar matters was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement. Because it is reasonable to compensate me commensurate with my skill, reputation, and experience, attorney's fees of approximately 1/3 of the Gross Settlement Amount is reasonable. Likewise, the caliber and experience of opposing counsel in labor and employment litigation supports the fairness and reasonableness of the requested fee award.

29. The litigation costs expended to aid in the representation of the PAGA Members include the following: lawsuit filing fee of \$1,536.08; lawsuit service fee of \$235.00; PAGA initial filing fees of \$75.00; expert data analysis fee of \$1,200.00; mediation fee of \$8,950.00;

1 and miscellaneous filing fees of \$122.52 for a total of \$12,118.60. All of these costs are
2 documented and reasonably incurred.

3 ***Settlement Administration Costs***

4 30. With regard to the settlement administration costs provision, it is reasonable.
5 Before agreeing to Phoenix Class Action Administration Solutions ("Phoenix"), the parties
6 sought and reviewed bids from other reputable third-party administrators, including Apex and
7 ILYM, and Phoenix's bid was comparable. Phoenix's bid has been attached as **Exhibit 3** to this
8 declaration and is also attached to the Declaration of Michael Moore, filed concurrently herein.

9 ***Notice of Settlement to the LWDA***

10 31. Pursuant to Lab. Code § 2699(1)(2), my firm submitted a copy of the Settlement
11 with the LWDA at the same time the Settlement is being filed with the Court. True and correct
12 copies of this submission with the LWDA and the confirmation email are collectively attached
13 as **Exhibit 4** to this declaration. My firm will further provide a copy of the Court's Order and
14 Judgment to the LWDA within ten (10) calendar days after entry of said judgment or order as
15 required by Labor Code sections 2699(1)(2)-(3).

16 I declare under the penalty of perjury of the laws of the State of California that the
17 foregoing is true and correct to the best of my knowledge.

18 Executed on June 9, 2025, at Glendale, California.

19
20 
21 HAROUT MESSRELIAN,
22 Declarant
23
24
25
26
27
28

EXHIBIT 1



MESSRELIAN LAW
ATTORNEYS AT LAW

500 N. Central Avenue, Suite 840
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VIA ELECTRONIC FILING

May 9, 2023

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

HL PENINSULA PEARL, INC.
MINGIE ZHI MIN LI
136 RANCH DR
MILPITAS, CA 95035

**JHONY ALEXANDER LOPEZ FLORES v. HL PENINSULA PEARL, INC.; MINGIE
ZHI MIN LI**

RE: PRIVATE ATTORNEYS GENERAL ACT NOTICE

To Whom It May Concern:

Please be informed that our client, Mr. Jhony Alexander Lopez Flores (hereinafter “Mr. Lopez” or “our client”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid California employees (“aggrieved employees”) who worked for HL PENINSULA PEARL, INC. and MINGIE ZHI MIN LI (hereinafter collectively referred to as “HL PENINSULA”) at all of their locations in the State of California, during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. Individual MINGIE ZHI MIN LI is being included in this PAGA notice pursuant to Labor Code section 558.1 in that they were and are the owner, managing agent, and/or director of HL PENINSULA PEARL, INC., was involved in the day-to-day operations of the business, and controlled the wages, hours, and/or working conditions of our client and other hourly, non-exempt employees.

Mr. Lopez started working at HL PENINSULA on or around mid 2022 as a washer. Mr. Lopez was classified as an hourly, non-exempt employee and his latest rate of pay was \$18.00 per hour. Mr. Lopez’s employment ended on or around April 2023.

In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff



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then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves and others. The statute also states that an “aggrieved employee” is “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas’ motion.

In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is our position that Mr. Lopez can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees, irrespective of job title or job duties.

It is our position that HL PENINSULA has violated the following Labor Code Sections against Mr. Lopez and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for HL PENINSULA at their various locations in the State of California during the relevant PAGA period.

HL PENINSULA violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay our client and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for “off the clock” work. This is so because HL PENINSULA had a company policy wherein they would disproportionately round down the number of hours worked, resulting in “time shaving” and further resulting in aggrieved employees not being paid for all hours worked. Furthermore, and to the extent that Mr. Lopez and others worked through their meal periods while “off the clock”, they were not compensated for all hours worked, which would be akin to a minimum wage violation. In fact, Mr. Lopez was specifically not paid his full and complete wages for all hours worked, including his final pay. Mr. Lopez complained about the fact that he was shorted on his hours and was not paid for all hours worked, but Mr. Lopez was ignored.

