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Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

TARA BEANE, on behalf of the State of
California and all other aggrieved employees;

Plaintiff,

vs.

PIZZA NOVA – HARBOR DRIVE, INC., a
California corporation; PIZZA NOVA SAN
MARCOS, LLC, a California limited liability
company; PIZZA NOVA SOLANA BEACH,
LLC, a California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2020-00038347-CU-OE-CTL

*Assigned to the Hon. Timothy B. Taylor, Dept.
C-72*

**Notice of Order Approving PAGA
Settlement under Labor Code §
2699(l)(2) and Entering Judgment;
Proof of Service**

Case Filed: Oct. 22, 2020

1 TO THE COURT, THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT
2 AGENCY (LWDA), ALL PARTIES, AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE
3 NOTICE THAT:

4 1. On June 23, 2021, Plaintiff Tara Beane, through counsel of record, filed a Joint
5 Stipulation Requesting Approval of PAGA Settlement; [Proposed] Order Approving PAGA
6 Settlement under Labor Code § 2699(l)(2) and Entering Judgment in this action entitled *Tara Beane*
7 *v. Pizza Nova – Harbor Drive, Inc. et al.*

8 2. On June 24, 2021, the Honorable Timothy B. Taylor signed the proposed order, which
9 became the Order of the Court. The Court entered final judgment according to its terms.

10 3. A true and correct copy of the **Joint Stipulation Requesting Approval of PAGA**
11 **Settlement; [~~Proposed~~] Order Approving PAGA Settlement under Labor Code § 2699(l)(2) and**
12 **Entering Judgment** is attached hereto as **Exhibit 1**.

13
14 Respectfully submitted,

15
16 Dated: July 2, 2021

Ferraro Vega Employment Lawyers, Inc.

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19 Nicholas J. Ferraro
20 Lauren N. Vega
21 Attorneys for Plaintiff Tara Beane
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Exhibit 1

Nicholas J. Ferraro (State Bar No. 306528)
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Attorneys for Defendants

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

TARA BEANE, on behalf of the State of
California and all other aggrieved
employees;

Plaintiff,

vs.

PIZZA NOVA – HARBOR DRIVE, INC.,
a California corporation; PIZZA NOVA
SAN MARCOS, LLC, a California limited
liability company; PIZZA NOVA
SOLANA BEACH, LLC, a California
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
06/23/2021 at 05:35:00 PM
Clerk of the Superior Court
By Melissa Reyes, Deputy Clerk

Case No. 37-2020-00038347-CU-OE-CTL

Assigned to the Hon. Timothy B. Taylor, Dept. C-72

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

Case Filed: Oct. 22, 2020
CMC: Aug. 13, 2021 at 9:45 a.m.
Trial Date: Not Set

1 **I. INTRODUCTION**

2 Plaintiff Tara Beane (“Plaintiff”) and Defendants Pizza Nova – Harbor Drive, Inc., Pizza
3 Nova San Marcos, LLC, and Pizza Nova Solana Beach, LLC (“Defendants”) (collectively, the
4 “Parties”) have reached a settlement of Plaintiff’s claims brought under the Private Attorneys
5 General Act. At the June 4, 2021 Case Management Conference, the Parties advised the Court of
6 this settlement. The Court stated that it may consider a stipulation for approval of the PAGA
7 settlement, and if approved, the CMC now set for August 13, 2021 would be vacated.

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

10 **II. BACKGROUND**

11 Plaintiff was employed by Defendants as a server at Pizza Nova’s Harbor Drive location in
12 San Diego from October 27, 2015 to July 15, 2020. She alleges that she is an aggrieved employee
13 who experienced violations of California employment law along with other current and former non-
14 exempt employees of Defendants.

