

1 Manny Starr (319778)
2 manny@frontierlawcenter.com
3 Adam Rose (210880)
4 adam@frontierlawcenter.com
5 Michael Rachmann (309770)
6 mike@frontierlawcenter.com
7 **FRONTIER LAW CENTER**
8 23901 Calabasas Road, Suite 1084
9 Calabasas, CA 91302
10 Telephone: (818) 914-3433
11 Facsimile: (818) 914-3433

12 Attorneys for Mounu Kiuoleva Lear,
13 individually and on behalf of all others similarly situated

14 **SUPERIOR COURT OF CALIFORNIA**

15 **COUNTY OF RIVERSIDE**

16 MOUNU KIUOLEVA LEAR, individually and
17 on behalf of all others similarly situated,

18 Plaintiff,

19 v.

20 SHALHOUB MANAGEMENT COMPANY,
21 INC. AND DNS2 MANAGEMENT, LLC; and
22 DOES 1 through 100,

23 Defendants.

Case No. CVRI2304984

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATION OF MANNY STARR;
DECLARATION OF MOUNU
KIUOLEVA LEAR; DECLARATION OF
ANDREA ROSENKRANTZ;
DECLARATION OF JODEY
LAWRENCE; [PROPOSED] ORDER**

Reservation ID: 708262420031

Date: November 21, 2024

Time: 8:30 a.m.

Dept: 1

24 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

25 **PLEASE TAKE NOTICE** that on November 21, 2024, at 8:30 a.m. or as soon thereafter as
26 the matter may be heard in Department 1 of the Riverside County Superior Court in the
27 Historic Courthouse located at 4050 Main Street Riverside, CA 92501, Plaintiff Mounu Kiuoleva
28 Lear will and hereby does move the court for an order approving the settlement of this PAGA

1 action.

2 The Motion is based on this notice, the Memorandum of Points and Authorities, the
3 declaration of Manny Starr, the declaration of Plaintiff Mounu Kiuoleva Lear, the declaration of
4 Andrea Rosenkrantz, declaration of Jodey Lawrence, pleadings on file, and arguments at the
5 hearing on this motion.

6
7 DATED: October 29, 2024

8 /s/ MANNY STARR

9 MANNY STARR

10 Attorney for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ALLEGATIONS AND INVESTIGATION	1
III.	A COPY OF THE SETTLEMENT AGREEMENT HAS BEEN GIVEN TO THE LWDA.....	3
IV.	FAIRNESS OF THE SETTLEMENT	3
A.	Meal Break Violations	4
B.	Rest Break Violations	5
C.	Minimum Wage Violations.....	7
D.	Overtime Violations.....	8
E.	Wage Statement Penalties.....	8
F.	Waiting Time Penalties.....	9
V.	TERMS AND PROCEDURES OF THE SETTLEMENT	10
VI.	THE PROPOSED ATTORNEYS' FEES AND CONSTS ARE FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED	11
VII.	NO ADMISSION OF LIABILITY OR WRONGDOING	13
VIII.	PAGA SETTLEMENT ADMINISTRATION	13
A.	Aggrieved Employee Data.....	13
B.	Funding of Settlement.....	13
C.	Payments to LWDA, Plaintiff's Counsel, Plaintiff, and Settlement Administrator	14
D.	Employee Notices and Payments to Aggrieved Employees	14
E.	Expiration of Settlement Checks	15
F.	Disputes Relating to Settlement Administration.....	15
G.	Settlement Administrator's Tax Reporting.....	15
H.	Confirmation of Administration of Settlement	15
I.	Notice Regarding Settlement Compliance.....	15
IX.	TAXES.....	16
X.	RELEASED CLAIMS	16
XI.	CONCLUSION.....	16

TABLE OF AUTHORITIES

Cases

<i>Arias v. Superior Court (Angelo Dairy)</i> (2009) 46 Cal.4th 969	3
<i>Augustus v. ABM Security Services, Inc.</i> , 2 Cal.5th 257	6
<i>Bechtel Corp. v. Superior Court</i> (1973) 33 Cal.App.3d 405	4
<i>California State Auto. Assn. Inter-Ins. Bureau v. Superior Court</i> (1990) 50 Cal.3d 658.....	4
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4 th 43	11
<i>Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America</i> (2006) 141 Cal.App.4th 46.....	4
<i>Harris v. Vector Mktg. Corp.</i> (N.D. Cal. 2009) 656 F. Supp. 2d 1128.....	9
<i>Lafitte v. Robert Half Int’l Inc.</i> (Cal. Aug. 11, 2016) 1 Cal.5 th 480.....	11
<i>Laguna v. Coverall N. Am., Inc.</i> , Case No. 12-55479 (9th Cir. June 3, 2014) 2014	
WL 2465049	10
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4 th 19	12
<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal.App.5 th 56	3
<i>Naranjo v. Spectrum Sec. Servs., Inc.</i> (2022) 13 Cal.5th 93.....	9
<i>Neary v. Regents of University of California</i> (1992) 3 Cal.4th 273	4
<i>Pellegrino v. Robert Half Intern., Inc.</i> (2010), 182 Cal.App.4th 278.....	12
<i>Serrano v. Priest</i> (1977), 20 Cal.3d. 25	12
<i>Shaw v. Toshiba America Information Systems, Inc.</i> (E.D. Tex. 2000) 91 F.Supp.2d 942	11
<i>Timney v. Lin</i> (2003) 106 Cal.App.4th 1121	4
<i>Wershba v. Apple Computer, Inc.</i> (2001), 91 Cal.App.4th 224.....	12

