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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

RICHARD SANCHEZ, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

SALINAS LINCOLN MERCURY, INC., a
California Corporation; and Does 1 through
50, Inclusive,

Defendants.

Case No. 21CV0001535

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
TO APPROVE PAGA SETTLEMENT**

Date: October 28, 2022

Time: 8:30 a.m.

Judge: Hon. Thomas W. Wills

Dept.: 15

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Richard Sanchez (“Plaintiff”) reached a settlement of the California Labor Code
4 Private Attorneys General Act of 2004, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in
5 this action against Defendant Salinas Lincoln Mercury, Inc. (“Defendant”) (collectively, the
6 “Parties”). In accordance with California Labor Code § 2699(l), Plaintiff now asks this Court to review
7 and approve the settlement of Plaintiff’s PAGA claims.¹ The PAGA Settlement is fair, reasonable,
8 and adequate as to the Aggrieved Employees and satisfies all statutory criteria for approval. This is
9 only a settlement of the PAGA claims for civil penalties and is not a class settlement and does not
10 release the individual wage claims, if any, of the affected employees other than Plaintiff himself. Cal.
11 Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v.*
12 *Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

13 The PAGA Settlement is set forth in the accompanying Stipulation of Settlement of PAGA
14 Claims and Release of PAGA Claims (“Settlement Agreement”). A true and correct copy of the
15 Settlement Agreement, which sets forth the terms for the settlement of the PAGA claims, is attached
16 as Exhibit #1 to the Declaration of Shani O. Zakay (“Zakay Dec.”), filed herewith. Capitalized terms
17 shall have the same meaning as defined in the Settlement Agreement. The LWDA received notice of
18 this Settlement and this motion as set forth in the Zakay Dec. A proposed order confirming review
19 and approval of the PAGA Settlement is submitted herewith.

20 **II. RELEVANT FACTS**

21 Plaintiff provided services to Defendant and Defendant’s customers as a non-exempt employee
22 in California during the PAGA Period of March 4, 2020, through March 31, 2022. On March 4, 2021,
23 Plaintiff Richard Sanchez on behalf of himself and on behalf of other “Aggrieved Employees”
24 submitted a notice and draft complaint to the LWDA memorializing claims against Defendant for
25 alleged violations of the California Labor Code, including claims for failure to pay all minimum,
26 regular, and overtime wages; failure to provide compliant meal periods or compensation in lieu thereof
27

28 ¹ Section 2699(1)(2) provides as follows: “The superior court shall review and approve any settlement
of any civil action pursuant to this part.”

1 in violation of Labor Code sections 226.7, and 512; failure to provide compliant rest periods or
2 compensation in lieu thereof in violation of Labor Code sections 226.7, and 512; failure to reimburse
3 employees for business-related expenses; failure to properly calculate the regular rate of pay for
4 purposes of compensating paid overtime compensation, sick time, and/or vacation pay; failure to
5 separately compensate piece-rate and/or commission-based aggrieved employees for non-productive
6 time, including rest periods; failure to provide accurate wage statements in violation of Labor Code
7 section 226(a); claims for violations of Labor Code sections 201, 202, 203, 204, 206.5, 210, 226,
8 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802; and claims for civil penalties and other
9 relief pursuant to Labor Code section 2699, and the sections preceding and following section 2699
10 (“PAGA Claims”). (LWDA Case No. 823726-21.) On May 10, 2021, Plaintiff filed a complaint
11 against Defendant in the Superior Court of Monterey County, Case No. 21CV001535, alleging a single
12 cause of action for violations of PAGA based on the above Labor Code violations. (Zakay Dec. at ¶
13 4.)

14 Plaintiff and Defendant agreed to mediate the action with Gig Kyriacou, Esq., an experienced
15 wage and hour PAGA action mediator. Prior to the mediation, in order to evaluate the potential value
16 of the claims, the Parties engaged in significant efforts to obtain evidence regarding the claims
17 asserted, including all of Defendant’s relevant wage and hour policies, the exchange of detailed
18 statistical data regarding work performed by Plaintiff and the Aggrieved Employees, the production
19 of hundreds of pages of documents, including a large sample of payroll records and time records, and
20 the exchange of detailed briefing and analysis in connection with the mediation. Based on this
21 extensive discovery, Plaintiff was able to perform damages calculations and assess his claims relevant
22 to Defendant’s defenses. (Zakay Dec. at ¶ 5.)

