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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ALAHJAH BROWN, on behalf of the State
of California, as a private attorney general,

Plaintiffs,

v.

NRI USA, LLC, a California Limited
Liability Company, and DOES 1 through
50, inclusive,

Defendant.

Case No: CIVSB 2028407

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR
PAGA SETTLEMENT APPROVAL**

Hearing Date: July 6, 2022

Hearing Time: 10:00am

Judge: Hon. David Cohn

Dept.: S26

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alahjah Brown (“Plaintiff”) reached a settlement of the California Labor Code Private
4 Attorneys General Act of 2004, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this action
5 against Defendant NRI USA, LLC (“Defendant”) (collectively, the “Parties”). In accordance with
6 California Labor Code § 2699(l), Plaintiff now asks this Court to review and approve the settlement
7 of Plaintiff’s PAGA claim.¹ This is only a settlement of the PAGA claim for civil penalties and is not
8 a class settlement and does not release the individual wage claims, if any, of the effected employees
9 other than Plaintiff himself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal.
10 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not
11 recoverable under PAGA).

12 The PAGA settlement is set forth in the accompanying Private Attorneys General Act (Labor
13 Code Section 2698 *et seq.*) Settlement Agreement and Limited Release (“Settlement Agreement”). A
14 true and correct copy of the Settlement Agreement which sets forth the terms for the settlement of the
15 PAGA claim is attached as Exhibit #1 to the Declaration of Shani O. Zakay (“Zakay Dec.”), filed
16 herewith. Capitalized terms shall have the same meaning as defined in the Settlement Agreement.
17 The Labor and Workforce Development Agency (“LWDA”) received notice of this Settlement and
18 this motion as set forth in the Zakay Dec. A proposed Order and Judgment confirming review and
19 approval of the PAGA settlement is submitted herewith.

20 **II. RELEVANT FACTS**

21 Plaintiff was employed by Defendant as a non-exempt employee in California during the
22 PAGA period. On July 31, 2020, Plaintiff served Defendant and the LWDA with a Notice of
23 Violations (“PAGA Notice”) and draft complaint memorializing claims against Defendant for alleged
24 violations of the California Labor Code, including causes of action for: failure to pay minimum wages
25 in violation of Labor Code sections 1194, 1197, and 1197.1; failure to pay overtime wages in violation
26 of Labor Code sections 510, 1194, and 1198; failure to provide required meal periods in violation of
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 Labor Code sections 226.7 and 512; failure to provide required rest periods in violation of Labor Code
2 sections 226.7 and 512; failure to provide accurate itemized wage statements in violation of Labor
3 Code section 226; and failure to provide wages when due in violation of Labor Code sections 201,
4 202, 203, *et seq.*, and 210. (LWDA Case No. 800897-20). On December 18, 2020, Plaintiff filed a
5 complaint against Defendant in the Superior Court of San Bernardino County, Case No.
6 CIVSB2028402, alleging a single cause of action for violations of PAGA based on the above Labor
7 Code violations. (Zakay Dec. at ¶ 4.)

8 A. Mediation

9 Plaintiff and Defendant agreed to mediate the action with Steve Rottman, Esq. (“Mediator
10 Rottman”), an experienced and reputable mediator. Prior to the mediation, in order to evaluate the
11 potential value of the claims, the Parties engaged in significant informal discovery in an effort to obtain
12 the facts regarding the claims asserted, including all of Defendant’s relevant wage and hour policies,
13 the exchange of detailed statistical data regarding assignments performed by Plaintiff and the
14 Aggrieved Employees, the production of hundreds of pages of documents including a large sample of
15 time records and payroll records, and the exchange of detailed briefing and analysis in connection with
16 the mediation. (Zakay Dec. at ¶ 5.)

