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12 **CALIFORNIA SUPERIOR COURT**
13 **IN AND FOR THE COUNTY OF SANTA CRUZ**

14 MARIO ALBERTO GARCIA
15 SAUCEDO,

16 PLAINTIFF,

17 V.

18 CORWIN & VOSKOBOYNIKOV
19 MANAGEMENT, LLC; DANIEL
20 VOSKOBOYNIKOV, AND DOES 1
21 THROUGH 50.

22 DEFENDANTS.

Case No. 20CV02190

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION**

Hearing Date: December 15, 2021

Time: 8:30am

Location: Department 10

TABLE OF CONTENTS

<u>I.</u>	<u>INTRODUCTION</u>	4
<u>II.</u>	<u>FACTUAL AND PROCEDURAL BACKGROUND</u>	4
	a. <u>Procedural Background</u>	4
	b. <u>Settlement Negotiations</u>	5
	c. <u>Attorney’s Fees and Costs</u>	6
<u>III.</u>	<u>SUMMARY OF THE TERMS OF SETTLEMENT</u>	6
<u>IV.</u>	<u>STANDARD OF REVIEW</u>	7
<u>V.</u>	<u>THE SETTLEMENT IS FAIR AND REASONABLE</u>	9
	a. <u>Global Settlement is Fair and Reasonable Given the Strengths and Weaknesses of Plaintiff’s Individual Claims and the PAGA Claim</u>	10
	b. <u>The Settlement Allocation between Plaintiff and PAGA Pool Members/LWDA is Fair and Reasonable</u>	11
	c. <u>The Risk, Expense, Complexity, and Likely Duration of Further Litigation</u>	11
	d. <u>The Amount and Terms Offered in the Settlement</u>	12
	e. <u>The Extent of Discovery Completed and Stage of the Proceedings</u>	13
	f. <u>The Presence of a Government Participant</u>	13
<u>VI.</u>	<u>CONCLUSION</u>	14

TABLE OF AUTHORITIES

CASES

<i>Arias v. Superior Court</i> (2009) 46 Cal. 4th 969	6, 7
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> (2014) 59 Cal. 4th 348, 360	7
<i>Sakkab v. Luxottica Retail N. Am. Inc.</i> , 803 F.3d 425 (9th Cir. 2015)	7
<i>GONZALEZ V. MILLARD MALL SERVS.</i> , 281 F.R.D. 455 (S.D. CAL. 2012)	7
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	8
<i>O'Connor v. Uber Technologies</i> , 201 F. Supp. 3d. 1110 (N.D. Cal. 2016)	8

STATUTES

Cal. Labor Code § 2699	passim
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1 **I. INTRODUCTION AND BRIEF STATEMENT OF FACTS**

2 This is a straightforward case involving claims for non-compliant breaks. Plaintiff was
3 employed by Defendants as a cook in their popular restaurant and alleges that he alongside his co-
4 workers were not afforded meal or rest breaks as required by law. The parties have been engaged in
5 informal discovery in an effort to resolve the case amicably and efficiently and have settled the matter.
6 The global settlement is fair, reasonable, and adequate to all concerned. Plaintiff requests that this Court
7 approve the Settlement Agreement between the parties, which has also been served on the Labor and
8 Workforce Development Agency (LWDA).
9

10 **II. FACTUAL AND PROCEDURAL BACKGROUND**

11 Plaintiff and his co-workers were employed at a popular Santa Cruz restaurant known as Harbor
12 Café. Complaint 1:21-26. It is owned by and operated by Defendants CORWIN &
13 VOSKOBOYNIKOV MANAGEMENT, LLC and DANIEL VOSKOBOYNIKOV. *Id.* Plaintiff alleges
14 that he and his co-workers were not provided compliant meal and rest breaks. *Id.* at 1:26-2:7.
15

16 a. Procedural Background

17 Plaintiff complied with PAGA’s administrative exhaustion procedures by giving written notice
18 to Defendants and the LWDA of the alleged Labor Code and Wage Order violations and the facts and
19 theories supporting those violations on July 13, 2020. Complaint 5:23-26. Plaintiff filed this Action on
20 October 19, 2020, which is sixty-five (65) days after the initial notice was given to Defendants and the
21 LWDA. *Id.* at 1:1-3. The LWDA never responded. Tran Decl. at ¶ 2. An answer was filed on January 6,
22 2021. *Id.*
23

