

**JCL LAW FIRM, APC**

Jean-Claude Lapuyade (State Bar #248676)  
Eduardo Garcia (State Bar #290572)  
Sydney S. Castillo-Johnson (State Bar #343881)  
5440 Morehouse Drive, Suite 3500  
San Diego, CA 92121  
Telephone: (619)599-8292  
Facsimile: (619) 599-8291  
[jlapuyade@jcl-lawfirm.com](mailto:jlapuyade@jcl-lawfirm.com)  
[egarcia@jcl-lawfirm.com](mailto:egarcia@jcl-lawfirm.com)  
[scastillo@jcl-lawfirm.com](mailto:scastillo@jcl-lawfirm.com)

**ZAKAY LAW GROUP, APLC**

Shani O. Zakay (State Bar #277924)  
Jackland K. Hom (State Bar #327243)  
Julieann Alvarado (State Bar #334727)  
5440 Morehouse Drive, Suite 3500  
San Diego, CA 92121  
Telephone: (619)255-9047  
Facsimile: (858) 404-9203  
[shani@zakaylaw.com](mailto:shani@zakaylaw.com)  
[jackland@zakaylaw.com](mailto:jackland@zakaylaw.com)  
[julieann@zakaylaw.com](mailto:julieann@zakaylaw.com)

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

QUAID DANIELS on behalf of himself and  
on behalf of all persons similarly situated,

Plaintiffs,

vs.

AVMC, LLC dba TOYOTA OF  
LANCASTER, a California limited liability  
company; and Does 1-50, Inclusive,

Defendants.

Case No. 21STCV07885

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

Date: August 16, 2022  
Time: 9:00 a.m.  
Reservation No.: 645614952695

Dept.: 39  
Judge: Hon. Stephen I. Goorvitch

**TABLE OF CONTENTS**

|      |                                                                              |    |
|------|------------------------------------------------------------------------------|----|
| I.   | INTRODUCTION                                                                 | 1  |
| II.  | RELEVANT FACTS                                                               | 1  |
| III. | TERMS OF THE PAGA SETTLEMENT                                                 | 3  |
| IV.  | THE PARTIES HAVE SETTLED THE PAGA CLAIMS                                     | 5  |
| V.   | THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIMS | 5  |
| VI.  | THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE                        | 10 |
| VII. | CONCLUSION                                                                   | 12 |