Statutes

Cal. Lab. Code §§ 2699	passim
------------------------------	--------

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff, Mounu Kiuoleva Lear (“Plaintiff”), and Defendants, Shalhoub Management
4 Company, Inc. and DNS2 Management, LLC (“Defendants”) have reached an agreement to settle the
5 above-captioned action (the “Action”). The parties have memorialized the terms of this settlement in
6 a Settlement Agreement (the “Settlement Agreement”). (See PAGA Settlement Agreement, attached
7 as **Exhibit 5** to Declaration of Manny Starr (“Starr Decl.”). Pursuant to California Labor Code §
8 2699(l), Plaintiff seeks an order permitting settlement on the terms outlined in the Settlement
9 Agreement. Plaintiff and Defendants are collectively referred to as the “Parties” and any one of them
10 individually may be referred to as a “Party.”

11 Defendants adamantly deny any liability or wrongdoing of any kind whatsoever associated
12 with the Action, and further deny that, for any purpose other than settling the Action, the Action is
13 appropriate for representative treatment. It is the desire of the Parties to fully, finally, and forever
14 compromise, and discharge all claims known or unknown related to those alleged in the Action.

15 **II. ALLEGATIONS AND INVESTIGATION**

16 Defendants operate McDonald’s restaurants in and around Riverside County, California.
17 Plaintiff worked at one of Defendant’s McDonald’s locations from February 8, 2023, through June
18 29, 2023. Plaintiff was employed as a crew member, with her primary duties including working the
19 front register and drive-through window. At all times during her employment, Plaintiff was an
20 hourly, non-exempt employee. (Starr Decl. ¶15)

21 On September 19, 2023, Plaintiff filed a Class Action Complaint against Defendants in the
22 Riverside County Superior Court, Case No. CVRI2304984. In her Complaint, Plaintiff pled causes
23 of action for: (1) Minimum Wage Violations; (2) Overtime Violations; (3) Meal Period Violations;
24 (4) Rest Period Violations; (5) Wage Statement Penalties; (6) Waiting Time Penalties; and (7)
25 Violation of Unfair Competition Law (“Complaint”). (*Id.*, at ¶6).

26 On December 20, 2023, PAGA Counsel, on behalf of Plaintiff and the PAGA Group, gave
27 written notice to the Labor Workforce and Development Agency (“LWDA”) of the Labor Code
28 violations Defendants is alleged to have violated (“LWDA Exhaustion Letter”). (*Id.*, at ¶4).

1 On or around April 24, 2024, Plaintiff amended the Complaint to dismiss the class claims
2 and add a cause of action for Civil Penalties pursuant to the Private Attorneys General Act of 2004
3 (“PAGA”). (*Id.*, at ¶8).

4 According to Defendants’ records, and extrapolated through the date of mediation, it has
5 employed 2,772 Aggrieved Employees from December 20, 2022, through September 1, 2024, and
6 that there are paychecks issued for a total of approximately 40,000 pay periods worked for that
7 same time period. (*Id.*, at ¶16).

8 Defendants deny and continue to deny all of Plaintiff’s material allegations. Specifically,
9 Defendants contend (1) they did not fail to pay the Aggrieved Employees the minimum, straight
10 time, and/or overtime wages; (2) they paid the Aggrieved Employees for all hours worked; (3) they
11 provided the Aggrieved Employees with all meal periods according to law and/or paid meal period
12 premiums; (4) they provided the Aggrieved Employees with all rest breaks according to law and/or
13 paid rest break premiums; (5) they did not fail to timely pay the Aggrieved Employees wages due
14 and owing during employment and/or upon separation; (6) they provided the Aggrieved Employees
15 with accurate itemized wage statements, consistent with Labor Code Section 226; (7) they properly
16 maintained all payroll records; (9) the PAGA Group is not entitled to penalties under PAGA; and
17 (10) Defendants are not liable for damages, including attorneys’ fees and costs of litigation to the
18 Aggrieved Employees. (*Id.*, at ¶17).

19 In connection with the Action, and in order to work toward a mediated resolution without
20 the time and expense of formal discovery, the Parties produced voluminous documents and data
21 (including, by Defendants, human resources documents and policies, time records, and payroll data
22 during the PAGA Period) which were reviewed, investigated, and analyzed by Plaintiff’s Counsel.
23 (*Id.*, at ¶11).

24 On July 8, 2024, the Parties in Action participated in a full day of mediation before an
25 experienced employment, class, and PAGA representative action mediator, David Phillips, Esq. (the
26 “Mediation”). (*Id.*, at ¶10). The Parties reached a settlement at the Maximum Settlement Amount of
27 \$425,000. (*Id.*, at ¶12).

