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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE, NORTH JUSTICE CENTER

PHUONG HUYNH, an individual Plaintiff, vs. PHO LOVERS LT, INC. dba PHO LOVERS, an unknown business entity; TUNG PHAM, an individual; LEON NGUYEN, an individual; and DOES 1 through 50, inclusive, Defendants.	**Case No.: 30-2024-01379995-CU-OE-NJC** **<u>Assigned For All Purposes To</u>:** **Hon. Judge Nathan Vu** **Dept: N15** **NOTICE OF MOTION AND UNOPPOSED MOTION FOR ORDER APPROVING SETTLEMENT INCLUDING PAYMENT OF CIVIL PENALTIES TO THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY** [Concurrently filed with Declaration of John D. Trieu, Esq; [Proposed] Order] **Reservation ID: 74460826** **Date: June 16, 2025** **Time: 9:00 a.m.** **Dept: N15** **Complaint Filed: February 20, 2024** **FAC Filed: February 23, 2024** **Trial Date: June 30, 2025**

TO ALL PARTIES AND THEIR COUNSEL:

PLEASE TAKE NOTICE that on **June 16, 2025** at **9:00** a.**m**. in **Department N15** of the above entitled court located at 1275 North Berkeley Avenue Fullerton, CA 92832, Plaintiff, PHUONG HUYNH, will move this court pursuant to California Labor Code 2699 (*l*)(2) for an order:

(1) For Approval of Plaintiff, PHUONG HUYNH's settlement with Defendants, PHO LOVERS LT, INC. dba PHO LOVERS ("PHO LOVERS"), TUNG TRAN (erroneously sued as TUNG PHAM) , an individual; and LEON NGUYEN, an individual ("Defendants"), on behalf of herself and 32 other aggrieved former and current employees of Defendants (Cal. Labor Code § 2698 et seq.), and the resulting payment of penalties to Plaintiff, the other aggrieved parties, and the California Labor & Workforce Development Agency, under the Labor Code Private Attorneys General Act ("PAGA")

(2) For Approval of the Notice of PAGA Settlement that will be sent to the Aggrieved Employees.

This motion is made on the grounds that after significant discovery, investigation, and good faith, arms' length negotiations, the parties have agreed upon the settlement, which is fair, reasonable, and adequate and in the best interests of the aggrieved employees. The Motion will be based upon the Notice of Motion, the accompanying Memorandum of Points and Authorities in support of the Motion, the Declaration of John D. Trieu, Esq., the Proposed Order submitted herewith, the Court's record of this action, all matters of which the Court may take notice, and such oral or documentary evidence as the Court may receive at or before the hearing on the Motion.

As this Motion is unopposed, the Parties respectfully request relief from the page limit requirement set by California Rules of Court, Rule 3.1113(d).

Dated: January 7, 2025

LAW OFFICES OF JOHN D. TRIEU, APC

By: ______________________________

JOHN D. TRIEU,
Attorneys for Plaintiff
PHUONG HUYNH

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND & PROCEDURAL HISTORY

This is an individual wage and hour action, and representative action (collectively, "Action") pursuant to the Private Attorneys General Act ("PAGA") filed by Plaintiff, PHUONG HUYNH ("PLAINTIFF"), who was a former employee of Defendants, PHO LOVERS and the individual owners, TUNG TRAN and LEON NGUYEN. From about **August 2022 to September 6. 2023,** PLAINTIFF was employed as a cashier and waitress for PHO LOVERS, an Asian restaurant specializing in Vietnamese beef noodle cuisine with three restaurant locations in Orange County.

On **November 10, 2023**, Plaintiff sent a letter to Defendants and submitted the letter to the California Labor & Workforce Development Agency ("LWDA") electronically which explained that she was an "aggrieved" former employee alleging Labor Code violations, individually and on behalf of the aggrieved employees of Defendants. On **September 4, 2024**, Plaintiff sent an Amended PAGA letter to the LWDA electronically adding a claim that Defendants did not provide paid sick leave. Copies of the November 10, 2023 and September 4, 2024 letters to the LWDA are provided as **"Exhibit A"** to the concurrently filed Declaration of John D. Trieu (hereinafter, "**Trieu Decl**.").

