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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

ELIJAH KOUYOUMDJIAN, on behalf of
the State of California, as a private attorney
general,

Plaintiff,

v.

RAISING CANE'S USA, L.L.C., a Limited
Liability Company; and DOES 1 through 50,
inclusive,

Defendant.

Case No. 21PSCV00329

**NOTICE OF MOTION AND MOTION
TO APPROVE PAGA SETTLEMENT;
and,**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION**

Hearing Date: July 18, 2022

Hearing Time: 10:00 a.m.

Reservation No. 378860994028

Judge: Hon. Thomas C. Falls

Dept.: R

Date Action Filed: April 27, 2021

Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 YOU ARE HEREBY NOTIFIED THAT at 10:00 a.m. on July 18, 2022, or as soon
3 thereafter as the matter can be heard, in Department R of the above entitled Court before the
4 Honorable Thomas C. Falls, Plaintiff Elijah Kouyoumdjian (“Plaintiff”) will and hereby does
5 move for an order approving the settlement of the PAGA claim alleged against Defendant
6 Raising Cane’s USA, L.L.C. (“Defendant”) in accordance with Labor Code §2699(l). The
7 proposed settlement is set forth in the accompanying PAGA Settlement Agreement and
8 Release (“Settlement Agreement”).

9 This Motion will be based on this notice, the accompanying points and authorities, the
10 Declaration of Kyle Nordrehaug, the Settlement Agreement, and the complete files and
11 records in this action. The Labor Workforce Development Agency has been served with this
12 motion and the Settlement Agreement as set forth in the accompanying proof of service.

13 Respectfully submitted,

14 Dated: June 21, 2022

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

15 By: /s/ Kyle Nordrehaug
16 Kyle R. Nordrehaug

17 *Attorneys for Plaintiff*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION**

4 Plaintiff Elijah Kouyoumdjian (“Plaintiff”) reached a settlement of the California
5 Private Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in
6 this action against Defendant Raising Cane’s USA, L.L.C. (“Defendant”) (collectively, the
7 “Parties”) which provides for a “Gross PAGA Settlement Amount” payment in the amount
8 of \$1,780,000. In accordance with California Labor Code §2699(l), Plaintiff now asks this
9 Court to review and approve the settlement of Plaintiff’s PAGA claims.¹ This is only a
10 settlement of the PAGA claims for civil penalties, and is not a class settlement and does not
11 release the individual wage claims, if any, of the affected employees other than of the
12 Plaintiff. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348,
13 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not
14 recoverable under PAGA).

15 The PAGA settlement is set forth in the accompanying PAGA Settlement Agreement
16 and Release (“Settlement Agreement”). A true and correct copy of the Settlement
17 Agreement which sets forth the terms for the settlement of the PAGA claims is attached as
18 Exhibit #1 to the Declaration of Kyle Nordrehaug, filed herewith. Capitalized terms shall
19 have the same meaning as defined in the Settlement Agreement. The LWDA received notice
20 of this Settlement and this motion as set forth in the accompanying proof of service.

21 A proposed order granting approval of the PAGA settlement is submitted herewith for
22 entry by the Court.

23 ///

24 ///

25 ///

26 ///

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.”

II. RELEVANT FACTS

PAGA Counsel mailed the necessary correspondence to the LWDA on February 19, 2021, on behalf of Plaintiff Kouyoumdjian and requesting authorization from the LWDA to seek civil penalties under PAGA for alleged violations of Labor Code §§ 201, 202, 203, 204, 210, 221, 226(a), 226.7, 233, 246, 351, 510, 512, 558(a)(1)-(2), 1194, 1197, 1197.1, 1198, 2802 and the applicable IWC Wage Order(s) (“LWDA Notice”). The 65-day notice period for the LWDA to notify Plaintiff of its intent to investigate the Labor Code violations alleged in Plaintiff’s notice letter expired on April 25, 2021.

On April 27, 2021, Plaintiff Kouyoumdjian filed a PAGA Representative Action Complaint against Defendant alleging a single cause of action for recovery of civil penalties pursuant to Labor Code §§ 2698, *et seq.* for violation of the Labor Code sections and applicable IWC Wage Order(s) set forth in Plaintiff’s February 19, 2021, LWDA Notice.