28 Counsel for the Parties have further investigated the applicable law as applied to the facts

1 discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code violations claimed
2 by Plaintiff. Based on their own independent investigations and evaluations, the Parties and their
3 respective counsel are of the opinion that the Settlement for the consideration and on the terms set
4 forth in this motion are fair, reasonable and adequate and are in the best interests of Plaintiff, the
5 Aggrieved Employees, and Defendants in light of all known facts and circumstances and the risks
6 inherent in litigation. (*Id.*, at ¶18).

7 The Parties further recognize that the issues presented in the Representative PAGA Claim
8 are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that
9 further litigation will cause inconvenience, distraction, disruption, delay, and expense
10 disproportionate to the maximum potential benefits. (*Id.*, at ¶19).

11 **III. A COPY OF THE SETTLEMENT AGREEMENT HAS BEEN GIVEN TO THE**
12 **LWDA PURSUANT TO LABOR CODE § 2699(1)(2)**

13 PAGA requires parties who seek approval of a proposed PAGA settlement to submit the
14 proposed settlement to the LWDA online "at the same time that it is submitted to the court," to give
15 LWDA an opportunity to comment on the proposed settlement. *See* Cal. Lab. Code §§ 2699(1)(2),
16 2699(1)(4). In satisfaction of that requirement, Plaintiffs submitted a copy of the Settlement and this
17 motion to the LWDA through the LWDA's online filing system in conjunction with filing this
18 motion. (Starr Decl. ¶14).

19 **IV. FAIRNESS OF THE SETTLEMENT**

20 The present settlement resolves claims under PAGA on a representative basis. This is not a
21 class settlement, and does not purport to resolve any individual claims (other than for the named
22 Plaintiff) on behalf of any class of individuals. As a result, the usual procedures for class actions
23 approval do not apply. (*Arias v. Superior Court (Angelo Dairy)* (2009) 46 Cal.4th 969.) This
24 action seeks penalties under PAGA under Labor Code sections 201, 202, 203, 210, 226(a), 226.3,
25 226.7, 510, 512, 558, 1194, 1197.1, 1198, and 2699 *et seq.*

26 Further, in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, the court found that the
27 "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements.
28 (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's

1 allocation of civil penalties between the affected aggrieved employees”. (*Id.*, at 64-65.)
2 California law provides some general guidance concerning judicial approval of any settlement.
3 First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992)
4 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public
5 policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106
6 Cal.App.4th 1121, 1127.) Moreover, “The court cannot surrender its duty to see that the judgment
7 to be entered is a just one, nor is the court to act as a mere puppet in the matter.” (*California State*
8 *Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have
9 specifically noted that *Neary* does not always apply, because “Where the rights of the public are
10 implicated, the additional safeguard of judicial review, though more cumbersome to the settlement
11 process, serves a salutatory purpose.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of*
12 *America* (2006) 141 Cal.App.4th 46, 63.) As explained below, the settlement with Defendants is
13 fair, reasonable, and adequate, and should be approved.

14 **A. Meal Break Violations**

15 Labor Code section 512 and the applicable Wage Orders require employers to provide non-
16 exempt employees with meal periods of at least 30 minutes for work periods exceeding five hours,
17 and a second meal period for work periods exceeding ten hours. These meal periods must be
18 uninterrupted, with employers relieving employees of all duties, relinquishing control over their
19 activities, and allowing employees a reasonable opportunity to take their full 30-minute break. If an
20 employer fails to provide a compliant meal period, it must pay the employee one additional hour of
21 pay at the employee's regular rate of compensation for each workday that the meal period is not
22 provided.

23 Plaintiff's theory of liability centers on Defendant's alleged failure to provide compliant meal
24 breaks to employees at its McDonald's locations due to understaffing and a high-pressure work
25 environment. (Starr Decl. ¶20). Plaintiff, representing the Aggrieved Employees, reports missing
26 meal breaks approximately 2-3 times per week, indicating a pattern of non-compliance. (*Id.*, at ¶21).
27 The violations allegedly stem from insufficient staffing levels, pressure to take late breaks after the
28 fifth hour of work, interruptions during breaks, lack of clear policy communication, and

1 management resistance to break requests. (*Id.*, at ¶22).

2 Based on Defendant's estimate of 40,000 pay periods during the relevant time frame, and
3 assuming a conservative violation rate of 50% based on the combined rates of missed, late, and
4 short meal periods, the maximum potential liability calculation would be: 20,000 violations (50% of
5 pay periods) × \$50 PAGA penalty = \$1,000,000 in potential penalties. (*Id.*, at ¶35).

6 However, Defendant presents strong defenses that substantially reduce the likelihood of
7 recovering the maximum penalty amount. Time record analysis shows minimal violation rates: only
8 0.2% for missed first meal periods, 6.0% for late first meal periods, and 0.2% for short first meal
9 periods. Defendant maintains that any non-compliant meal periods were due to employees'
10 voluntary choices rather than company policy or practice. Furthermore, Defendant has already paid
11 \$53,590.12 in meal period premiums during the PAGA period, demonstrating both good faith
12 compliance efforts and remediation of violations. (*Id.*, at ¶36).

