

Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiff and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

TASHA COLE, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

NORTHCENTRAL PIZZA, LLC, a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 34-2021-00299158-CU-OE-GDS

**PLAINTIFF'S NOTICE OF MOTION
AND UNOPPOSED MOTION TO
APPROVE SETTLEMENT
AGREEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT**

Date: July 12, 2022

Time: 9:00 a.m.

Dept.: 54

Reservation No.: 2649437

Complaint Filed: April 21, 2021

Trial Date: None Set

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

2 **PLEASE TAKE NOTICE** that on July 12, 2022, at 9:00 a.m., or as soon thereafter as
3 the matter may be heard, before the Honorable Christopher E. Krueger, judge presiding, in
4 Department 54 of the above referenced Court located at 813 6th Street, Sacramento, CA
5 95814, Plaintiff Tasha Cole (“Plaintiff”) will seek an Order approving the PAGA Settlement
6 Agreement under the Private Attorneys General Act, pursuant to the procedures set forth in
7 Labor Code § 2698, *et seq.*

8 This motion will be based on this notice of motion, the attached memorandum of points
9 and authorities, the accompanying declarations of Larry W. Lee, Mai Tulyathan, and Plaintiff
10 Tasha Cole, the records and file herein, and on such other evidence as may be presented at the
11 hearing of the motion.

12
13 DATED: June 17, 2022

DIVERSITY LAW GROUP, P.C.

14
15 By: 
16 Larry W. Lee
17 Mai Tulyathan
18 Attorneys for Plaintiff and the Aggrieved
19 Employees
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1 **I. INTRODUCTION**

2 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor
3 Code § 2698, *et seq.*, Plaintiff Tasha Cole (“Plaintiff”) hereby moves the Court for an order
4 approving a non-reversionary PAGA settlement.

5 The operative complaint filed by Plaintiff in this case seeks civil penalties against
6 Defendant Northcentral Pizza, LLC (“Defendant”) for alleged violations of the Labor Code
7 pursuant to the Private Attorneys General Act of 2004 (“PAGA”), California Labor Code §
8 2698, *et seq.* As set forth in the Complaint, Plaintiff brings claims under the PAGA predicated
9 on allegations that Defendant failed to provide off-duty rest periods in violation of Labor Code
10 § 226.7, failed to provide off-duty meal periods in violation of Labor Code §§ 226.7 and 512,
11 failed to pay all wages owed upon separation of employment in violation of Labor Code §§
12 201-203, and failed to provide accurate itemized wage statements in violation of Labor Code §
13 226.

14 As will be explained in further detail below, based on the California Supreme Court’s
15 opinion in *Arias v. Superior Court* (2009) 46 Cal. 4th 969 and *Iskanian v. CLS Transportation*
16 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, Plaintiff can seek appropriate civil penalties as
17 called for under PAGA on behalf of the State of California and other similarly situated
18 aggrieved employees without seeking class certification or meeting the requirements of class
19 certification (i.e., numerosity, typicality, commonality and adequacy). As such, while the
20 PAGA settlement reached herein is on behalf of the State of California and other aggrieved
21 employees, the usual two-step preliminary and final approval process is not required. Rather,
22 as called for under Labor Code § 2699(l), all that is required is an approval by this Court of
23 any settlement of the PAGA claim by the Plaintiff and Defendant (collectively, the “Parties”).

24 The Parties have reached such an agreement, and thus now seek this Court’s approval
25 of the proposed PAGA settlement that provides for the payment of PAGA civil penalties. As
26 demonstrated below, the proposed settlement warrants this Court’s approval. Significantly, the
27 settlement was reached after the exchange of information through informal discovery,
28 including information pertaining to the PAGA group, the number of workweeks and pay

1 periods at issue, a sample of time and payroll records for the PAGA group, and documents
2 pertaining to Defendant's policies and practices.

3 Pursuant to the terms of the Parties' proposed settlement agreement, Defendant will
4 pay the total settlement amount of \$275,000.00, which includes a Net Settlement Amount of
5 approximately \$151,496.79 to be split amongst the Labor and Workforce Development
6 Agency ("LWDA") and the aggrieved employees, as required by PAGA. The proposed
7 settlement also has a limited and tailored release for the aggrieved employees that does not
8 release any of their substantive claims. Specifically, the aggrieved employees are releasing
9 only their rights to bring PAGA claims based on the facts alleged in Plaintiff's claim and letter
10 to the LWDA, specifically those claims predicated on violations of Labor Code §§ 201, 202,
11 203, 226(a), 226.7, and 512.