The Parties thereafter agreed to mediate with Tripper Ortman. Prior to the mediation, in order to evaluate the potential value of the claims, the Parties engaged in significant efforts to obtain the facts regarding the claims asserted, including the exchange of detailed statistical data regarding shifts worked by Plaintiff and the PAGA Members, the production of hundreds of pages of documents, and the exchange of detailed briefing and analysis in connection with the mediation. (Declaration of Kyle Nordrehaug, at ¶3).

Defendant is U.S. based, quick-service restaurant. Plaintiff’s theory of PAGA liability is that Defendant did not pay workers for all hours worked because, for example, Defendant failed to pay its employees for the time spent undergoing Covid temperature screenings which were done off the clock. Plaintiff asserts that employees are subject to Defendant’s control when they undergo temperature checks and should have been compensated for this time. Plaintiff asserts that Defendant also failed to provide accurate wage statements because, for example, the wage statements failed to state total hours worked. Plaintiff also asserts that Defendant failed to provide employees with compliant meal and rest breaks due to chronic understaffing and interruptions from co-workers and supervisors during breaks requiring them to come back to work. Moreover, Plaintiff asserts that when meal and rest

1 break premiums were paid, they were paid at the base rate instead of the regular rate. Also,
2 Plaintiff asserts that he and PAGA Members regularly used their own personal cell phones in
3 order to respond to Defendant for scheduling purposes, but were not reimbursed for the costs
4 related to the use of their personal phone for work-related issues.

5 On January 21, 2022, the Parties engaged in an all-day mediation session before
6 Mediator Ortman, a respected and experienced mediator knowledgeable of both the wage
7 and hour laws and the representative claims at issue in this action. Through arms-length
8 negotiations with the assistance of the mediator, the Parties reached an agreement to settle
9 the PAGA claims in this action which led to the signing of a Memorandum of Understanding
10 memorializing the settlement.² The settlement was negotiated in light of all known facts and
11 circumstances and the uncertainty associated with litigation – including the risk of Plaintiff
12 not being able to maintain representative claims, the difficulty of proving Plaintiff’s claims
13 in a manageable trial, the merits of Defendant’s potential defenses, and the significant delay
14 and potential appellate issues inherent to litigation – and was reached after extensive arm’s
15 length negotiations, with the assistance of Mediator Ortman. (Declaration of Kyle
16 Nordrehaug, at ¶3).

17 ///

18 ///

19
20 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
21 Plaintiff’s individual claims pursuant to a separate confidential Individual Settlement Agreement.
22 (Settlement Agreement at § III(5)(b).) The individual claims were not at issue in this action and exist
23 independent and apart from the PAGA claims at issue before the Court. *See Kim v. Reins Int’l Cal.,*
24 *Inc.*, 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does not strip an aggrieved
25 employee of standing, as the state’s authorized representative, to pursue PAGA remedies” nor
26 resolve the PAGA claims.). As part of this motion, PAGA Counsel has filed a declaration with the
27 Court disclosing that there was consideration given for settling these individual claims and
28 confirming that the consideration is unrelated to and separate from the settlement of Plaintiff’s
PAGA claim. (Declaration of Kyle Nordrehaug, at ¶3) PAGA Counsel is not receiving any
additional attorneys’ fees or costs reimbursement as a result of the individual settlement payment to
Plaintiff. If the Court requires the Parties to submit the terms of the Individual Settlement
Agreement to obtain approval of the PAGA settlement, the Parties agree that the terms of the
Individual Settlement Agreement will only be submitted under seal or disclosed to the Court in some
other way to ensure that the Individual Settlement Amount is not disclosed publicly. (Settlement
Agreement at § III(5)(b).)

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

3 The PAGA settlement is subject to Court approval consistent with Labor Code
4 §2699(1)(2). (Settlement Agreement at § III(4)(a).) The Settlement Agreement negotiated
5 by the Parties provides for a “Gross PAGA Settlement Amount” payment in the amount of
6 \$1,780,000 to resolve the PAGA Released Claims. From this Gross PAGA Settlement
7 Amount of \$1,780,000, there is a deduction of attorneys’ fees in the amount of \$593,333
8 (which is one-third of the Gross PAGA Settlement Amount), reimbursement of incurred
9 costs in an amount not to exceed \$20,000, and Settlement Administration Costs not to exceed
10 \$55,000. (Settlement Agreement at § III(4)(b)-(c).)³ After these deductions, the amount
11 remaining is the “PAGA Payment”, which is estimated to be \$1,111,666.67. (Declaration of
12 Kyle Nordrehaug, at ¶4.) Of the PAGA Payment amount, seventy-five percent (75%) will be
13 paid to the LWDA and the remaining twenty-five percent (25%) will be paid to the PAGA
14 Members. (Settlement Agreement at III(4)(a)(1).)⁴ This 75/25 allocation is required by
15 Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

16 The Individual PAGA Payment for each PAGA Member shall be based on the
17 number of pay periods each PAGA Member worked during the PAGA Period as a
18 percentage of the total pay periods worked by the PAGA Members during the PAGA Period.
19 (*Id.*) The PAGA Period is the time period from February 19, 2020, through and including
20 April 21, 2022. (Settlement Agreement at § I (13).)