13 Given these substantial defenses, the low violation rates, documented compliance efforts,
14 and premiums already paid, a risk adjustment of 5% of the maximum potential liability is
15 appropriate. Therefore, the risk-adjusted liability is calculated as $\$1,000,000 \times 5\% = \$50,000$. (*Id.*,
16 at ¶37). This adjustment acknowledges both the court's discretion to reduce PAGA penalties under
17 Labor Code section 2699(e)(2) when they would be unjust, arbitrary, oppressive, or confiscatory,
18 and the significant challenges Plaintiff would face in proving widespread violations were the result
19 of Defendant's policies rather than employee choice.

20 **B. Rest Break Violations**

21 Labor Code section 226.7 and the applicable Wage Orders require employers to authorize
22 and permit employees to take rest periods at the rate of 10 minutes net per four hours or major
23 fraction thereof. Employers must relieve employees of all duties during rest periods and allow them
24 to leave the premises, or else pay a premium at the regular rate of pay. If an employer fails to
25 provide a compliant rest period, it must pay the employee one additional hour of pay at the
26 employee's regular rate of compensation for each workday that the rest period is not provided.

27 Plaintiff alleges that Defendant failed to provide compliant rest breaks to employees at its
28 McDonald's locations through three primary mechanisms. (*Id.*, at ¶23). First, Plaintiff alleges that

1 employees were required to remain on premises during their 10-minute breaks, directly violating the
2 California Supreme Court's ruling in *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 which
3 prohibits any restraint on employees during rest breaks. (*Id.*, at ¶24). Second, Plaintiff alleges that
4 the high-pressure work environment and persistent understaffing created an implicit expectation that
5 employees should forego their rest breaks to maintain operational efficiency. (*Id.*, at ¶25). Plaintiff
6 reports missing approximately 2 rest breaks per week, with many others being interrupted by work-
7 related tasks. (*Id.*, at ¶26). Third, Plaintiff alleges that management failed to clearly communicate
8 and enforce rest break policies, leading to confusion and inconsistent practices across locations. (*Id.*,
9 at ¶27).

10 Based on Defendant's estimate of 40,000 pay periods during the relevant time frame, while
11 Plaintiff alleges that the on-premises requirement affected all rest breaks (which would implicate
12 100% of pay periods), this practice is not explicitly stated in Defendant's written policies and would
13 be challenging to prove on a systematic basis. Therefore, using a more conservative violation rate of
14 50% based on the alleged patterns of missed and short rest periods, the maximum potential liability
15 calculation would be: 20,000 violations (50% of pay periods) × \$100 PAGA penalty = \$2,000,000
16 in potential penalties. This rate accounts for both documented violations and the potential broader
17 impact of the alleged on-premises practice, while acknowledging the evidentiary challenges in
18 establishing such a practice as company policy. (*Id.*, at ¶38).

19 However, Defendant presents several strong defenses that substantially reduce the likelihood
20 of recovering the maximum penalty amount. Time record analysis shows minimal violation rates:
21 only 0.6% for missed rest breaks and 3.0% for short breaks. Further, Defendant maintains that it has
22 compliant written rest break policies, that any missed breaks were voluntary, and that employees
23 were free to leave the premises during breaks. (*Id.*, at ¶39).

24 Given these substantial defenses, the low violation rates, and the inherent difficulties in
25 proving rest break violations, a risk adjustment of 5% of the maximum potential liability is
26 appropriate. Therefore, the risk-adjusted liability is calculated as $\$2,000,000 \times 5\% = \$100,000$. (*Id.*,
27 at ¶40). This adjustment acknowledges both the court's discretion to reduce PAGA penalties under
28 Labor Code section 2699(e)(2) when they would be unjust, arbitrary, oppressive, or confiscatory,

1 and the significant challenges Plaintiff would face in proving widespread violations were the result
2 of Defendant's policies rather than employee choice.

3 **C. Minimum Wage Violations**

4 Labor Code section 1197.1 mandates that employers pay employees at least the minimum
5 wage for all hours worked. This includes any time during which an employee is subject to the
6 control of the employer and any work performed off the clock. Plaintiff alleges that the Aggrieved
7 Employees were not compensated for all hours worked, including hours worked off the clock and
8 during periods when they were required to work through their meal breaks while clocked out. (*Id.*,
9 at ¶28). These practices effectively resulted in the Aggrieved Employees performing work without
10 receiving the legally required minimum wage for those hours.

11 Defendants' arguments against these allegations mirror those presented for the meal and rest
12 break claims discussed above. Defendants contend that any off-the-clock work or work performed
13 during meal breaks was neither authorized nor required by company policy. Defendants assert that
14 employees were instructed to accurately record all hours worked and that any instances of off-the-
15 clock work were due to individual choices rather than systemic issues or directives from
16 management. (*Id.*, at ¶29).