TABLE OF AUTHORITIES  
CASES

|    |                                                                            |         |
|----|----------------------------------------------------------------------------|---------|
| 1  |                                                                            |         |
| 2  |                                                                            |         |
| 3  | <i>Boyd v. Bank of America</i>                                             |         |
| 4  | 2014 WL 6473804, at *11 (C.D. Cal. 2014).....                              | 11      |
| 5  | <i>Brinker v. Super. Ct.</i>                                               |         |
| 6  | 53 Cal.4th 1004 (2012).....                                                | 8       |
| 7  | <i>Cardenas v. McLane Foodservice, Inc.</i>                                |         |
| 8  | 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011).....                     | 8       |
| 9  | <i>Carrington v. Starbucks Corp.</i>                                       |         |
| 10 | 30 Cal. App. 5th 504 (2018).....                                           | 6-7     |
| 11 | <i>Dunk v. Ford Motor Co.</i>                                              |         |
| 12 | (1996) 48 Cal.App.4th 1794, 1800-01.....                                   | 6       |
| 13 | <i>Fleming v. Covidien</i>                                                 |         |
| 14 | 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....                         | 7       |
| 15 | <i>Hopkins v. Stryker Sales Corp.</i>                                      |         |
| 16 | No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013).....   | 11      |
| 17 | <i>Iskanian v. CLS Transportation</i>                                      |         |
| 18 | 59 Cal. 4th 348, 381 (2014).....                                           | 1       |
| 19 | <i>Ketchum v. Moses</i>                                                    |         |
| 20 | 24 Cal.4th 1122, 1132 (2001).....                                          | 11      |
| 21 | <i>Kim v. Reins Int'l California, Inc.</i>                                 |         |
| 22 | (2020) 9 Cal.5th 73, 88.....                                               | 5       |
| 23 | <i>Laffitte v. Robert Half Int'l Inc.</i>                                  |         |
| 24 | 1 Cal.5th 480, 504 (2016).....                                             | 10-11   |
| 25 | <i>Makabi v. Gedalia</i>                                                   |         |
| 26 | 2016 Cal. App. Unpub. 1489, *5–7 (2nd Dist. Ct. of App. Mar. 6, 2016)..... | 7       |
| 27 | <i>Moniz v. Adecco USA, Inc.</i>                                           |         |
| 28 | (2021) 72 Cal.App.5th 56, 77.....                                          | 5-6     |
|    | <i>Pellegrino v. Robert Half Int'l, Inc.</i>                               |         |
|    | 182 Cal.App.4th 278 (2010).....                                            | 11      |
|    | <i>Stetson v. Grissom</i>                                                  |         |
|    | 821 F.3d 1157, 1166 (9th Cir. 2016).....                                   | 11      |
|    | <i>Taco Bell Wage &amp; Hour Actions</i>                                   |         |
|    | 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016).....          | 7       |
|    | <i>Vandervort v. Balboa Capital Corp.</i>                                  |         |
|    | 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....                              | 11      |
|    | <i>Viking River Cruises, Inc. v. Moriana</i>                               |         |
|    | 142 S.Ct. 1906 (2022).....                                                 | 9-10    |
|    | <i>Williams v. Super. Ct.</i>                                              |         |
|    | (2017) 3 Cal.5th 531, 549.....                                             | 6       |
|    | <i>Wershba v. Apple Computer</i>                                           |         |
|    | 91 Cal.App.4th 224, 254 (2001).....                                        | 11      |
|    | <i>ZB, N.A. v. Superior Court</i>                                          |         |
|    | 8 Cal. 5th 175, 182 (2019).....                                            | 1, 3, 5 |

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Quaid Daniels (“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 AVMC, LLC dba Toyota of Lancaster (“Defendant”) (collectively, the “Parties”).  
6 In accordance with California Labor Code § 2699(l), Plaintiff now asks this Court to review and  
7 approve the settlement of Plaintiff’s PAGA claims.<sup>1</sup> The PAGA settlement is fair, reasonable, and  
8 adequate as to the Aggrieved Employees and satisfies all statutory criteria for approval. This is only  
9 a settlement of the PAGA claims for civil penalties and is not a class settlement and does not release  
10 the individual wage claims, if any, of the affected employees other than Plaintiff himself. Cal. Labor  
11 Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior*  
12 *Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

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

20 **II. RELEVANT FACTS**

21 Plaintiff provided services to Defendant and Defendant’s clients as a non-exempt employee in  
22 California during the PAGA Period. On December 18, 2020, Plaintiff Quaid Daniels on behalf of  
23 himself and on behalf of other “Aggrieved Employees” submitted a notice and draft complaint to the  
24 LWDA memorializing claims against Defendant for alleged violations of the California Labor Code,  
25 including claims for failure to provide compliant meal periods or compensation in lieu thereof in  
26 violation of Labor Code sections 226.7, and 512; failure to provide compliant rest periods or  
27

28 <sup>1</sup> 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 compensation in lieu thereof in violation of Labor Code sections 226.7, and 512; failure to pay all  
2 minimum, regular, and overtime wages; failure to maintain true and accurate records in violation of  
3 Labor Code sections 1174 and 1174.5; failure to provide accurate itemized wage statements in  
4 violation of Labor Code sections 226, 226.2, 1174, and 1175; claims for violations of Labor Code  
5 sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5,  
6 the applicable Industrial Welfare Commission Wage Order(s); and claims for civil penalties and other  
7 relief pursuant to Labor Code section 2699, and the sections preceding and following section 2699.  
8 (LWDA Case No. 815877-20.) On February 25, 2021, Plaintiff filed a Class Action lawsuit for the  
9 above-mentioned Labor Code violations. On May 5, 2021, Plaintiff filed the First Amended Complaint  
10 (“FAC”) against Defendant in the Superior Court of Los Angeles County, Case No. 21STCV07885,  
11 dismissing the class claims and alleging a single cause of action for violations of PAGA based on the  
12 above Labor Code violations. (Zakay Dec. at ¶ 4.)