21 Defendant has represented to PAGA Counsel the number of pay periods and PAGA
22 Members. Defendant represents that there are approximately 15,530 PAGA Members who

23
24 ³ In the event approval is required and a payment of less than One-Third of the Gross PAGA
25 Settlement Amount in Attorneys’ Fees or less than \$20,000 in Attorneys’ Expenses to PAGA
26 Counsel, the unawarded difference will be added to the PAGA Payment and not to PAGA Counsel
or the Defendant. (Settlement Agreement at III (4)(b).) In the event the Court approves less than
\$55,000 to administer the settlement or if the actual cost to administer the settlement is less than
\$55,000, the difference will be added to the PAGA Payment. (*Id.* at III (4)(c).)

27 ⁴ “PAGA Members” means all individuals who were employed by Defendant in California and
28 classified as non-exempt employees during the period February 19, 2020 to April 21, 2022.
(Settlement Agreement at § I (2).)

collectively worked 204,296 weekly pay periods between February 19, 2020 and December 31, 2021. (Settlement Agreement at § III(3).) (Declaration of Kyle Nordrehaug, at ¶4.)

Upon entry of final judgment, the Released Parties⁵ shall be entitled to a release from the State of California and the PAGA Members only for any “Released PAGA Claims”, which means all PAGA claims that accrued during the PAGA Period for civil penalties under California Labor Code §§ 2698 *et seq.*, predicated on the California Labor Code claims that are asserted in the LWDA Notice and operative complaint which are for civil penalties pursuant to Labor Code section 2699, *et seq.* for claims of any alleged violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 226.8, 510, 512, 558, 1194, 1197, 1198, 2698, *et seq.*, and 2802, and applicable Industrial Welfare Commission Wage Orders, as well as a release from all PAGA claims that could have been asserted in the LWDA Notice and operative complaint based on the facts, claims and/or allegations pled therein (the “Released PAGA Claims”)(Settlement Agreement at § III(5)(a)). The release does not include non-PAGA class claims, claims for wrongful termination, discrimination, unemployment insurance, disability, and workers’ compensation, and claims outside of the PAGA Period. (*Id.*) The Settlement Agreement expressly confirms that “In no event shall the release of the Released PAGA Claims in this Settlement Agreement release any non-PAGA individual claims of any PAGA Members.” (*Id.*).

Within thirty (30) days after receipt of the Gross PAGA Settlement Amount from Defendant, the Settlement Administrator will issue to each PAGA Member a check for their Individual PAGA Payment at their last known home address along with an explanatory letter mutually approved by the parties. (Settlement Agreement at § IV(3)). Checks will remain negotiable for one hundred eighty (180) days. (*Id.*) Subject to Court approval, all checks not cashed within one hundred eighty (180) days of payment shall be paid to the State Controller Fund in the name(s) of the absent PAGA Members, subject to Court approval, and the

⁵ “Released Parties” means Defendant Raising Cane’s USA, L.L.C. and Raising Cane’s Restaurants, L.L.C., which include any of their affiliates, divisions, subsidiaries, parents, owners, predecessors, any merged entity or merged entities and/or any of their present and former agents, officers, directors, employees, stockholders, members, partners, successors in interest, insurers, trustees, administrators, executors, representatives, principals, and assigns. (Settlement Agreement at § I (16)..

1 PAGA members shall remain bound by the Settlement Agreement and will be deemed to
2 have released the Released Parties from the PAGA Released Claims.. (*Id.*)

3 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of
4 the Settlement Agreement and this motion to the LWDA concurrently with the filing of the
5 instant motion for settlement approval as set forth in the accompanying proof of service in
6 compliance with Labor Code section 2699(1). In addition, Plaintiff shall submit to the
7 LWDA a copy of the Court's judgment and order approving the Settlement Agreement
8 within ten (10) days after entry of judgment or order.