15 **A. Case Background**

16 On August 18, 2020, Plaintiff submitted a notice to the Labor and Workforce Development
17 Agency (“LWDA”) asserting her claims for civil penalties under the PAGA on behalf of herself and
18 the aggrieved employees. (Declaration of Nicholas J. Ferraro (“Ferraro Decl.”), ¶ 5.) On
19 October 22, 2020, Plaintiff filed a PAGA representative action in San Diego Superior Court. (ROA
20 #1.) In her Complaint, Plaintiff requested civil penalties under California Labor Code section 2699
21 *et seq.* based on the following claims: (1) Failure to Pay All Regular and Minimum Wages,
22 (2) Failure to Pay All Overtime, (3) Meal Period Violations, (4) Rest Period Violations,
23 (5) Unlawful Tip Pooling, (6) Paid Sick Leave Violations, (7) Failure to Pay Split Shift Premiums,
24 (8) Failure to Pay Reporting Time Pay, (9) Unlawful Deductions From Wages, (10) Untimely Wage
25 Payment, (11) Wage Statement Violations, (12) Failure to Timely Pay All Wages Owed Upon
26 Separation of Employment, (13) Failure to Reimburse Business Expenses, and (14) Recordkeeping
27 Violations. (*See Complaint.*)

1 Throughout the litigation, Plaintiff obtained the applicable written employment policies and
2 handbooks governing the terms and conditions of employment for the alleged “aggrieved
3 employees,” who are defined in the operative complaint as:

4 [All] current and former non-exempt employees of Defendants who
5 work or worked within the State of California within the one-year
6 period prior to the date on which Plaintiff first provided written
7 notice to the [LWDA] and Defendants

8 (Complaint, ¶ 38.) Additionally, Plaintiff obtained a sampling of wage statements and time records,
9 compensation records and data, payroll information, an anonymized employee list based on date of
10 hire, job titles, location, and other information, along with schedules, emails, text messages and
11 other communications and documents obtained by Plaintiff through independent investigation of
12 the claims. (Ferraro Decl., ¶ 16.)

13 On April 15, 2020, the Parties attended mediation with employment law mediator Todd
14 Smith. With the assistance of Mr. Smith, the Parties reached a settlement. At the mediation, the
15 Parties entered into a Memorandum of Agreement. The Parties then negotiated the remaining terms
16 of the long-form settlement agreement. On June 10, 2021, the Parties fully executed the Settlement
17 Agreement of Private Attorneys General Act Claims (“Settlement Agreement”). A full copy of the
18 Settlement Agreement is attached to the accompanying Declaration of Nicholas J. Ferraro as
19 **Exhibit 1**. (Ferraro Decl., ¶ 3.)

20 **C. Settlement Terms**

21 The settlement covers 247 aggrieved employees who worked for Defendants from
22 August 18, 2019 through January 31, 2021. (Ferraro Decl., ¶ 19.) The Parties agreed to settle the
23 underlying PAGA claims in exchange for a non-reversionary Gross Settlement Amount of
24 **\$152,500**, allocated as follows:

25	Gross Settlement Amount:	\$152,500
26	Plaintiff’s Counsel Fees (minus):	(\$50,833.33)
27	Plaintiff’s Counsel Actual Costs (minus):	(\$7,616.70)
28	Third Party Administration Costs (minus)	(\$5,000)

Individual Enhancement to Named Plaintiff (\$5,000)

Remaining PAGA Payment \$84,049.97

To LWDA (75 percent) \$63,037.48

To Aggrieved Employees (25 percent) \$21,012.49

(Ferraro Decl., ¶ 20.) Each aggrieved employee will receive a portion of the PAGA Payment payable to the aggrieved employees on a pro-rata basis based on workweeks worked during the PAGA Period. (Settlement Agreement (“S.A.”), Sec. III.(3)(a)(1).) All employee who receive a payment will release the “PAGA Released Claims” against Defendants, defined as follows:

any and all claims, causes of action, damages, expenses, benefits, interest, penalties, attorneys’ fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature that were asserted or could have been asserted with respect to the facts and claims asserted in Plaintiff’s LWDA Notice and Plaintiff’s Complaint, pursuant to PAGA for civil penalties for alleged violation of any provision of the California Labor Code. (S.A., Sec. I.12.)

Within 10 calendar days of the Court approving the Settlement Agreement, Defendants will deposit the Gross Settlement Amount with the Settlement Administrator along with the addresses and contact information for the aggrieved employees. Within 20 calendar days, the Settlement Administrator will issue a check to the aggrieved employees along with the cover letter attached as Exhibit A (in English and Spanish) to the Settlement Agreement. (S.A., Sec. IV.4.)