17 Thereafter, on July 12, 2021, the Parties participated in a full-day mediation with Mediator
18 Rottman. After extensive, arms-length negotiations and bargaining, the mediation concluded without
19 settlement. However, following the mediation, the Parties continued settlement negotiations for
20 several months, with the assistance of Mediator Rottman, until the Parties reached an agreement to
21 settle based on Mediator Rottman’s proposal, which led to the signing of a PAGA Settlement
22 Agreement and Limited Release memorializing the settlement. The settlement was negotiated in light
23 of all known facts and circumstances and the uncertainty associated with litigation – including the risk
24 of Plaintiff not being able to maintain representative claims and establishing manageability, the
25 difficulty of proving Plaintiff’s claims in a manageable trial, the merits of Defendant’s potential
26 defenses, and the significant delay and potential appellate issues inherent to litigation – and was
27 reached after extensive arm’s length negotiations, with the assistance of Mediator Rottman. (Zakay
28 Dec. at ¶ 6.)

1 **III. TERMS OF THE PAGA SETTLEMENT**

2 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2)
3 (Settlement Agreement at § IV(1)). The Settlement Agreement negotiated by the Parties provides for
4 a “Gross PAGA Settlement Fund” payment in the amount of \$200,000 to resolve the PAGA Claim.
5 The Gross PAGA Settlement Fund encompasses attorneys’ fees in the amount of \$66,666.67 (which
6 is one-third of the PAGA Settlement), reimbursement of incurred costs in an amount not to exceed
7 \$16,000, a Representative Service Award of not more than \$10,000, and Settlement Administration
8 Costs, which will not exceed \$10,000. (Settlement Agreement at §§ III(6)(b)-(d)). Once the Attorney
9 Fee/Cost Payment, Representative Service Award, and Administration Costs have been deducted from
10 the Gross PAGA Settlement Fund, the remaining funds will be referred to as the “Net PAGA
11 Settlement Fund.” (Zakay Dec. at ¶ 7.)

12 The Net PAGA Settlement Fund, approximately \$97,333.33, shall be allocated as follows: a
13 total of seventy-five percent (75%) shall be paid to the LWDA and the remaining twenty-five percent
14 (25%) shall be paid to the Aggrieved Employees. (Settlement Agreement at § III(6)(a)).² This 75/25
15 allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175
16 (2019). (Zakay Dec. at ¶ 8.)

17 The Individual Settlement Share for each PAGA Employee shall be based on the number of
18 payroll periods each Aggrieved Employee worked during the PAGA Period as a percentage of the
19 total pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement
20 Agreement at § III(5)). The PAGA Period is the time period from July 31, 2019 to November 30,
21 2021. (Settlement Agreement at § I(15)). (Zakay Dec. at ¶ 9.)

22 At the time of settlement, Defendant represented to Plaintiff’s Counsel that there are
23 approximately 1,775 Aggrieved Employees who worked approximately 36,387 pay periods during the
24 PAGA Period. (Settlement Agreement at § III(3)). (Zakay Dec. at ¶ 10.)

25 ///

26
27
28 ² “Aggrieved Employees” means all individuals who were employed by NRI USA, LLC in a non-
exempt position in California from July 31, 2019 to November 30, 2021 or the date the Court grants
approval of the settlement, whichever is earlier. (Settlement Agreement at § I(2)).

1 A. Release of Claims

2 Upon entry of Judgment and funding in full of the Settlement by Defendant, the Released
3 Parties shall be entitled to a release from the State of California and Plaintiff as to the following claims:
4 Any and all claims that were asserted in Plaintiff's July 31, 2020 PAGA Notice and the operative
5 Complaint for PAGA penalties that occurred during the PAGA Period, including any potentially
6 applicable claims for attorneys' fees. ("Released Claims") (Settlement Agreement at § III(7)). The
7 Released Claims in the Settlement Agreement excludes all PAGA claims outside the PAGA Period,
8 all PAGA claims not alleged in the operative complaint or LWDA Notice, and all non-PAGA claims
9 but for Plaintiff's individual wage claims. (*Id.*) (Zakay Dec. at ¶ 11.)