24 In Plaintiff’s Complaint, Plaintiff alleges that he was “never provided an unpaid 30-minute meal
25 period” nor was he ever “provided a paid 10-minute rest break every four hours or major fraction
26 thereof.” Complaint 5:11-17. Plaintiff further alleged that Defendants “had no break policy or
27 schedule.” *Id.* at 5:16-17. He sought damages for non-compliant meal and rest breaks, as well as
28

1 derivative penalties for non-compliant wage stubs and waiting time penalties. *Id.* at 6:1-9:12. Plaintiff
2 also sought restitution for his allegations of non-compliant meal and rest breaks under the Unfair Trade
3 Practices Act and statutory penalties for these break violations of Defendants' employees under the
4 Private Attorney General Act. *Id.* at 9:13-12:13.

5
6 Discussions between the parties pivoted to resolution in short order. The parties began
7 discussing mediators and agreed to the Honorable Justice James Lambden. Tran Decl. at ¶ 4. To
8 facilitate these discussions and an informal exchange of documents, the parties also agreed to a
9 stipulated protective order, which was granted on May 17, 2021. *Id.* Defendants produced time records
10 for forty-seven (47) current and former employees on May 21, 2021¹. *Id.* From these records, Plaintiff
11 conducted an analysis that showed over \$2.2 million in liabilities, 91% of which was from PAGA
12 penalties, 9% from break premiums. *Id.* at ¶ 5.

13
14 No formal discovery was conducted in this matter. Tran Decl. at ¶ 6. Time records produced by
15 Defendants did not show any recorded meal breaks for employees. *Id.* None of Defendants' voluntary
16 production had information establishing any violation of their rest break obligations, but all parties
17 contend that they have evidence and support for their respective positions on Defendants' liability for
18 rest break violations. *Id.*

19 Plaintiff has served the LWDA with a copy of this Motion. Tran Decl. at ¶ 11.

20
21 b. Settlement Negotiations

22 Mediation was originally scheduled on June 29, but ultimately held on July 12. Tran Decl. at ¶ 7.
23 At mediation, Plaintiff acknowledged that Defendants contested liability, that they were represented by
24 talented Counsel who was prepared to represent them zealously, and that Harbor Café is a small

25
26
27 ¹ Time records for one additional worker was produced on September 28 when it was discovered that
28 they were not part of the original production. Tran Decl. at ¶ 4. In total, Defendants produced time and
pay records for forty-eight (48) aggrieved employees who worked at Harbor Café between July 13, 2019
through December 31, 2020, including plaintiff.

1 restaurant that is unlikely to be able to pay over \$2 million in liabilities. *Id.* at ¶ 8. The parties agreed to
2 a global settlement of Plaintiff's individual claims and the claims for statutory penalties under PAGA.
3 *Id.* The parties agreed to [REDACTED], of which \$70,000 will
4 be paid Plaintiff's counsel for fees and costs, a third-party administrator, the LWDA and aggrieved
5 employees to settle the PAGA claims, and executed a memorandum of understanding that laid out
6 additional terms that the parties accepted that same day. *Id.* The MOU was executed with the
7 understanding that the parties would resolve any additional matters in a final settlement agreement. *Id.*

8
9 The parties had key disagreements that still needed to be resolved about the scope of the release
10 included in the Settlement Agreement but entered into a final agreement on September 30, 2021. Tran
11 Decl. at ¶ 9. All parties believe that the settlement is fair and reasonable for Plaintiff, Defendants, and
12 PAGA Pool Members based on careful consideration of the strengths and weakness of this Action,
13 including the risks of delay, the defenses asserted by Defendants, and Defendants' ability to pay. *Id.*

14
15 c. Attorney's Fees and Costs

16 Plaintiff's Counsel bills according to the Laffey Matrix (www.laffeymatrix.com). Tomas
17 Margain has 24 years of experience, and as such bills at \$914 per hour. Huy Tran has 9 years of
18 experience, and as such bills at \$540 per hour. Alan Jimenez is their clerk and bills at \$125 per hour.
19 Prior to the filing of this Motion, Counsel and their staff committed the following hours in this matter:

20

Person	Rate	Hours	Total
Tomas Margain	\$914	24	\$21,936.00
Huy Tran	\$540	19.4	\$6696.00
Alan Jimenez	\$125	12	\$1500.00

21
22
23

24 In total, Plaintiff claims \$33,696 in fees before the filing of this Motion. Plaintiff has also
25 incurred \$461.96 in costs. Altogether, Plaintiff has incurred \$34,157.96 in fees and costs.

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III. SUMMARY OF THE TERMS OF THE SETTLEMENT

Under the Settlement Agreement, Defendants must pay a total of [REDACTED] (the “Gross Settlement Amount”) in a global settlement of this action. Tran Decl. at ¶ 9, Ex. 1, Settlement Agreement Section IV.A. The Settlement provides that, subject to Court approval, the following will be deducted from the Gross Settlement Amount: (1) [REDACTED], and (2) the PAGA settlement amount of seventy-thousand dollars (\$70,000). *Id.* From the PAGA settlement amount, the following will be deducted: (1) Plaintiff’s counsel’s reasonable attorney’s fees and costs at no more than twenty-eight thousand dollars (\$28,000), and (2) third-party administrator costs at no more than twenty-five hundred dollars (\$2,500). *Id.* at IV.C. Of the remaining amount, twenty-five percent (25%) would be distributed to Defendants’ aggrieved employees who are included in this Agreement on a pro rata basis, and seventy-five percent (75%) would be paid to the LWDA. *Id.*

Plaintiff does seek the full allowable amount for attorney’s fees and costs. Assuming that the full amount set aside for attorney’s fees and costs and the third-party administrator is allocated, the amount to be distributed to PAGA Pool Members is 6% of PAGA settlement amount, and only represents the statutory penalties recoverable under PAGA. None of the PAGA Pool Members, aside from Plaintiff, release any of their individual claims. Tran Decl. at ¶ 9, Ex. 1, Settlement Agreement Section V.A.

IV. STANDARD OF REVIEW

Judicial review of the Settlement is required due to the representative claim brought under California’s PAGA. See Cal. Labor Code § 2699 (1)(2). The PAGA statute does not provide a precise standard for settlement approval and case law has not extensively discussed the standard. Importantly, the California Supreme Court considered whether an aggrieved employee who brings a PAGA representative action needed to meet class certification requirements. *Arias v. Superior Court* (2009) 46

1 Cal. 4th 969. Inherent in this is the fact that PAGA settlements are not subject the same standard of
2 review imposed on class action settlements. Even so, the statute and relevant case law offer guidance for
3 reviewing and assessing the fairness and reasonableness of the PAGA settlement presented here for
4 approval.

5 Per statute, the LWDA is afforded an opportunity to review a proposed PAGA settlement and
6 may submit objections. See, e.g., Cal. Lab. Code § 2699. Plaintiff has complied with that provision by
7 contemporaneously serving a copy of the Settlement Agreement to the LWDA.
8

9 The California Supreme Court has opined on how the PAGA is distinct from a class action. The
10 PAGA “authorizes an employee to bring an action for civil penalties on behalf of the state against his or
11 her employer for Labor Code violations committed against the employee and fellow employees....”
12 *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal. 4th 348, 360. “An action brought
13 under the PAGA is a type of qui tam action.” *Id.* at 382. The Ninth Circuit explained in *Sakkab v.*
14 *Luxottica Retail N. Am. Inc.*, 803 F.3d 425, 429 (9th Cir. 2015), “[t]he class action is a procedural device
15 for resolving the claims of absent parties on a representative basis. ...By contrast, a PAGA action is a
16 statutory action in which the penalties available are measured by the number of Labor Code violations
17 committed by the employer. An employee bringing a PAGA action does so ‘as the proxy or agent of the
18 state’s labor law enforcement agencies.” *Sakkab, supra*, 803 F.3d at 435 (internal citations omitted). The
19 purpose in enacting PAGA was to boost compliance with the state labor code by adding civil penalties
20 for particular violations and deputizing individual workers to file a private claim for civil penalties
21 where a “shortage of government resources” might otherwise undercut enforcement. *Id.* at 429-30
22 (citing *Iskanian*, 59 Cal. 4th at 378-79).