12 In light of the above, the proposed settlement constitutes an adequate, fair, and
13 reasonable settlement on behalf of the LWDA and aggrieved employees, and accomplishes the
14 goal of PAGA.

15 **II. FACTUAL AND PROCEDURAL BACKGROUND**

16 **A. Summary of the Allegations**

17 On March 4, 2021, Plaintiff submitted her written notice under Labor Code § 2699.3
18 (the "PAGA Notice") to the Labor and Workforce Development Agency ("LWDA") and
19 Defendant. (Declaration of Mai Tulyathan ("Tulyathan Decl.") at ¶ 2.) As set forth in the
20 PAGA Notice, Plaintiff alleged that Defendant: (1) failed to provide off-duty rest periods in
21 violation of Labor Code § 226.7; (2) failed to provide off-duty meal periods in violation of
22 Labor Code §§ 226.7 and 512; (3) failed to pay all wages owed upon separation of
23 employment in violation of Labor Code §§ 201-203; and (4) failed to provide accurate
24 itemized wage statements in violation of Labor Code § 226. (*Id.*)

25 On April 21, 2021, Plaintiff filed a representative PAGA action against Defendant in
26 the Superior Court of California, County of Sacramento (the "Action"). (*Id.* at ¶ 3.) The
27 Complaint alleges a single cause of action for violation of the PAGA, Labor Code § 2698, *et*
28 *seq.*, predicated on the alleged violations of the Labor Code described above. (*Id.*)

1 **B. The Parties Participated in Private Mediation**

2 After the filing of the Complaint, the Parties met and conferred to discuss the
3 enforceability of the arbitration agreement signed by Plaintiff. In connection with meet and
4 confer discussions, the Parties agreed to participate in early mediation with wage-and-hour
5 mediator Tripper Ortman, Esq. (Tulyathan Decl. at ¶ 6.)

6 Prior to the mediation, the Parties engaged in informal discovery. (*Id.* at ¶ 7.) As part
7 of informal discovery, Defendant produced data relevant to the potential value of the claims,
8 including information pertaining to the PAGA group, the number of workweeks and pay
9 periods at issue, a sample of time and payroll records for the PAGA group, and documents
10 pertaining to Defendant’s policies and practices. (*Id.*) The data allowed Plaintiff to run
11 comprehensive damages analysis. (*Id.*)

12 On December 17, 2021, the Parties engaged in an all-day mediation session with
13 Tripper Ortman, a respected and experienced mediator in wage and hour class and PAGA
14 actions. (*Id.* at ¶ 8.) While the Parties did not reach a resolution at mediation, the Parties
15 continued lengthy settlement negotiations facilitated by Mr. Ortman. (*Id.*) The Parties
16 subsequently accepted a mediator’s proposal on or about March 7, 2022. (*Id.*)

17 The Parties have agreed to settle the Action pursuant to the terms and conditions of the
18 PAGA Settlement Agreement (“Agreement” or “Settlement Agreement”), which is attached to
19 the Declaration of Mai Tulyathan as Exhibit A. (Tulyathan Decl. at ¶ 9.) Based on their own
20 independent investigation and evaluation, Plaintiff’s Counsel is of the opinion that the
21 settlement with Defendant for the consideration and on the terms set forth in the Settlement
22 Agreement is fair, reasonable, and adequate and is in the best interests of Plaintiff, the State of
23 California, and Aggrieved Employees, in light of all known facts and circumstances, including
24 the risk of significant delay, the uncertainty associated with litigation, the various defenses
25 asserted by Defendant, and the numerous potential appellate issues. Defendant and its Counsel
26 also agree that the settlement is fair, reasonable, and adequate. (Tulyathan Decl. at ¶ 10.)

27 **III. THE SETTLEMENT TERMS AND ACTUAL AMOUNTS REQUESTED**

28 The material terms of the settlement are described below and set forth in detail in the

Settlement Agreement. (*See* Tulyathan Decl., Ex. A.)