10 Defendant shall (a) deposit \$200,000 as the Gross Settlement Amount in a Qualified Settlement
11 Fund established by the Settlement Administrator, ILYM Group, and (b) provide the Settlement
12 Administrator with a list of all Aggrieved Employees (the "Aggrieved Employee List") within fourteen
13 (14) business days after the Effective Date. (Settlement Agreement at § III(4)). Within ten (10) days
14 of the Funding Date, the Settlement Administrator will mail settlement checks and a letter explaining
15 why the check is being sent ("Notice"), to the Aggrieved Employees identified on the Aggrieved
16 Employees List by postmarked First Class U.S. Mail. (Settlement Agreement at § IV(4)). Should any
17 of the Notices be returned as undeliverable, the Settlement Administrator will promptly, via regular
18 First-Class U.S. Mail, send the Notice to the forwarding address affixed thereto. (Settlement
19 Agreement at § IV(4)). If no forwarding address is provided, for those settlement checks returned as
20 undeliverable and those settlement checks remaining un-cashed for more than 180 days after issuance,
21 the Settlement Administrator shall escheat those checks to the State Controller's Office, Unclaimed
22 Property Division in the name of the absent employee. (Settlement Agreement at § IV(4)). The
23 Individual PAGA Payments are 100% penalties and shall be reported using IRS tax form 1099.
24 (Settlement Agreement § III(6)(a)(3)). (Zakay Dec. at ¶ 12.)

25 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
26 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion
27 for settlement approval as set forth in the accompanying Zakay Dec. in compliance with Labor Code
28 section 2699(1). (Zakay Dec. at ¶ 13.)

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

2 The claim before this Court is the representative claim under the PAGA on behalf of the State
3 of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this PAGA
4 claim in its entirety after significant informal discovery, and an arm’s length mediation. The settlement
5 is intended to fully and finally resolve the PAGA Released Claims asserted by Plaintiff on behalf of
6 the State of California. This is only a settlement of the PAGA claims for civil penalties and is not a
7 class settlement and does not release the individual claims other than Plaintiff himself if any, of the
8 Aggrieved Employees. This settlement does not release any claim that is not a PAGA claim.³
9 Attorneys’ fees equal to one-third of the PAGA Settlement amount (\$66,666.67) and litigation
10 expenses in an amount not to exceed \$16,000 will also be paid to Plaintiff’s Counsel as part of the
11 settlement in accordance with California Labor Code § 2699(g)(1) as set forth in the Settlement
12 Agreement. Lastly, payment to the Settlement Administrator in an amount not to exceed \$10,000 to
13 perform the administrative duties to distribute the settlement money shall also be paid. (Zakay Dec.,
14 at ¶ 14.)

15 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT**
16 **OF THE PAGA CLAIM**

17 Labor Code § 2699(l) requires that the Court “shall review and approve any settlement of any
18 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
19 agency at the same time that it is submitted to the court.” Further, the Court in *Moniz v. Adecco USA,*
20 *Inc.* (2021) 72 Cal.App.5th 56, 77 stated that “the trial court must review and approve a PAGA
21 settlement (§ 2699, subd.(l)(2)), and the Supreme Court has in dictum referred to this review as a
22 safeguard.” (Citing *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 88; internal
23 quotations omitted.) “The Supreme Court has also observed that trial court approval ensures that any
24 negotiated resolution is fair to those affected,” leading the Court in *Moniz* to determine that “adoption
25 of a standard of review for settlements that prevents fraud, collusion or unfairness, and protects the
26 interests of the public and the LWDA in the enforcement of state labor laws is warranted.” (*Moniz*,

27 _____
28 ³ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: “Nonparty employees are bound
by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties.”

1 *supra*, 72 Cal.App.5th at 77; citing *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549; *Dunk v.*
2 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; internal citations omitted.) In other words,
3 “[i]n review and approval of a proposed settlement under section 2699, subd. (1)(2), a trial court thus
4 must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the
5 state’s interests, and hence the public interest.” (*Moniz, supra*, 72 Cal.App.5th at 88.) Consequently,
6 the parties respectfully ask the Court to review and approve the settlement of the PAGA claims and
7 the PAGA Payment to be paid as part of the proposed settlement.