The LWDA responded by acknowledging receipt on November 10, 2023 and September 4, 2024 by email and subsequently did not respond within the statutory time to inform Plaintiff it intended to investigate Plaintiff's claims. (**Trieu Decl. ¶7-8 Exhibit B**) Plaintiff is an aggrieved party and had exhausted her administrative claims for PAGA Penalties. (See Cal. Labor Code §2699.3.)

On **February 20, 2024**, Plaintiff commenced this Action by filing a Complaint against Defendants. Plaintiff subsequently filed a First Amended Complaint on **February 23, 2024** that alleges claims for: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure to Permit Meal Periods; (4) Failure to Permit Rest Periods; (5) Failure to Provide Proper Itemized Statements; (6) Failure to Pay Wages Due Upon Termination of Employment; (7) Failure to Comply with Written Request to Receive Copy of Personnel Records, and (8) Violation of the Private Attorney's General Act of 2004 ("Operative Complaint").

From March 13, 2024 to October 7, 2024, the parties through their respective counsel engaged in numerous lengthy settlement discussions in writing and by phone which led to this Agreement to settle the Action. During the settlement negotiations, Plaintiff obtained, through informal discovery from Defendants, employee documents and information, including but not limited to time records and wage statements of Plaintiff and Defendants' current and former employees of Defendants since November 10 , 2022 and the last four numbers of the employees' Social Security Number. These records consist of approximately 1730 pages of information which was reviewed manually and converted to 8000 lines of data, and data demonstrating estimated number of current and former employees, workweeks (pay periods), hourly-rates, and total compensation of non-exempt employees. The parties also exchanged documents of communications to support Plaintiff's claims and Defendants' defenses. Plaintiff's investigation was sufficient to reach a settlement on October 7, 2024.

The parties ultimately reached a settlement on October 7, 2024 ("Settlement") and then worked together to execute a formal Individual and PAGA Settlement Agreement ("Settlement Agreement") which was signed on **October 31, 2024**. The Settlement Agreement is provided for the Court's review at Exhibit 1 to the concurrently filed Declaration of John D. Trieu in support of the Motion for Order Approving of Settlement and Payment of Civil Penalties (hereinafter, e.g., **"Trieu Decl. ¶ 9-11, Exhibit C"**).

II. SETTLEMENT

The Settlement is **$107,600** ("Gross Settlement Amount") which includes a payment of **$58,866** to be paid to plaintiff, PHUONG HUYNH to settle her individual damage claims, of which **$19,000** was allocated to Plaintiff and **$35,866** allocated as attorney's fees and up to **$2,000** as costs. **(Trieu Decl. ¶12-17, Exhibit C).** Plaintiff's individual wage and hour damage claims are based on the Labor Code violations set forth in the Operative Complaint and span from August 2022 until the end of her employment on September 6, 2023 equating to approximately 57 workweeks or 28 pay periods.

As part of the Settlement, **$50,734** shall be paid and allocated to PAGA civil penalties payable to 33 aggrieved former and current non-exempt employees for the period from November 10, 2022 to October 7, 2024 (collectively, "Aggrieved Employees"), and to the LWDA. Pursuant to Labor Code section 2699(i)[1]: PAGA civil penalties recovered in this action shall be distributed as follows: 75% of the apportioned PAGA settlement amount **($38,050,50**) will be paid to the LWDA, and the remaining 25% **($12,683.50**) will be divided among the Aggrieved Employees. Upon the court's approval of the Settlement, Defendants will mail to Plaintiff's counsel checks for PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, Plaintiff's Individual Settlement Payment, and the LWDA PAGA Payment. Plaintiff's Counsel shall be responsible to disburse these checks to the payees.

Within fourteen (14) calendar days of Court approval of the Settlement, Defendants shall provide Plaintiff's counsel the names of the Aggrieved Employees, the number of workweeks they worked during the period from November 10, 2022 to October 7, 2024 ("PAGA Period" as defined in the Settlement Agreement, Par. 1.2, 4.1, **Exhibit C**.), and their last known addresses and telephone numbers.

Following the expiration of the above-referenced fourteen calendar day period, the Parties will then have thirty (30) calendar days to do the following: (i) Defendants' counsel will calculate each Aggrieved Employee's pro rata payment share of the PAGA penalties, and provide a list of these payment amounts to Plaintiff's counsel; (ii) Defendants will then issue checks for individual PAGA payments to the Aggrieved Employees in amounts reflected on the list provided by Defendants and send them to the Aggrieved Employees via First Class U.S. Mail, postage prepaid. 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. Defendants will cancel all checks not cashed by the void date; and (iii) once the Aggrieved Employees' checks are cashed, Defendants will report the Individual PAGA Payments on IRS 1099 Forms.

