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Clerk of the Superior Court
By Melissa Reyes, Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION**

DANTE ANGOTTI, on behalf of the State
of California and all aggrieved employees,

Plaintiff,

vs.

AZUL HOSPITALITY GROUP, LLC;
AZUL HOSPITALITY MANAGEMENT,
LLC; AZUL HOSPITALITY, LLC; AZUL
HOSPITALITY – BROADWAY, LLC;
AZUL HOSPITALITY – GLENDALE,
LLC; AZUL HOSPITALITY – NORTH
BAY, LLC; AZUL HOSPITALITY –
PASO ROBLES, LLC; AZUL
HOSPITALITY – PH, LLC; AZUL
HOSPITALITY – RB, LLC; AZUL
HOSPITALITY – SACRAMENTO, LLC;
AZUL HOSPITALITY – SRSB, LLC;
AZUL HOSPITALITY – GASLAMP,
LLC; and DOES 1 through 20, inclusive,

Defendants.

Case No. 37-2020-00019008-CU-OE-CTL

Assigned to the Hon. Joel R. Wohlfeil, Dept. C-73

**Joint Stipulation Requesting Approval of PAGA
Settlement; [Proposed] Order Approving PAGA
Settlement under Labor Code § 2699(1)(2) and
Entering Judgment**

Case Filed: June 5, 2020

CMC: Sept. 10, 2021 at 2:30 p.m., Dept. C73

Trail Date: Not Set

1 **I. INTRODUCTION**

2 Plaintiff DANTE ANGOTTI ("Plaintiff") and Defendants AZUL HOSPITALITY GROUP,
3 LLC; AZUL HOSPITALITY MANAGEMENT, LLC; AZUL HOSPITALITY, LLC; AZUL
4 HOSPITALITY – BROADWAY, LLC; AZUL HOSPITALITY – GLENDALE, LLC; AZUL
5 HOSPITALITY – NORTH BAY, LLC; AZUL HOSPITALITY – PASO ROBLES, LLC; AZUL
6 HOSPITALITY – PH, LLC; AZUL HOSPITALITY – RB, LLC; AZUL HOSPITALITY –
7 SACRAMENTO, LLC; AZUL HOSPITALITY – SRSB, LLC; AZUL HOSPITALITY –
8 GASLAMP, LLC; ("Defendants") (collectively, the "Parties") have reached a settlement of
9 Plaintiff's claims brought under the Private Attorneys General Act ("PAGA").

10 The Parties now stipulate to the terms herein and request that the Court sign the Order
11 approving the PAGA settlement under Labor Code section 2699(1)(2) and enter judgment thereon.

12 **II. BACKGROUND**

13 Plaintiff alleges he was employed by Defendants as a server at its former Downtown San
14 Diego location, The Guild Hotel, from July 2019 through March 2020. Plaintiff alleges that he is
15 an aggrieved employee who experienced violations of the California Labor Code along with other
16 current and former non-exempt employees of Defendants.

17 **A. Case Background**

18 On March 31, 2020, Plaintiff submitted a notice to the Labor and Workforce Development
19 Agency ("LWDA") asserting his claims for civil penalties under the PAGA on behalf of himself
20 and the aggrieved employees. (Declaration of Nicholas J. Ferraro ("Ferraro Decl."), ¶ 5.) On June
21 5, 2020, Plaintiff filed a PAGA representative action in San Diego Superior Court. (ROA #1.) In
22 the Complaint, Plaintiff requested civil penalties under California Labor Code section 2699 *et seq.*
23 based on a single cause of action under the PAGA. (*See* Complaint.)

24 Throughout the litigation, Plaintiff obtained the applicable written employment policies and
25 handbooks governing the terms and conditions of employment for the alleged "aggrieved
26 employees," who are defined in the operative complaint as:

27 **[A]ll current and former non-exempt employees of AZUL**
28 **[Defendants] who work or worked within the State of California and**

1 who experienced one or more of the Labor Code violations committed
2 by AZUL during the period from March 31, 2019 continuing through
3 the present.