8 A. The Gross PAGA Settlement Fund is Fair and Reasonable

9 Plaintiff and her counsel believe that the Gross PAGA Settlement Fund amount is fair and
10 reasonable and therefore "shall" be reviewed and approved. The Labor and Workforce Development
11 Agency has released data on PAGA settlement amounts. After removing the outliers at the low and
12 high end, the average, total settlement amount of PAGA claims is approximately \$10,000. Here, the
13 Gross PAGA Settlement Fund of \$200,000 is significantly larger. (Zakay Dec. at ¶ 15.)

14 California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the
15 maximum civil penalty if, based on the facts and circumstances, to do otherwise would result in an
16 award that is "unjust, arbitrary and oppressive or confiscatory." Before and during the mediation,
17 Defendants argued, among other things, that it was unlikely that any Judge would award more than
18 the actual amounts owed on the claims, let alone the full \$100 or \$200 per violation. In *Carrington v.*
19 *Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial
20 which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties
21 awarded in this case could be significantly less than Plaintiff’s calculation, even had Plaintiff prevailed
22 on the PAGA claim. Here, multiplying the number of pay periods (36,387) by \$5 results in a total
23 potential liability of **\$181,935**. Therefore, even assuming Plaintiff would have prevailed on all of her
24 claims at trial, the result obtained by Plaintiff in the Settlement exceeds the amount Plaintiff would
25 have recovered had the Court relied on *Carrington* in awarding the PAGA penalties. (Zakay Dec. at ¶
26 16.)

27 Pursuant to PAGA, courts have considerable discretion to reduce the penalty award. In
28 *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
203 (waiting time violations)	1,250 terminated employees	\$100	1,250	100% of pay periods when an employee was terminated	\$0 - \$125,000
226.2, 226.7, & 512 (rest break violations)	1,748 aggrieved employees	\$100	2,399	9.4% of total pay periods	\$239,900
226.7 (unpaid meal break violations)	683 aggrieved employees	\$100	2,399	9.4% of total pay periods	\$239,900
226 (wage statement violations)	1,748 aggrieved employees	\$100	25,655	100% of total pay periods	\$0 - \$2,565,500
510 (unpaid overtime and double time violations)	695 aggrieved employees	\$100	622	100% of total pay periods	\$62,200

(Zakay Dec. at ¶ 17.)

Thus, at the time of mediation, Plaintiff's Counsel, with the assistance of the consultants at Berger Consulting Group, estimated Defendant's liability exposure at \$542,000-\$3,232,500. Consequently, the Total Settlement Amount of \$200,000 is 6%-37% of Defendant's liability exposure. The rationale behind the range of exposure is the California Supreme Court's pending decision in *Naranjo v. Spectrum Security Services, Inc.*, in which the Court will decide whether wage statement inaccuracies deriving from meal and rest period violations also constitute violations of Labor Code

1 sections 203 and 226. The current state of the law does not entitle employees to derivative penalties
2 under Labor Code section 203 or section 226. Because Plaintiff's claim for waiting time violations
3 under Labor Code section 203 and wage statement violations under Labor Code section 226 derive
4 from meal and rest period violations, Plaintiff is not currently entitled to penalties for those violations,
5 until and unless the California Supreme Court reverses the Court of Appeals decision in *Naranjo*,
6 *supra*, 40 Cal.App.5th 444. (Zakay Dec. at ¶ 18.)

7 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of
8 the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
9 LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot
10 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
11 Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered
12 a violation for each period the employee worked in relation to meal or rest period violations, failure
13 to pay minimum or overtime wages, failure to provide accurate itemized wage statements, failure to
14 pay wages when due, and/or failure to maintain required records. (Zakay Dec. at ¶ 19.)

15 Defendant maintains that Plaintiff and the Aggrieved Employees were properly compensated,
16 and that they did not violate the Labor Code.