A. The Aggrieved Employees

Pursuant to the Agreement, the “PAGA Settlement Group Members” consists of all current and former non-exempt hourly general managers and assistant managers of Defendant in the State of California who were employed at Northcentral Pizza, LLC at any time from March 1, 2020, to December 17, 2021 (also referred to herein as “Aggrieved Employees”). (Settlement Agreement ¶¶ I.E., I.O.) Pursuant to the Agreement, Defendant agrees that there are no more than 6,873 pay periods worked by Aggrieved Employees during the period of March 1, 2020, to December 17, 2021 (the “Covered Period”). (Settlement Agreement ¶ III.B.) Based upon Defendant’s records, there are approximately 350 unique PAGA Settlement Group Members during the Covered Period. (Tulyathan Decl. at ¶ 11.)

B. The Total Settlement Amount

The Settlement Agreement calls for a “Total Settlement Amount” in the amount of \$275,000.00 for resolution of the Action. (Settlement Agreement ¶¶ I.W., III.B.) The balance of the Total Settlement Amount remaining after deduction of approved attorneys’ fees and litigation costs, final costs of the settlement administration, and approved Service Award to Plaintiff (“Net Settlement Amount”), will be available for distribution to the LWDA and Aggrieved Employees pursuant to the PAGA. (Settlement Agreement ¶¶ I.L., III.C.)

C. Allocation of the Net Settlement Amount

The Parties estimate that the Net Settlement Amount will be at least \$151,496.79. (Tulyathan Decl. at ¶ 12.) Seventy-five percent (75%) of the Net Settlement Amount, or approximately \$113,622.59 will be paid to the LWDA. (Settlement Agreement ¶ I.L. III.E.; Tulyathan Decl. at ¶ 13.) The remaining twenty-five percent (25%) of the Net Settlement Amount, or approximately \$37,874.20, will be paid to the PAGA Settlement Group Members. (Settlement Agreement ¶¶ I.L., III.H.; Tulyathan Decl. at ¶ 13.) This 75/25 allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175 (2019).

The individual settlement payments to PAGA Settlement Group Members will be

1 allocated proportionally based on the number of pay periods each PAGA Settlement Group
2 Member worked for Defendant during the Covered Period. (Settlement Agreement ¶ III.H.)
3 The amount any particular Aggrieved Employee will be entitled to recover will vary depending
4 on the number of pay periods he or she worked, with some entitled to receive more, and others
5 less. (Tulyathan Decl. at ¶ 14.) This is fair, as it directly allocates greater penalties to
6 individual Aggrieved Employees who experienced a higher number of alleged violations. (*Id.*)
7 Based on the estimated number of Aggrieved Employees, on a raw average, each Aggrieved
8 Employee will receive approximately \$432.85 as a result of the Settlement. (*Id.* at ¶ 15.)

9 For purposes of computing taxes, one hundred percent (100%) of the individual
10 settlement payments shall be classified as civil penalties and shall not be subject to
11 withholdings. (Settlement Agreement ¶ III.H.)

12 **D. Service Award to Plaintiff**

13 Pursuant to the terms of the Settlement Agreement, and without opposition from
14 Defendant, the Settlement contemplates a Service Award to Plaintiff in the amount of \$10,000.
15 (Settlement Agreement ¶ III.G.) This amount is to compensate Plaintiff for her efforts and
16 work in prosecuting this case as the PAGA representative, which includes discussing the
17 lawsuit with counsel on a number of occasions, searching for and providing documents in this
18 case, and reviewing the pleadings in this case, including her PAGA letter, the Complaint, and
19 the Settlement Agreement. (Declaration of Tasha Cole (“Cole Decl.”) at ¶ 6.) Additionally,
20 Plaintiff also executed a general release, including for a waiver under California Civil Code §
21 1542, which will waive Plaintiff’s ability to bring any claims related to her employment with
22 Defendant—a far broader scope of release than that provided by the Aggrieved Employees.
23 (*See* Settlement Agreement ¶¶ III.K.2.) Any portion of the Service Award not used or
24 approved by the Court shall be added to the Net Settlement Amount for distribution to the
25 LWDA and Aggrieved Employees.