23 Thereafter, on March 17, 2022, the Parties engaged in a full-day mediation with Mr. Kyriacou.
24 At the conclusion of the full-day mediation, the Parties reached an agreement for settlement based on
25 a mediator’s proposal, which led to the signing of the Settlement Agreement memorializing the
26 settlement. The settlement was negotiated in light of all known facts and circumstances and the
27 uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain
28 representative claims and establishing manageability, the difficulty of proving Plaintiff’s claims in a

manageable trial, the merits of Defendant’s potential defenses, and the significant delay and potential appellate issues inherent to litigation – and was reached after extensive arm’s length negotiations, with the assistance of Mr. Kyriacou. (Zakay Dec. at ¶ 6.)

III. TERMS OF THE PAGA SETTLEMENT

The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2) (Settlement Agreement at III(K).) The Settlement Agreement negotiated by the Parties provides for a “Maximum Settlement Amount” payment in the amount of \$171,000 to resolve the PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this PAGA Settlement of \$171,000, there is a deduction of attorneys’ fees in the amount of \$57,000 (which is one-third of the PAGA Settlement), reimbursement of incurred costs in an amount not to exceed \$20,000, and Settlement Administration Costs, which will not exceed \$5,000. (Settlement Agreement at III(J)(7)-(8)).² After these deductions, the amount remaining is the “Net Settlement Amount”, which is estimated to be \$89,000. (Settlement Agreement at I(K).) (Zakay Dec. at ¶ 7.)

Of the Net Settlement Amount, seventy-five percent (75%) will be paid to the LWDA, and the remaining twenty-five percent (25%) will be paid to the Aggrieved Employees. (Settlement Agreement at I(K).)³ This 75/25 allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019). (Zakay Dec. at ¶ 8.)

The individual payment for each Aggrieved Employee shall be based on the number of pay periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement Agreement at III(J)(1).) The PAGA Period is the time period from March 4, 2020, through March 31, 2022. (Settlement Agreement at I(O).) (Zakay Dec. at ¶ 9.)

At the time of mediation, Defendant estimated that there were 65 Aggrieved Employees who

² In the event the Court approves less than One-Third of the PAGA Settlement Amount in Attorneys’ Fees or less than \$20,000 in Attorneys’ Expenses to Plaintiff’s Counsel, the unawarded difference will be added to the Net Settlement Amount and not to Plaintiff’s Counsel or Defendant (Settlement Agreement at III(J)(7).)

³ “Aggrieved Employees” means all current and former non-exempt employees of Defendant during the PAGA Period. (Settlement Agreement at I(B).) The PAGA Period means the period between March 4, 2020 through March 31, 2022. (Settlement Agreement at I(O).)

1 worked approximately 3,100 pay periods during the PAGA Period. (Settlement Agreement at
2 III(A)(2).) (Zakay Dec. at ¶ 10.)

3 A. Release of Claims

4 Upon entry of Judgment and funding in full of the PAGA Settlement by Defendant, the
5 Released Parties shall be entitled to a release from the Plaintiff, the LWDA and the State of California
6 as to the following claims:

7 “Released PAGA Claims” means all claims for civil penalties
8 arising under PAGA that were asserted in the Complaint and
9 Plaintiff’s March 4, 2021 notice to the LWDA.

10 (Settlement Agreement at I(V).) (Zakay Dec. at ¶ 11.)

