

Kevin Mahoney, Esq. (SBN: 235367)

kmahoney@mahoney-law.net

Katherine J. Odenbreit, Esq. (SBN: 184619)

kodenbreit@mahoney-law.net

MAHONEY LAW GROUP, APC

249 E. Ocean Boulevard, Suite 814

Long Beach, California 90802

(562) 590-5550 Telephone

(562) 590-8400 Facsimile

Attorneys for Plaintiff GERTRUDES CENTENO on behalf of himself and all others similarly situated,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT
SPRING STREET COURTHOUSE**

GERTRUDES CENTENO, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

REDHEAD KITCHEN, LLC dba PASTA
SISTERS, and DOES 1 through 50, inclusive,

Defendants.

Case No.: 18STCV01494

CLASS ACTION

**PLAINTIFF'S NOTICE OF UNOPPOSED
MOTION AND MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

Assigned for all purposes to:
Hon. Maren Nelson, Dept.: 17

Date: April 27, 2021
Time: 10:00 a.m.
Dept.: 17

Complaint Filed: January 4, 2019
Trial Date: Not Yet Set

1 **PLEASE TAKE NOTICE** that on April 27, 2021, at 10:00 a.m. in Department 17 of this
2 Court, located at 312 N. Spring Street, Los Angeles California 90012, pursuant to Code of Civil
3 Procedure section 382 and Rules of Court, rule 3.769, subdivision (c), Plaintiff, GERTRUDES
4 CENTENO (“Plaintiff”), will move the Court for an order granting approval of the proposed
5 PAGA settlement, between Plaintiff and Defendant, REDHEAD KITCHEN, LLC dba PASTA
6 SISTERS (“Defendant” or “Redhead”), which is memorialized in the Parties’ PAGA Settlement
7 Agreement (“Settlement Agreement.”) (Attached as Exhibit A of Declaration of Katherine J.
8 Odenbreit, filed concurrently herewith.).

9 Plaintiff will move the Court for an Order:

10 1. Approval of the PAGA Settlement on behalf of all current and former employees
11 who worked for Defendant at any time from October 19, 2017 to February 8, 2021 (“Aggrieved
12 Employees”) (Declaration of Katherine J. Odenbreit (“Odenbreit Decl.”), Ex. A);

13 2. Approval of the PAGA Notice;

14 3. Approval of a Representative Plaintiff’s Payment for Plaintiff GERTRUDES
15 CENTENO;

16 4. Appointing Phoenix Settlement Administrators as Settlement Administrator;

17 5. Approval of Plaintiff’s Counsel’s award of attorney’s fees and costs pursuant to
18 Labor Code section 2699, subdivision (g)(1);

19 6. Directing Defendant, Redhead, to furnish the Settlement Administrator, within
20 fifteen (15) days after the Court grants approval of the Settlement, a database or practical
21 equivalent setting forth the Aggrieved Employees’ names, social security numbers, last-known
22 addresses, telephone numbers, starting and ending dates of employment, and number of shifts
23 worked during the Relevant Period which is defined as October 19, 2017, to February 3, 2021;
24 and

25 7. Setting a date by which the Settlement Administrator will submit to the Court a
26 final accounting of all distributions.

27 8. Entry of Judgment and Dismissal of the Action with prejudice.
28

1 This motion will be based upon this notice, the attached memorandum of points and
2 authorities, the declaration of Katherine J. Odenbreit and exhibits thereto, the records and files in
3 this action, and any further evidence or argument that the Court may properly receive at or before
4 the hearing.

5
6 Dated: March 23, 2021

MAHONEY LAW GROUP, APC



Kevin Mahoney, Esq.

Katherine Odenbreit, Esq.

Attorneys for Plaintiff GERTRUDES CENTENO
as an individual and on behalf of all Aggrieved
Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND STATEMENT OF FACTS**

3 **A. Procedural Background**

4 On October 19, 2018, Plaintiff GERTRUDES CENTENO (“Plaintiff”) filed a class
5 action complaint against Defendant REDHEAD KITCHEN, LLC dba PASTA SISTERS
6 (“Defendant” or “Redhead”), alleging various wage and hour violations co(failure to pay all
7 wages, including minimum wage compensation; failure to provide meal and rest periods; failure
8 to provide accurate earnings statements; failure to pay owed wages at time of separation from
9 employment; failure to reimburse business related expenses) as well as violations of unfair
10 competition laws set forth in the Business and Professions Code (“B&PC”). Plaintiff thereafter
11 filed a first amended complaint on March 29, 2019, adding the PAGA-related cause of action.
12 (Odenbreit Decl., ¶4.)

13 On May 1, 2019, Defendant filed a Motion to Compel Arbitration of Plaintiff’s individual
14 claims and stay the remaining claims. On August 1, 2019, the Court granted Defendant’s motion
15 and ordered the individual claims of Mr. Centeno to arbitration and stayed Plaintiff’s PAGA
16 claims. The Court further found dismissal of the class allegations was not necessary because they
17 do not constitute “claims”. (Odenbreit Decl., ¶6.)