23 Distinguished from class actions, PAGA claims are intended to serve a decidedly different
24 purpose—namely to protect the public rather than for the benefit of private parties. See *Arias v. Superior*
25 *Court* (2009) 46 Cal.4th 969, 986 (2009); *Gonzalez v. Millard Mall Servs.*, 281 F.R.D. 455, 469 (S.D.
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1 Cal. 2012).) Furthermore, unlike with a class action, a PAGA action is different because a judgment or
2 dismissal with prejudice in a PAGA action is not binding on non-party employees with respect to their
3 individual remedies separate from civil penalties. *Arias, supra*, 46 Cal. 4th at 987 (“If the employer had
4 prevailed, however, the nonparty employees, because they were not given notice of the action or
5 afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than
6 civil penalties.”) As a result, it is the State that is bound in PAGA litigation because the private plaintiff
7 acts for the State of California, not as a representative of other employees.
8

9 It is important that relief provided for under a PAGA action be genuine, meaningful, and
10 consistent with the underlying purpose of the statute to benefit the public. See *O’Connor v. Uber*
11 *Technologies*, 201 F. Supp. 3d. 1110, 1134 (N.D. Cal. 2016). “By creating a cause of action under which
12 private plaintiffs may recover civil penalties otherwise recoverable by the state, PAGA benefits the
13 public by augmenting the state’s enforcement capabilities, encouraging compliance with Labor Code
14 provisions, and deterring noncompliance.” *Id.* at 1132-33.
15

16 While it is clear that FRCP 23 or CCP § 382 have no application to a PAGA claim, it may be
17 appropriate to consider whether the factors pertinent in *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026
18 (9th Cir. 1998) “or any other coherent analysis” justified the proposed settlement of a PAGA claim.
19 *O’Connor, supra*, 201 F. Supp. 3d. at 1134-35. *Hanlon* calls for the consideration of the following:
20 (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further
21 litigation; (3) the amount and terms offered in settlement; (4) the extent of discovery completed and the
22 stage of the proceedings; (5) the experience and views of counsel; and (6) the presence of a government
23 participant. *Hanlon, supra*, 150 F.3d at 1026. The interest served is that of the State of California and the
24 LWDA is the governmental entity which has standing to comment upon any settlement. See Cal. Lab.
25 Code § 2699(1). The relevant *Hanlon* factors provide an instructive framework for settlement review,
26 though the PAGA itself, at least with reference to health and safety violations, points to review that
27
28

1 “ensure[s] that the settlement provisions are at least as effective as the protections or remedies
2 provided...for the alleged violation.” See Cal. Lab. Code § 2699.3(b)(4).

3 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

4 The Settlement presented here is fair, reasonable, and adequate to those concerned, as it
5 provides for a recovery for Plaintiff’s release of his individual claims and for the PAGA Workforce and
6 the LWDA for the release of civil penalties pursuant to PAGA.

7
8 a. The Global Settlement is Fair and Reasonable Given the Strengths and Weaknesses of
9 Plaintiff’s Individual Claims and the PAGA Claim.

10 Based on careful consideration of the strengths and weakness of this Action, including the risks
11 of delay, the defenses asserted by Defendants, and Defendants’ ability to pay in light of our current
12 recovery from the COVID-19 pandemic, Plaintiff’s counsel firmly believes that this Settlement is fair
13 and reasonable for Plaintiff, the aggrieved employees, and the LWDA. Defendants produced time and
14 payroll documents for Plaintiff and forty-eight (48) aggrieved employees pursuant to the parties’
15 settlement negotiations. The timekeeping records produced in the informal exchange support Plaintiff’s
16 allegations that he and the aggrieved employees were not provided meal breaks, nor were break
17 premiums paid. As a result, the alleged derivative violations alleged in the action, including the PAGA
18 penalties, are also supported by the timekeeping and payroll documents produced. This said, there was
19 no documentation related to rest breaks, and Plaintiff’s claims for rest break violations would be
20 litigated on conflicting testimony about the availability of rest breaks. Furthermore, Defendants’
21 managers and employees contested Plaintiff’s claims that he did not have an opportunity to take meal
22 breaks required by law.