17 Penalties for minimum wage violations are assessed at \$100 for each underpaid Aggrieved
18 Employee for each pay period in which the employee is underpaid. While there are an estimated
19 40,000 pay periods during the relevant timeframe, a conservative estimate of 20,000 pay periods
20 with potential violations, consistent with the approach used for meal and rest break violations. This
21 results in a maximum potential liability calculation of 20,000 pay periods × \$100 penalty =
22 \$2,000,000 in potential penalties. (*Id.*, at ¶41).

23 Given the substantial defenses presented by Defendant and the challenges in proving
24 widespread minimum wage violations, a risk adjustment of 5% of the maximum potential liability is
25 appropriate. Therefore, the risk-adjusted liability is calculated as \$2,000,000 × 10% = \$200,000.
26 (*Id.*, at ¶42). This adjustment acknowledges the court's discretion under Labor Code section
27 2699(e)(2) to reduce PAGA penalties when they would be unjust, arbitrary, oppressive, or
28 confiscatory, and reflects the significant hurdles Plaintiff would face in establishing that the alleged

1 violations were the result of Defendant's policies rather than isolated incidents.

2 **D. Overtime Violations**

3 Labor Code section 558 mandates that employers pay overtime wages to employees who
4 work more than eight hours in a day or 40 hours in a week. This includes any time during which an
5 employee works off the clock, which should be compensated at the appropriate overtime rate.
6 Plaintiff alleges that Defendants failed to pay overtime wages when Aggrieved Employees worked
7 in excess of the standard hours, including periods of off-the-clock work and instances when they
8 were required to work through their meal breaks without proper compensation. (*Id.*, at ¶30). These
9 practices resulted in the Aggrieved Employees not receiving the overtime pay to which they were
10 legally entitled.

11 Defendants' arguments against these allegations are similar to those presented for the break
12 claims discussed above. Defendants contend that any off-the-clock work or overtime hours were
13 neither authorized nor required by company policy. Defendants assert that employees were
14 instructed to accurately record all hours worked, including overtime, and that any failure to
15 compensate overtime was due to the Aggrieved Employees not following company procedures
16 rather than systemic issues or directives from management. (*Id.*, at ¶31).

17 Penalties for overtime violations are assessed at \$50 for each underpaid employee for each
18 pay period in which a violation occurred. Although there are an estimated 40,000 pay periods
19 during the PAGA Period, Plaintiff conservatively estimates 20,000 pay periods with potential
20 violations, consistent with the approach used for previous claims. This results in a maximum
21 potential liability calculation of 20,000 pay periods × \$50 penalty = \$1,000,000 in potential
22 penalties. Given the defenses presented by Defendant and the challenges in proving widespread
23 overtime violations, a risk adjustment of 5% of the maximum potential liability is appropriate.
24 Therefore, the risk-adjusted liability is calculated as $\$1,000,000 \times 5\% = \$50,000$. (*Id.*, at ¶43).

25 **E. Wage Statement Penalties**

26 The wage statement violations are derivative of the unpaid time and meal and rest break
27 violations. (*Id.*, at ¶44). Assuming a violation on every single wage statement over the 40,000 pay
28 periods at issue, the maximum theoretical value of this claim is (40,000 x \$100 per initial violation)

1 \$4,000,000. (*Id.*, at ¶45).

2 However, because this claim is purely derivative, defeating liability on the underlying claim
3 also defeats liability on the Wage Statement claim. Even if the underlying claim prevails,
4 Defendants could counter that any alleged omission of information from the wage statements was
5 not knowing and intentional, which could negate wage statement penalties. (*Harris v. Vector Mktg.*
6 *Corp.* (N.D. Cal. 2009) 656 F. Supp. 2d 1128, 1145-46 (summary adjudication warranted on
7 Section 226(e) claim where dispute existed as to whether plaintiff was independent contractor, and
8 record lacked evidence that conduct was knowing or willful). (*Id.*, at ¶46). As such, Plaintiff
9 estimates that the risk-adjusted liability on this claim is only 10% of its maximum value, or
10 \$400,000. (*Id.*, at ¶47).

11 **F. Waiting Time Penalties**

12 Similarly, the waiting time penalties are derivative from the off the clock and missed break
13 allegations, which are theoretically recoverable consistent with *Naranjo v. Spectrum Sec. Servs.,*
14 *Inc.* (2022) 13 Cal.5th 93. Based on the data regarding the number of Aggrieved Employees who
15 are no longer employed by Defendants, and the Aggrieved Employees' average rates of pay,
16 Plaintiff estimates the maximum liability for the estimated 1,500 former employees to be \$150,000
17 at \$100 per Aggrieved Employee. (*Id.*, at ¶48).

18 On the other hand, Defendants can defeat these claims if they defeat the underlying
19 predicate claims. In addition, much like the wage statement claims, Defendants will likely argue
20 that the failure to pay was not willful, that it disputes that any wages were due, that violations were
21 minimal, and that the Aggrieved Employees were not following company procedure. (*Id.*, at ¶49).
22 Given this double risk of losing on liability, Plaintiff evaluates the risk-adjusted value of this claim
23 to be 10% or \$15,000. (*Id.*, at ¶50).