18 In the first amended complaint, Plaintiff alleged the following Labor Code violations
19 under PAGA: Labor Code sections 201, 202, 203, 204, 221-225.5, 226, 226.7, 510, 512, 558,
20 1174, 1197 and 1197. (Declaration of Katherine J. Odenbreit “Odenbreit Decl.” ¶4.) These
21 allegations were set forth in Plaintiff’s pre-filing notice to the California Labor and Workforce
22 Development Agency (“LWDA”) on October 12, 2018. (Odenbreit Decl., Ex. B.)

23 Plaintiff contends Defendant failed to provide timely and uninterrupted meal and rest
24 breaks, failed to pay premium wages for missed meal and rest breaks, failed to pay all overtime
25 and minimum wages due, failed to provide accurate itemized wage statements and failed to pay
26 all wages due at separation of employment. (Odenbreit Decl., ¶4.)

27 Plaintiff alleged he and the Aggrieved Employees were not provided with meal breaks
28 within the first five (5) hours of their work shifts, were required to return to work before a full

thirty (30) minute break or were not provided with a meal period at all. Plaintiff further alleges he and the other Aggrieved Employees were not provided with a second meal break when they worked shifts in excess of ten (10) hours. Plaintiff also alleged he and Aggrieved Employees were provided with only 1 rest break in for shifts worked in excess of six (6) hours. (Odenbreit Decl., ¶4.) Defendant had not policy or practice for paying premium pay when employees were not provided with meal or rest breaks. (Odenbreit Decl., ¶4.)

Plaintiff further alleged Defendant would not pay all overtime and minimum wages due for time spent by employees working off-the-clock. Specifically, Plaintiff contends they would work shifts in excess of eight to ten (8-10) hours but that time would not be entered by managers on their time records to reflect this overtime worked. (Odenbreit Decl., ¶4.)

Plaintiff also alleged derivative claims arising from the above-described violations: that Defendant frequently and regularly issued to Plaintiff and Plaintiff Class inaccurate wage statements which did not accurately set forth the number of hours worked or wages earned in a given pay period and that Defendant failed to pay all wages owed at the time of separation from employment. (Odenbreit Decl., ¶4.)

Defendants have denied all liability and have contended that: (1) Employees were not permitted to work off-the-clock; (2) Defendant consistently provided to Plaintiff and Aggrieved Employees legally compliant opportunities to take meal and rest periods; (3) front of the house employees rarely worked shifts that would require a meal period as well as other legal defenses. (Odenbreit Decl., ¶ 5.)

B. Case Investigation and Mediation

Following the Court's order compelling arbitration of Plaintiff's individual claims Plaintiff submitted a demand for arbitration on January 15, 2020. Defendant filed a response to this demand on February 27, 2020. The arbitrator is Emily Boyle of the American Arbitration Association. (Odenbreit Decl., ¶7.) The arbitration hearing was scheduled for May 25 through 27, 2021. (Odenbreit Decl., ¶7.) The Parties had exchanged initial written discovery and documents.

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1 On January 25, 2021, the Parties attended mediation with mediator Jill Sperber, Esq. from
2 the offices of Judicate West, following, which the Parties reached a resolution regarding the
3 principal terms of settlement, which were subsequently formalized in a written “PAGA
4 Settlement Agreement” (Settlement Agreement), executed on February 8, 2021. (Odenbreit
5 Decl., ¶x, Ex. A.) During the mediation, the Parties separately negotiated and resolved the
6 individual claims of Plaintiff Centeno, currently pending in arbitration. (Odenbreit Decl., ¶8.)

7 In advance of mediation and as part of Plaintiff’s case investigation, Plaintiff’s counsel
8 reviewed the following:

- 9 • Documents and information provided by Defendant in connection with Plaintiff’s
10 individual arbitration which consisted of Defendant’s written policies and practices,
11 time and pay records;
- 12 • Payroll and daily time records for Plaintiffs, thirty-one (31) sets of time and pay
13 records for Plaintiff and thirty (30) randomly selected Aggrieved Employees
14 representing a nineteen (19%) sample of Aggrieved Employees;
- 15 • Defendant’s’ written wage and hour policies from 2018 and as updated in late 2018
16 and 2019;
- 17 • An expert report obtained by Plaintiff’s counsel from an expert witness setting forth
18 an analysis of the potential recoverable penalties. (Odenbreit Decl., ¶8.)

19 Further, in advance of mediation, Plaintiff’s and Defendant’s counsel had several
20 discussions about the data provided, issues with Defendant’s timekeeping system when the
21 restaurant first opened, the impact of COVID-19 on Defendant’s business, the job duties and
22 shifts of Aggrieved Employees and the Parties’ respective positions on potential legal issues in
23 the case. (Odenbreit Decl., ¶8.) Plaintiff relayed key information obtained in these conversations
24 to Plaintiff’s expert for verification, specifically with regard to Defendant’s contention that front
25 of the house employees rarely worked shifts in excess of four (4) hours and represent
26 approximately fifty percent (50%) of the Aggrieved Employees at issue. (Odenbreit Decl., ¶8.)
27 Plaintiff’s expert was able to extrapolate from the data for nineteen (19%) sample to provide
28 potential maximum PAGA penalties at issue. (Odenbreit Decl., ¶8.)