4 (Complaint, ¶ 13.) Additionally, Plaintiff obtained a sampling of wage statements and time records,
5 compensation records and data, payroll information, and anonymized employee information from
6 Defendants, along with emails, text messages, policies, and other records obtained by Plaintiff and
7 counsel through independent investigation of the claims. (Ferraro Decl., ¶¶ 16-19.)

8 On February 18, 2021, the Parties attended mediation with employment law mediator Todd
9 Smith. Mediation lasted all day but was unsuccessful. In the weeks following the mediation,
10 counsel for the Parties continued to exchange information and argument and work with the
11 mediator, resulting in a tentative settlement. The Parties then negotiated the remaining terms of the
12 long-form settlement agreement. (Ferraro Decl., ¶ 18.) On May 13, 2021, the Parties fully
13 executed a long-form settlement agreement entitled "Private Attorneys General Act Settlement
14 Agreement and Release of All Claims," which will entirely resolve this action upon Court-approval
15 ("Settlement Agreement"). (Ferraro Decl., ¶ 18.) A full copy of the Settlement Agreement is
16 attached to the accompanying Declaration of Nicholas J. Ferraro as **Exhibit 1**. (Ferraro Decl., ¶ 3.)

17 **C. Settlement Terms**

18 The settlement covers all individuals employed by Defendants as non-exempt employees in
19 California from March 31, 2019 through March 31, 2021 ("PAGA Members"). (Ferraro Decl.,
20 ¶ 21.) The Parties agreed to settle the underlying PAGA claims in exchange for a non-reversionary
21 Total Settlement Amount of **\$185,000**, allocated as follows:

Total Settlement Amount:	\$185,000
Plaintiff's Counsel Fees - 33.33% (minus):	(\$61,666.66)
Plaintiff's Counsel Actual Costs (minus):	(\$8,212.96)
<u>Third Party Administration Costs (minus)</u>	<u>(\$5,600)</u>
Remaining PAGA Payment	\$109,520.38
To LWDA (75 percent)	\$82,140.29
To PAGA Members (25 percent)	\$27,380.09

1 (Ferraro Decl., ¶ 20.) Each PAGA Member will receive a portion of the PAGA Payment payable to
2 the PAGA Members on a pro-rata basis based on the number of pay periods worked during the
3 PAGA Period. (Settlement Agreement (“S.A.”), § 6.3.) All PAGA Members will release the
4 “Released Claims” against Defendants (and the “Released Parties” as defined in the Settlement
5 Agreement) as follows:

6 **[A]ny and all claims ... whether known or unknown, contingent or vested,**
7 **arising from or based on a claim for civil penalties under the Labor Code**
8 **Private Attorneys General Act of 2004 (“PAGA”) for any violations of the Labor**
9 **Code or IWC Wage Orders that were alleged by Plaintiff in the Action, or that**
10 **could have been alleged based on the facts asserted in the Action, as well as any**
11 **based on the alleged violations of the Labor Code or IWC Wage Orders asserted**
12 **in any of Plaintiff’s notices to the LWDA, including but not limited to claims for**
13 **the alleged failure to provide meal breaks, rest periods, accurate itemized wage**
14 **statements and waiting time penalties; failure to compensate for all hours**
15 **worked, including overtime; failure to pay all tips and maintain accurate records**
16 **of tips; failure to maintain required records; and failure to timely pay wages**
17 **during employment and upon separation (the “Released Claims”), during the**
18 **PAGA Period.**

19 (S.A., § 11.1.) Within 14 calendar days of the Effective Date, Defendants will deposit the Total
20 Settlement Amount with the Settlement Administrator along with the addresses and contact
21 information for the PAGA Members. Within 10 calendar days of Defendants’ funding of the Total
22 Settlement Amount with the Settlement Administrator, the Settlement Administrator will issue
23 checks—pursuant to the allocation set forth above—to the LWDA, Plaintiff’s counsel, and the
24 PAGA Members, who will also receive an explanatory cover letter attached as Exhibit 1 to the
25 Settlement Agreement. (S.A., § 6.1.) Additionally, the Parties have entered into a Confidential
26 Settlement Agreement in full satisfaction of Plaintiff’s underlying individual wage and other
27 claims, which shall be paid separate and apart from the PAGA settlement set forth herein. (Ferraro
28 Decl., ¶ 18.)