26 **E. Attorneys’ Fees and Costs**

27 The Settlement Agreement specifies up to thirty-five percent (35%) of the Total
28 Settlement Amount, or \$96,250.00, to be paid as attorneys’ fees to Plaintiff’s Counsel, as well

1 as declared litigation costs not to exceed \$17,000.00. (Settlement Agreement ¶ III.F.) Here,
2 with respect to litigation costs, Plaintiff seeks reimbursement of the actual costs in the amount
3 of \$13,628.21, which is well short of the maximum contemplated by the Agreement.
4 (Tulyathan Decl. at ¶ 34.) Any portion of the attorneys' fees and litigation costs not approved
5 by the Court shall be added to the Net Settlement Amount for distribution to the LWDA and
6 Aggrieved Employees.

7 **F. Settlement Administration Costs**

8 The Parties have selected Phoenix Settlement Administrators as the Settlement
9 Administrator. (Settlement Agreement ¶¶ I.U., III.I.) The anticipated costs for the settlement
10 administration are not to exceed \$4,125.00. (Settlement Agreement ¶ III.D.) Plaintiff's
11 Counsel believes that this amount is reasonable in relation to the value of the settlement.
12 (Tulyathan Decl. ¶ 18.) The settlement administration costs will be deducted from the Total
13 Settlement Amount. (Settlement Agreement ¶ III.D.) Any portion of the settlement
14 administration costs not used or approved by the Court shall be added to the Net Settlement
15 Amount for distribution to the LWDA and Aggrieved Employees.

16 **G. Scope of Release by Aggrieved Employees**

17 The Settlement provides for a PAGA Settlement Group Members' Released Claims.
18 The release provides that upon funding of the Total Settlement Amount, Plaintiff and the
19 Aggrieved Employees will release Defendant and the Released Parties from the following
20 claims:

21 [A]ny and all claims based on the Private Attorneys General Act
22 (2004), as pleaded in Plaintiff's Complaint or that could have been
23 pleaded based on the facts as alleged in the Complaint and Plaintiff's
24 notice letter to LWDA, arising during the Covered Period, including
25 but not limited to claims under Labor Code sections 201, 202, 203,
26 226, 226.7, 512, 2698, 2699.3, and 2699.5, the Industrial Welfare
27 Commission Wage Orders, and any resulting claim for attorneys'
28 fees and costs (the "PAGA Released Claims"). The release only
extends to pay periods in which the PAGA Settlement Group
Member worked at Northcentral Pizza, LLC during the Covered
Period.

(Settlement Agreement ¶ III.K.1.) As noted above, this release is limited to those claims
premised on the PAGA based on the facts and claims raised in the complaint, and further

1 limited to pay periods in which the PAGA Settlement Group Member worked for Defendant
2 during the Covered Period. Thus, the release is appropriately tailored.

3 **IV. PAGA REQUIREMENTS**

4 Prior to the enactment of PAGA, many of the penalties provided against employers for
5 violations of certain Labor Code provisions were solely within the province of the California
6 Department of Labor to seek, enforce, and assess. *Arias v. Superior Court*, 46 Cal. 4th 969,
7 980 (2009). However, due to the lack of financing to California's agencies and the potential
8 number of Labor Code violations by California employers, the California Legislature found
9 that it was in the public interest to allow aggrieved employees to act as private attorneys
10 general and to enforce and recover penalties on behalf of other similarly situated aggrieved
11 employees for Labor Code violations committed by their employers. *Id.* As such, PAGA was
12 enacted to allow such enforcement and recovery by private individuals who have been
13 aggrieved by their employers. Moreover, 75% of any penalties recovered under PAGA by an
14 aggrieved employee is to be paid to California's LWDA and the remaining 25% is to be shared
15 amongst the aggrieved employees. Cal. Lab. Code § 2699(i).

16 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved
17 employee must first provide written notice to the LWDA and the employer of the particular
18 Labor Code violation the aggrieved employee alleges the employer has violated. *See* Cal.
19 Labor Code § 2699.3(a)(1). Once the LWDA notifies the aggrieved employee that it does not
20 intend to investigate the alleged violations or the time for the LWDA to investigate the claims
21 passes, the aggrieved employee is allowed to proceed in a civil action against the employer on
22 the alleged violations on behalf of all other similarly situated employees. *See* Cal. Labor Code
23 § 2699.3(a)(2)(A).