1 After extensive investigation, formal and informal discovery, including analysis of
2 relevant documents and other gathered data, Class Counsel believed that this case was
3 appropriate for resolution *via* mediation. (Odenbreit Decl., ¶11.)

4 During and prior to the mediation, the parties discussed all aspects of the case, including
5 the risks of litigation and the risks to both parties of proceeding with trial. Especially, Plaintiff
6 and his counsel considered the potential impact of Defendants' facially compliant written policies
7 after September 2018, and subsequent change in the time records to indicate Defendant was
8 attempting to come into compliance with the Labor Code. (Odenbreit Decl., ¶8.) The Parties also
9 discussed at length with the mediator, the severe impact the COVID-19 stay-at-home orders have
10 had on Defendant and the restaurant industry as a whole. (Odenbreit Decl., ¶11.)

11 After engaging in substantial investigation and extensive negotiations with the assistance
12 of a respected third-party neutral, Jill Sperber, the parties have agreed to settle the PAGA claims
13 for a Maximum Settlement Amount ("MSA") of fifty-five thousand dollars (\$55,000.00),
14 inclusive of all fees and costs and reimbursement of Plaintiff's share of the mediator's fee outside
15 the Settlement. All one hundred sixty-one (161) Class Members will automatically receive a
16 settlement share of twenty-five percent (25%) of the Net Settlement Amount ("NSA"). The
17 estimated minimum Net Settlement Amount ("NSA") of six thousand, five hundred twenty-nine
18 dollars and sixteen cents (\$6,529.16) will be distributed and paid to the Aggrieved Employees.
19 (Odenbreit Decl., ¶10.) In Plaintiff counsel's analysis, this is a reasonable settlement consistent
20 with the purpose of PAGA. (Odenbreit Decl., ¶¶11-18.)

21 **1. Proposed Distribution**

22 Defendant contends that front of the house employees (i.e., cashiers, baristas) were
23 consistently scheduled to work shifts of four (4) hours. (Odenbreit Decl., ¶¶12, 17.) Defendant
24 further provided information to show nearly fifty percent (50%) of the Aggrieved Employees
25 (79) were front of the house employees. (Odenbreit Decl., ¶12.) Plaintiff's expert analysis
26 confirmed this assertion. The analysis showed that only four percent (4%) or less of the shifts
27 worked by front of the house employees were more than six (6) hours and rarely, if ever, worked
28 overtime. (Odenbreit Decl., ¶12.) This evidence significantly impacted the value of the PAGA

1 penalties as nearly fifty percent (50%) of the pay periods at issue would not likely have a
2 violation. (Odenbreit Decl., ¶12.) Contrary, back of the house employees (i.e., cooks, cleaners)
3 routinely worked shifts in excess of six (6) hours and were the employees who sometimes worked
4 overtime. (Odenbreit Decl., ¶17.) This distinct disparity between the two groups in the number
5 of potential violations that could be proven demands a different distribution of the available
6 PAGA penalties. Therefore, the Settlement provides that front of the house employees will
7 receive a flat sum distribution of twenty-five dollars (\$25.00) and back of the house employees
8 will receive a proportional share of the remaining NSA based on the number of pay periods in
9 which they actually performed work for Defendant. (Odenbreit Decl., ¶17, Ex. A, ¶H.2.)

10 **C. Analysis Ahead of Settlement**

11 From Plaintiff's counsel's review of the facts, strengths, and weaknesses of the case, the
12 risks and delays posed by further litigation, especially in light of the current stay of the PAGA
13 claims, and counsel's own prior litigation experience, counsel believes that the recovery of civil
14 penalties for each employee is fair and reasonable taking into consideration the risks inherent in
15 litigation of this genre, the Defendant's efforts to enact legally compliant policies and practices,
16 and in consideration of the significant impact of COVID-19 on Defendant's business and the
17 Aggrieved Employee's employment. Further, and based on the settlement negotiations, which
18 were the extensive and conducted in good faith and at arm's length between attorneys with
19 substantial experience litigating PAGA cases, the Settlement Agreement was the product of a
20 non-collusive settlement process in which the parties were forced to make significant
21 compromises in the interest of reaching a full and complete settlement of the PAGA action.
22 (Odenbreit Decl., ¶¶8, 11-18.)

23 Conversely, Plaintiff is confident he will prevail in trial of the action. However, Plaintiff
24 realizes that there is always a significant risk associated with trial and a trial verdict, especially,
25 as in this case, where Defendants have produced evidence to show nearly fifty percent (50%) of
26 the Aggrieved Employees at issue have experience few, if any, violations, the potential cut-off
27 of liability once compliant policies were put in place and the likelihood that penalties would be
28 significantly reduced by the Court due to financial impact on Defendant's business over the past

1 year. (Odenbreit Decl., ¶ 9.)