11 The Maximum Settlement Amount shall be due by Defendant to the Settlement Administrator
12 via wire transfer on the Funding Date. (Settlement Agreement at III(A)(3)). Defendant will provide
13 the necessary information about the Aggrieved Employees to the Settlement Administrator (ILYM
14 Group) no later than (10) calendar days after the Effective Date. (Settlement Agreement at III(I)). The
15 Settlement Administrator will mail the individual payments for each Aggrieved Employee by regular
16 First-Class U.S. Mail to the Aggrieved Employees’ last known mailing address no later than fifteen
17 (15) calendar days after the Funding Date. (Settlement Agreement at III(J)(4).) Checks will remain
18 valid and negotiable for one hundred eighty (180) days. (Settlement Agreement at III(J)(5).) If an
19 Aggrieved Employee does not cash his or her settlement check within ninety (90) days, the Settlement
20 Administrator will send a letter to such persons, advising that the check will expire after the 180th day,
21 and invite that Aggrieved Employee to request reissuance in the event the check was destroyed, lost,
22 or misplaced. (*Id.*) In the event an Aggrieved Employee payment check has not been cashed within
23 one hundred and eighty (180) days, all funds represented by such uncashed checks, plus any interest
24 accrued thereon, shall be transmitted to St. Jude’s Children’s Research Hospital. (*Id.*) The individual
25 Aggrieved Employee payments are 100% penalties and shall be reported using IRS tax form 1099.
26 (Settlement Agreement III(J)(2).) (Zakay Dec. at ¶ 12.)

27 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
28 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion

1 for settlement approval as set forth in the accompanying proof of service in compliance with Labor
2 Code section 2699(1). In addition, Plaintiff will submit to the LWDA a copy of the Court's judgment
3 and order approving the Settlement Agreement within ten (10) days after entry of judgment or order.
4 (Zakay Dec. at ¶ 13.)

5 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

6 The claim before this Court is a representative claim under the PAGA on behalf of the State of
7 California for civil penalties pursuant to the PAGA. The parties have agreed to settle the PAGA
8 Claims in their entirety after significant informal discovery, and an arm's length mediation. The
9 settlement is intended to fully and finally resolve the Released Claims asserted by Plaintiff on behalf
10 of the State of California. This is only a settlement of the PAGA Claims for civil penalties and is not
11 a class settlement and does not release the individual claims, if any, of the Aggrieved Employees. This
12 settlement does not release any claim that is not a PAGA Claim.⁴ Attorneys' fees equal to one-third
13 of the PAGA Settlement (\$57,000) and litigation expenses in an amount not to exceed \$20,000 will
14 also be paid to Plaintiff's Counsel as part of the settlement in accordance with California Labor Code
15 § 2699(g)(1) as set forth in the Settlement Agreement.⁵ Lastly, payment to the Settlement
16 Administrator in an amount not to exceed \$5,000 to perform the administrative duties to distribute the
17 settlement money shall also be paid. (Zakay Dec. at ¶ 14.)

18 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT** 19 **OF THE PAGA CLAIMS**

20 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any
21 civil [PAGA] action filed pursuant to this part. Further, the Court in *Moniz v. Adecco USA, Inc.* (2021)
22 72 Cal.App.5th 56, 77 stated that "the trial court must review and approve a PAGA Settlement (§
23 2699, subd.(l)(2)), and the Supreme Court has in dictum referred to this review as a safeguard." (Citing
24 *Kim v. Reins Int'l California, Inc.* (2020) 9 Cal.5th 73, 88; internal quotations omitted.) "The Supreme
25

26 ⁴ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: "Nonparty employees are bound
27 by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

28 ⁵ As set forth in the accompanying Zakay Dec., Plaintiff's Counsel incurred costs in the current
amount of \$12,603.39 which is less than the cost allocation in the Settlement Agreement. See Zakay
Dec. at ¶ 29.

1 Court has also observed that trial court approval ensures that any negotiated resolution is fair to those
2 affected,” leading the Court in *Moniz* to determine that “adoption of a standard of review for
3 settlements that prevents fraud, collusion or unfairness, and protects the interests of the public and the
4 LWDA in the enforcement of state labor laws is warranted.” (*Moniz, supra*, 72 Cal.App.5th at 77;
5 citing *Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 549; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
6 1794, 1800–01; internal citations omitted.) In other words, “[i]n review and approval of a proposed
7 settlement under section 2699, subd. (1)(2), a trial court thus must scrutinize whether, in resolving the
8 action, a PAGA plaintiff has adequately represented the state’s interests, and hence the public interest.”
9 (*Moniz, supra*, 72 Cal.App.5th at 88.) The proposed settlement shall be submitted to the agency at the
10 same time that it is submitted to the court.” (*Id.* at 78, citing Cal. Lab. Code § 2699, subd. (1)(2).)
11 Consequently, the Parties respectfully ask the Court to review and approve the settlement of the PAGA
12 claims and the PAGA Payment to be paid as part of the proposed settlement.