23 The parties agreed specifically that the PAGA claims would be resolved only for the statutory
24 penalties for each of aggrieved employees. Each worker retains their individual claims for breaks,
25 except for Plaintiff who enters into a global settlement to resolve the PAGA claims as well and his
26 individual claims.

27 This strength of Plaintiff’s claim is balanced by the fact that liability is contested, Defendants are
28 represented by talented counsel who are prepared to zealously litigate this case, and Harbor Café is a

1 small restaurant likely unable to pay out all of the liabilities that Plaintiff identified. In addition to the
2 risks presented by pursuing this matter to trial, there is also the likelihood that the non-prevailing party
3 would appeal any judgment rendered at trial, or whether Defendants could afford to pay the amount of
4 any judgment obtained at trial. The Settlement is also in the best interest of judicial efficiency in this
5 case, as it would eliminate a complex representative action, which also alleges individual claims, from
6 this Court's calendar. Therefore, based on the aforementioned reasons, the global Settlement presented
7 is fair and reasonable for Plaintiff, the PAGA Workforce and the LWDA.

8
9 b. The Settlement Allocation between Plaintiff and PAGA Pool Members/LWDA is Fair and Reasonable.

10 Allocating nearly seventy-eight percent (77.78%), or \$70,000, of the Gross Settlement Amount
11 to resolve the PAGA claim and [REDACTED], of the Gross Settlement Amount to
12 settle Plaintiff's individual causes of action is fair and reasonable for the following reasons. First, the
13 informal discovery produced by Defendants suggests clear meal break violations upon which the claim
14 for PAGA penalties is based. See Tran Decl. at ¶ 6. Second, unlike settlements of class actions that also
15 include a PAGA cause of action in which the LWDA is awarded a relatively small fraction net
16 settlement, here there are no class claims seeking recovery of workers' underlying labor code violations.
17 *Id.* Both of these factors weigh in favor of a robust slice of the Net Settlement going to settle the PAGA
18 claims and settlement proceeds distributed to the aggrieved employees and the LWDA. *Id.*

19
20 In addition, Plaintiff's estimated damages for non-compliant breaks and derivative penalties are
21 estimated at \$22,256.50. Tran Decl. at ¶ 7. This Settlement Allocation takes into account that Plaintiff is
22 resolving all of his individual claims while preserving those claims for each aggrieved worker should
23 they choose to pursue them. To the extent that the percentage of Plaintiff's recovery from Net
24 Settlement Amount is less than the value of Plaintiff's individual claims, this is acknowledgment that
25 there will be conflicting evidence related to his rest and meal break claims. *Id.* For these reasons, the
26 proposed allocation of the Gross Settlement Amount is fair and reasonable.
27
28

1 Lastly, the amount set aside for attorney's fees and costs is reasonable. PAGA authorizes the
2 recovery of attorney's fees. Labor Code § 2699(g). Plaintiff's Counsel incurred over \$34,000 in fees
3 and costs, but is reducing that amount to \$28,000 to resolve this matter.

4
5 c. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

6 The parties considered a number of risk factors in this action in determining what an acceptable
7 settlement would be after Defendants produced the core timekeeping and payroll documents during
8 settlement negotiations. Although Plaintiff's counsel believes it is unlikely, Plaintiff faces the potential
9 risk of an adverse ruling at trial and being bound by a decision that awards no penalties on the many
10 claimed violations, particularly should Plaintiff and/or Aggrieved Employees be found to have received
11 compliant rest breaks. Conversely, Defendants face substantial risk and liability once non-compliant
12 meal breaks are proven under PAGA. *Id.* Nonetheless, liability is contested by Defendants, Defendants
13 are represented by talented counsel who are prepared to zealously litigate this case, and there is no way
14 to determine what would transpire at and after trial. *Id.* The Settlement resolves this uncertainty and
15 provides recovery at this moment for Plaintiff, the Aggrieved Employees and the LWDA.