2 From counsel's review of the facts, strengths, and weaknesses of the case, the risks and
3 delays posed by further litigation, and counsel's own prior litigation experience, counsel believes
4 that the recovery for each Aggrieved Employee is fair and reasonable and furthers the interests
5 of the state and the Aggrieved Employees. Further, and based on the settlement negotiations,
6 which were extensive and conducted in good faith and at arm's length between attorneys with
7 substantial experience litigating PAGA cases, including at trial, the Settlement Agreement was
8 the product of a non-collusive settlement process in which the parties were forced to make
9 significant compromises in the interest of reaching a full and complete settlement of the lawsuit

10 As discussed above, the Parties engaged in substantial informal discovery before the
11 Settlement was reached to allow them to fully evaluate the class claims and Defendants'
12 defenses. Indeed, a settlement was only reached after considerable investigation, formal and
13 informal discovery, the review of employment records of Plaintiff and Aggrieved Employees,
14 including time and payroll data, as well as Defendant's facially and legally compliant handbook
15 and written policies in place since September 2018. (Odenbreit Decl., ¶8.) This information and
16 evidence have allowed counsel to fully assess the strengths and weaknesses of the PAGA claims
17 against Defendant and the benefits of the Settlement under the circumstances of this case.
18 (Odenbreit Decl., ¶¶8-9.)

19 Given that the Settlement creates a Maximum Settlement Amount of up to fifty-five
20 thousand dollars (\$55,000.00) for the potential PAGA claims of one hundred sixty-one (161)
21 Aggrieved Employees, this Settlement provides a reasonable recovery to the PAGA penalties.

22 **II. SUMMARY OF TERMS OF THE SETTLEMENT**

23 Key provisions of the proposed settlement include:

- 24 • Settlement of PAGA claims on behalf of: All current and former employees who worked
25 for Defendant Redhead Kitchen, LLC dba Pasta Sisters at any time from October 19,
26 2017 to February 8, 2021. ("Aggrieved Employees" or "PAGA Settlement Group
27 Members") (Odenbreit Dec., Ex. A: ("PAGA Settlement Agreement"), ¶I.Q.)

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- Defendants agree to pay a Maximum Settlement Amount (“MSA”) of fifty-five thousand dollars (\$55,000.00), from which the entire twenty-five (25%) of the Net Settlement Amount (“NSA”) will be paid to PAGA Settlement Group Members directly along with a Notice of PAGA Settlement. (Odenbreit Decl., Ex. A, ¶III.H).
- Administration of the Settlement will be handled by Phoenix Settlement Administrators. Charges and expenses of the Settlement Administrator shall not exceed five thousand dollars (\$5,000.00), which shall be paid to the Settlement Administrator out of the payment of the MSA. (Odenbreit Decl., Ex. A, ¶I.W. and III.D).
- PAGA Settlement Group Members will be notified of the Settlement via U.S. Mail at their last known address through written notice approved by the Court accompanying the check for their share of the penalties. The Settlement Administrator will take reasonable steps prior to the mailing to verify the last known address of each Class Member. (Odenbreit Decl., Ex. A, ¶III.I.) The Notice will provide class members with an explanation of the proposed settlement, their recovery, including the methodology used to calculate individual payments, and an explanation of the claims for which the payment represents and the Aggrieved Employee releases. (Odenbreit Decl., Ex. A, ¶III.J.3.) (See also Odenbreit Decl., Ex. C.) The Notice will be sent in English and Spanish. (Odenbreit Decl., ¶19, Ex. C.)
- Defendant shall not oppose an application by Representative Plaintiff for a Representative Plaintiff Award of two thousand dollars (\$2,000.00), for his significant participation and assistance in the litigation, payable from the MSA. (Odenbreit Decl., Ex. A, ¶III.G.)
- Defendant shall not oppose Plaintiff’s counsel’s application for attorney’s fees in the amount up to eighteen thousand, three hundred thirty-three dollars and thirty-three cents (\$18,333.33) which represents 33.33% of attorney’s fees pursuant to Labor Code section 2699, subdivision (g)(1), payable from the MSA upon approval by the Court. Odenbreit Decl., Ex. A, ¶III.F.)

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- Defendant will not oppose Plaintiff’s counsel’s application for litigation costs up to three thousand, five hundred fifty dollars (\$3,550.00), payable from the MSA upon approval by the Court. (Odenbreit Decl., Ex. A, ¶III.F, Ex. D.)
- Defendant will pay to Judicate West Plaintiff’s portion of the mediation fees in the amount of two thousand six hundred fifty dollars and zero cents (\$2,650.00) separate and apart from the MSA. (Odenbreit Decl., Ex. A ¶III.B.2.)

III. The Proposed Settlement Represents a Reasonable Compromise of Disputed Claims in Furtherance of the Protections and Remedies Provided by the State

PAGA requires that the Court evaluate whether the penalties procured in a settlement are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. (Lab. Code, § 2699.3, subdivision (b)(4).) The interest to be protected by PAGA is to deter Labor Code violations and protect employees. (*Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 370; *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 83.)

Further, PAGA provides that a court has the discretion to reduce and award less than the maximum penalties “based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Lab. Code, § 2699, subdivision (e)(2).)