C. Notice to LWDA

On June 23, 2021, Plaintiff submitted the proposed settlement of this PAGA action to the LWDA electronically via the LWDA’s online filing system. (Ferraro Decl. ¶ 7.)

III. LEGAL STANDARD

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

PAGA settlements require judicial review and approval. (Labor Code § 2699(1)(2).) The criteria for review and approval is not well-developed. But when a PAGA claim is settled, the relief provided for must be genuine and meaningful, consistent with the purpose of the statute to

benefit the public. (*See Haralson v. U.S. Aviation Services Corp.* (N.D. Cal. 2019) 383 F. Supp.3d 959, 971-972.)

Civil penalties sought under the PAGA are “inherently regulatory, not remedial, and are intended to secure obedience to statutes and regulations validly adopted under the police power” of the state. *Home Depot U.S.A, Inc. v. Superior Court* (2010) 191 Cal.App.4th 210, 225. Here, as an initial matter, Plaintiff’s counsel’s review of the records at issues in the data and sampling reveal that Defendants appear to have corrected the practices alleged as deficient in the Complaint. (Ferraro Decl. ¶ 19.) This settlement has thus met the fundamental aim of the legislation, to enforce compliance with California’s state wage and labor laws.

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

These factors support approval of the settlement. First, plaintiff had a strong case on many discrete issues, but the prevalence of those violations for the aggrieved employees working at different times in different restaurant locations was not as common as it appeared on the named Plaintiff’s records. For example, issues concerning reporting time pay, overtime based on a 24-hour period, and split shifts primarily affected the named Plaintiff alone and not other aggrieved employees. This was due to Plaintiff’s long-term employment with Defendants. Therefore, while Plaintiff believes she have been able to prove some violations, subject to manageability challenges from Defendants, those violations were not as widespread for purposes of civil penalty liability. Second, while the litigation could have proceeded with the aforementioned risks, the largest element of damages would have likely been for statutory attorneys’ fees as the prevailing party; therefore, the remedial and enforcement mechanisms of the PAGA are better served through this

1 settlement than through additional litigation during a time of great challenges to the Court (given
2 the unavailability of trial days) and to Defendants, given the challenges presented in the restaurant
3 industry by COVID-19. Additional litigation would have been costly to Defendants and likely
4 reduced the amount of assets available to pay any future settlement or judgment. Third, the amount
5 offered in settlement is significant for a small business and accounts for civil penalties to the
6 LWDA and the aggrieved employees. Fourth, the settlement was only after Plaintiff's counsel
7 obtained all of the policies and data necessary to conduct a liability exposure analysis. The
8 settlement was negotiated at arms-length through an experienced mediator and by counsel on both
9 sides experienced in PAGA and wage and hour litigation. Fifth, Plaintiff's counsel focuses entirely
10 on labor and employment litigation, with a particular emphasis on wage and hour litigation and
11 PAGA cases. Plaintiff's counsel recommends the settlement as fair and reasonable. There are no
12 objections or intervenors and no related cases. Sixth, the LWDA was duly notified upon filing of
13 the PAGA notice in this case, and has not intervened nor stated intent to do so. The absence of
14 LWDA intervention, as a governmental party, supports approval of the settlement.

15 The settlement reached also takes into account the ten months of time when employees were
16 not working due to the Covid-19 pandemic (*i.e.*, no PAGA penalties accruing). From
17 March 17, 2020 to May 23, 2020, all of Defendants' employees were furloughed and from
18 May 23, 2020 through January 2021, Defendants furloughed between 50% to 80% of their
19 employees at various points. Even if Plaintiff established liability for each of her claims,
20 Defendants would request that the Court exercise its discretion to substantially reduce PAGA
21 penalties on the basis that awarding the full default penalty would be unjust, arbitrary, oppressive,
22 or confiscatory. Courts routinely reduce PAGA penalties as permitted by California Labor Code
23 section 2699(f)(2). *See Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 517 (approving
24 trial court's reduction of PAGA penalties by 90%). Collectively, the factors support approval of
25 this PAGA-only settlement.