1 **C. Notice to LWDA of PAGA Settlement**

2 On July 17, 2021, Plaintiff submitted the proposed settlement of this PAGA action to the
3 LWDA electronically via the LWDA's online filing system. (Ferraro Decl. ¶ 7.)

4 **III. LEGAL STANDARD**

5 **A. The PAGA Settlement is Fair and Reasonable and Should be Approved.**

6 PAGA settlements require judicial review and approval. (Labor Code § 2699(l)(2).) The
7 criteria for review and approval is not well-developed. But when a PAGA claim is settled, the
8 relief provided for must be genuine and meaningful, consistent with the purpose of the statute to
9 benefit the public. (*See Haralson v. U.S. Aviation Services Corp.* (N.D. Cal. 2019) 383 F. Supp.3d
10 959, 971-972.)

11 Civil penalties sought under the PAGA are "inherently regulatory, not remedial, and are
12 intended to secure obedience to statutes and regulations validly adopted under the police power" of
13 the State of California. *Home Depot U.S.A, Inc. v. Superior Court* (2010) 191 Cal.App.4th 210,
14 225 (internal citations omitted). Here, as an initial matter, Plaintiff's counsel's review of the
15 records at issues in the data and sampling reveal that Defendants appear to have corrected the
16 practices alleged as deficient in the Complaint, demonstrating fulfillment of the statute's regulatory
17 and enforcement mandate. (Ferraro Decl. ¶ 20.) This settlement has thus met the fundamental aim
18 of the legislation, to enforce compliance with California's state wage and labor laws.

19 PAGA actions are not evaluated subject to the same requirements as class actions, though
20 courts like this one can and often do consider the factors applicable to class action settlements when
21 reviewing PAGA settlements. *See, e.g., Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
22 1801; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 240; *Kullar v. Foot Locker Retail,*
23 *Inc.* (2008) 168 Cal.App.4th 116 (factors include the (1) strengths of plaintiffs' case; (2) risk,
24 expense, complexity, and duration of further litigation; (3) amount offered in settlement;
25 (4) discovery and investigation completed; (5) experience and views of counsel; and
26 (6) governmental participant involvement).

27 These factors support approval of the settlement. (*See* Ferraro Decl., ¶ 19(a)-(j).) First,
28 regarding the strengths of Plaintiff's claims, Plaintiff's claims primarily focused on an alleged