Although the evaluation of a PAGA settlement differs from that in a class action settlement, some courts require counsel to provide a maximum potential recovery and then discuss reasons the reduced settlement amount is a reasonable result for the affected employees. To evaluate a settlement, the trial court must receive “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) The Court must also take into account the potential risks if litigation were to proceed, including difficulties in proving violations (especially for rest break allegations), unsettled or unclear law and difficulties in securing witnesses for trial. (*Mora v. Cal West Ag Services, Inc.* (E.D. Cal., May 13, 2019, No. 115CV01490LJOEPG) 2019 WL

2084725, at *5.) However, as *Kullar* continues:

“The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. While an agreement reached under these circumstances presumably will be fair to all concerned, particularly when few of the affected class members express objections, in the final analysis it is the court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation... ” (*Kullar, supra*, 168 Cal.App.4th at p. 129.)

Essentially, when the settlement is a product of negotiation between competently represented parties, and with the assistance of a reputable professional neutral, there is a presumption of fairness, absent specific concerns regarding the reasonableness of the resulting agreement.

Plaintiff’s expert was able to extrapolate from the sample provided because it contained significant records from both groups of potentially aggrieved employees (front of the house, back of the house). Plaintiff estimated the potential civil penalties that could be assessed if Plaintiff was successful on all violations for all employees was one million fifty-one thousand and fifty dollars (\$1,051,050.00). (Odenbreit Decl., ¶¶11-18.) This amount was calculated with the “initial violation” of one hundred dollars (\$100.00) being assessed for the first pay period in which the employee worked during the relevant time period and then two hundred dollars (\$200.00) for each subsequent pay period. However, Defendant would argue that each employee is only entitled to an “initial violation” penalty of one hundred dollars (\$100.00) up until the time they had notice of this PAGA action. (*Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209.)

Additionally, the records revealed a significant distinction whereby front of the house employees (baristas, cashiers) rarely worked shifts in excess of 6 hours and typically worked shifts of four (4) hours. (Odenbreit Decl., ¶¶12, 17.) The records showed the back of the house employees (cooks, dish washers) worked longer shifts, typically six to eight (6-8) hours or longer. (Odenbreit Decl., ¶¶12, 17.) What this evidence ultimately revealed is that forty to fifty percent

(40-50%) of the potential aggrieved employees likely did not experience any of the violations alleged by Plaintiff. (Odenbreit Decl., ¶x.) Therefore, Plaintiff's initial assessment of the potential penalties and aggrieved employees at issue was overestimated. (Odenbreit Decl., ¶¶12, 17.) Plaintiff had to reduce the amount of potential estimated penalties by forty six percent (46%). (Odenbreit Decl., ¶12.)

In evaluating the reasonableness of this Settlement, Plaintiff and the Court cannot ignore the impact COVID-19 state orders have had on small businesses and in particular, restaurants. The requirement of restaurants to continually shift their business model (i.e., from indoor dining to outdoor and takeout) has significantly increased the cost and required most restaurants to reduce staff. Defendant is no exception. (Odenbreit Decl., ¶9.) Counsel personally reviewed Defendant's P&L Statements from 2019 and 2020 as well as Payroll Summary documents from November 2019 (pre-pandemic) and November 2020 (post-pandemic). (Odenbreit Decl., ¶9.) These documents support Defendant's contention of the pandemic's devastating impact on its business. (Odenbreit Decl., ¶9.) Further, the Payroll Summary reports show Defendant was required to reduce its staff by forty five percent (45%) due to the impact of the pandemic. (Odenbreit Decl., ¶9.) Defendant has also represented that only recently has it been able to begin bringing back staff in an attempt to recover from the various state closure mandates. (Odenbreit Decl., ¶9.) Since the purpose of Department of Industrial Relations, LWDA and PAGA are to protect employees, it would make no sense that a settlement would be rejected based on an ability to pay if a higher settlement would risk the jobs and livelihoods of current employees.

In the instant action, consideration of risk was especially significant in reaching a settlement. As noted above, part of the evidence presented by Defendant in opposing Plaintiff's claims included their written policies which revised nine (9) months into the relevant period to be legally compliant on their face and directly refuted the allegations brought by Plaintiff. Compliant written policies are not necessarily determinative or persuasive, but this change in policy makes it more difficult for Plaintiff to prove the allegations. (Odenbreit Decl., ¶14.) Additionally, Defendant contends when it first opened the restaurant in January 2018 it experienced technical difficulties with its timekeeping system requiring managers to add time to employee payroll.

(Odenbreit Decl., ¶14.) While Plaintiff continues to believe the time records show violations on their face, if Defendant is able to convince the trier of fact that it did pay employees for all time worked and provide meal periods, the value of this case is significantly diminished.

Given the circumstances set forth above, Plaintiff had to reassess the potential penalties he would likely be awarded to an estimated seventy thousand nine hundred forty-five dollars and eighty-eight cents (\$70,945.88). (Odenbreit Decl., ¶15.)

As demonstrated above, the proposed settlement resulted from formal mediation conducted by an experienced and reputable third-party neutral wholly versed with the relevant legal issues. The Parties exchanged an extensive volume of records and documentation which was objectively sufficient for Plaintiff to evaluate and assess the strengths of his claims, the frequency/character/value of the alleged violations in relation to available evidence, the real and substantive risks presented by continued litigation, and Defendant's limited ability to fund a settlement. In light of the above, there are no questions or factors which rebut the presumption of fairness given to proposed settlements achieved in this or similar fashion.