24 **G. The Total Settlement Amount is Fair and Reasonable**

25 Under the civil penalty formula applicable under PAGA, Plaintiff estimated a maximum
26 exposure of approximately **\$10,150,000** (of which approximately \$3,000,000 is for the meal/rest
27 break regular rate violations, \$2,000,000 is for minimum wage violations, \$1,000,000 is for the
28 overtime regular rate violations, and approximately \$4,150,000 is for wage statement and waiting

1 time penalties). This assumes that Plaintiff were to prevail on all claims, be awarded maximum
2 penalties for each claim, and was able to stack PAGA penalties. When applying a reduction to
3 account for the risks associated with each of the Labor Code violations set forth above, Plaintiff
4 estimated the risk adjusted liability to be **\$815,000**. This represents a more realistic recovery at trial
5 based on the likelihood of Plaintiff prevailing on the various claims as alleged, and the potential for
6 the Court to reduce PAGA penalties further for the reasons set forth above.

7 In addition to the risks related to each of the theories of liability as outlined above, Plaintiff
8 recognizes that there are additional risks related to litigation in general which justify a settlement that
9 is lower than the estimated risk adjusted liability. Furthermore, Plaintiff understands that the Court
10 may choose not to stack PAGA penalties for derivative violations. In view of the risks, the Settlement
11 of \$425,000 (4.2% of maximum liability, 52% of risk adjusted liability) represents a fair, adequate,
12 and reasonable compromise amount for these claims and is in the best interest of Plaintiff and
13 Aggrieved Employees and thus, warrants approval. (*Id.*, at ¶53). *See Laguna v. Coverall N. Am., Inc.*,
14 Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its
15 terms are fair, just, reasonable, adequate, and equitable to Defendants, Plaintiff, and the State,
16 especially in light of the current economic climate, and are the product of good faith, and informed
17 arms-length negotiations between the Parties consistent with public policy and fully comply with
18 applicable provisions of law. (Starr Decl. ¶54).

19 **V. TERMS AND PROCEDURES OF THE SETTLEMENT**

20 The Settlement covers any and all civil penalties and claims arising from Plaintiff's
21 allegations in her Complaint, as laid out above.

22 Defendants agree to pay \$425,000 toward the Settlement (the "Gross Settlement Amount" or
23 "GSA") which will be distributed by the Settlement Administrator as follows:

- 24 a. Up to \$148,750.00 (35% of the GSA) in attorney's fees to Frontier Law Center;
- 25 b. Actual costs, up to \$11,500 in attorney litigation costs to Frontier Law Center;
- 26 c. \$12,750 in PAGA Settlement Administrator costs to Phoenix Class Action
27 Administration Solutions;
- 28 d. \$10,000 enhancement award to Plaintiff Mounu Kiuoleva Lear;

e. The remainder, presently estimated as \$242,000 (the “Net Settlement Amount” or “NSA”) will be divided as follows:

- i. \$181,500 (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
- ii. \$60,500 (25% of NSA) (the “Aggrieved Employee Payment”) to the Aggrieved Employees which represents civil penalties payable to the Aggrieved Employees as compensation for civil penalties that are allegedly owed on the Representative PAGA Claim for the period from December 20, 2022, through September 1, 2024.

Plaintiff and each Aggrieved Employee shall receive a portion of the Aggrieved Employee Payment on a pro-rata basis by multiplying the Aggrieved Employee Payment by the ratio of (i) the number of pay periods worked by the Aggrieved Employee during the release period and (ii) the total number of pay periods worked by all Aggrieved Employees during the release period.

For purposes of computing taxes, one-hundred percent (100%) of the Aggrieved Employee Payment Share shall be considered to be a civil penalty and shall not be subject to withholding, unless otherwise required by law. The Claims Administrator shall file proof of payment.

VI. THE PROPOSED ATTORNEYS’ FEES AND CONSTS ARE FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE APPROVED

Plaintiff’s counsel represents Plaintiff on a straight contingency basis. Plaintiff counsel’s request for \$148,750.00 in attorney fees and \$11,500.00 in litigation costs is fair and reasonable. (Starr Decl. ¶62). “Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 47 fn. 11 (quoting *Shaw v. Toshiba America Information Systems, Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also Lafitte v. Robert Half Int’l Inc.* (Cal. Aug. 11, 2016) 1 Cal.5th 480, 503, (holding that courts can use the percentage method for the calculation of attorneys’ fees). This is also consistent with Plaintiff’s Counsel’s experience in cases involving PAGA claims. This award is justified here because Plaintiff’s counsel

1 achieved a strong result for the Aggrieved Employees and the State while bearing the substantial
2 burdens of contingency representation. (Starr Decl. ¶63).