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

27 The settlement proposed for approval provides for \$50,833.33 in attorneys' fees and up to
28 \$15,000 in litigation costs, though Plaintiff seeks only \$7,616.70 in hard costs incurred. (S.A., Sec.

1 III.3.) The attorneys’ fees represent one-third of the Gross Settlement Amount. The purpose of the
2 percentage method is to avoid unjust enrichment by spreading the litigation costs proportionally
3 among all the beneficiaries. (*See, e.g., Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19,
4 47.) This approach incentivizes lawyers to undertake risks of time and resources to vindicate the
5 public interest and protect the policies underlying the wage laws. In the case of a common fund—
6 like the one in this case where there is no reversion or claims process—the percentage method is the
7 preferred method:

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

14 (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal. 5th 480, 503 (citations omitted).)
15 “[R]egardless whether the percentage method or the lodestar method is used, fee awards in class
16 actions average around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th
17 43, 66, n. 11.)

18 According to the Declaration of Nicholas J. Ferraro, Plaintiff’s counsel expended in excess
19 of 147.5 hours through mediation, not including additional hours worked for settlement, approval,
20 or other post-settlement tasks. Plaintiff’s counsel has been approved at a rate of \$475 on settlement
21 approvals in San Diego Superior Court and others, which demonstrates reasonableness for purposes
22 of a lodestar cross-check. Plaintiff’s request for costs reveal ordinary litigation costs that may be
23 reimbursed upon settlement of this PAGA action.¹

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26 ///

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 **IV. STIPULATIONS**

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

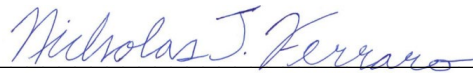
5 The Parties further stipulate and agree that Phoenix Settlement Administration will serve as
6 the Settlement Administrator in this case.

7 The Parties finally stipulate and agree that any amounts from checks issued in connection
8 with this settlement that remain unclaimed and/or uncashed after 180 days of issuance will be
9 disbursed to the California State Controller's Office's Unclaimed Property Division.

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

12
13 Dated: June 23, 2021

Ferraro Vega Employment Lawyers, Inc.

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Nicholas J. Ferraro

16 Lauren N. Vega

17 Attorneys for Plaintiff Tara Beane

18 Dated: June 23, 2021

Law Offices of Annie M. Ellis, A.P.C.

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22 Annie M. Ellis

23 Attorney for Defendants
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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 Settlement Agreement of Private Attorneys General Act Claims.

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

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

- 10 a. \$63,037.48 to the LWDA for PAGA penalties
11 b. \$21,012.49 to the aggrieved employees
12 c. \$5,000 to Plaintiff as an enhancement payment
13 d. \$50,833.33 to Plaintiff's counsel for attorneys' fees
14 e. \$7,616.70 to Plaintiff's counsel for costs
15 f. \$5,000 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 ~~t~~. (Code Civ. Proc.,
20 § 668.5.) Plaintiff shall take from her complaint only the relief set forth in the settlement agreement
21 and this order and judgment. The Court retains jurisdiction over the parties to enforce the terms of
22 the settlement agreement and the final order and judgment. The CMC set for 8-13-21 is ordered off
23 calendar.

24 **IT IS SO ORDERED.**

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26 Dated: **6-24-21** _____

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HONORABLE TIMOTHY B. TAYLOR
SUPERIOR COURT JUDGE

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On **July 2, 2021**, I served true copies of the following document(s) on the interested parties listed in the attached Service List as follows:

☒ **BY ELECTRONIC SERVICE**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Nicholas J. Ferraro

 NICHOLAS J. FERRARO, ESQ.
 Attorney for Plaintiff

Annie Ellis, Esq. LAW OFFICE OF ANNIE M ELLIS APC 550 B Street Suite 400 San Diego CA 92101 annie.ellis@annieellislaw.com	Attorney for Defendants PIZZA NOVA HARBOR DRIVE INC PIZZA NOVA SAN MARCOS LLC PIZZA NOVA SOLANA BEACH LLC
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