A Notice of PAGA Settlement and Release of Claims ("Notice") will be mailed to each Aggrieved Employees' check. The Notice includes: (1) an explanation of PAGA; (2) a description of the factual allegations of the operative complaint; (3) a description of the released claims: (4) the gross settlement amount, net settlement amount, and portions allocated to the LWDA; (5) how individual

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[1] All references to Labor Code section 2699 in this motion will pertain to the statute prior to the August 2024 amendment as this PAGA action was filed before the amendment.

payments will be calculated; (6) describe the recipient's responsibility for any taxes payable on the mount received; and (7) notification to the aggrieved employees that they cannot opt out of the settlement and that, even if they do not cash their checks, they will be bound by the release. The Notice is provided for the Court's review at **Exhibit D** to the concurrently filed Declaration of John D. Trieu in support of the Motion for Order Approving of Settlement and Payment of Civil Penalties.

For any Aggrieved Employee whose Individual PAGA payment check is uncashed and canceled after the void date, Defendants shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. The approval order from the Court shall have a date for final accounting. Defendants shall issue a report to Plaintiff identifying the actual amounts paid to Aggrieved Employees including the amount of uncashed checks. Plaintiff will submit to the Court the final report at least five (5) court days prior to the final accounting hearing. (Settlement Agreement, Par. 4.2, 4.3-4.3.4, **Exhibit C**.) Defendants admit no liability and make this Settlement solely for purposes of buying their peace.

Plaintiff's counsel agrees as part of the Settlement Agreement to forego any attorney's fees and costs payable as a result of the PAGA payments except for the fees and costs paid out from the settlement. This Settlement will only release claims of Aggrieved Employees for PAGA civil penalties based on (i) all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint or PAGA notices, or ascertained in the course of the Action. Aggrieved Employees do not release any other claims based on facts occurring outside the PAGA Period. (Settlement Agreement, Par. 5.1, **Exhibit C.**)

The "Aggrieved Employees are "**all current and former persons employed by Defendants in California and classified as non-exempt employees at any time during the PAGA Period**." The PAGA Period is from **November 10, 2022 to October 7, 2024.** Plaintiff is not aware of any other pending action in any other court against the defendants in this action that this Settlement may impact. **(Trieu Decl. ¶18-19.)**

Plaintiff seeks approval of the court of the Settlement, including the payment of penalties to the Aggrieved Parties and the LWDA. (California Labor Code § 2699(l)(2).) Plaintiff has submitted the

Settlement Agreement with the Motion for Order Approving Settlement,, along with the Declaration of John D. Trieu in Support of the Motion for Order Approving Settlement with Exhibits, on the LWDA via the online portal on January 7, 2025 at the same time this motion is filed with the court and has included a proof of submission to that effect. (Labor Code § 2699(l)(2); See **Trieu Decl. ("Trieu Decl."), at Exhibit F, Proof of Service and Document Submission email from LWDA. Trieu Decl. ¶43-44**.)

III. ARGUMENT

Pursuant to Labor Code § 2699(l)(2), "[T]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." A party is not required to satisfy class action requirements in a PAGA action. (Arias v. Superior Court (2009) 46 Cal.4th 969.) However, due to the lack of authority on PAGA, by analogy the Court may choose to refer to case law governing approval of settlements in class actions as a guide, even though the Court's focus here, on the amount of penalties alone, is far more narrow.

A. The Settlement is Entitled to a Presumption of Fairness

In reviewing class actions, a presumption of fairness exists where: (1) The settlement is reached through arm's length bargaining; (2) Investigation and discovery are sufficient to allow counsel and the Court to act intelligently; (3) Counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (See Dunk v. Ford Motor Company (1996) 48 Cal.App.4th 1794, 1802. The trial court has broad powers to determine whether a proposed settlement in a class action is fair. (See Mallick v. Superior Court (1979) 89 Cal.App.3d 434.)

Also in class action, the Court considers relevant factors such as the strength of the Plaintiff's case, the risk, expenses, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant and the reaction of the class members to the proposed settlement. "This list is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties." (See Dunk v. Ford Motor Company, supra, 48 Cal.App.4th at 1801.)

