

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

egarcia@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 3600

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

julieann@zakaylaw.com

Attorneys for Plaintiff BRITTNEY JONES

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

BRITTNEY JONES, an individual, in her
representative capacity on behalf of the State
of California and fellow Aggrieved
Employees,

Plaintiffs,

vs.

ASD6 LLC, a California Limited Liability
Company; and Does 1 through 50, Inclusive,

Defendants.

Case No. 37-2021-00016864-CU-OE-CTL

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

Date: April 15, 2022

Time: 1:30 p.m.

Dept.: C-72

Judge: Hon. Timothy Taylor

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Brittney Jones (“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 ASD6, 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 claims.¹ The PAGA Settlement is fair, reasonable, and adequate as to the PAGA
8 Members and satisfies all statutory criteria for approval. This is only a settlement of the PAGA claims
9 for civil penalties and is not a class settlement and does not release the individual wage claims, if any,
10 of the affected employees other than Plaintiff herself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS*
11 *Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019)
12 (unpaid wages are not recoverable under PAGA).

13 The PAGA settlement is set forth in the accompanying Stipulation of Settlement of PAGA
14 Action 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
19 and approval of the PAGA settlement is submitted herewith.

20 **II. RELEVANT FACTS**

21 Plaintiff provided services to Defendant and Defendant’s customers as a non-exempt employee
22 in California during the PAGA period of January 15, 2020, through October 31, 2021. On January 15,
23 2021, Plaintiff Brittney Jones on behalf of herself and on behalf of other “Aggrieved Employees”
24 submitted a notice and draft complaint to the LWDA memorializing claims against Defendant for
25 alleged violations of the California Labor Code, including claims for failure to provide compliant meal
26 periods or compensation in lieu thereof in violation of Labor Code sections 226.7, and 512; failure to
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 provide compliant rest periods or compensation in lieu thereof in violation of Labor Code sections
2 226.7, and 512; failure to allow employees to take duty-free, off-the-premises rest periods; failure to
3 pay all minimum, regular, and overtime wages; failure to maintain true and accurate records in
4 violation of Labor Code sections 1174 and 1174.5; failure to pay all reporting time wages; failure to
5 provide accurate itemized wage statements in violation of Labor Code sections 226, 226.2, 1174, and
6 1175; failure to reimburse employees for required business expenses in violation of Labor Code
7 section 2802; failure to timely pay wages due during, and upon termination of employment; claims for
8 violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3, 226.7, 510, 512, 558,
9 1174(d), 1194, 1197, 1197.1, 1198, 1199, and 2802; and claims for civil penalties and other relief
10 pursuant to Labor Code section 2699, and the sections preceding and following section 2699. (LWDA
11 Case No. 818935-21). On April 15, 2021, Plaintiff filed a complaint against Defendant in the Superior
12 Court of San Diego County, Case No. 37-2021-00016864-CU-OE-CTL, alleging a single cause of
13 action for violations of PAGA based on the above Labor Code violations. (Zakay Dec. at ¶ 4.)

14 A. Mediation

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

24 Thereafter, on November 18, 2021, the Parties engaged in a full-day mediation with Mr.
25 Knight. At the conclusion of the full-day mediation, the Parties reached an agreement for settlement
26 based on Mr. Knight's proposal, which led to the signing of a Stipulation of Settlement of PAGA
27 Action and Release of PAGA Claims memorializing the settlement. The settlement was negotiated in
28 light of all known facts and circumstances and the uncertainty associated with litigation – including

1 the risk of Plaintiff not being able to maintain representative claims and establishing manageability,
2 the difficulty of proving Plaintiff's claims in a manageable trial, the merits of Defendant's potential
3 defenses, and the significant delay and potential appellate issues inherent to litigation – and was
4 reached after extensive arm's length negotiations, with the assistance of Mr. Kelly. (Zakay Dec. at ¶
5 6.)