A. The Proposed Allocation Method is Fair, Adequate and Reasonable

The Total Settlement Value ("TSA") is fifty-five thousand dollars and zero cents (\$55,000.00).

All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than five thousand dollars (\$5,000.00) shall be paid to the Settlement Administrator out of the payment of the TSA to cover the estimated costs of mailing and administration of the settlement. (Odenbreit Decl., Ex. A, ¶III.D.) The TSA selected is Phoenix Class Action Administration Solutions, a widely known and reputable settlement administrator. (Declaration of Mike Moore, filed concurrently herewith.)

Up to two thousand dollars (\$2,000.00) is allocated toward Plaintiff's Representative Service Award, in recognition of his contributions to this action and his service to the PAGA Settlement Group Members. (Odenbreit Decl., ¶III.G.)

Up to one-third of the TSA for Plaintiff counsel's attorneys' fees, or eighteen thousand three hundred thirty-three dollars and thirty-three cents (\$18,333.33), plus costs of up to three

1 thousand five hundred fifty dollars and zero cents (\$3,550.00) is allocated toward compensating
2 and reimbursing Plaintiff's counsel for their representation of Plaintiff and the PAGA Settlement
3 Group Members. (Odenbreit Decl., Ex. A, ¶III.F.)

4 The Net Settlement Amount after the above deductions would be twenty-six thousand one
5 hundred sixteen dollars and sixty-seven cents (\$26,116.67.) Seventy-five percent (75%) of the
6 NSA, or nineteen thousand five hundred ninety-five dollars and zero cents (\$19,595.00) will be
7 paid by the Settlement Administrator to the LWDA. The remaining six thousand twenty-nine
8 dollars and sixteen cents (\$6,529.16) will be distributed to the PAGA Settlement Group Members
9 as follows:

- 10 1. Front of the House Employees (Baristas, Cashiers): Defendant's records show that
11 front of the house employees typically worked 4 hour shifts and rarely worked shifts
12 in excess of six (6) hours. For this reason, they will receive a flat payment of twenty-
13 five dollars (\$25.00) regardless of the time worked for Defendant. (Odenbreit Decl.,
14 ¶17, Ex. A, ¶III.I.2.)
- 15 2. Back of the House Employees (Cooks, Dishwashers): Based on Plaintiff's counsel's
16 analysis of the records and evaluation, it is estimated that back of the house employees
17 were the employees that were subject to Plaintiff's alleged violations. Therefore, they
18 will receive a pro rata share per pay period of the NSA remaining after allocation to
19 the front of the house employees and the LWDA. (Odenbreit Decl., ¶18.)

20 The Settlement Administrator will be responsible for issuing to participating Settlement
21 Class members IRS Forms 1099 for the Settlement Payment amounts.

22 The proposed method of allocating the Settlement to PAGA Settlement Group Members
23 is fair and reasonable in that it provides additional funds to those employees more likely to have
24 actually experienced the alleged violations and still provides recovery for those employees who
25 may have only experienced one or two violations, if any, during the duration of their employment.
26 (Odenbreit Decl., ¶¶17-18.)

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1 **B. The Proposed Representative Plaintiff Payment is Fair and Reasonable**

2 The proposed enhancement payment of up to two thousand dollars (\$2000.00) to Plaintiff
3 is intended to recognize his substantial initiative and significant efforts on behalf of the PAGA
4 Settlement Group Members. Courts routinely approve incentive awards to compensate named
5 plaintiffs for the services they provide and the risks they incur in representative actions, often in
6 much higher amounts than that sought here. (*See, e.g., Hillman v. Lexicon Consulting, Inc.* (C.D.
7 Cal., Apr. 27, 2017, No. EDCV1601186VAPSPX) 2017 WL 10433869, at *11 [cases
8 recognizing incentive payments appropriate to plaintiffs for their willingness to act as private
9 attorney general].) A PAGA action is a representative action and is therefore comparable in that
10 respect to a class action. (*See, Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59
11 Cal.4th 348, 387.) Without a representative plaintiff to take on the enforcement action there
12 would be no recovery. Such compensation as may be necessary to induce him to participate in
13 the suit could be thought the equivalent of the lawyers' non-legal but essential case-specific
14 expenses, such as long-distance phone calls, which are reimbursable. (*Clark v. American*
15 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 804, fn. omitted, citing *Matter of*
16 *Continental Illinois Securities Litigation* (7th Cir. 1992) 962 F.2d 566, 571.) These awards “are
17 intended to compensate a representatives Plaintiff for work done on behalf of the beneficiaries,
18 to make up for financial or reputational risk undertaken in bringing the action, and, recognize
19 that without the courage and actions of the representative plaintiffs, the recovery would never
20 have been achieved. (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958–
21 959; *Torchia, supra* at 280; *Hillman, supra* at *11.) The Court should look to the risk, time, effort
22 and benefit secured for the beneficiaries in each case and not establish a “standard” enhancement.
23 (*Mora, supra*, 2019 WL at p. at *10; *Barrerra, supra* at *2; *Munoz v. BCI Coca-Cola Bottling*
24 *Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.)