24 In 2009, the California Supreme Court considered the issue of whether an aggrieved
25 employee who brings a PAGA claim on behalf of himself and others similarly situated needs
26 to seek the PAGA claim as a class action and meet class certification requirements. *Arias*, 46
27 Cal. 4th at 976. After a substantial review of the legislative history of PAGA, the California
28 Supreme Court held that an aggrieved employee's representative action brought on behalf of

1 other similarly situated employees against an employer for PAGA violations do not need to
2 meet all of the requirements for class certification. *Id.* at 975; 980-88. As the California
3 Supreme Court held, a plaintiff bringing suit under PAGA does so as the proxy or agent of
4 California’s labor law enforcement agencies. *Id.* at 986. Because an employee’s PAGA action
5 functions as a substitute for an action brought by the government itself, a judgment in the
6 PAGA action binds all those who would be bound by a judgment in an action brought by the
7 government. *Id.*

8 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the
9 Superior Court must “review and approve any settlement of any civil action filed pursuant to”
10 PAGA. Labor Code § 2699(1)(2). As the Parties to this current PAGA action have reached
11 such an agreement, the Parties now seek this Court’s approval as to the settlement of the
12 penalties amount.

13 **V. THE SETTLEMENT VALUE IS REASONABLE CONSIDERING THE**
14 **ATTENDANT RISKS OF CONTINUING LITIGATION AND DEFENDANT’S**
15 **CONTENTIONS**

16 Though Plaintiff is reasonably confident that she would prevail at trial, proceeding in
17 litigation entails significant risk on the underlying merits of Plaintiff’s theory, in addition to
18 the still-developing law under PAGA.

19 **1. Plaintiff’s Claims are Contested**

20 **a. Meal and Rest Period Violations**

21 Here, Plaintiff alleges that Defendant failed to provide off-duty meal and rest periods to
22 Plaintiff and aggrieved employees, in violation of Labor Code §§ 201-203, 226.7, and 512. In
23 this regard, Plaintiff alleges that Defendant required its employees to work through their meal
24 and rest periods without providing the requisite off-duty meal and/or rest periods. Due to
25 Defendant’s scheduling and/or staffing issues of its other employees, Plaintiff and other
26 employees were routinely not allowed to take their rest breaks and/or their full 30-minute meal
27 breaks. (Tulyathan Decl. at ¶ 4.)

28 However, Defendant argued that its written policies are compliant with meal and rest

1 period laws and that it provided its employees with meal and rest periods. In support of this,
2 Defendant provided evidence of its written meal and rest period policies. In addition,
3 Defendant also argued that its managers signed on-duty meal period waivers, which it
4 maintains are valid, to help combat issues regarding scheduling of shifts. (Tulyathan Decl. at ¶
5 23.)

6 **b. Wage Statement Violations**

7 Plaintiff seeks to recover PAGA penalties for Defendant's alleged failure to issue
8 accurate wage statements, for derivative wage statement violations and standalone wage
9 statement violations. For Plaintiff's standalone wage statement violations, Plaintiff alleges that
10 whenever overtime and/or double time wages were paid to Plaintiff and aggrieved employees,
11 the corresponding wage statements displayed the wrong hourly rate of pay. Specifically, the
12 overtime and/or double time hourly pay rates are identified on the wage statements as the base
13 hourly rates of pay, rather than the correct overtime rate of pay of 1.5 times the regular rate of
14 pay. (Tulyathan Decl. at ¶ 5.)

15 For this theory of liability, Defendant argued that its wages statements provide all
16 details that are necessary for employees to verify their pay and that employees can use simple
17 math to obtain any information such that there is no 226(a)(9) wage statement violation under
18 California law. In any event, Defendant has represented that it has revised its wage statement
19 practices to identify the separate rate of pay for overtime and double time wages as of October
20 2020. As such, even if Plaintiff could prevail on liability on this theory of liability, any
21 penalties recoverable would be limited. (Tulyathan Decl. at ¶ 24.)