3 It is an accepted practice in wage and hour class action settlements to award attorneys' fees to
4 Plaintiff's Counsel based on a percentage of the total settlement value agreed upon by the parties.
5 California courts have long recognized that an appropriate method for awarding attorneys' fees in
6 class actions is to award a percentage of the common fund. *See Serrano v. Priest* (1977), 20 Cal.3d.
7 25, 48-49 ["when a number of persons are entitled in common to a specific fund, and an action brought
8 by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
9 plaintiff or plaintiffs may be awarded attorney's fees out of the fund"]; *Wershba v. Apple Computer,*
10 *Inc.* (2001), 91 Cal.App.4th, 230, 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19,
11 26-30.) While PAGA actions are not class actions, the same logic holds true as PAGA actions are
12 also representative actions.

13 Generally, the Ninth Circuit and California Courts award multipliers between 2 to 4 times the
14 lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining good results.
15 *Pellegrino v. Robert Half Intern., Inc.* (2010), 182 Cal.App.4th 278 (noting reasonable multipliers of
16 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.* (2001),
17 91 Cal.App.4th 224, 254 (noting that multipliers can range from 2 to 4 or higher). Consideration of
18 the enhancement factors justify the enhancement of the lodestar; courts multiply the lodestar by a
19 factor to account for the risk of non-payment, delay in payment, the quality of work, and the novelty
20 and difficulty of the issues involved. *Ketchum v. Moses* (2001), 24 Cal.4th 1122, 1132. Plaintiff's
21 counsel's lodestar amount is very close to the actual fee requested and is less than the generally
22 awarded multiplier of 2. The requested fee award is justified by the work performed; the fee award
23 represents Plaintiff's counsel's current lodestar of \$82,155 with a reasonable multiplier of 1.8, with
24 additional work to be performed such that the multiplier will ultimately be less than 1.8. (Starr Decl.
25 ¶64).

26 The litigation costs expended to aid in the representation of the Aggrieved Employees
27 include the following: Certified Mail costs of \$17.06 for the PAGA notice to Defendant, \$75 filing
28 fee for filing the PAGA notice with the LWDA, a mediation fee of \$7,450.00 (for Plaintiff's portion

1 of the mediation), \$2,800 in expert fees, \$160 in docket fees, and other filing, mail, and access fees
2 of \$995. All of these costs are documented and reasonably incurred. (*Id.*, at ¶65). All costs include
3 any fee charged by One Legal, Plaintiff Counsel’s electronic filing processor, where applicable.

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

5 The payment of consideration or any other obligation are not and shall not be construed in any
6 way as an admission of wrongdoing or liability on the part of Defendants, or any other person or
7 business entity. Defendants adamantly deny all allegations of wrongdoing arising out of the
8 employment relationship between the Parties, including the Aggrieved Employees. The Parties intend
9 merely to avoid the expense, delay, uncertainty, and burden of continued litigation.

10 **VIII. PAGA SETTLEMENT ADMINISTRATION**

11 The Parties agreed to use Phoenix Class Action Administration Solutions to handle the
12 administration of this Settlement.

13 **A. Aggrieved Employee Data**

14 Defendant shall compile a list containing the following information regarding each of the
15 Aggrieved Employees: (1) first and last name; (2) last known mailing address; (3) Social Security
16 number or tax ID; and (4) the total number of pay periods worked during the PAGA Period
17 (“Aggrieved Employee Data”). The Aggrieved Employee Data will be provided to the Settlement
18 Administrator within twenty-one (21) calendar days after the Court has signed and entered the
19 Approval Order. This information shall be treated as and remain confidential and shall be used
20 solely to manage the notice and payment process described herein, shall not be disclosed to anyone
21 other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to
22 express written authorization of Defendant, the individual in question, or by order of the Court.

23 **B. Funding of Settlement**

24 Defendant shall fund the Gross Settlement Amount by way of electronic transfer to the
25 account to be established by the Settlement Administrator for purposes of administration of the
26 Settlement (“Settlement Administration Account”) within ten (10) calendar days after receipt of
27 transfer instructions from the Settlement Administrator, which shall occur within ten (10) calendar
28 days after the Court has signed and entered the Approval Order granting approval of the PAGA

1 Settlement. Defendant's obligations for funding the settlement is satisfied upon electronic transfer
2 of the Gross Settlement Amount to the Settlement Administrator pursuant to the Settlement
3 Administrator's instructions, provided, however, that any unsuccessful electronic transfer of funds
4 be of no fault of Defendant. In the event of an unsuccessful electronic transfer of funds, the Parties
5 agree to cooperate in good faith to resolve the issues.

6 **C. Payments to LWDA, Plaintiff's Counsel, Plaintiff, and Settlement Administrator**

7 Within ten (10) calendar days after Defendant funds the Gross Settlement Amount, the
8 Settlement Administrator shall pay the Court-approved LWDA Payment to the LWDA, Attorneys'
9 Fees and Costs to Plaintiff's Counsel, PAGA Representative Payment to Plaintiff, and Settlement
10 Administration Costs to itself.