17 Most importantly and relevant to this case, Defendant argued that the Supreme Court decision
18 in *Brinker v. Superior Court*, 53 Cal.4th 1004 (2012), weakened, if not eliminated, Plaintiff's claims,
19 on liability, value, and discretion with respect to the PAGA penalties, as to the meal and rest period
20 claims. A major component of the penalties alleged to have been owed by Defendant are attributed to
21 non-compliant meal and rest breaks. Before and during the mediation, Defendant aggressively argued
22 that Defendant's policies and culture afforded the Aggrieved Employees an opportunity to take timely
23 meal and rest breaks, and that employees like Plaintiff *chose* not to take compliant breaks. Specifically,
24 Defendant's written policies encouraged Aggrieved Employees to take meal periods and rest breaks
25 according to schedules compliant with the California Labor Code. The policy further *required*
26 employees who believed they were unable to take a rest of meal period to speak with their supervisor
27 who would ensure that they got a rest or meal period. Defendant argued, therefore, that under the
28 *Brinker* decision it has no liability for the missed breaks whatsoever. Defendant argued that it adopted

1 and strictly enforced lawful policies and afforded Plaintiff and the Aggrieved Employees compliant
2 meal and rest breaks. Further, Plaintiff's expert's analysis based on the payroll and time records
3 provided by Defendant, indicated that Defendant had a 98.9% compliance rate for the first meal period.
4 Thus, Defendant's exposure for meal and rest period violations is predicated on a second meal break
5 violation and a third rest break violation. Plaintiff's expert determined that only 4.4% of shifts (9,849
6 out of 224,945 total shifts) were greater than 10 hours, requiring a second meal period. Even with a
7 near 100% second meal break violation rate in shifts greater than 10 hours, Plaintiff's expert identified
8 unique meal break violations in only 2,399 pay periods, accounting for 9.4% of the 25,655 total pay
9 periods. Because Plaintiff's claims were largely based on the missed meal and rest breaks, Defendant's
10 policies were, indeed, compliant, and Defendant's achieved 98.9% compliance for the first meal
11 period, this presented a very real concern for Plaintiff. If successful, this defense could eliminate or
12 substantially reduce any recovery under PAGA. While Plaintiff believes that this defense, and others,
13 could be overcome, Defendant maintains that these defenses have merit and therefore present a serious
14 risk to recovery of penalties. (Zakay Dec. at ¶ 20.)

15 Accordingly, Defendant disputes and denies Plaintiff's allegations and claims asserted in the
16 operative complaint which are resolved by the Settlement Agreement. Defendant asserted additional
17 defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties.
18 Defendant could argue that no penalties prior to the PAGA notification should be awarded because
19 the violations were not intentional, and at least one court has so ruled. These defenses present a risk
20 to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be
21 awarded. (Zakay Dec. at ¶ 21.)

22 Given Defendant's potential defenses to the violations at issue, the risks and costs of continued
23 litigation, Plaintiff and her attorneys believe that the PAGA Settlement is fair and reasonable.
24 Plaintiff's Counsel have significant experience litigating wage and hour claims including claims for
25 PAGA penalties, and the PAGA Settlement here is similar to or greater than similar settlements that
26 courts have approved. The PAGA Settlement, along with the other terms of the proposed settlement,
27 were negotiated by experienced counsel at arm's length with the assistance of an experienced and
28 reputable mediator, Steve Rottman. (Zakay Dec. at ¶ 22.)

1 As set forth in the accompanying Zakay Dec., the LWDA has been provided notice of this
2 motion and the PAGA settlement. The decision of the LWDA to accept the PAGA Settlement and
3 not oppose the motion should be given considerable weight. This is not a situation where the Court
4 needs to be concerned about the rights of absent employees as in a class settlement, as this PAGA-
5 only settlement does not release the individual claims of absent employees, and the LWDA is a
6 sophisticated government entity that is more than able to look out for its own rights. (Zakay Dec. at ¶
7 23.)

8 Based on our investigation, analysis and discounts for risk factors, Plaintiff adequately
9 represented the interests of both the State and the public in resolving this action and reaching the
10 proposed PAGA settlement. (Zakay Dec. at ¶ 24.)