22 **c. Defenses to PAGA**

23 Defendant asserted additional defenses to the PAGA claim, not only as to liability but
24 also as to the amount of the penalties. (Tulyathan Decl. at ¶ 25.) Defendant argued that no
25 penalties should be awarded because any alleged violations were not intentional, and thus
26 should be substantially reduced. (*Id.*) Defendant also argued that the PAGA claims were
27 unmanageable, which presented significant risk especially considering the Court of Appeal's
28 recent holding in, *Wesson v. Staples the Off. Superstore, LLC*, 68 Cal. App. 5th 746, 283 Cal.

1 Rptr. 3d 846 (2021), reh'g denied (Sept. 27, 2021), review filed (Oct. 19, 2021) (upholding trial
2 court's order striking PAGA claim as unmanageable). These defenses present a risk to the
3 PAGA claim and the potential that some or all of the PAGA penalties sought may not be
4 awarded. (*Id.*)

5 Pursuant to Labor Code section 2699(f)(2) the Court can decline to award PAGA
6 penalties where "...if, based on the facts and circumstances of the particular case, to do
7 otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." In
8 other words, were this matter to go to trial, any award granted would be at the discretion of the
9 Court. Plaintiff further recognizes that there may be reasons that the Court would be unwilling
10 to issue an award in this matter even if Plaintiff were able to prove the PAGA violation at trial.

11 Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.*,
12 while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the
13 maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at
14 complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon review, the Court of Appeal
15 found such reduction to be proper. *Id.* at 539. Courts have also suggested that a reduction of
16 civil penalties may be appropriate where the alleged violation is a technical one. *Raines v.*
17 *Coastal Pacific*, 23 Cal. App. 5th 667, 681 (2018) ("[A] trial court has discretion in awarding
18 civil penalties and may reduce the award for technical violations that cause no injury").
19 Defendant argued that if a court were to find it liable for the violations alleged, any penalties
20 awarded should be reduced under this other similar line of reasoning that would render any
21 such award of penalties as unjust, arbitrary, and oppressive, and/or confiscatory.

22 *Carrington* is not the only cautionary tale. In *Magadia v. Wal-Mart Assocs. et al.*,
23 while the trial court imposed substantial PAGA penalties upon the defendant, such amount still
24 represented reductions of 67% and 80% of the potential PAGA penalties at issue. 2019 U.S.
25 Dist. Lexis 91792 at *87-*100. Moreover, this was only after the plaintiff in *Magadia* had
26 prevailed after trial. Thereafter, the Ninth Circuit reversed a substantial judgment in favor of
27 the plaintiff and the aggrieved employees. *Magadia v. Wal-Mart Assocs., Inc.*, 999 F.3d 668,
28 682 (9th Cir. 2021).

1 While Plaintiff maintains that there does not exist any reason for reducing PAGA
2 penalties here, Plaintiff is aware that Defendant's defenses could be persuasive to the Court.
3 Accordingly, Plaintiff factored in those evaluations into the proposed settlement amount.

4 **2. Recovery of Penalties After Trial**

5 Defendant has indicated that the aggrieved employees worked 6,873 pay periods during
6 the Covered Period. (Settlement Agreement ¶ III.B.) Therefore, pursuant to the PAGA,
7 Plaintiff has calculated total exposure, if the Court were to award penalties for the violations
8 alleged, could total as high as \$3,092,850. (Tulyathan Decl. at ¶ 21.) This is based on the
9 following calculations:

- 10 • PAGA based on meal period violations: 6,873 pay periods x \$100 initial
11 violation penalty = \$687,300
- 12 • PAGA based on rest period violations: 6,873 pay periods x \$100 initial violation
13 penalty = \$687,300
- 14 • PAGA based on wage statement violations: 6,873 pay periods x \$250 violation
15 penalty (pursuant to Labor Code § 226.3 and pursuant to *Raines v. Coastal*
16 *Pacific Food Distributors, Inc.*) = \$1,718,250

17 (*Id.*) Based on the above, the total potentially available PAGA penalties are \$3,092,850. (*Id.*)