All of these factors are present here and in light of the same, the PAGA penalties negotiated are reasonable and should be approved.

i. On the Cause of Action for Unpaid Wages and Minimum Wage, PAGA Penalties of $10,000 are Reasonable

Plaintiff contends Defendants did not pay the Aggrieved Parties the correct state-required minimum wage during their employment. The records reviewed showed the main PAGA violation is based on Labor Code §1194(a) (failure to pay minimum wage) which occurred in 2023 when Defendants paid the Aggrieved Employees **$15.00** an hour when they should have paid **$15.50** an hour. This violation affected approximately 14 non-exempt employees. Defendants acknowledge this error and the Parties agree that Defendants owe approximately $9,010 to the Aggrieved Employees for unpaid minimum wage. As to PAGA penalties, Plaintiff initially believed that the potential maximum penalty was approximately $102,000. Plaintiff reached this initial position by assuming there was a violation for every pay period in 2023, with Plaintiff then projecting the PAGA civil penalties of $100 for the first pay period and $200 for each subsequent pay period. These potential maximum civil penalties total approximately **$102,000** [$100 x 1 Pay Period x 14 employees = $2,000 + $200 x 25 Pay Periods x 20 employees = $100,000]).

However, the Parties now agree that Defendants have a viable "good faith" defense to any PAGA penalties for the unpaid minimum wage. Under Labor Code §1194.2, the Court may refuse to award penalties if the failure to pay the correct minimum wage was a "good faith" error. See Naranjo v. Spectrum Security Services, Inc. (2024) 15 Cal.5th 1056 1074. In the present action, Defendants contend that the error in paying $15.00 an hour, instead of the required $15.50 an hour, was made in good faith because it was attributable to advice they received from their long-standing, third party payroll vendor, that the correct minimum wage was $15.00 an hour. Defendants produced written communications between Tung Tran, the Chief Financial Officer of PHO LOVERS and Ms. Michelle Hoang, a self-employed Enrolled Agent licensed by the Internal Revenue Service as a tax practitioner, upon whom Defendants had reasonably relied since 2015. Defendants contend that at the beginning of each calendar year, Defendants would consult with Michele Hoang to determine the correct minimum wage to pay its employees that year. In a text exchange in January 2023, Mr. Tran seeks to confirm the content of his prior telephone conversation with Ms. Hoang, in which Ms. Hoang advised Mr. Tran that the minimum wage for 2023 would be $15.00 an hour. Defendants contend it then paid $15.00 an hour in 2023, not knowing that Michele was off by $.50 cents an hour. Accordingly, the Parties agree that Defendants have a viable good faith defense to any PAGA penalties and that, as a result of Defendants' defense and the possibility that the Court might award $0 in penalties, the claim for PAGA penalties may be reasonably valued at $10,000. (**Trieu Decl. ¶20-21**.)

ii. <u>On the Cause of Action for Meal Break Violations, PAGA Penalties of $10,000 are Reasonable</u>

Plaintiff alleges that Defendants' strict restaurant demands forced the Aggrieved Employees to either skip or take late or short meal and rest breaks. In addition, Plaintiff alleges that Defendants failed to keep accurate records of meal periods and failed to record meal periods to show if employees took a full, timely, uninterrupted meal period, and if employees were paid for a one hour premium wage for any non-compliant meal periods. Based on the data provided by Defendants, the time records appeared to show most employees worked up to 5 hour shifts and about 20% of the employees did not have a meal period punch when working more than 5 hrs. Using these numbers, Plaintiff initially estimated that the total potential maximum civil penalties exposure Defendants could face for the meal period violations was **$260,700** [$100 x 1 Pay Period x 33 employees = $3,300 + $200 x 39 Pay Periods x 33 employees = $257,400]. This amount was adjusted to **$49,500** based on the assumption that meal period violations occurred in only 20% of the work week.