Due to the above “off the clock” violations, HL PENINSULA also violated Labor Code §510 because it failed to pay our client and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Lopez’s and other aggrieved employees’ actual work hours entitled them to overtime compensation, however, HL PENINSULA did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the “off the clock” work



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and time shaving as described above. Furthermore, HL PENINSULA failed to include bonuses/incentive payments in calculating employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

HL PENINSULA also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide our client and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. HL PENINSULA did not completely relieve our client and others of all duty during said rest periods. HL PENINSULA did not pay to our client and others one additional hour of pay at our client's regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not part of the company policy for employees such as Mr. Lopez to take at least two rest breaks per shift. The concept of rest breaks was not consistently implemented as it was not company policy. Moreover, it would not have been possible for employees such as Mr. Lopez to take such rest breaks due to being understaffed and due to a heavy workload, especially in the fast-paced restaurant industry. As such, the culture as well as the policies and procedures of HL PENINSULA did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at HL PENINSULA was not conducive to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

HL PENINSULA violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees, including Mr. Lopez and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. HL PENINSULA did not completely relieve Mr. Lopez and other employees of all duty during said meal periods. HL PENINSULA did not pay to Mr. Lopez and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. The hourly, non-exempt employees would often not be able to receive timely meal periods before the 5th hour worked that were actually uninterrupted. The latter was due to the workload and due to being in a fast-paced restaurant environment. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not part of the company culture and was not enforced by HL PENINSULA. Consequently, it was the normal practice and custom of HL PENINSULA not to authorize, permit, and enforce timely statutory meal periods. If HL PENINSULA had our client sign a meal period waiver, it would not be valid and enforceable since our client and others generally worked more than a 6-hour shift. If HL PENINSULA had our client sign an on-duty meal period agreement wherein our client agreed to work through the meal periods, it would be invalid and unenforceable because the nature of our client's job does not and did not prevent him from taking a meal period and the company could have hired "breakers" to relieve Mr. Lopez of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for our client to revoke such an agreement even if it was signed. As such, our client and others did not always receive statutory, timely meal periods



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during their employment. To the extent that HL PENINSULA argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at HL PENINSULA was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

Furthermore, during the relevant time period, and due to the above labor code violations, HL PENINSULA failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. Since Mr. Lopez was personally not compensated for all hours worked, HL PENINSULA would have certainly violated section 204 as to Mr. Lopez. HL PENINSULA was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. As such, HL PENINSULA did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

During the relevant time period, HL PENINSULA also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Mr. Lopez and others pursuant to California Labor Code sections 1174(d).

HL PENINSULA also violated Labor Code § 203 because it willfully failed to pay our client and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks. Since Mr. Lopez was shorted on his hours and was not paid his full wages, HL PENINSULA would have unequivocally violated Labor Code section 203 as to Mr. Lopez.

During the relevant time period, Mr. Lopez and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by HL PENINSULA. These costs include, but are not limited to, uniforms. Accordingly, HL PENINSULA was in violation of California Labor Code sections 2800 and 2802.



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Additionally, HL PENINSULA violated Labor Code Section 351 and 353 by taking some of the tips meant for employees and also deducting the tips from others' earned wages. HL PENINSULA also deducted the credit card fee from others' tips and did not timely provide the credit card and even cash tips to other aggrieved employees. As such, other similarly situated employees were not given accurate tips to which they were entitled.

Furthermore, we believe your companies have also violated Labor Code Section 558 and has engaged in business practices which violate Business and Professions Code Section 17200.

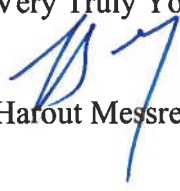
Each of the aforementioned violations, except the violations for inaccurate pay statements under Labor Code section 226(a), is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, Mr. Lopez also intends to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by HL PENINSULA.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very Truly Yours,



Harout Messrelian, Esq.

EXHIBIT 2

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement ("Agreement") is made by and between plaintiff Jhony Alexander Lopez Flores ("Plaintiff") and defendants HL Peninsula Pearl, Inc. and Mingie Zhi Min Li (collectively "Defendants"). The Agreement refers to Plaintiff and Defendants collectively as "Parties," or individually as "Party."