16
17 d. The Amount and Terms Offered in the Settlement.

18 The Settlement presents a fair recovery for Plaintiff, the PAGA Workforce, and the LWDA. The
19 Gross Settlement Amount is [REDACTED]. Tran Decl, Ex. 1, Settlement Agreement
20 Section IV.A. Plaintiff will receive [REDACTED] to release all of his individual
21 claims, leaving seventy-thousand dollars (\$70,000) as the Gross PAGA Settlement Amount. *Id.*

22
23 Twenty-eight thousand dollars (\$28,000) of the Gross PAGA Settlement Amount is allotted to
24 cover all attorneys' fees and costs. Tran Decl, Ex. 1, Settlement Agreement Section IV.A.

25 After fees and costs are deducted from the Gross Settlement Amount, the Net Settlement
26 Amount is forty-two thousand dollars (\$42,000). Tran Decl, Ex. 1, Settlement Agreement Section IV.C.
27 From that, no more than twenty-five hundred dollars (\$2500) will be paid to a third-party administrator.
28

Seventy-five percent (75%) of the remaining amount will be paid to the LWDA, and twenty-five percent (25%) will be paid to PAGA Pool Members. *Id.* The PAGA settlement is only for statutory penalties under PAGA, and has no impact on each aggrieved worker's underlying claims. *Id.* at § 5.A. Assuming that the full amount allotted for administrative costs is spent, this means that twenty-nine-thousand six-hundred and twenty-five dollars (\$29,625) will be paid to the LWDA and nine-thousand eight-hundred and seventy-five dollars (\$9,875) will be paid to the PAGA Pool Members on a *pro-rata* basis based on the relative number of shifts worked by members of the PAGA Workforce during the PAGA Period (July 13, 2019 through the date upon which the Court approved of this proposed PAGA settlement). *Id.* at § 4.C. In exchange for the payment described in the above paragraph, the PAGA claims for civil penalties arising from any of the alleged predicate Labor Code violations outlined in the operative complaint are released. *Id.* at § 5.A. The following chart lays out this breakdown.

Disbursement	Amount
To Plaintiff	
To Plaintiff's Counsel	\$28,000
To Admin	\$2,500 (no more than)
To LWDA	\$29,625 (min)
To PAGA Pool Members	\$9,875 (min)
TOTAL	

e. The Extent of Discovery Completed and Stage of the Proceedings.

No formal discovery was conducted in this matter because the parties agreed to an informal exchange of records. Defendants' produced time and pay records for their PAGA Pool Members, which provided strong support for Plaintiff's allegation that he and the other PAGA Pool Members were not provided meal breaks. However, nothing in Defendants' production showed violations of their rest break obligations, meaning that the case over rest breaks was likely to come down to conflicting testimony about whether Defendants complied with the rest break obligations.

1 The parties focused on resolution, and thus have been able to get this matter resolved before
2 further costs were incurred through discovery and motion practice.

3 f. The Presence of a Government Participant.

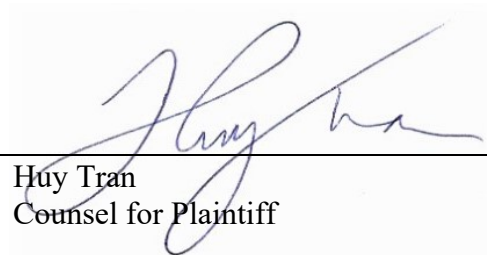
4 In this case there is no active governmental participant. Plaintiff notified the State of California,
5 through the LWDA, of his allegations, before the filing his claim for enforcement of the PAGA. The
6 LWDA has taken no action against the Defendant. Plaintiff's counsel has also submitted a copy of the
7 parties' settlement agreement to the LWDA and has not received any objection from the LWDA as of
8 the date of this filing.
9

10 **VI. CONCLUSION**

11 For the aforementioned reasons, Plaintiff requests that this Court approve the Settlement
12 Agreement and payment of \$70,000 from Defendants representing a settlement of the PAGA claims and
13 PAGA penalties for PAGA Pool Members.
14

15
16 Date: December 29, 2021

By: _____

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Huy Tran
Counsel for Plaintiff
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