13 A. The PAGA Settlement Amount To Be Paid Is Fair And Reasonable

14 Plaintiff and his counsel believe that the PAGA Settlement amount is fair and reasonable and
15 therefore “shall” be reviewed and approved. Here, the PAGA Settlement amount of \$171,000 is
16 significantly larger than amounts previously approved by Courts throughout California. (Zakay Dec.
17 at ¶ 15.)

18 California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the
19 maximum civil penalty if, based on the facts and circumstances, to do otherwise would result in an
20 award that is “unjust, arbitrary and oppressive or confiscatory.” Before and during the mediation,
21 Defendant argued, among other things, that it was unlikely that any judge would award more than the
22 actual amounts owed on the claims, let alone the full \$100 or \$200 per violation. In *Carrington v.*
23 *Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial
24 which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties
25 awarded in this case could be significantly less than Plaintiff’s calculation, even had Plaintiff prevailed
26 on the PAGA claims. Here, multiplying the number of violations identified, assumed, and extrapolated
27 by Plaintiff (4,425 violations) by \$5 results in a total potential liability of **\$22,125**. Further, multiplying
28 the number of pay periods (3,100) by \$5 results in a total potential liability of **\$15,500**. Therefore,

even assuming Plaintiff would have prevailed on all of his claims at trial, the result obtained by Plaintiff in the PAGA Settlement exceeds the amount Plaintiff would have recovered had the Court relied on *Carrington* in awarding the PAGA penalties. (Zakay Dec. at ¶ 16.)

Under the PAGA, courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, as the court found maximum penalties “unjust” because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5–7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

Plaintiff’s claims and corresponding PAGA penalties can be broken down as follows:

Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
1194, 1197, and, 1197.1, (unpaid minimum/straight wages)	59 Aggrieved Employees	\$100	3,100	100% of total pay periods	\$310,000
226.2, 226.7 and 512 (rest break violations)	59 Aggrieved Employees	\$100	3,100	100% of total pay periods	\$310,000
226.7 (unpaid meal break violations)	59 Aggrieved Employees	\$100	1,309	42.2% of total pay periods	\$130,900
510 (unpaid overtime)	6 Aggrieved Employees	\$100	186	6% of total pay periods	\$186,000
226 (wage statement violations)	59 Aggrieved Employees	\$100	3,100	100% of total pay periods	\$310,000

1 Thus, at the time of mediation, Plaintiff's Counsel estimated Defendant's maximum liability
2 exposure at \$1,246,900. Consequently, the PAGA Settlement of \$171,000 is 13.7% of Defendant's
3 maximum liability exposure – before any reduction. (Zakay Dec. at ¶ 17.)

4 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of
5 the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
6 LEXIS 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot
7 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
8 Code by the defendant.”). Here, Plaintiff would need to prove that each Aggrieved Employee suffered
9 a violation for each period the employee worked in relation to meal or rest period violations, failure
10 to pay minimum or overtime wages, and failure to provide accurate itemized wage statements. (Zakay
11 Dec. at ¶ 18.)