25 In this case, Plaintiff actively participated throughout the litigation and spent a substantial
26 number of hours meeting with and assisting counsel, making himself available to assist with
27 discovery and personally attending mediation, and reviewing documents over the course of this
28 lengthy litigation. (Declaration of Gertrudes Centeno (“Centeno Decl.”), ¶11.) Prior to filing the

1 action, Plaintiff's counsel met with Plaintiff multiple times to discuss the supporting facts,
2 documents that could be used as evidence and potential witnesses. (Centeno Decl., ¶¶10-11.)
3 Plaintiff provided valuable information to enable his counsel and potential witnesses to support
4 his allegations. (Centeno Decl., ¶¶10-11; Odenbreit Decl., ¶19.) Further, Mr. Centeno's step son
5 was employed with Defendant at the time this lawsuit was filed. Therefore, his bringing this action
6 could have had negative consequences on the employment of his family member. (Centeno
7 Decl., ¶7.) The two thousand dollars (\$2,000.00) service award is reasonable.

8 **C. The Proposed Award of Costs and Attorney's Fees is Reasonable and Merits**
9 **Approval**

10 Labor Code section 2699, subdivision (g)(1) provides: "Any employee who prevails in
11 any action shall be entitled to an award of reasonable attorney's fees and costs, including any
12 filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph
13 (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to
14 limit an employee's right to pursue or recover other remedies available under state or federal
15 law, either separately or concurrently with an action taken under this part."

16 Here, a common fund has been established for the distinct class of beneficiaries: the State
17 of California and the 161 current and former employees of Defendant. (*Cziraki v. Thunder Cats,*
18 *Inc.* (2003) 111 Cal.App.4th 552, 558.). The California Supreme Court removed any lingering
19 doubt about the use of the percentage of the fund method to award attorney's fees in California
20 Courts:

21 We join the overwhelming majority of federal and state courts in holding that when
22 class action litigation establishes a monetary fund for the benefit of the class
23 members, and the trial court in its equitable powers awards class counsel a fee out
24 of that fund, the court may determine the amount of a reasonable fee by choosing
25 an appropriate percentage of the fund created. The recognized advantages of the
26 percentage method—including relative ease of calculation, alignment of
27 incentives between counsel and the class, a better approximation of market
28 conditions in a contingency case, and the encouragement it provides counsel to
seek an early settlement and avoid unnecessarily prolonging the litigation (See pt.
I, *ante*; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 48–49;
Rawlings v. Prudential-Bache Properties, Inc. (6th Cir. 1993) 9 F.3d 513, 516)—
convince us the percentage method is a valuable tool that should not be denied our

trial courts. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 503.)

Thus, this Court may, and, as encouraged by the California Supreme Court, should, award attorney's fees to Plaintiff's counsel based upon the percentage of the fund methodology. "Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 47 n. 11 quoting *Shaw v. Toshiba America Information Systems, Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972).) This is also consistent with Plaintiffs' counsel's experience in these types of cases.

Also, California courts have regularly approved attorneys' fees equaling one-third of the common fund or higher: (*Chavez, supra*, 162 Cal.App.4th at p. 66, n.11 (numerous studies have shown that "fee awards in class actions average around one-third of the recovery"); *Weber v. Einstein Noah Restaurant Group, Inc.*, No. 37-2008-00077680 (San Diego Super. Ct.) (40% award); *Chalmers v. Elecs. Boutique*, No. BC306571 (L.A. Super. Ct.) (33% award); *Boncore v. Four Points Hotel ITT Sheraton*, No. GIC807456 (San Diego Super. Ct.) (33% award); *Vivens, et al. v. Wackenhut Corp.*, No. BC290071 (L.A. Super. Ct.) (31% award); *Crandall v. U-Haul Intl., Inc.*, No. BC178775 (L.A. Super. Ct.) (40% award); *Albrecht v. Rite Aid Corp.*, No. 729219 (San Diego Super. Ct.) (35% award); *Marroquin v. Bed Bath & Beyond*, No. RG04145918 (Alameda Super. Ct.) (33% award); *In re Milk Antitrust Litig.*, No. BC070061 (L.A. Super. Ct.) (33% award).

Here, Plaintiffs' attorneys intend to request attorneys' fees of up to eighteen thousand, three hundred thirty-three dollars and thirty-three cents (\$18,333.33) and litigation costs of up to three thousand five hundred fifty dollars (\$3,550.00). (Odenbreit Decl., Ex. A, ¶III.F.) In view of the efforts and risks involved in pursuing this case, as well as the results achieved, these amounts are well within the range of reasonableness and thus warrant preliminary approval. Plaintiff counsel's efforts of diligently pursuing this case, utilizing mediation to educate Defendant on Plaintiff's legal position, prompting Defendant to come into compliance with the law to protect current and future employees and obtaining a result consistent with the purpose of PAGA.