Defendants contested the merits of Plaintiff's meal break claim. Defendants contended that Plaintiff did not work shifts more than 6 hours and Plaintiff had a verbal meal waiver agreement with Defendants to skip meal breaks when she worked only 6 hours a day. Defendants further contended that they satisfied the meal break obligation by relieving the employees of all duty, relinquishing control over their activities and permitting them a reasonable opportunity to take an uninterrupted 30-minute break, and did not impede or discourage them from doing so. (Brinker Restaurant Corp. v. Super. Ct (2012) 53 Cal. 4th 1004). Defendants maintain they are not liable if the Aggrieved Employees freely chose to continue working or take a short or late meal break and did not report the same to management. In addition, Defendants contend that the meal break claims would be unmanageable due to required individualized analyses regarding all of Plaintiff's claims. Once again, the Court might award $0 in meal break penalties.

By reason of the foregoing, and especially due to the fact that Plaintiff's meal break claim was based on assumptions that were never borne out by depositions, the Parties now agree that the PAGA penalties on the meal break claim may be reasonably valued at $10,000. (**Trieu Decl. ¶22-23**.)

iii. On the Cause of Action for Rest Break Violations, PAGA Penalties of $10,000 are Reasonable

The analysis of Plaintiff's rest break claim is similar. Plaintiff's Counsel initially estimated that a rest period was not provided in at least 20% of the work weeks. Assuming the Aggrieved Employees missed a rest period during 20% of the work weeks in the PAGA Period, they could be entitled to recover **$49,500** using the same calculation methodology as for meal periods. However, Plaintiff's Counsel also considered that the contested issue of whether employees remained under Defendants' control during rest periods, the validity of Defendants' rest policies, and the difficulty in proving non-compliant rest breaks without time records would drive the liability.

Again, Plaintiff's rest break claim was based wholly on assumptions that were not borne out by depositions. In addition, Defendants again rely on Brinker, supra, to argue that there were no rest break violations since Defendants made compliant rest periods available. Finally, the rest break claim would be unmanageable due to required individualized analyses. As such, the Parties again agree that the PAGA penalties on the rest break claim may be reasonably valued at $10,000. (**Trieu Decl. ¶25-26**.)

iv. <u>On the Cause of Action for Inaccurate Wage Statements, PAGA Penalties of $10,000 are Reasonable</u>

Under Labor Code § 226, an employer is required to provide its employees with wage statements that accurately reflect the wages earned, applicable hourly rate, and hours worked. Plaintiff contends that because Defendants failed to accurately list the applicable hourly rates (i.e., the required minimum wage) in effect during the pay period and the corresponding number of hours worked at each hourly rate, the Aggrieved Employees suffered injury in that they were not able to calculate their pay properly. This claim primarily applies to the year 2023 when Defendants paid the incorrect minimum wage.

Defendants contested the validity of the claim for inaccurate wage statements. Defendants contended that the violation stemmed primarily from the inaccurate recording of minimum wage on the wage statements. Once again, Defendants are able to rely on the "good faith" defense. Under Labor Code §226(e)(1), a claim arises for the failure to provide correct wage statements only if the failure is "knowing and intentional." A clerical or inadvertent error is not knowing and intentional. <u>Naranjo</u>, <u>supra</u>, at 1071. As previously stated, Defendants' wage statements were based upon advice as to the correct amount of minimum wage that was received from their long-standing, professional third party vendor, leaving only a clerical role to Defendants. Therefore, the provision of inaccurate wage statements was not a knowing and intentional error by Defendants.

By reason of the foregoing, and the possibility that the Court could award $0 in wage statement penalties, Plaintiff significantly discounted the value of the wage statement claim. The Parties now agree that the PAGA penalties on the wage statement claim may reasonably be valued at $10,000. (**Trieu Decl. ¶28-29**.)

v. <u>On the Cause of Action for Waiting Time Penalties, PAGA Penalties of $10,000 are Reasonable</u>

In California, any wages earned and unpaid are due and payable at the time of discharge. Labor. Code §201. Failure to timely pay wages owed at time of discharge subjects an employer to "waiting time penalties" of 30 days' pay "<u>[i]f an employer willfully fails to pay, without abatement or reduction</u>" any wages of an employee who is discharged or quits. Labor Code §203. Plaintiff initially alleged that the Aggrieved Employees who quit or were fired during the PAGA Period were not paid all wages due to them, as they were not paid all of their minimum wage pay or their meal/rest break penalties. Based on data provided by Defendants, Plaintiff's Counsel estimated that there are **15** Aggrieved Employees who have been terminated by Defendants or who have left their employment between November 10, 2022 through May 31, 2024. Assuming full liability exposure for this claim, Defendants' exposure for PAGA penalties would be **$118,500** [$100 x 1 Pay Period x 15 employees = $1,500 + $200 x 39 Pay Periods x 15 employees = $117,000].