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

7 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2)
8 (Settlement Agreement at III(K)). The Settlement Agreement negotiated by the Parties provides for a
9 "Total Settlement Amount" payment in the amount of \$135,000 to resolve the PAGA Claims
10 (hereinafter referred to as the "PAGA Settlement"). From this PAGA Settlement of \$135,000, there
11 is a deduction of attorneys' fees in the amount of \$45,000 (which is one-third of the PAGA
12 Settlement), reimbursement of incurred costs in an amount not to exceed \$10,000, and Settlement
13 Administration Costs, which will not exceed \$6,000. (Settlement Agreement at III(J)(7)-(8)).² After
14 these deductions, the amount remaining is the "PAGA Payment", which is estimated to be \$74,000.
15 (Zakay Dec. at ¶ 7.)

16 Of the PAGA Payment amount, seventy-five percent (75%) will be paid to the LWDA, and
17 the remaining twenty-five percent (25%) will be paid to the Aggrieved Employees. (Settlement
18 Agreement at (I)(J)).³ This 75/25 allocation is required by Labor Code § 2699 as explained by *ZB,*
19 *N.A. v. Superior Court*, 8 Cal.5th 175 (2019). (Zakay Dec. at ¶ 8.)

20 The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of
21 pay periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total
22 pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement Agreement at
23 III(J)(1)). The PAGA Period is the time period from January 15, 2020, through October 31, 2021.

24
25 ² In the event the Court approves less than One-Third of the PAGA Settlement Amount in Attorneys'
26 Fees or less than \$10,000 in Attorneys' Expenses to Plaintiff's Counsel, the unawarded difference will
27 be added to the PAGA Payment and not to Plaintiff's Counsel or Defendant (Settlement Agreement
28 at III(J)(7)).

³ "Aggrieved Employees" means all individuals who worked for Defendant ASD6, LLC as non-
exempt employees in California during the PAGA Period. (Settlement Agreement at (I)(B)). The
PAGA Period is January 15, 2020, through October 31, 2021.

1 (Settlement Agreement at I(N)). (Zakay Dec. at ¶ 9.)

2 Defendant provided a declaration regarding how there were 288 Aggrieved Employees who
3 worked 4,909 pay periods during the PAGA Period. (Settlement Agreement at III(A)(2)). (Zakay Dec.
4 at ¶ 10.)

5 A. Release of Claims

6 Upon entry of Judgment and funding in full of the Settlement by Defendant, the Released
7 Parties shall be entitled to a release from the State of California and Plaintiff as to the following claims:

8 “Released PAGA Claims” shall mean all PAGA claims which were asserted in
9 Plaintiff’s Complaint and Plaintiff’s PAGA notice to the LWDA, which include claims
10 for PAGA penalties predicated upon the following: failure to provide compliant meal
11 periods or compensation in lieu thereof in violation of Labor Code sections 226.7, and
12 512; failure to provide compliant rest periods or compensation in lieu thereof in
13 violation of Labor Code sections 226.7, and 512; failure to allow employees to take
14 duty-free, off-the-premises rest periods; failure to pay all minimum, regular, and
15 overtime wages; failure to maintain true and accurate records in violation of Labor
16 Code sections 1174 and 1174.5; failure to pay all reporting time wages; failure to
17 provide accurate itemized wage statements in violation of Labor Code sections 226,
18 226.2, 1174, and 1175; failure to reimburse employees for required business expenses
19 in violation of Labor Code section 2802; failure to timely pay wages due during, and
20 upon termination of employment; claims for violations of Labor Code sections 201,
21 202, 203, 204, 210, 218.5, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197,
22 1197.1, 1198, 1199, and 2802; and claims for civil penalties and other relief pursuant
23 to Labor Code section 2699, and the sections preceding and following section 2699.

24 (Settlement Agreement at I(U)). (Zakay Dec. at ¶ 11.)