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

22 Thereafter, on April 25, 2022, the Parties engaged in a full-day mediation with Mr. Krivis. At  
23 the conclusion of the full-day mediation, the Parties reached an agreement for settlement based on a  
24 Mediator’s proposal that was memorialized in the form of a Memorandum of Understanding. The  
25 settlement was negotiated in light of all known facts and circumstances and the uncertainty associated  
26 with litigation – including the risk of Plaintiff not being able to maintain representative claims and  
27 establishing manageability, the difficulty of proving Plaintiff’s claims in a manageable trial, the merits  
28 of Defendant’s potential defenses, and the significant delay and potential appellate issues inherent to

1 litigation – and was reached after extensive arm’s length negotiations, with the assistance of Mr.  
2 Krivis. (Zakay Dec. at ¶ 6.)

### 3 **III. TERMS OF THE PAGA SETTLEMENT**

4 The PAGA Settlement is subject to Court approval consistent with Labor Code § 2699(1)(2)  
5 (Settlement Agreement at III(J).) The Settlement Agreement negotiated by the Parties provides for a  
6 “Gross Settlement Amount” payment in the amount of \$230,000 to resolve the PAGA claims  
7 (hereinafter referred to as the “PAGA Settlement”). From this PAGA Settlement of \$230,000, there  
8 is a deduction of attorneys’ fees in the amount of \$76,666.66 (which is one-third of the PAGA  
9 Settlement), reimbursement of incurred costs in an amount not to exceed \$20,000, and Settlement  
10 Administration Costs, which will not exceed \$6,500. (Settlement Agreement at III(I)(7)-(8)).<sup>2</sup> After  
11 these deductions, the amount remaining is the “Net Settlement Amount,” which is estimated to be  
12 \$126,833.34. (Zakay Dec. at ¶ 7.)

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

17 The individual PAGA payment for each Aggrieved Employee shall be based on the number of  
18 pay periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total  
19 pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement Agreement at  
20 III(I)(1).) The PAGA Period is the time period of December 18, 2019 to April 25, 2022. (Settlement  
21 Agreement at I(O).) (Zakay Dec. at ¶ 9.)

22 At the time of mediation, Defendant estimated that there were 280 Aggrieved Employees who  
23 worked approximately 10,774 pay periods during the PAGA Period. (Settlement Agreement at  
24

---

25 <sup>2</sup> In the event the Court approves less than one-third of the PAGA Settlement amount in attorneys’  
26 fees or less than \$20,000 in attorneys’ expenses to Plaintiff’s Counsel, the unawarded difference will  
27 be added to the Net Settlement Amount and not to Plaintiff’s Counsel or Defendant (Settlement  
28 Agreement at III(I)(7).)

<sup>3</sup> “Aggrieved Employees” means all individuals who worked for Defendant as non-exempt employees  
in California during the PAGA Period. (Settlement Agreement at I(B).) The PAGA Period means the  
period between December 18, 2019 to April 25, 2022. (Settlement Agreement at I(O).)

1 III(A)(2).) (Zakay Dec. at ¶ 10.)

2 A. Release of Claims

3 Upon entry of Judgment and funding in full of the PAGA Settlement by Defendant, the  
4 Released Parties shall be entitled to a release from the State of California and Plaintiff as to the  
5 following claims: “Released PAGA Claims” means all PAGA claims alleged in the operative  
6 complaint and Plaintiff’s notice to the LWDA which occurred during the PAGA Period. (Settlement  
7 Agreement at I(V).) (Zakay Dec. at ¶ 11.)