11 **D. Employee Notices and Payments to Aggrieved Employees**

12 Within fourteen (14) calendar days after Defendant funds the Gross Settlement Amount, the
13 Settlement Administrator shall mail via U.S. First Class mail to each Aggrieved Employee his or
14 her Individual Settlement Check at the last known address in the Aggrieved Employee Data or a
15 more updated address from the National Change of Address Database. A notice letter explaining
16 why the check is being sent ("Employee Notice"), in a mutually-agreed upon form that has been
17 approved by the Court, in substantially the form that is attached hereto as "**Exhibit 5**" to the
18 Declaration of Manny Starr (specifically, the notice is attached to the settlement agreement as
19 Exhibit A), and will be included in the mailing of each Aggrieved Employee's Individual
20 Settlement Check. Together, an Individual Settlement Check that is mailed to a PAGA Employee
21 with the Employee Notice is referred to as a "Payment Packet." Prior to mailing the Payment
22 Packets, the Settlement Administrator shall check the addresses provided using the National Change
23 of Address database. Should any of the Employee Notices be returned as undeliverable, the
24 Settlement Administrator will have five (5) calendar days after it receives the returned undeliverable
25 mail to search for a more current address for the Aggrieved Employee (via a skip trace or other
26 reasonable method) and to re-mail Employee Notices to the traced address. The Settlement
27 Administrator will only be required to re-mail the Payment Packets once by way of this process.

28 ///

1 **E. Expiration of Settlement Checks**

2 All Individual Settlement Checks will expire one hundred and eighty (180) calendar days
3 after the initial mailing of the original Payment Packets to the Aggrieved Employees, and thereafter,
4 shall be cancelled. If any funds remain in the Settlement Administration Account as a result of
5 cancelled Individual Settlement Checks, such funds shall be transmitted to the California State
6 Controller's Office Unclaimed Property Fund in the name of each Aggrieved Employee whose
7 check is voided. All duties set forth herein shall be included in the Settlement Administration Costs
8 and paid from the Gross Settlement Amount. Irrespective of whether an Aggrieved Employee's
9 Individual Settlement Check has been actually received and/or cashed, he or she will be deemed to
10 be bound to this Settlement, the release provided herein, and the Court's Approval Order.

11 **F. Disputes Relating to Settlement Administration**

12 Any disputes concerning administration of the Settlement which cannot be resolved by the
13 Parties shall be submitted to and resolved by the Court.

14 **G. Settlement Administrator's Tax Reporting**

15 The Settlement Administrator shall be responsible for providing the requisite Form 1099's
16 as required by this Agreement, and the completion of any other steps necessary for compliance with
17 any tax obligations of the Settlement under federal, state, and/or local law, as applicable.

18 **H. Confirmation of Administration of Settlement**

19 Within ten (10) calendar days of distributing the Gross Settlement Fund, the Settlement
20 Administrator shall provide to Plaintiff's Counsel and Counsel for Defendant a written declaration
21 verifying that it effected disbursement of the Gross Settlement Fund pursuant to the terms of this
22 Agreement.

23 **I. Notice Regarding Settlement Compliance**

24 Within fourteen (14) calendar days of receipt of the Settlement Administrator's declaration
25 confirming Defendant's funding of the Settlement and the Settlement Administrator's disbursement
26 of the Gross Settlement Fund, Plaintiff shall file a notice informing the court of compliance with the
27 terms of the Settlement and satisfaction of the Judgment, and requesting formal closure of the
28 Action.

1 **IX. TAXES**

2 Plaintiff and each Aggrieved Employee bear full responsibility for the payment of any taxes
3 or withholdings arising from the Aggrieved Employee Settlement Awards paid to them.

4 **X. RELEASED CLAIMS**

5 Upon the approval by the Court of this Settlement, Plaintiff, the State of California, and each
6 Aggrieved Employee, and without the need to manually sign a release document, shall release the
7 Defendants, including any and all parent corporations, affiliates, subsidiaries, managers,
8 predecessors, insurers, successors and assigns, including but not limited to each of their current and
9 former attorneys officers, directors and agents thereof, both individually and in their business
10 capacities, (collectively, "Released Parties") and the State of California, for claims for civil
11 penalties pursuant to PAGA based upon all causes of action and claims that were alleged in the
12 Action or reasonably could have been alleged based on the facts and legal theories contained in the
13 Action and/or the LWDA Exhaustion Letter.

14 Further, upon the approval by the Court of this Settlement, Plaintiff, individually and on
15 behalf of Plaintiff's heirs, executors, administrators, representatives, attorneys, successors and
16 assigns knowingly and voluntarily releases and forever discharges Released Parties, to the fullest
17 extent permitted by law, of and from any and all claims, known and unknown, asserted and
18 unasserted, which Plaintiff has or may have against the Released Parties as of the date of execution
19 of this Settlement Agreement. ("Plaintiff's Release"). Plaintiff's Release does not extend to any
20 claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment
21 benefits, disability benefits, social security benefits, workers' compensation benefits that arose at
22 any time, or based on occurrences outside the PAGA Period. Plaintiff acknowledges that Plaintiff
23 may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows
24 or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective
25 in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

26 **XI. CONCLUSION**

27 The settlement being fair and reasonable, Plaintiff respectfully requests that the Court
28 approve the settlement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: October 29, 2024

FRONTIER LAW CENTER

/s/ MANNY STARR
Manny Starr
Attorney for Plaintiff
Mounu Kiuoleva Lear