25 The Total Settlement Amount shall be due by Defendant to the Settlement Administrator via
26 wire transfer or check on or before the Funding Date. (Settlement Agreement at III(A)(3)). Defendant
27 will provide the necessary information about the Aggrieved Employees to the Settlement
28 Administrator (ILYM Group) within ten (10) calendar days of the approval of the Effective Date.
(Settlement Agreement at III(I)). The Settlement Administrator will mail the Individual Aggrieved
Employee Payments by regular First-Class U.S. Mail to the Aggrieved Employees’ last known mailing
address no later than fifteen (15) calendar days after the Funding Date. (Settlement Agreement at
III(J)(4)). Checks will remain valid and negotiable for one hundred eighty (180) days. (Settlement
Agreement at III(J)(5)). If an Aggrieved Employee does not cash his or her settlement check within
ninety (90) days, the Settlement Administrator will send a letter to such persons, advising that the

1 check will expire after the 180th day, and invite that Aggrieved Employee to request reissuance in the
2 event the check was destroyed, lost, or misplaced. (*Id.*) In the event Aggrieved Employee Payment
3 checks have not been cashed within one hundred and eighty (180) days, the Settlement Administrator
4 shall cause the aggregate sum represented by those uncashed checks to be sent to the California State
5 Bar’s Justice Gap Fund. (*Id.*) The Individual PAGA Payments are 100% penalties and shall be reported
6 using IRS tax form 1099. (Settlement Agreement III(J)(2)). (Zakay Dec. at ¶ 12.)

7 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
8 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion
9 for settlement approval as set forth in the accompanying proof of service in compliance with Labor
10 Code section 2699(1). In addition, Plaintiff will submit to the LWDA a copy of the Court’s judgment
11 and order approving the Settlement Agreement within ten (10) days after entry of judgment or order.
12 (Zakay Dec. at ¶ 13.)

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

14 The claim before this Court is a representative claim under the PAGA on behalf of the State of
15 California for civil penalties pursuant to the PAGA. The parties have agreed to settle the PAGA claims
16 in their entirety after significant informal discovery, and an arm’s length mediation. The settlement
17 is intended to fully and finally resolve the PAGA Released Claims asserted by Plaintiff on behalf of
18 the State of California. This is only a settlement of the PAGA claims for civil penalties and is not a
19 class settlement and does not release the individual claims, if any, of the Aggrieved Employees. This
20 settlement does not release any claim that is not a PAGA claim.⁴ Attorneys’ fees equal to one-third of
21 the PAGA Settlement amount (\$45,000) and litigation expenses in an amount not to exceed \$10,000
22 will also be paid to Plaintiff’s Counsel as part of the settlement in accordance with California Labor
23 Code § 2699(g)(1) as set forth in the Settlement Agreement.⁵ Lastly, payment to the Settlement
24

25
26 ⁴ 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.”

27 ⁵ As set forth in the accompanying Zakay Dec., Plaintiff’s Counsel incurred costs in the current
28 amount of \$10,005.68 which is less than the cost allocation in the Settlement Agreement. See Zakay
Dec. at ¶29.

1 Administrator in an amount not to exceed \$6,000 to perform the administrative duties to distribute the
2 settlement money shall also be paid. (Zakay Dec. at ¶ 14.)

3 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT**
4 **OF THE PAGA CLAIMS**