Defendants argued, however, that no waiting time penalties should be awarded because they depend wholly on the success of the unpaid minimum wage claims and meal/rest break claims, and thus suffer from the same, above-mentioned shortcomings. Defendants also argued that the "good faith" defense also applies specifically to waiting time penalties. Under Labor Code §203(a), waiting time penalties arise only if the employer "willfully" fails to pay as required, and will not be imposed if the employer has a "good faith and reasonable belief" in the legality of its payroll action. Naranjo, supra, at 1074. As indicated previously, Defendants had a good faith belief that at the time of any Aggrieved Employees' discharge that the additional minimum wages and meal/rest break premiums were not owed. *See also* Road Sprinkler Fitters Local Union No. 669 v. G&G Fire Sprinklers, Inc. (2002) 102 Cal.App.4th 765, 782 (a good faith mistaken belief that wages are not owed by employer negates a finding of willfulness). (**Trieu Decl. ¶30-31**.)

By reason of the foregoing, the Parties now agree that PAGA penalties on the waiting time claim may be reasonably valued at $10,000.

vi. Summary

At the outset of the litigation, Plaintiff estimated that for the main claims for unpaid minimum wage, meal and rest violations, and waiting time penalties Defendants could potentially incur PAGA penalties of **$319,500** ($102,000 [unpaid minimum wage] $49.500 [meal period violation] + $49,500 [rest break violation] + $118,500 [waiting time penalties] = $319,500. As such, the PAGA Settlement of **$50,734** represents approximately **12.6%** of the ***originally*** estimated total potential liability for penalties. However, after lengthy and extensive document review, argument, and discussion, the Parties now agree that the PAGA Settlement of **$50,734** closely approximates the actual aggregate value of the claims for PAGA penalties in the amount of **$50,000**. In addition to the specific bases discussed above, several general factors were considered in arriving at this conclusion: (1) Defendants deny any liability in this matter; (2) Defendants deny any violations of the wage and hour laws which would have entitled the Aggrieved Employees to recover penalties under PAGA; (3) the underlying facts of the case are in dispute; (4) Defendants are small business owners that believe they made a good faith error; (5) Plaintiff was the only employee that had viable claims; (6) the company records did not show any other significant violations other than the minimum wage and meal period claims; (7) there will be significant investments of time and expense by the Parties to litigate the claims for penalties under PAGA; (8) there is no guarantee of an outcome on the PAGA claims for either Party at trial; (9) the resolution of this dispute will be delayed until trial, and, regardless of the outcome, there is a significant of risk of further delay due to appeals; (10) uncertainty of full recovery due to Defendants' potential defenses to "stacking" of PAGA penalties and limitations on penalties for "subsequent violations"; (11) the unsettled issue of whether courts have inherent authority to strike PAGA claims on manageability grounds; and (12) any award of penalties under PAGA is within the discretion of the trial court. (**Trieu Decl. ¶33-34**.)

Thus, Plaintiff's proposed allocation of **$50,734** for PAGA penalties is fair, reasonable, and adequate in light of the known facts and circumstances.

B. <u>The Parties Request Court Approval of the Settlement</u>

The Parties are required to obtain the trial court approval of the settlement of a PAGA action, including the amount of any penalties sought as part of a proposed settlement of PAGA claims. (Labor Code §2699(1)). For all the reasons cited herein, the Parties agreed to settle Plaintiff's claims for damages and for penalties under PAGA. All counsel believe that the proposed Settlement is to the advantage of their respective clients.

The LWDA was given the opportunity to investigate this matter after being given proper notice, but declined to do so. (**Exhibit B**). The only directions the LWDA provided are that any settlement of the PAGA claims must be approved by the Court, and 75% of the consideration received for the PAGA penalties be paid to the LWDA. (**Exh. B**).

For all these reasons, the Parties respectfully request the Court approve the Settlement of the Action, including the agreed-upon amount of penalties under PAGA and the allocation of 75% of the penalties to the LWDA.

C. <u>Counsel Are Experienced and Endorse the Settlement</u>

Experienced counsel, operating at arm's length, have weighed all of the foregoing factors and endorse the proposed Settlement.