12 Defendant maintains that Plaintiff and the Aggrieved Employees were properly compensated,
13 and that it did not violate the Labor Code. Most importantly and relevant to this case, Defendant argued
14 that the Supreme Court decision in *Brinker v. Super. Ct.*, 53 Cal.4th 1004 (2012), weakened, if not
15 eliminated, Plaintiff's claims, on liability, value, and discretion with respect to the PAGA penalties,
16 as to the meal and rest period claims. A major component of the penalties alleged to have been owed
17 by Defendant are attributed to non-compliant meal and rest breaks. Before and during the mediation,
18 Defendant aggressively argued that Defendant's policies and culture afforded the Aggrieved
19 Employees an opportunity to take timely meal and rest breaks, and that employees like Plaintiff *chose*
20 not to take compliant breaks. Defendant argued, therefore, that under the *Brinker* decision it has no
21 liability for the missed breaks whatsoever. Defendant argued that it adopted and strictly enforced
22 lawful policies and afforded Plaintiff and the Aggrieved Employees adequate time to take compliant
23 meal periods and rest breaks. Because Plaintiff's claims were largely based on the missed meal and
24 rest breaks, this presented a very real concern for Plaintiff. If successful, this defense could eliminate
25 or substantially reduce any recovery under PAGA. While Plaintiff believes that this defense, and
26 others, could be overcome, Defendant maintains these defenses have merit, which therefore presents
27 a serious risk to recovery of penalties. (Zakay Dec. at ¶ 19.)
28

1 Accordingly, Defendant disputes and denies Plaintiff's allegations and claims asserted in the
2 operative complaint which are resolved by the Settlement Agreement. Defendant asserted additional
3 defenses to the PAGA Claims, not only as to liability but also as to the amount of the penalties.
4 Defendant could argue that no penalties prior to the PAGA notification should be awarded because
5 the violations were not intentional, and at least one court has so ruled. These defenses present an
6 appreciable risk in the litigation and the potential that some or all of the PAGA penalties sought may
7 not be awarded. (Zakay Dec. at ¶ 20.)

8 Given Defendant's potential defenses to the violations at issue and the risks and costs of
9 continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and
10 reasonable. Plaintiff's Counsel have significant experience litigating wage and hour claims including
11 claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than similar
12 settlements that courts have approved. The PAGA Settlement, along with the other terms of the
13 proposed settlement, were negotiated by experienced counsel at arm's length with the assistance of an
14 experienced and reputable mediator, Mr. Kyriacou. (Zakay Dec. at ¶ 21.)

15 As set forth in the accompanying proof of service, the LWDA has been provided notice of this
16 motion and the PAGA Settlement. The decision of the LWDA to accept the PAGA Settlement and
17 not oppose the motion should be given considerable weight. This is not a situation where the Court
18 needs to be concerned about the rights of absent employees as in a class settlement, as this PAGA-
19 only settlement does not release the individual claims of absent employees, and the LWDA is a
20 sophisticated government entity that is more than able to look out for its own rights. (Zakay Dec. at ¶
21 22.)

22 Based on Plaintiff's Counsel's investigation, analysis and discounts for risk factors, Plaintiff
23 adequately represented the interests of both the State and the public in resolving this action and
24 reaching the proposed PAGA Settlement. (Zakay Dec. at ¶ 23.)

25 Notably, in the recent decision in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. __ (2022),
26 the United States Supreme Court held that the Federal Arbitration Act requires enforcement of a
27 bilateral arbitration agreement providing that an employee cannot raise representative claims,
28 including under PAGA. Given the Supreme Court's decision, this action could be dismissed

1 altogether. The proposed PAGA Settlement allows Plaintiff to resolve the claims on his behalf, on
2 behalf of the Aggrieved Employees, and on behalf of the State of California before *Viking River*
3 *Cruises* rids them of the opportunity to receive a settlement at all. (Zakay Dec. at ¶ 24.)

4 Finally, Plaintiff's diligent and efficient litigation of this action resulted in the creation of an
5 ascertainable common fund of \$171,000 that will substantially benefit the State of California and the
6 Aggrieved Employees. Plaintiff's efforts also resulted in significant non-monetary relief for the State
7 of California and the Aggrieved Employees by catalyzing Defendant to change its meal break policy
8 and practices to pay premiums for meal break violations on a forward-going basis. Thus, Plaintiff
9 obtained greater Labor Code compliance and a change to Defendant's policies that accomplishes the
10 primary objective of PAGA as set for by the Labor Commissioner in *Price v. Uber Techs.*, Los Angeles
11 Superior Court Case No. BC544512. (Zakay Dec. at ¶ 25.)