9 10 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

11 The claim before this court is the representative claim under PAGA on behalf of the
12 State of California for civil penalties pursuant to the PAGA. The parties have agreed to
13 settle this PAGA claim in its entirety after investigation and arm's length mediation.
14 (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and finally
15 resolve the Released PAGA Claims asserted by Plaintiff on behalf of the State of California.
16 This is only a settlement of the PAGA claims for civil penalties, and is not a class settlement
17 and does not release the individual claims, if any, of the PAGA Members. This settlement
18 does not release any claim that is not a PAGA claim.⁶ Attorneys' fees equal to one-third of
19 the Gross PAGA Settlement Amount (\$593,333) and litigation expenses in an amount not to
20 exceed \$20,000 will also be paid to PAGA Counsel as part of the settlement in accordance
21 with California Labor Code § 2699(g)(1) as set forth in the Settlement Agreement.⁷ Lastly,
22 payment to the Settlement Administrator in an amount not to exceed \$55,000 to perform the
23 administrative duties to distribute the settlement money shall also be paid. (Declaration of
24 Kyle Nordrehaug, at ¶¶ 4-5.)

25
26 ⁶ 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 ⁷ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
28 in the current amount of \$17,095.73, which is less than the cost allocation in the Settlement
Agreement. See Declaration of Nordrehaug at ¶ 9.

1 **V. REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIM**

2 Labor Code § 2699(l) requires that the Court “shall review and approve any
3 settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement
4 shall be submitted to the agency at the same time that it is submitted to the court.”
5 Consequently, the parties respectfully ask the Court to review and approve the settlement of
6 the PAGA claims and the PAGA Payment to be paid as part of the proposed settlement.

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

8 The Parties believe that the Gross PAGA Settlement Amount is fair and reasonable
9 and therefore "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount
10 of \$1,780,000 is significantly more than many PAGA settlement amounts and constitutes
11 more than \$8 per weekly pay period. (Declaration of Nordrehaug, at ¶6.)

12 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
13 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
14 statutory PAGA civil penalties was potentially \$20,429,600 based on 204,296 pay periods.⁸
15 (Declaration of Nordrehaug, at ¶6.) Importantly, however, these calculations were
16 performed at the maximum statutory rate for the penalties, when in fact, it is likely that any
17 penalties awarded would be at a lower rate. California Labor Code Section 2699(e)(1)
18 permits a Court to award a lesser amount than the maximum civil penalty if based on the
19 facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary
20 and oppressive or confiscatory."

21 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
22 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay
23 period. Therefore, at trial, any PAGA penalties awarded could be significantly less than
24 Plaintiffs' calculation even where Plaintiff prevailed on the PAGA claim. If the amount of \$5

25 ⁸ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.
26 The valuation of \$20,429,600 is the civil penalty amount without stacking. If stacking is permitted,
27 then the valuation increases with each additional penalty added to each pay period, and here, if
28 penalties are stacked for each of the eight (8) alleged violations, the total penalties would be as high
as \$102 million. Plaintiff, however, is not aware of any PAGA award which permitted stacking and
in the cases cited herein, only one penalty per pay period was assessed.

1 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties
2 would be only \$1,021,480, which is less than this settlement provides.

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

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

21 Defendant maintains that Plaintiff and the PAGA Members were properly
22 compensated in compliance with the law, that Defendant did not violate the Labor Code and
23 that its conduct was not willful with respect to any alleged failure to pay any wages or
24 penalties. Accordingly, Defendant disputes and denies Plaintiff's allegations and claims
25 asserted in the complaint which are resolved by the Settlement Agreement. Defendant
26 asserted both procedural and substantive defenses to the PAGA claim, not only as to liability
27 but also as to the amount of the penalties. Defendant could argue that no penalties prior to
28 the PAGA notification should be awarded because the violations were not intentional, and at

1 least one court has so ruled. These defenses present a risk to the PAGA claim and the
2 potential that some or all of the PAGA penalties sought may not be awarded. (Declaration of
3 Nordrehaug, at ¶7.)

4 Given Defendant's potential defenses to the violations at issue, the risks and costs of
5 continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and
6 reasonable. (Declaration of Nordrehaug, at ¶7.) Defendant has similarly concluded that it is
7 desirable that this action is settled in the manner and upon the terms and conditions set forth
8 in the Settlement Agreement in order to avoid further expense, inconvenience and distraction
9 of further legal proceedings, as well as the uncertainty of litigation. Defendant has
10 determined that it is desirable and beneficial to put to rest the claims in this action and
11 Defendant agrees that the PAGA Settlement is fair, reasonable, and adequate.