5 Labor Code § 2699(l) requires that the Court “shall review and approve any settlement of any
6 civil [PAGA] action filed pursuant to this part. Further, the Court in *Moniz v. Adecco USA, Inc.* (2021)
7 72 Cal.App.5th 56, 77 stated that “the trial court must review and approve a PAGA settlement (§ 2699,
8 subd.(l)(2)), and the Supreme Court has in dictum referred to this review as a safeguard.” (Citing *Kim*
9 *v. Reins Int’l California, Inc.* (2020) 9 Cal.5th 73, 88; internal quotations omitted.) “The Supreme
10 Court has also observed that trial court approval ensures that any negotiated resolution is fair to those
11 affected,” leading the Court in *Moniz* to determine that “adoption of a standard of review for
12 settlements that prevents fraud, collusion or unfairness, and protects the interests of the public and the
13 LWDA in the enforcement of state labor laws is warranted.” (*Moniz, supra*, 72 Cal.App.5th at 77;
14 citing *Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 549; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
15 1794, 1800–01; internal citations omitted.) In other words, “[i]n review and approval of a proposed
16 settlement under section 2699, subd. (l)(2), a trial court thus must scrutinize whether, in resolving the
17 action, a PAGA plaintiff has adequately represented the state’s interests, and hence the public interest.”
18 (*Moniz, supra*, 72 Cal.App.5th at 88.) The proposed settlement shall be submitted to the agency at the
19 same time that it is submitted to the court.” Consequently, the Parties respectfully ask the Court to
20 review and approve the settlement of the PAGA claims and the PAGA Payment to be paid as part of
21 the proposed settlement.

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

23 Plaintiff and her counsel believe that the PAGA Settlement amount is fair and reasonable and
24 therefore “shall” be reviewed and approved. The Labor and Workforce Development Agency has
25 released data on PAGA settlement amounts. After removing the outliers at the low and high end, the
26
27
28

1 average, total settlement amount of PAGA claims is approximately \$10,000. Here, the PAGA
2 Settlement Amount of \$135,000 is significantly larger. (Zakay Dec. at ¶ 15.)

3 California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the
4 maximum civil penalty if, based on the facts and circumstances, to do otherwise would result in an
5 award that is “unjust, arbitrary and oppressive or confiscatory.” Before and during the mediation,
6 Defendant argued, among other things, that it was unlikely that any Judge would award more than the
7 actual amounts owed on the claims, let alone the full \$100 or \$200 per violation. In *Carrington v.*
8 *Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial
9 which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties
10 awarded in this case could be significantly less than Plaintiff’s calculation, even had Plaintiff prevailed
11 on the PAGA claim. Here, multiplying the number of violations identified, assumed, and extrapolated
12 by Plaintiff (17,268 violations) by \$5 results in a total potential liability of **\$86,340**. Further,
13 multiplying the number of pay periods (4,909) by \$5 results in a total potential liability of **\$24,545**.
14 Therefore, even assuming Plaintiff would have prevailed on all of her claims at trial, the result obtained
15 by Plaintiff in the Settlement exceeds the amount Plaintiff would have recovered had the Court relied
16 on *Carrington* in awarding the PAGA penalties. (Zakay Dec. at ¶ 16.)

17 Under the PAGA, courts have considerable discretion to reduce the penalty award. In *Fleming*
18 *v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
19 from \$2,800,000 to \$500,000, a reduction of 82.2%, as the court found maximum penalties “unjust”
20 because the employees had suffered no injuries. Some trial courts have actually awarded no civil
21 penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal. App.
22 Unpub. 1489, *5–7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the
23 Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*,
24 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

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

26 //

27 //

Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
1194, 1197, and, 1197.1, (unpaid wages)	288 Aggrieved Employees	\$100	4,909	100% of total pay periods	\$490,900
226.2, 226.7 and 512 (rest break violations)	288 Aggrieved Employees	\$100	4,027	21.7% of total pay periods	\$89,000
226.7 (unpaid meal break violations)	288 Aggrieved Employees	\$100	890	21.7% of total pay periods	\$89,000
510 (unpaid overtime)	54 Aggrieved Employees	\$100	79	1.9% of total pay periods	\$7,900
2802 (expense reimbursement violations)	288 Aggrieved Employees	\$100	2,454	50% of total pay periods	\$245,400
226 (wage statement violations)	288 Aggrieved Employees	\$100	4,909	100% of total pay periods	\$490,900

(Zakay Dec. at ¶ 17.)

Thus, at the time of mediation, Plaintiff's Counsel estimated Defendant's maximum liability exposure at \$1,413,100.00. Consequently, the Total Settlement Amount of \$135,000 is 9.5% of Defendant's maximum liability exposure – before any reduction.