12 **B. The Remaining Settlement Terms Are Fair And Reasonable**

13 Although PAGA requires that a court approve the proposed PAGA Settlement, Labor Code §
14 2699(1) does not require that a court approve any other elements of the proposed settlement. Because
15 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to
16 class settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs
17 to approve the settlement of the civil penalties sought in the PAGA claims. Nevertheless, as explained
18 herein, the settlement terms for attorneys' fees and costs are reasonable.

19 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

20 Plaintiff's Counsel seeks approval of attorneys' fees from the PAGA Settlement in the amount
21 of \$57,000, representing one-third of the \$171,000 PAGA Settlement amount. PAGA does not have
22 any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of
23 attorneys' fees and costs in this settlement is a matter of contract for a contingent representation.
24 Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees
25 and costs are reasonable.

26 First, the requested fees are justified by the result achieved. Plaintiff's Counsel negotiated a
27 recovery of \$171,000, and this result justifies the requested fees equal to one third of this recovery.
28 This percentage is within the standard contingent recovery percentage of one-third, and this percentage

1 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
2 480, 504 (2016). At the time this case was brought, the result was far from certain. Defendant's
3 defenses to the merits of the case created difficulties with proof and complex legal issues for Counsel
4 to overcome. Here, a number of defenses asserted by Defendant present serious threats to the claims
5 of the Plaintiff and the Aggrieved Employees. Defendant asserted that their employment practices
6 complied with all applicable Labor laws. If successful, Defendant's defenses would eliminate *any*
7 *recovery* to the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome,
8 Defendant maintains these defenses have merit which therefore presents a serious risk to recovery.
9 The PAGA Settlement was possible because Counsel was able to persuade Defendant that there was
10 an appreciable risk that Plaintiff would prevail on the factual and legal issues underlying liability and
11 overcome difficulties in proof as to monetary relief. (Zakay Dec. at ¶ 26.)

12 Second, the fee award is justified by the work performed. As detailed in the accompanying
13 Declarations of Shani O. Zakay and Jean-Claude Lapuyade at ¶ 4, the fee award represents Plaintiff's
14 Counsel's current combined lodestar of \$49,512.50 with a multiplier of 1.15 with additional work to
15 be performed such that the multiplier will ultimately be even lower. Generally, the Ninth Circuit and
16 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for accepting
17 the contingent risks of the litigation or obtaining good results. *See, e.g., Laffitte*, 1 Cal. 5th at 506
18 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Int'l*,
19 *Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
20 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting
21 that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d
22 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar);
23 *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund,
24 which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK,
25 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier
26 of 2.76 as falling within the "majority" range for risk multipliers). (Zakay Dec. at ¶ 27.)

27 Third, consideration of the enhancement factors justifies the enhancement of the lodestar.
28 Courts multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the

1 quality of work, and the novelty and difficulty of the issues involved. See *Ketchum v. Moses*, 24
2 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in cases that meet these criteria is an
3 abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016).

4 Finally, based on Plaintiff's Counsel's lodestar, Plaintiff's Counsel's requested fee award
5 reflects a request for a reasonable hourly rate of \$540.28. Specifically, dividing \$57,000 by the number
6 of hours spent by Plaintiff's Counsel on the case (105.5), results in an average hourly rate of \$540.28,
7 which is reasonable and should be awarded. (Zakay Dec. at ¶ 28.)

8 Finally, as to litigation expenses, Plaintiff's Counsel will be recovering litigation expenses in
9 the total amount of \$12,603.39 which is less than the \$20,000 allocation for costs in the Settlement
10 Agreement, so the difference of \$7,396.61 will be added to the Net Settlement Amount. These
11 expenses are documented in the accompanying Zakay Dec. at ¶ 29.

12 VII. CONCLUSION

13 Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA Settlement
14 as set forth in the Settlement Agreement and enter the proposed order and judgment submitted
15 herewith.

16
17 Dated: July 18, 2022

ZAKAY LAW GROUP, APC

18
19 By:


Shani O. Zakay
Julieann Alvarado