1 “regular rate of pay” deficiency, unlawful tip pooling policies, and underpayment of meal period
2 premiums for non-compliant meal periods. However, the data examined by Plaintiff’s expert
3 revealed that only 8.4 percent of meal periods were not recorded or less than 30 minutes, based on
4 the time records of the aggrieved employees. Of these 8.4 percent of meal periods, Defendants had
5 a meal period waiver for those shifts of 6 hours or less, and otherwise paid meal period premium
6 payments (an estimated total of 4,454) for 29.3% of late or short meal periods. Therefore, the
7 ability to prove a common system-wide practice of non-compliant meal periods under the *Brinker*
8 standard would have proved difficult. Additionally, for the alleged regular rate of pay violations,
9 these alleged underpayments affected only 21.1% of pay periods and there were considerable
10 disputes regarding whether some of the forms of pay were required to be included in the hourly OT
11 rate. Lastly, the tip pooling claim would have likely been unsuccessful given that Defendants did
12 not share tips or gratuities with supervisors and maintained records of tip pooling payments
13 throughout the PAGA Period. Second, while the litigation could have proceeded with the
14 aforementioned risks, the largest element of damages would have likely been for statutory
15 attorneys’ fees as the prevailing party; therefore, the remedial and enforcement mechanisms of the
16 PAGA are better served through this settlement than through additional litigation during a time of
17 great challenges to the Court (given the unavailability of trial days) and to Defendants, given the
18 challenges presented in the hospitality industry by COVID-19. Additional litigation would have
19 been costly to Defendants and likely reduced the amount of assets available to pay any future
20 settlement or judgment. Third, the amount offered in settlement is significant for a hospitality
21 business suffering losses in the midst of government-mandated shutdowns of businesses throughout
22 the State, and thus the Settlement accounts for civil penalties to the LWDA and the aggrieved
23 employees in a manner that is fair and reasonable taking into account Defendants’ financial
24 conditions. Fourth, the settlement was only after Plaintiff’s counsel obtained all of the policies and
25 data necessary to conduct a liability exposure analysis. The settlement was negotiated at arms-
26 length through an experienced mediator and by counsel on both sides experienced in PAGA and
27 wage and hour litigation. Fifth, Plaintiff’s counsel focuses entirely on labor and employment
28 litigation, with a particular emphasis on wage and hour litigation and PAGA cases. Plaintiff’s

1 counsel recommends the settlement as fair and reasonable. There are no objections or intervenors
2 and no related cases. Sixth, the LWDA was duly notified upon filing of the PAGA notice in this
3 case, and has not intervened nor stated intent to do so. The absence of LWDA intervention, as a
4 governmental party, supports approval of the settlement. (Ferraro Decl., ¶ 19(a)-(j).)

5 Most importantly, however, the settlement also takes into account the nearly one-year when
6 the majority of service employees were not working due to the Covid-19 pandemic (*i.e.*, no PAGA
7 penalties accruing). (Ferraro Decl., ¶ 20.) After the unsuccessful mediation, Defendants shared
8 with Plaintiff's counsel detailed financial information showing their financial condition from the
9 past year and beyond. These records reflected serious concerns for Plaintiff's counsel about how
10 the outcome of this case would have affected Defendants' ability to operate and, correspondingly,
11 ability to pay a judgment to the LWDA and the aggrieved employees. (Ferraro Decl., ¶ 20.) Even
12 if Plaintiff established liability for each of his claims, Defendants would request that the Court
13 exercise its discretion to substantially reduce PAGA penalties on the basis that awarding the full
14 default penalty would be unjust, arbitrary, oppressive, or confiscatory. Courts routinely reduce
15 PAGA penalties as permitted by California Labor Code section 2699(f)(2). *See Carrington v.*
16 *Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 517 (approving trial court's reduction of PAGA
17 penalties by 90%). A reduction would have likely been applied here in light of the industry, the
18 nature of the claims, and Defendants' remedial action in response to the lawsuit. Collectively, the
19 factors support approval of this PAGA-only settlement.

20 **B. The Attorneys Fees Are Reasonable.**

21 The settlement proposed for approval provides for \$61,666.66 in attorneys' fees and up to
22 \$15,000 in litigation costs, though Plaintiff seeks only \$8,212.96 in hard costs incurred. (S.A., Sec.
23 III.3.) The attorneys' fees represent 33.33 percent of the Total Settlement Amount. The purpose of
24 the percentage method is to avoid unjust enrichment by spreading the litigation costs proportionally
25 among all the beneficiaries. (*See, e.g., Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19,
26 47.) This approach incentivizes lawyers to undertake risks of time and resources to vindicate the
27 public interest and protect the policies underlying the wage laws. In the case of a common fund—
28

1 like the one in this case where there is no reversion or claims process—the percentage method is the
2 preferred method:

3 The recognized advantages of the percentage method—including relative
4 ease of calculation, alignment of incentives between counsel and the class,
5 a better approximation of market conditions in a contingency case, and the
6 encouragement it provides counsel to seek an early settlement and avoid
7 unnecessarily prolonging the litigation ... —convince us the percentage
8 method is a valuable tool that should not be denied our trial courts.