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

Defendant maintains that Plaintiff and the Aggrieved Employees were properly compensated, and that it did not violate the Labor Code. Most importantly and relevant to this case, Defendant argued

1 that the Supreme Court decision in *Brinker v. Super. Ct.*, 53 Cal.4th 1004 (2012), weakened, if not
2 eliminated, Plaintiff's claims, on liability, value, and discretion with respect to the PAGA penalties,
3 as to the meal and rest period claims. A major component of the penalties alleged to have been owed
4 by Defendant are attributed to non-compliant meal and rest breaks. Before and during the mediation,
5 Defendant aggressively argued that Defendant's policies and culture afforded the Aggrieved
6 Employees an opportunity to take timely meal and rest breaks, and that employees like Plaintiff *chose*
7 not to take compliant breaks. Specifically, Defendant's written policies encouraged Aggrieved
8 Employees to take meal periods and rest breaks according to schedules compliant with the California
9 Labor Code. The policy further *required* employees who felt they were not provided an opportunity
10 to take a meal or a rest break to notify a supervisor prior to missing, or being late for, their breaks.
11 Defendant argued, therefore, that under the *Brinker* decision it has no liability for the missed breaks
12 whatsoever. Defendant argued that it adopted and strictly enforced lawful policies and afforded
13 Plaintiff and the Aggrieved Employees adequate time to take compliant meal periods and rest breaks.
14 Because Plaintiff's claims were largely based on the missed meal and rest breaks, and because
15 Defendant's policies were indeed compliant, this presented a very real concern for Plaintiff. If
16 successful, this defense could eliminate or substantially reduce any recovery under PAGA. While
17 Plaintiff believes that this defense, and others, could be overcome, Defendant maintains these defenses
18 have merit, which therefore presents a serious risk to recovery of penalties. (Zakay Dec. at ¶ 19.)

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

26 Given Defendant's potential defenses to the violations at issue and the risks and costs of
27 continued litigation, Plaintiff and her attorneys believe that the PAGA Settlement is fair and
28 reasonable. Plaintiff's Counsel have significant experience litigating wage and hour claims including

1 claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than similar
2 settlements that courts have approved. The PAGA Settlement, along with the other terms of the
3 proposed settlement, were negotiated by experienced counsel at arm's length with the assistance of an
4 experienced and reputable mediator, Kelly Knight. (Zakay Dec. at ¶ 21.)

5 As set forth in the accompanying proof of service, the LWDA has been provided notice of this
6 motion and the PAGA settlement. The decision of the LWDA to accept the PAGA Settlement and
7 not oppose the motion should be given considerable weight. This is not a situation where the Court
8 needs to be concerned about the rights of absent employees as in a class settlement, as this PAGA-
9 only settlement does not release the individual claims of absent employees, and the LWDA is a
10 sophisticated government entity that is more than able to look out for its own rights. (Zakay Dec. at ¶
11 22.)

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

15 Notably, in the pending *Viking River Cruises, Inc. v. Moriana* case, the Supreme Court will
16 examine whether the Federal Arbitration Act requires enforcement of a bilateral arbitration agreement
17 providing that an employee cannot raise representative claims, including under PAGA. Given the
18 Supreme Court's pending decision, there is a strong possibility that this action could be dismissed
19 altogether if the Supreme Court finds that Plaintiff could waive her right to bring a PAGA action. The
20 proposed PAGA settlement allows Plaintiff to resolve the claims on her behalf, on behalf of the
21 Aggrieved Employees, and on behalf of the State of California before *Viking River Cruises* is decided
22 and potentially rids them of the opportunity to receive a settlement at all. (Zakay Dec. at ¶ 24.)