18 Here, the Total Settlement Amount is \$275,000, which is approximately 8.89 percent of
19 the total estimated exposure. (Tulyathan Decl. at ¶ 27.) The proposed settlement exceeds
20 PAGA settlements that courts have approved in other cases, when considered as a percentage
21 of the overall settlement value of the case. The proposed settlement, in fact, far exceeds other
22 PAGA settlements approved by courts—including those that provide for less than the one
23 percent allocation to PAGA penalties. *See, e.g., Hopson v. Hanesbrands Inc.*, 2009 WL
24 928133, *9 (N.D. Cal. Apr. 3, 2009) (approving total PAGA allocation that was 0.49% of
25 \$408,420.32 gross settlement; *Moore v. PetSmart, Inc.*, 2015 WL 5439000, *8 (N.D. Cal. Aug.
26 4, 2015) (approving total PAGA allocation that was 0.5% of \$10,000,000 gross settlement);
27 *Lusby v. Gamestop Inc.*, 97 F.R.D. 400, 407 (N.D. Cal. 2013) (approving total PAGA
28 allocation that was 0.67% of \$750,000 gross settlement). A PAGA allocation need not

1 represent any particular percentage of the overall settlement value in order to secure court
2 approval, and courts routinely approve PAGA settlements representing only a tiny fraction of
3 the overall settlement value.

4 Based on the above, this settlement is fair and reasonable and the Court should approve
5 the Settlement.

6 **VI. ATTORNEYS' FEES AND COSTS ARE APPROPRIATE**

7 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. (Cal. Lab. Code
8 § 2699, subd. (g).) Similar to awarding fees in a class action, California state and federal
9 courts have recognized that an appropriate method for determining award of attorneys' fees for
10 representative actions is to use a percentage of the total value of benefits to class members by
11 the settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano*
12 *v. Priest* (1977) 20 Cal. 3d 25, 34 ("*Serrano III*"); *Boeing Co. v. Van Gemert* (1980) 444 U.S.
13 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F. 2d 759, 769.) The purpose
14 of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation
15 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the
16 entire burden alone." (*Vincent*, 557 F. 2d at p. 769.)

17 The Common Fund doctrine is predicated on the principle of preventing unjust
18 enrichment. When a litigant's efforts create or preserve a fund from which others derive
19 benefits, he may require the passive beneficiaries to compensate those who created the fund.
20 Both California state and federal courts have embraced this doctrine. (*Serrano III*, 20 Cal. 3d
21 at p. 35; *Vincent*, 557 F.2d at p. 769.) Similarly, in *City and County of San Francisco v. Sweet*
22 (1995) 12 Cal. 4th 105, 110, the California Supreme Court recognized that the common fund
23 doctrine has been applied "consistently in California when an action brought by one party
24 creates a fund in which other persons are entitled to share." The reasons for applying the
25 common fund doctrine include: "fairness to the successful litigant, who might otherwise
26 receive no benefit because his recovery might be consumed by the expenses; correlative
27 prevention of an unfair advantage to the others who are entitled to share in the fund and who
28 should bear their share of the burden of its recovery; encouragement of the attorney for the

1 successful litigant who will be more willing to undertake and diligently prosecute proper
2 litigation for the protection or recovery of the fund if he is assured that he will be properly and
3 directly compensated should his efforts be successful.” (*Id.*)

4 Indeed, most recently, the California Supreme Court has also held that the award of
5 attorneys’ fees in common fund wage and hour class action settlements should start with the
6 percentage method. (*See Laffitte v. Robert Half Int’l* (2016) 1 Cal. 5th 480, 503 (“We join the
7 overwhelming majority of federal and state courts in holding that when class action litigation
8 establishes a monetary fund for the benefit of the class members, and the trial court in its
9 equitable powers awards class counsel a fee out of that fund, the court may determine the
10 amount of a reasonable fee by choosing an appropriate percentage of the fund created.”).)

11 Here, Plaintiff’s counsel seeks thirty-five percent (35%) of the Total Settlement
12 Amount in attorneys’ fees, or \$96,250.00, which is reasonable. (*Martin v. AmeriPride Servs.,*
13 *Inc.* (S.D. Cal. June 9, 2011) 2011 WL 231604, at *8 (“More particularly, courts may award
14 attorneys’ fees in the 30–40% range in wage and hour class actions that result in recovery of a
15 common fund under \$10 million.”); *Singer v. Becton Dickinson and Co.* (S.D. Cal. June 1,
16 2010) 2010 U.S. Dist. LEXIS 53416, 2010 WL 2196104, * 8 (approving attorney fee award
17 and finding that award was similar to awards in three other wage and hour class action cases
18 where fees ranged from 30.3% to 40%); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal.
19 Nov.14, 2007) 2007 U.S. Dist. LEXIS 86270, 2007 WL 3492841.)