9 (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 503 (citations omitted).)

10 “[R]egardless whether the percentage method or the lodestar method is used, fee awards in class
11 actions average around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th
12 43, 66, n. 11.)

13 According to the Declaration of Nicholas J. Ferraro, Plaintiff’s counsel expended thus far
14 131 hours through the date of this Stipulation, not including additional hours worked for
15 forthcoming post-settlement tasks. (Ferraro Decl., ¶¶ 23-25.) Plaintiff’s counsel has been approved
16 at a rate of \$475 on settlement approvals in San Diego Superior Court and others, which
17 demonstrates reasonableness for purposes of a lodestar cross-check. Plaintiff’s request for costs
18 reveal ordinary litigation costs that may be reimbursed upon settlement of this PAGA action.¹
19 (Ferraro Decl., ¶¶ 21-25.)

20 IV. STIPULATIONS

21 Plaintiff and Defendants, through their respective attorneys of record, hereby stipulate that,
22 based on the foregoing, the PAGA settlement in this PAGA-only case is fair and reasonable and
23 therefore respectfully request that this Court enter an order approving the entire settlement.

24 The Parties further stipulate and agree that Phoenix Settlement Administration will serve as
25 the Settlement Administrator in this case.

26
27
28 ¹ “[R]egardless 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, 66, n. 11.)

1 The Parties further stipulate, agree, and request that the Court enter judgment upon approval
2 of this PAGA settlement if and at the time it signs the accompanying Order.

3 Respectfully submitted,

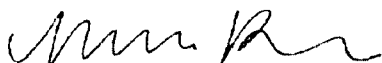
4
5 Dated: July 21, 2021

Ferraro Vega Employment Lawyers, Inc.

6
7 
8 Nicholas J. Ferraro
9 Lauren N. Vega
Attorneys for Plaintiff Dante Angotti

10 Dated: July 21, 2021

Wilson Turner Kosmo LLP

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12 
13 Leonid M. Zilberman
14 Nicole R. Roysdon
Attorney for Defendants Azul Hospitality *et al.*

1 **~~PROPOSED~~ ORDER**

2 The Court has reviewed the papers on file in this action, the Joint Stipulation Requesting
3 Approval of PAGA Settlement, the supporting Declaration of Nicholas J. Ferraro, and its exhibits,
4 including the Private Attorneys General Act Settlement Agreement and Release of All Claims (i.e.,
5 the Settlement Agreement).

6 **NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED AS**
7 **FOLLOWS:**

8 1. The Parties' Joint Stipulation Requesting Approval of PAGA Settlement is
9 GRANTED and hereby APPROVED pursuant to Labor Code § 2699(l)(2). The Total Settlement
10 Amount shall be distributed as follows:

- 11 a. \$82,140.29 to the LWDA for PAGA penalties
12 b. \$27,380.09 to the PAGA Members
13 c. \$61,666.66 to Plaintiff's counsel for attorneys' fees
14 d. \$8,212.96 to Plaintiff's counsel for costs
15 e. \$5,600 to the Settlement Administrator

16 2. Plaintiff, Defendants, and the Settlement Administrator are ordered to carry out the
17 terms of the settlement in accordance with the Settlement Agreement and the Joint Stipulation.

18 **JUDGMENT**

19 Judgment shall be entered through the filing of this order and judgment. (Code Civ. Proc.,
20 § 668.5.) Plaintiff shall take from the operative complaint in this action only the relief set forth in
21 the settlement agreement and this order and judgment. The Court retains jurisdiction over the
22 parties to enforce the terms of the settlement agreement and the final order and judgment.

23
24 **IT IS SO ORDERED.**

25
26 Dated: 8-6-21

27 
HONORABLE JOEL R. WOHLFEIL
SUPERIOR COURT JUDGE