23 Finally, Plaintiff's diligent and efficient litigation of this action resulted in the creation of an
24 ascertainable common fund of \$135,000 that will substantially benefit the State of California and the
25 Aggrieved Employees. PAGA Counsel's efforts also resulted in significant non-monetary relief for
26 the State of California and the Aggrieved Employees by catalyzing Defendant to change its meal break
27 policy and practices to pay premiums for meal break violations retroactively and on a forward-going
28 basis. Thus, PAGA Counsel obtained greater Labor Code compliance and a change to Defendant's

1 policies that accomplishes the primary objective of PAGA as set for by the Labor Commissioner in
2 *Price v. Uber Techs.*, Los Angeles Superior Court Case No. BC544512. (Zakay Dec. at ¶ 25.)

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

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

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

11 Plaintiff's Counsel seeks approval of attorneys' fees from the PAGA settlement in the amount
12 of \$45,000 representing one-third of the \$135,000 PAGA Settlement amount. PAGA does not have
13 any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of
14 attorneys' fees and costs in this settlement is a matter of contract for a contingent representation.
15 Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees
16 and costs are reasonable.

17 First, the requested fees are justified by the result achieved. Plaintiff's Counsel negotiated a
18 recovery of \$135,000, and this result justifies the requested fees equal to one third of this recovery.
19 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
20 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
21 480, 504 (2016). At the time this case was brought, the result was far from certain. Defendant's
22 defenses to the merits of the case created difficulties with proof and complex legal issues for Counsel
23 to overcome. Here, a number of defenses asserted by Defendant present serious threats to the claims
24 of the Plaintiff and the Aggrieved Employees. Defendant asserted that their employment practices
25 complied with all applicable Labor laws. If successful, Defendant's defenses would eliminate *any*
26 *recovery* to the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome,
27 Defendant maintains these defenses have merit which therefore presents a serious risk to recovery.
28 The Settlement was possible because Counsel was able to persuade Defendant that there was an

1 appreciable risk that Plaintiff would prevail on the factual and legal issues underlying liability and
2 overcome difficulties in proof as to monetary relief. (Zakay Dec. at ¶ 26.)

3 Second, the fee award is justified by the work performed. As detailed in the accompanying
4 Declarations of Shani O. Zakay at ¶26-32 and Jean-Claude Lapuyade at ¶3-9, the fee award represents
5 Plaintiff's Counsels' current combined lodestar of \$50,102.50 with a negative multiplier of 0.9 with
6 additional work to be performed such that the multiplier will ultimately be even lower. Generally, the
7 Ninth Circuit and California Courts award multipliers between 2 to 4 times the lodestar to reward
8 counsel for accepting the contingent risks of the litigation or obtaining good results. *See, e.g., Laffitte*,
9 1 Cal. 5th at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino*
10 *v. Robert Half Int'l, Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are
11 often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224,
12 254 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital*
13 *Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52
14 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014)
15 (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*,
16 No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that
17 represented a multiplier of 2.76 as falling within the "majority" range for risk multipliers). (Zakay
18 Dec. at ¶ 27.)

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

24 Finally, based on Plaintiff's Counsel's lodestar, Plaintiff's Counsel's requested fee award
25 reflects a request for a reasonable hourly rate of \$488.07. Specifically, dividing \$45,000 by the number
26 of hours spent by Plaintiff's Counsel on the case (92.2), results in an average hourly rate of \$488.07,
27 which is reasonable and should be awarded. (Zakay Dec. at ¶ 28.)
28

1 Finally, as to litigation expenses, Plaintiff's Counsel will be recovering litigation expenses in
2 the total amount of \$10,000 which is equal to the \$10,000 allocation for costs in the Settlement
3 Agreement, and less than the \$10,005.68 incurred by Plaintiff's Counsel. These expenses are
4 documented in the accompanying Lapuyade Dec. at ¶3-6 and Zakay Dec. at ¶ 29.

5 **VII. CONCLUSION**

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

9 Dated: April 8, 2022

ZAKAY LAW GROUP, APC

10 By: 
11 Shani O. Zakay