8  
9 The Gross Settlement Amount shall be due by Defendant to the Settlement Administrator via  
10 wire transfer on the Funding Date. (Settlement Agreement at III(A)(3).) Defendant will provide the  
11 necessary information about the Aggrieved Employees to the Settlement Administrator (ILYM Group)  
12 no later than five (5) calendar days after the Effective Date. (Settlement Agreement at III(H).) The  
13 Settlement Administrator will mail the individual Aggrieved Employee payments by regular First-  
14 Class U.S. Mail to the Aggrieved Employees’ last known mailing address no later than fifteen (15)  
15 calendar days after the Funding Date. (Settlement Agreement at III(I)(4).) Checks will remain valid  
16 and negotiable for one hundred eighty (180) days. (Settlement Agreement at III(I)(5).) If an Aggrieved  
17 Employee does not cash his or her settlement check within ninety (90) days, the Settlement  
18 Administrator will send a letter to such persons, advising that the check will expire after the 180<sup>th</sup> day,  
19 and invite that Aggrieved Employee to request reissuance in the event the check was destroyed, lost,  
20 or misplaced. (*Id.*) In the event an Aggrieved Employee payment check has not been cashed within  
21 one hundred and eighty (180) days, all funds represented by such uncashed checks, plus any interest  
22 accrued thereon, shall be transmitted to the Controller of the State of California to be held pursuant to  
23 the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the names and corresponding  
24 amounts associated with each Aggrieved Employee whose check(s) are cancelled (*Id.*) The individual  
25 PAGA payments are 100% penalties and shall be reported using IRS tax form 1099. (Settlement  
26 Agreement III(I)(2).) (Zakay Dec. at ¶ 12.)

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

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

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

6 The claim before this Court is a representative claim under the PAGA on behalf of the State of  
7 California for civil penalties pursuant to the PAGA. The parties have agreed to settle the PAGA claims  
8 in their entirety after significant informal discovery, and an arm's length mediation. The settlement is  
9 intended to fully and finally resolve the Released Claims asserted by Plaintiff on behalf of the State of  
10 California. This is only a settlement of the PAGA claims for civil penalties and is not a class settlement  
11 and does not release the individual claims, if any, of the Aggrieved Employees. This settlement does  
12 not release any claim that is not a PAGA claim.<sup>4</sup> Attorneys' fees equal to one-third of the PAGA  
13 Settlement amount (\$76,666.66) and litigation expenses in an amount not to exceed \$20,000 will also  
14 be paid to Plaintiff's Counsel as part of the settlement in accordance with California Labor Code §  
15 2699(g)(1) as set forth in the Settlement Agreement.<sup>5</sup> Lastly, payment to the Settlement Administrator  
16 in an amount not to exceed \$6,500 to perform the administrative duties to distribute the settlement  
17 money shall also be paid. (Zakay Dec. at ¶ 14.)

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

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

---

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

28 <sup>5</sup> As set forth in the accompanying Zakay Dec., Plaintiff's Counsel incurred costs in the current  
amount of \$14,653.86 which is less than the cost allocation in the Settlement Agreement. (See Zakay  
Dec. at ¶ 29.)

1 Court has also observed that trial court approval ensures that any negotiated resolution is fair to those  
2 affected,” leading the Court in *Moniz* to determine that “adoption of a standard of review for  
3 settlements that prevents fraud, collusion or unfairness, and protects the interests of the public and the  
4 LWDA in the enforcement of state labor laws is warranted.” (*Moniz, supra*, 72 Cal.App.5th at 77;  
5 citing *Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 549; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th  
6 1794, 1800–01; internal citations omitted.) In other words, “[i]n review and approval of a proposed  
7 settlement under section 2699, subd. (1)(2), a trial court thus must scrutinize whether, in resolving the  
8 action, a PAGA plaintiff has adequately represented the state’s interests, and hence the public interest.”  
9 (*Moniz, supra*, 72 Cal.App.5th at 89.) The proposed settlement shall be submitted to the agency at the  
10 same time that it is submitted to the court.” (Labor Code § 2699(1)(2).) Consequently, the Parties  
11 respectfully ask the Court to review and approve the settlement of the PAGA claims and the PAGA  
12 Settlement amount to be paid as part of the proposed settlement.