1. DEFINITIONS.

- 1.1. "Action" means the Plaintiff's PAGA lawsuit alleging wage and hour violations against Defendants captioned *Jhonny Alexander Lopez Flores v. HL Peninsula Pearl, Inc. et al.* Case No. 23CV420534 initiated on August 9, 2023 and pending in Superior Court of the State of California, County of Santa Clara.
- 1.2. "Administrator" means Phoenix Settlement Administrators, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. "Administration Expenses Payment" means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator's "not to exceed" bid submitted to the Court in connection with approval of this Settlement.
- 1.4. "Aggrieved Employee" means a person employed by Defendants in California and classified as an hourly, non-exempt employee who worked for Defendants during the PAGA Period.
- 1.5. "Aggrieved Employee Data" means Aggrieved Employee identifying information in Defendants' possession including the Aggrieved Employee's name, last-known mailing address, Social Security number, and number of PAGA Pay Periods.
- 1.6. "Aggrieved Employee Address Search" means the Administrator's investigation and search for current Aggrieved Employee mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.
- 1.7. "Court" means the Superior Court of California, County of Santa Clara.
- 1.8. "Defense Counsel" means Prudentia Law Corporation.
- 1.9. "Effective Date" means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment.

- 1.10. "Gross Settlement Amount" means \$ 285,000 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administrator's Expenses Payment.
- 1.11. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved Employee worked during the PAGA Period.
- 1.12. "Judgment" means the judgment entered by the Court based upon the Final Approval.
- 1.13. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.14. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.15. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Aggrieved Employees as Individual PAGA Payments.
- 1.16. "PAGA Counsel" means Messrelian Law Inc., the attorneys representing the Plaintiff in the Action.
- 1.17. "PAGA Counsel Fees Payment" and "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to PAGA Counsel for reasonable attorneys' fees incurred to prosecute the Action.
- 1.18. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.19. "PAGA Period" means the period from June 5, 2022 to September 4, 2024.
- 1.20. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.21. "PAGA Notice" means Plaintiff's May 9, 2023 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.22. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to LWDA in settlement of PAGA claims.

- 1.23. "Plaintiff" means Jhony Alexander Lopez Flores, the named plaintiff in the Action.
- 1.24. "Approval Order" means the proposed Court Order Granting Approval of PAGA Settlement.
- 1.25. "Released PAGA Claims" means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraph 5 below.
- 1.26. "Released Parties" means: Defendants and each of their former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns, subsidiaries and affiliates.
- 1.27. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.28. "Defendants" mean named Defendants HL Peninsula Pearl, Inc. and Mingie Zhi Min Li.

2. RECITALS.

- 2.1. On August 9, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for (1) Failure to Compensate for All Hours Worked; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime; (4) Failure to Provide Accurate Itemized Wage Statements; (5) Failure to Pay Wages Owed Every Pay Period; (6) Failure to Give Rest Breaks; (7) Failure to Give Meal Breaks; (8) Private Attorneys General Act ("PAGA"); (9) Failure to Pay Wages When Employment Ends; (10) Failure to Reimburse Business Expenses; and (11) Violation of California Business and Professions Code Section 17200. The Complaint is the operative complaint in the Action (the "Operative Complaint.") Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint and deny any and all liability for the causes of action alleged.
- 2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.
- 2.3. On September 4, 2024 the Parties participated in an all-day mediation presided over by Monique Ngo-Bonnici which led to this Agreement to settle the Action.
- 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, (a) the number of PAGA employees during the PAGA Period; (b) the number of PAGA employees who stopped working for Defendants at any time during the PAGA Period; (c) the number of PAGA employees' recorded workdays during the PAGA Period; (d) the number of paychecks Defendants issued to PAGA employees during the PAGA Period. Moreover, Plaintiff obtained Defendants' relevant wage and hour policies and a random sampling of employee time and payroll records for review by a data analyst.

- 2.5. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants promise to pay \$285,000 and no more as the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

- 3.2.1. To PAGA Counsel: A PAGA Counsel Fees Payment of not more than 35% of the Gross Settlement Amount which is currently estimated to be \$99,750 and PAGA Counsel Litigation Expenses as requested pursuant to motion and currently estimated to be \$12,118.60. Defendants will not oppose requests for Court approval of these payments. Plaintiff and/or PAGA Counsel will file an application or motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from any claim to any portion any PAGA Counsel Fee Payment and/or PAGA Counsel Litigation Expenses Payment. The Administrator will pay the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment using one or more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.

- 3.2.2. To the Administrator: An Administrator Expenses Payment not to exceed \$5,500 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,500, the Administrator will retain the remainder in the Net Settlement Amount.

- 3.2.3. To the LWDA and Aggrieved Employees: PAGA Penalties in the estimated amount of \$167,631.40 to be paid from the Gross Settlement Amount, with 75% (\$125,723.55) allocated to the LWDA PAGA Payment and 25% (\$41,907.85) allocated to the Individual PAGA Payments.