1 Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method
2 or the lodestar method is used, the outcome is roughly the same: "Empirical studies show that,
3 regardless whether the percentage method or the lodestar method is used, fee awards in class
4 actions average around one-third of the recovery." (*Chavez, supra*, 162 Cal.App.4th 43, 47 n. 11.)
5 In this case, Plaintiff counsel's lodestar in this case exceeds the amount requested by over four
6 hundred percent (400%). (Odenbreit Decl., Ex. E.) Therefore, the requested fee is reasonable.
7 (*See Sargent v. Board of Trustees of California State University* (Cal. Ct. App., Mar. 5, 2021, No.
8 A153072) 2021 WL 836135, at *4 and 9 [affirming 2.0 multiplier for attorneys' fees in retaliation
9 and PAGA judgment].)

10 **D. The Proposed Notice Meets the Requirements of California Rules of Court,**
11 **Rule 3.766, subdivision (d) and (e)**

12 There is no right to opt-out or object to the settlement "[B]ecause an aggrieved
13 employee's action under [PAGA] functions as a substitute for an action brought by the
14 government itself, a judgment in that action binds all those, including nonparty aggrieved
15 employees, who would be bound by a judgment in an action brought by the government. The act
16 authorizes a representative action only for the purpose of seeking statutory penalties for Labor
17 Code violations [citations], and an action to recover civil penalties 'is fundamentally a law
18 enforcement action designed to protect the public and not to benefit private parties' [citation].
19 When a government agency is authorized to bring an action on behalf of an individual or in the
20 public interest, and a private person lacks an independent legal right to bring the action, a person
21 who is not a party but who is represented by the agency is bound by the judgment as though the
22 person were a party. [Citation.] Accordingly, with respect to the recovery of civil penalties,
23 nonparty employees as well as the government are bound by the judgment in an action brought
24 under the act." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 986; *Robinson v. Southern*
25 *Counties Oil Company* (2020) 53 Cal.App.5th 476, 482.) While there is no per se notice
26 requirement in a PAGA action, however reason dictates the Aggrieved Employees should be
27 informed why they are receiving a check and what claims are being released.

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1 Notice requirements in class action matters are set forth in Rules of Court, rule 3.766 and
2 will be applied in this case. In determining the manner of the notice, the court must consider the
3 interests of the PAGA Settlement Group Members; the type of relief requested; the stake of the
4 individual PAGA Settlement Members [and the State]; the cost of notifying PAGA Settlement
5 Group Members; the resources of the parties; the possible prejudice to Settlement Group
6 Members who do not receive notice; and the res judicata effect on PAGA Settlement Group
7 Members [and the State]. (Rules of CA ST CIVIL RULES Rule 3.766, subdivision (e).)

8 Here, the Parties have submitted a Proposed Notice for the Court's consideration.
9 (Odenbreit Decl., Ex. C). The Notice informs each Back of the House employee the total number
10 of pay periods upon which their individual recovery is based and provides instructions on how
11 to dispute the pay periods if necessary and provides notice to Front of the House employees the
12 amount they will receive. The notice explains the claims at issue and what claims are being
13 released by the PAGA Settlement Group Members. (Odenbreit Decl., Ex. C.)

14 The notice process provides a reasonable chance the payment and notice will reach a
15 substantial percentage of the PAGA Settlement Group Members as it will be sent to the address
16 in the employer's records and the Settlement Administrator will check for updated addresses
17 prior to the mailing. (Odenbreit Decl., Ex. C.) (*Cartt v. Superior Court* (1975) 50 Cal.App.3d
18 960, 974.) Finally, the Notice Packet will include a check representing payment of the PAGA
19 Settlement Group Members' share of the civil penalties. Here, the proposed procedure includes
20 safeguards, including, but not limited to, pre-mailing searches for address changes and the re-
21 mailing of returned notices after skip traces are conducted.

22 Further, Notice of the PAGA Settlement Approval hearing and Plaintiff's motion and
23 exhibits have been provided to the LWDA. (Odenbreit Decl., Ex. F.)

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For the foregoing reasons, the Plaintiffs respectfully requests the Court grant approval of the PAGA Settlement and award the requested attorney fees, costs and Representative Plaintiff's payment.

Dated: March 23, 2021


Kevin Mahoney, Esq.
Katherine Odenbreit, Esq.
Attorneys for Plaintiff GERTRUDES CENTENO

PROOF OF SERVICE
Code of Civ. Proc. § 1013a, subd. (3)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 249 East Ocean Boulevard, Suite 814, Long Beach, California, 90802

On **March 23, 2021**, I served [X] true copies [] originals of the following document described as: **PLAINTIFF'S NOTICE OF UNOPPOSED MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT**. The document was served on the interested parties in this action, addressed as follows:

Lee A. Miller, Esq. Ilana Kaufman, Esq. Miller Law Partners 21600 Oxnard Street, Suite 380 Woodland Hills, CA 91367	Attorney for Defendant: REDHEAD KITCHEN dba PASTA SISTERS Telephone: 818-279-6600 Facsimile: 818-279-6601 Email: IKaufman@millerlawpartners.com lmiller@millerlawpartners.com
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☒ **By electronic service:** Based on a court order, I caused the document(s) to be sent to the persons at the electronic service addresses listed above by transmission through CASE ANYWHERE.

☒ **(State):** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **March 23, 2021**, at Long Beach, California.



Gilbert Martinez