11 Notably, in the pending *Viking River Cruises, Inc. v. Moriana* case, the Supreme Court will
12 examine whether the Federal Arbitration Act requires enforcement of a bilateral arbitration agreement
13 providing that an employee cannot raise representative claims, including under PAGA. Given the
14 Supreme Court's pending decision, there is a strong possibility that this action could be dismissed
15 altogether if the Supreme Court finds that Plaintiff could waive his right to bring a PAGA action. The
16 proposed PAGA settlement allows Plaintiff to resolve the claims on his behalf, on behalf of the
17 Aggrieved Employees, and on behalf of the State of California before *Viking River Cruises* is decided
18 and potentially rids them of the opportunity to receive a settlement at all. (Zakay Dec. at ¶ 25.)

19 Finally, Plaintiff's diligent and efficient litigation of this action resulted in the creation of an
20 ascertainable common fund of \$200,000 that will substantially benefit the State of California and the
21 Aggrieved Employees. PAGA Counsel's efforts also resulted in significant non-monetary relief for
22 the State of California and the Aggrieved Employees by catalyzing Defendant to change its meal break
23 policy and practices to pay premiums for meal break violations *at the regular rate of pay* retroactively
24 and on a forward-going basis. Thus, PAGA Counsel obtained greater Labor Code compliance and a
25 change to Defendant's policies that accomplishes the primary objective of PAGA as set for by the
26 Labor Commissioner in *Price v. Uber Technologies*, Los Angeles Superior Court Case No. BC544512.
27 (Zakay Dec. at ¶ 26.)

28 ///

1 B. The Remaining Settlement Terms Are Fair and Reasonable

2 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
3 2699(1) does not require that a court approve any other elements of the proposed settlement. Because
4 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to
5 class settlements under Cal. Code Civil Proc. § 382 do not apply. Accordingly, the Court only needs
6 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
7 herein, the settlement terms for attorneys' fees and costs are reasonable.

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

9 Plaintiff's Counsel seeks approval of attorneys' fees from the PAGA settlement in the amount
10 of \$66,666.67 representing one-third of the \$200,000 Gross PAGA Settlement Fund. PAGA does not
11 have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of
12 attorneys' fees and costs in this settlement is a matter of contract for a contingent representation.
13 Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees
14 and costs are reasonable.

15 First, the requested fees are justified by the result achieved. Plaintiff's Counsel negotiated a
16 recovery of \$200,000, and this result justifies the requested fees equal to one third of this recovery.
17 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
18 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
19 480, 504, (2016). At the time this case was brought, the result was far from certain. Defendant's
20 defenses to the merits of the case created difficulties with proof and complex legal issues for Counsel
21 to overcome. Here, a number of defenses asserted by Defendant present serious threats to the claims
22 of the Plaintiff and the PAGA Employees. Defendant asserted that its employment practices complied
23 with all applicable Labor laws. If successful, Defendant's defenses would eliminate *any recovery* to
24 the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome, Defendant
25 maintains that these defenses have merit and therefore present a serious risk to recovery. The
26 Settlement was possible because Counsel was able to persuade Defendant that there was an appreciable
27 risk that Plaintiff would prevail on the factual and legal issues underlying liability and overcome
28 difficulties in proof as to monetary relief. (Zakay Dec. at ¶ 27.)

1 Second, the fee award is justified by the work performed. As detailed in the accompanying
2 Zakay Dec. at ¶ 28, the fee award represents Plaintiff's Counsels current combined lodestar of
3 \$91,997.75 with a multiplier of 0.72 with additional work to be performed such that the multiplier will
4 ultimately be even lower. Generally, the Ninth Circuit and California Courts award multipliers
5 between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation
6 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with
7 multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010)
8 (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba*
9 *v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to
10 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding
11 one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL
12 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of
13 lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal.
14 Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority"
15 range for risk multipliers). (Zakay Dec. at ¶ 28.)

16 Third, consideration of the enhancement factors justifies the enhancement of the lodestar.
17 Courts multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the
18 quality of work, and the novelty and difficulty of the issues involved. See *Ketchum v. Moses*, 24
19 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in cases that meet these criteria is an
20 abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016).

21 VII. CONCLUSION

22 Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA settlement
23 as set forth in the Settlement Agreement and enter the proposed Order and Judgment submitted
24 herewith.

25
26 Dated: April 19, 2022

ZAKAY LAW GROUP, APC

27 By:


28 Shani O. Zakay