Lead counsel for both Plaintiff and Defendants are experienced specialists in Employment Law. (**Trieu Decl. ¶3-6**.) Lead counsel for Plaintiff, John Trieu, has had experience litigating previous PAGA claims as well as wage and hour class actions. Id. Lead counsel for Defendants, Randolph Bain, has employment law experience representing employers and employees in areas of class actions, PAGA, wrongful termination and harassment. All counsel agree that the apportionment of the Settlement proceeds is fair and specifically that the amount of penalties assessed is fair and represents a good recovery for the state and for the Aggrieved Employees -- a recovery that would not be significantly greater had litigation continued up to and including judgment.

The Parties engaged in informal and formal discovery before the settlement was reached to allow the Parties to evaluate the Individual and Aggrieved Employees' alleged claims, Defendants' alleged defenses and the Aggrieved Employees' alleged damages. This is not a settlement reached by guesswork. The records provided by Defendants, along with the information gathered by Plaintiff, allowed Plaintiff to extrapolate a total number of weeks worked by the Class Members, the number of meal and rest breaks violation and premium owed, the unpaid wages owed, and other similar items of information. The findings from this discovery and investigation allowed for a fully informed assessment of the risks and merits presented in this case.

The Parties fully engaged in formal and informal exchange of information in order to evaluate the opportunity for resolution. While the attorneys may disagree on the facts and legal implications thereof, counsel on both sides have completed sufficient work to ensure that the presentation made to the Court in the course of proposing the settlement at issue is complete, thorough and accurate. The experience and views of counsel warrant a finding by the Court that the settlement is fair, adequate and reasonable. (**Trieu Dec. at ¶35-36**.)

D. <u>The Remaining Settlement Terms Should Be Approved</u>

Finally, the settlement requires that attorneys' fees, costs, and individual settlement payment be paid. Such requirement respects a long recognized exception to the general American rule that parties bear the costs of their own attorneys, and respects the proprietary of awarding an attorney fee to a party who has recovered or preserved a monetary fund for the benefit of himself or herself and others. In awarding a fee from the fund or from the other benefited parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment." <u>Lafitte v. Robert Half Intern., Inc.</u> (2016) 1 Cal.5th 480, 561 (approving percentage of recovery method in wage and hour class action); <u>Fox v. Hale & Norcross Silver Mtn. Co.</u> (1895) 108 Cal. 475, 476 (approving fee payment from common fund in early derivative case).

A prevailing PAGA plaintiff is entitled to no more than his or her "reasonable [attorney] fees." <u>Harrington v. Payroll Entertainment Services, Inc.</u> (2008) 160 Cal.App.4th 589, 594 (emphasis in original); Labor Code § 2699(g)(1). Here, Plaintiff's Counsel seeks one-third of the total Settlement, the amount typical in the analogous class action context. <u>Lafitte</u>, <u>supra</u> at 488. Plaintiff's Counsel's lodestar as of the filing of the motion seeking Settlement Approval is **$50,609,** which would result in an amount well within the bounds of reasonableness in the analogous class action context. The proposed attorneys' fees award of **$35,866.00**, therefore, reflects a negative lodestar through January 7, 2025. (**Trieu Dec. at ¶37-40**.)

Plaintiff also seeks reimbursement of litigation costs incurred in the amount of **$2,050**, and **Exhibit E** attached to the Trieu Declaration provides a table listing those costs. The requested attorney's fees and costs are reasonable and should be approved up to $2000. (**Trieu Dec. at ¶41.)**

Plaintiff's individual settlement of **$19,000** is based on a compromise of disputed facts of her individual claims for unpaid overtime, minimum wage, meal and rest break, wage statement violation, waiting time penalties, and failure to provide employment records. As a means to facilitate an overall settlement, Plaintiff will forego any Individual PAGA payments under the Settlement. (Settlement Agreement, par. 3.2.2) Plaintiff's individual settlement is reasonable and should be approved. (**Trieu Dec. at ¶42.)**

VI. <u>CONCLUSION.</u>

Based on the foregoing, Plaintiff respectfully requests that the Court approve the Settlement Agreement and grant the instant motion, so the parties can conclude this matter.

Dated: January 7, 2025

LAW OFFICES OF JOHN D. TRIEU, APC

By: ________________________________
JOHN D. TRIEU,
Attorneys for Plaintiff
PHUONG HUYNH