- 3.2.3.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$41,907.85) by

the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

- 3.2.3.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. **Aggrieved Employee Pay Periods.** Based on a review of its records to date, Defendants estimate there are 313 Aggrieved Employees who worked a total of 5,782 PAGA Pay Periods.
- 4.2. **Aggrieved Employee Data.** Within 30 days, Defendants will deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved Employee Data to Administrator employees who need access to the Aggrieved Employee Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify PAGA Counsel if they discover that the Aggrieved Employee Data omitted employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Aggrieved Employee Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Aggrieved Employee Data.
- 4.3. **Funding of Gross Settlement Amount.** Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than 30 days after the Effective Date.
- 4.4. **Payments from the Gross Settlement Amount.** Within 10 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees/Expenses Payment. Disbursement of the PAGA Counsel Fees/Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments.
- 4.4.1. 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.

- 4.4.2. The Administrator must conduct an Aggrieved Employee Address Search for all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address. Within [7] days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date.
- 4.4.3. For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.
- 4.4.4. The payment of Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
5. **RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire Gross Settlement Amount Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:
- 5.1 **Plaintiff's Release.** Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.
- 5.1.1 **Plaintiff's Waiver of Rights Under California Civil Code Section 1542.** For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

- 5.2 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.
- 5.3 Release by PAGA Counsel: PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.
6. **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT.** The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.
- 6.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.2 Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 60 days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court's Approval to the Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously

work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1 Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, it agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

7.4 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8. **AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records, Defendants estimated during the mediation that there were approximately 5,481 pay periods during the PAGA Period. The Parties agreed that should the actual number of pay periods during the PAGA Period increase beyond 10%, Defendants shall increase the Gross Settlement Amount by the percentage increase in the number of PAGA pay periods above 10%. Defendants have confirmed that the total number of PAGA pay periods is 5,782, which is not an increase beyond 10% of the estimate.

9. **CONTINUING JURISDICTION OF THE COURT.** The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

9.1 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as

the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10. ADDITIONAL PROVISIONS.

- 10.1 No Admission of Liability or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that representative treatment is for purposes of this Settlement only. If, for any reason the Court does not approve this Settlement, Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 10.2 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 10.3 Attorney Authorization. PAGA Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 10.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 10.5 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 10.6 No Tax Advice. Neither Plaintiff, PAGA Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

- 10.7 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 10.8 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 10.9 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 10.10 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 10.11 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 10.12 Use and Return of Aggrieved Employee Data. Information provided to PAGA Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data provided to PAGA Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the Administrator discharges its obligation to pay out of all Settlement funds, Plaintiff shall destroy all paper and electronic versions of Aggrieved Employee Data received from Defendants unless, prior to the Administrator's payment of all Settlement Funds, Defendants make a written request to PAGA Counsel for the return, rather than the destructions, of Aggrieved Employee Data.
- 10.13 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 10.14 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 10.15 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:

Harout Messrelian, Esq.
Messrelian Law Inc.
500 N. Central Ave., Suite 840
Glendale, California 91203
hm@messrelianlaw.com

To Defendants:

Robert L. Kenny, Esq.
Gerald Lau, Esq.
Prudential Law Corporation
533 Airport Blvd., Suite 400
Burlingame, California 94010
rkenny@prudentiallaw.com
gerald@prudentiallaw.com

10.16 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

10.17 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

DATED: November ⁰⁶____, 2024

Jhony Alexander Lopez Flores
Jhony Alexander Lopez Flores (Nov 6, 2024 16:26 PST)
Plaintiff Jhony Alexander Lopez Flores

DATED: November 7, 2024

Defendant HL Peninsula Pearl, Inc.

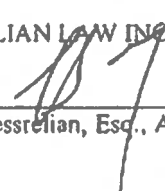
By: Mingie Zhi Min Li
Mingie Zhi Min Li, President

DATED: November 7, 2024

Mingie Zhi Min Li
Defendant Mingie Zhi Min Li

DATED: November 6, 2024

MESSRELIAN LAW INC.

By: 
Harout Messrelian, Esq., Attorneys for Plaintiff

DATED: November 12, 2024

PRUDENTIA LAW CORPORATION

By: 
Robert L. Kenny, Esq., Attorneys for Defendants

EXHIBIT A

NOTICE OF PAGA SETTLEMENT

Jhonny Alexander Lopez Flores v. IIL Peninsula Pearl, Inc. et al. Case No. 23CV420534

[Name]
[Address]
[Telephone]