20 Plaintiff’s counsel’s reimbursement request in the amount of \$13,628.21 is also
21 reasonable, especially in light of the fact that the Parties agreed that Plaintiff’s counsel may
22 seek up to \$17,000.00 in litigation costs under the Settlement Agreement. (Tulyathan Decl. at
23 ¶ 34.) As set forth in Plaintiff’s counsel’s declaration, the costs were all directly incurred in
24 the prosecution of this action, including, but not limited to, filing/service fees, court fees,
25 expert fees, and mediation fees. (Tulyathan Decl. at ¶ 35, Exhibit B.) As such, the requested
26 costs should be awarded as fair and reasonable.

27 **VII. NOTICE TO THE LWDA HAS BEEN PROVIDED**

28 Pursuant to California Labor Code § 2699(1), on June 17, 2022, Plaintiff uploaded the

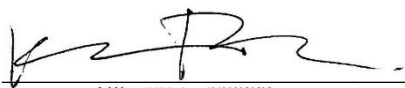
1 instant motion, Settlement Agreement, and proposed order to the LWDA's website.
2 (Tulyathan Decl. at ¶ 36.) In addition, Plaintiff shall submit to the LWDA a copy of the
3 Court's judgment and order approving the Settlement Agreement within ten (10) days after
4 entry of judgment or order. (*Id.*)

5 **VIII. CONCLUSION**

6 Based on the above, Plaintiff requests the Court approve the current PAGA settlement.

7
8 DATED: June 17, 2022

DIVERSITY LAW GROUP, P.C.

9
10 By: 
11 Larry W. Lee
12 Mai Tulyathan
13 Attorneys for Plaintiff and the Aggrieved
14 Employees
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1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On June 17, 2022, I served the following document(s) described as:

- 11 1. **PLAINTIFF'S NOTICE OF MOTION AND UNOPPOSED MOTION TO**
12 **APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE**
13 **ATTORNEYS GENERAL ACT; MEMORANDUM OF POINTS AND**
14 **AUTHORITIES IN SUPPORT**
15
16 2. **DECLARATION OF MAI TULYATHAN IN SUPPORT OF PLAINTIFF'S**
17 **UNOPPOSED MOTION TO APPROVE SETTLEMENT AGREEMENT**
18 **PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
19
20 3. **DECLARATION OF LARRY W. LEE IN SUPPORT OF PLAINTIFF'S**
21 **UNOPPOSED MOTION TO APPROVE SETTLEMENT AGREEMENT**
22 **PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
23
24 4. **DECLARATION OF TASHA COLE IN SUPPORT OF PLAINTIFF'S**
25 **UNOPPOSED MOTION TO APPROVE SETTLEMENT AGREEMENT**
26 **PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**
27
28 5. **[PROPOSED] ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION TO**
APPROVE SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT; AND JUDGMENT THEREON

on the interested parties in this action as follows:

Alexander M. Medina
alex@medinamckelvey.com
Doug Leach
doug@medinamckelvey.com
Samantha Shapiro
Samantha@medinamckelvey.com
Jenelle Joyce

1 jenelle@medinamckelvey.com
2 Medina McKelvey LLP
3 925 Highland Pointe Drive, Suite 300
4 Roseville, CA 95678
5 Attorneys for Defendant Northcentral Pizza

6 X BY ELECTRONIC MAIL: by personally sending a true and correct copy
7 of the above-described document(s) to the party(ies) listed above or on the attached mailing list
8 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
9 indicated above or on the attached mailing list. I certify that said electronic transmission was
10 completed and that all pages were received by the party(ies) identified herein or on the attached
11 mailing list.

12 I declare under penalty of perjury under the laws of the State of California that the
13 above is true and correct. Executed on June 17, 2022, at Los Angeles, California.

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Erika Mejia