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

14 Plaintiff and his counsel believe that the PAGA Settlement amount is fair and reasonable and  
15 therefore “shall” be reviewed and approved. Here, the PAGA Settlement amount of \$230,000 is  
16 significantly larger than amounts previously approved by Courts throughout California. (Zakay Dec.  
17 at ¶ 15.)

18 California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the  
19 maximum civil penalty if, based on the facts and circumstances, to do otherwise would result in an  
20 award that is “unjust, arbitrary and oppressive or confiscatory.” Before and during the mediation,  
21 Defendant argued, among other things, that it was unlikely that any Judge would award more than the  
22 actual amounts owed on the claims, let alone the full \$100 or \$200 per violation. In *Carrington v.*  
23 *Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial  
24 which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties  
25 awarded in this case could be significantly less than Plaintiff’s calculation, even had Plaintiff prevailed  
26 on the PAGA claim. Here, multiplying the number of violations identified, assumed, and extrapolated  
27 by Plaintiff (31,774 violations) by \$5 results in a total potential liability of **\$158,870**. Further,  
28 multiplying the number of pay periods (10,774) by \$5 results in a total potential liability of **\$53,870**.

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

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

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

| Labor Code Section                                  | Number of employees     | Statutory penalty | Number of pay periods / violations | Violation rate             | Total Penalties |
|-----------------------------------------------------|-------------------------|-------------------|------------------------------------|----------------------------|-----------------|
| 226.7, 1194, 1197 and 1197.1 (unpaid minimum wages) | 280 Aggrieved Employees | \$100             | 9,129                              | 84.7% of total pay periods | \$912,900       |
| 226.7 and 512 (unpaid meal break violations)        | 280 Aggrieved Employees | \$50              | 1,185                              | 11% of total pay periods   | \$59,250        |
| 226.2, 226.7 and 512 (rest break violations)        | 280 Aggrieved Employees | \$50              | 1,185                              | 11% of total pay periods   | \$59,250        |
| 226 (wage statement violations)                     | 280 Aggrieved Employees | \$100             | 10,774                             | 100% of total pay periods  | \$1,077,400     |
| 2802 (unreimbursed business expenses)               | 280 Aggrieved Employees | \$100             | 5,387                              | 50% of total pay periods   | \$538,700       |

Thus, at the time of mediation, Plaintiff’s Counsel estimated Defendant’s maximum liability exposure at \$2,647,500. Consequently, the PAGA Settlement amount of \$230,000 is 8.69% of Defendant’s maximum liability exposure – before any reduction. (Zakay Dec. at ¶ 17.)

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

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

27 Accordingly, Defendant disputes and denies Plaintiff’s allegations and claims asserted in the  
28 operative complaint which are resolved by the Settlement Agreement. Defendant asserted additional

1 defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties.  
2 Defendant could argue that no penalties prior to the PAGA notification should be awarded because  
3 the violations were not intentional, and at least one court has so ruled. These defenses present a risk  
4 to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be  
5 awarded. (Zakay Dec. at ¶ 20.)

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

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

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

23 Notably, in the recent decision in *Viking River Cruises, Inc. v. Moriana*, 142 S.Ct. 1906 (2022),  
24 the United States Supreme Court held that the Federal Arbitration Act requires enforcement of a  
25 bilateral arbitration agreement providing that an employee cannot raise representative claims,  
26 including under PAGA. Given the Supreme Court's decision, this action could be dismissed  
27 altogether. The proposed PAGA Settlement allows Plaintiff to resolve the claims on his behalf, on  
28

1 behalf of the Aggrieved Employees, and on behalf of the State of California before *Viking River*  
2 *Cruises* rids them of the opportunity to receive a settlement at all. (Zakay Dec. at ¶ 24.)