You are receiving this notice as a result of a lawsuit brought on a representative basis under the Private Attorneys General Act, Labor Code § 2698 et seq. ("PAGA") ("the Action"). The plaintiff in the Action is Jhonny Alexander Lopez Flores ("Plaintiff") and the Defendants are HL Peninsula Pearl, Inc. and Mingie Zhi Min Li ("Defendants"). The Action seeks civil penalties for purported violations of the California Labor Code on behalf of all non-exempt California employees who worked for Defendants during the Settlement Period of June 5, 2022 to September 4, 2024 (the "PAGA Employees"). Defendants deny all claims and allegations in the Action, deny that they owe any penalties, and assert that they have fully complied with all applicable Labor Code provisions. The Court has not ruled on the merits of the claims or defenses at issue in the case. Nevertheless, to avoid further costs and time in litigating the Action, the parties have settled the case and the Court has approved the settlement and release of claims. By settling the Action, Defendants are not admitting that they have done anything wrong as of and subject to the occurrence of the Effective Date of the Settlement. Upon the Effective Date of this Settlement, Plaintiff, the State of California (including, but not limited to, the LWDA), and the PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Settled PAGA Claims with respect to Defendants and each of their officers, directors, members, partners, owners, shareholders, employees (excluding PAGA Employees), former employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors, successors, parent companies and organizations. The Settled PAGA Claims shall include all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the Settlement Period facts stated in the Operative Complaint and the PAGA Notice, including but not limited to: California Labor Code Sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2802, 2698, 2699.

By Order dated <<court approval order date>>, the Superior Court of the State of California, Santa Clara County approved the Settlement of the PAGA claims.

According to the Defendant's records, you are a PAGA Employee and therefore entitled to a share of the settlement based upon the Court approved allocation. Enclosed with this Notice is your check for your share. The settlement check shall remain valid for 180 days. Thereafter, all uncashed checks shall be distributed to California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA Employee.

Please Note: One hundred percent (100%) of your individual PAGA payment under this Settlement will be considered penalties and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your

own tax advisors as to the tax consequences of your individual PAGA payment. Neither Plaintiff nor Defendant have made any representations or warranties regarding the taxation of your individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended). Enclosed are the appropriate tax forms pertaining to your payment.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. If you have any questions, you may call or write to Phoenix Settlement Administrators (the Settlement Administrator), using the contact information at the top of this correspondence.

EXHIBIT 3



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	313
Opt Out Rate	N/A
Opt Outs Received	
Total Class Claimants	313
Subtotal Admin Only	\$5,534.99

Flat Fee Total **\$5,500.00**

For 313 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Multi-Language Translation, Printing & Mailing Included

October 11, 2024

Case: Flores v. HL Peninsula, PAGA Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Harout Messrelain
Firm: Messrelain Law, Inc.
Contact Number: 818.484.6531
Email: hm@messrelainlaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.
Estimate is based on **313** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 day

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	1		\$100.00
Programming Database & Setup	\$100.00	1		\$100.00
Toll Free Setup*	\$100.00	1		\$100.00
Call Center & Long Distance	\$2.50	61		\$152.50
NCOA (USPS)	\$75.00	1		\$75.00
Total				\$527.50

* Up to 120 days after disbursement

Data Merger & Scrub / PAGA Letter & Check / Postage / Multi-Language Translations

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	1		\$100.00
Multi-Language Translations	\$150.00	3		\$450.00
Data Merge & Duplication Scrub	\$0.09	313		\$28.17
PAGA Letter and Check Packet	\$1.00	313		\$313.00
Estimated Postage (up to 1 oz.)*	\$0.79	313		\$247.27
Total				\$1,138.44

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing PAGA Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	3	\$165.00
Skip Tracing Undeliverables	\$0.75	78	\$58.69
Remail PAGA Packets	\$0.65	75	\$48.91
Estimated Postage	\$0.79	75	\$59.45
Programming Undeliverables	\$50.00	1	\$50.00
Total			\$382.05

Case Management

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	3	\$165.00
Case Manager	\$85.00	2	\$170.00
Total			\$335.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$135.00	1	\$135.00
Disbursement Review	\$135.00	1	\$135.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$135.00	1	\$135.00
Check Run Setup & Printing	\$135.00	3	\$405.00
Total			\$1,000.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	2		\$230.00
Remail Undeliverable Checks (Postage Included)	\$1.50	38		\$57.00
Case Associate	\$55.00	3		\$165.00
Reconcile Uncashed Checks	\$85.00	3		\$255.00
Conclusion Reports	\$115.00	2		\$230.00
Case Manager Conclusion	\$85.00	2		\$170.00
Final Reporting & Declarations	\$115.00	3		\$345.00
QSF Annual Tax Reporting * (State Tax Reporting & Escheating Uncashed Checks to the State of CA included)	\$700.00	1		\$700.00
Check to Cy-Pres	\$150.00	1		Included
Total				\$2,152.00
* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.				
Estimate Total:				\$5,534.99



CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 4