12 PAGA Counsel have significant experience litigating wage and hour claims including
13 claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than
14 similar settlements that courts have approved. (Declaration of Nordrehaug, at ¶10.) The
15 PAGA Settlement, along with the other terms of the proposed settlement, were negotiated by
16 experienced counsel at arm's length with the assistance of a private mediator, Tripper
17 Ortman. (Declaration of Nordrehaug, at ¶7.)

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

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

26 Although PAGA requires that a court approve the proposed PAGA settlement, Labor
27 Code § 2699(1) does not require that a court approve any other elements of the proposed
28 settlement. Because there are no class allegations for which Plaintiff seeks approval, the

1 approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not
2 apply. Accordingly, the Court only needs to approve the settlement of the civil penalties
3 sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for
4 attorneys' fees and costs are reasonable.

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

7 PAGA Counsel seeks approval of attorneys' fees from the PAGA settlement in the
8 amount of \$593,333 representing one-third of the \$1,780,000 Gross PAGA Settlement
9 Amount. PAGA does not have any requirements for reviewing attorneys' fees, and
10 Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a
11 matter of contract for a contingent representation. Nevertheless, should this Court review the
12 requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

13 First, the requested fees are justified by the result achieved. PAGA Counsel
14 negotiated a recovery of \$1,780,000, and this result justifies the requested fees equal to one
15 third of this recovery. This percentage is within the standard contingent recovery percentage
16 of one-third, and this percentage is what was expressly approved by the Supreme Court in
17 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.,*
18 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that ““fee awards in class actions
19 average around one-third of the recovery”” regardless of ““whether the percentage method or
20 the lodestar method is used.”” (quoting *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11
21 (2008))).

22 Second, the fee award is justified by the work performed and contributions to the
23 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶9, the fee award
24 represents PAGA Counsel's current lodestar of \$236,104.75 with a reasonable multiplier,
25 with significant additional work to be performed to complete the approval and settlement
26 process, such that multiplier will ultimately be less than 2.2.

27 Generally, the Ninth Circuit and California Courts award positive multipliers between
28 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation

1 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award
2 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
3 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
4 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
5 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa*
6 *Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which
7 was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D.
8 Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v.*
9 *Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6,
10 2013) (approving fee award that represented a multiplier of 2.76 as falling within the
11 "majority" range for risk multipliers).

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

18 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation
19 expenses in the combined total amount of \$17,095.73, which is less than the \$20,000
20 allocation for costs in the Settlement Agreement, so the difference of \$2,904.27 will be
21 added to the PAGA Payment amount. These expenses are documented in the accompanying
22 Declaration of Nordrehaug at ¶9.

23 24 **VII. CONCLUSION**

25 Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA
26 settlement as set forth in the Settlement Agreement and enter the proposed order and
27 judgment submitted herewith.
28

1 Dated: June 21, 2022

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug

Attorneys for Plaintiff

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Make a Reservation

ELIJAH KOUYOUMDJIAN, ON BEHALF OF THE STATE OF CALIFORNIA, AS A PRIVATE ATTORNEY GENERAL vs RAISING CANE'S USA, L.L.C., A LIMITED LIABILITY COMPANY

Case Number: 21PSCV00329 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2021-04-27 Location: Pomona Courthouse South - Department R

Reservation

Case Name:

ELIJAH KOUYOUMDJIAN, ON BEHALF OF THE STATE OF CALIFORNIA, AS A PRIVATE ATTORNEY GENERAL vs RAISING CANE'S USA, L.L.C., A LIMITED LIABILITY COMPANY

Case Number:

21PSCV00329

Type:

Motion for Order (Approving PAGA Settlement)

Status:

RESERVED

Filing Party:

Elijah Kouyoumdjian, on behalf of the State of California, as a private attorney general (Plaintiff)

Location:

Pomona Courthouse South - Department R

Date/Time:

07/18/2022 10:00 AM

Number of Motions:

1

Reservation ID:

378860994028

Confirmation Code:

CR-KQ7ZCALB4MZHDYJF3

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:

\$61.65

Type:

AmericanExpress

Account Number:

XXXX1076

Authorization:

285363

Print Receipt

[Reserve Another Hearing](#)

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