3 Finally, Plaintiff's diligent and efficient litigation of this action resulted in the creation of an  
4 ascertainable common fund of \$230,000 that will substantially benefit the State of California and the  
5 Aggrieved Employees. (Zakay Dec. at ¶ 25.)

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

7 Although PAGA requires that a court approve the proposed PAGA Settlement, Labor Code §  
8 2699(1) does not require that a court approve any other elements of the proposed settlement. Because  
9 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to  
10 class settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs  
11 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained  
12 herein, the settlement terms for attorneys' fees and costs are reasonable.

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

14 Plaintiff's Counsel seeks approval of attorneys' fees from the PAGA Settlement in the amount  
15 of \$76,666.66, representing one-third of the \$230,000 PAGA Settlement amount. PAGA does not have  
16 any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of  
17 attorneys' fees and costs in this settlement is a matter of contract for a contingent representation.  
18 Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees  
19 and costs are reasonable.

20 First, the requested fees are justified by the result achieved. Plaintiff's Counsel negotiated a  
21 recovery of \$230,000, and this result justifies the requested fees equal to one third of this recovery.  
22 This percentage is within the standard contingent recovery percentage of one-third, and this percentage  
23 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th  
24 480, 504 (2016). At the time this case was brought, the result was far from certain. Defendant's  
25 defenses to the merits of the case created difficulties with proof and complex legal issues for Counsel  
26 to overcome. Here, a number of defenses asserted by Defendant present serious threats to the claims  
27 of the Plaintiff and the Aggrieved Employees. Defendant asserted that their employment practices  
28 complied with all applicable Labor laws. If successful, Defendant's defenses would eliminate *any*

1 recovery to the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome,  
2 Defendant maintains these defenses have merit which therefore presents a serious risk to recovery.  
3 The PAGA Settlement was possible because Counsel was able to persuade Defendant that there was  
4 an appreciable risk that Plaintiff would prevail on the factual and legal issues underlying liability and  
5 overcome difficulties in proof as to monetary relief. (Zakay Dec. at ¶ 26.)

6 Second, the fee award is justified by the work performed. As detailed in the accompanying  
7 Declarations of Shani O. Zakay and Jean-Claude Lapuyade at ¶ 4, the fee award represents Plaintiff's  
8 Counsels' current combined lodestar of \$84,557.50 with a multiplier of 0.91 with additional work to  
9 be performed such that the multiplier will ultimately be even lower. Generally, the Ninth Circuit and  
10 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for accepting  
11 the contingent risks of the litigation or obtaining good results. *See, e.g., Laffitte*, 1 Cal. 5th at 506  
12 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Int'l,*  
13 *Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and  
14 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting  
15 that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d  
16 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar);  
17 *Boyd v. Bank of America*, 2014 WL 6473804, at \*11 (C.D. Cal. 2014) (awarding one-third of fund,  
18 which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK,  
19 2013 WL 496358, at \*6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier  
20 of 2.76 as falling within the "majority" range for risk multipliers). (Zakay Dec. at ¶ 27.)

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

26 Finally, based on Plaintiff's Counsel's lodestar, Plaintiff's Counsel's requested fee award  
27 reflects a request for a reasonable hourly rate of \$399.93. Specifically, dividing \$76,666.66 by the  
28

1 number of hours spent by Plaintiff's Counsel on the case (191.70), results in an average hourly rate of  
2 \$399.93, which is reasonable and should be awarded. (Zakay Dec. at ¶ 28.)

3 As to litigation expenses, Plaintiff's Counsel will be recovering litigation expenses in the total  
4 amount of \$14,653.86 which is less than the \$20,000 allocation for costs in the Settlement Agreement,  
5 so the difference of \$5,346.14 will be added to the Net Settlement Amount. These expenses are  
6 documented in the accompanying Zakay Dec. at ¶ 29.

7 **VII. CONCLUSION**

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

11 DATED: July 22, 2022

**ZAKAY LAW GROUP, APLC**

12  
13 By:  \_\_\_\_\_

14 Shani O. Zakay  
15 Julieann Alvarado  
16 Attorneys for Plaintiff  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28