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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF STANISLAUS

RACHEL LATIN, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

ONEMAIN GENERAL SERVICES
CORPORATION., a Delaware Corporation;
and DOES 1 through 50, Inclusive;

Defendants.

Case No: CV-20-002498

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

Hearing Date: October 20, 2021
Hearing Time: 8:30 a.m.

Hon. Judge Stacy Speiller
Dept. 12

Trial Date: Not Yet Set
Action Filed: June 8, 2020

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Rachel Latin (“Plaintiff”) reached a settlement of the California Labor Code Private
4 Attorneys General Act of 2004, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this action
5 against Defendant OneMain General Services Corporation. (“Defendant”) (collectively, the “Parties”).
6 In accordance with California Labor Code § 2699(l), Plaintiff now asks this Court to review and
7 approve the settlement of Plaintiff’s PAGA claim.¹ This is only a settlement of the PAGA claim for
8 civil penalties, and is not a class settlement and does not release the individual wage claims, if any, of
9 the affected employees other than Plaintiff himself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS*
10 *Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019)
11 (unpaid wages are not recoverable under PAGA).

12 The PAGA settlement is set forth in the accompanying Private Attorneys General Act (Labor
13 Code Section 2698 *et seq.*) Settlement Agreement and Release (“Settlement Agreement”). A true and
14 correct copy of the Settlement Agreement which sets forth the terms for the settlement of the PAGA
15 claim is attached as Exhibit #1 to the Declaration of Shani O. Zakay, filed herewith. Capitalized terms
16 shall have the same meaning as defined in the Settlement Agreement. The LWDA received notice of
17 this Settlement and this motion as set forth in the accompanying proof of service.

18 A proposed order confirming review and approval of the PAGA settlement is submitted
19 herewith.

20 **II. RELEVANT FACTS**

21 On June 4, 2020, Plaintiff Rachel Latin on behalf of herself and on behalf of other allegedly
22 aggrieved employees submitted a notice and draft complaint to the LWDA memorializing claims
23 against Defendant for alleged violations of the California Labor Code, including causes of action for
24 failure to pay minimum wages in violation of Labor Code sections 1194, 1197, and 1197.1; failure to
25 pay overtime wages in violation of Labor Code section 510; failure to provide required meal periods
26 in violation of Labor Code sections 226.7 and 512; failure to provide required rest periods in violation
27

28 ¹ Section 2699(1)(2) provides as follows: “The superior court shall review and approve any settlement
of any civil action pursuant to this part.”

1 of Labor Code sections 226.7 and 512; failure to provide accurate itemized wage statements in
2 violation of Labor Code section 226; failure to provide wages when due in violation of Labor Code
3 sections 201, 202, and 203; failure to reimburse for business expenses in violation of Labor Code
4 section 2802; and violation of the California Labor Code Private Attorneys General Act of 2004 (Labor
5 Code section 2698, *et seq.*), LWDA Case No. LWDA-CM-792308-20. On June 8, 2020 Plaintiff filed
6 a class action complaint against Defendant in the Stanislaus County Superior Court (Case No. CV-20-
7 002498). After meeting and conferring with Defendant on the existence of an enforceable arbitration
8 agreement between Plaintiff and Defendant, which included a waiver of class claims, on September
9 14, 2020, Plaintiff filed a first amended complaint dismissing, without prejudice, the class claims and
10 allegations, and alleging instead a single cause of action for violations of PAGA. On December 2,
11 2020 Plaintiff filed a second amended PAGA complaint, which added specific allegations regarding
12 Defendant's allegedly illegal policy of requiring employees to refrain from disclosing the amount of
13 their wages, and added specific allegations regarding Defendant's alleged failure to correctly calculate
14 the regular rate of pay for purposes of paying employees' sick time. On June 22, 2021, Plaintiff
15 submitted an amended notice to the LWDA memorializing additional wage and hour claims against
16 Defendant for Defendant's alleged illegal policy of requiring employees to refrain from disclosing the
17 amount of their wages, and Defendant's alleged failure to properly calculate the regular rate of pay for
18 purposes of calculating and paying sick time. On August 26, 2021 Plaintiff submitted a third amended
19 complaint, adding the claims alleged in the June 22, 2021 amended notice to the LWDA. The third
20 amended complaint is the operative complaint. (Decl. Zakay at ¶4).

21 A. Mediation

22 Plaintiff and Defendant agreed to mediate the action with Steven Serratore, Esq., an
23 experienced and reputable wage and hour and PAGA actions mediator. Prior to the mediation, in order
24 to evaluate the potential value of the claims, the Parties engaged in significant efforts to obtain the
25 facts regarding the claims asserted, including all of Defendant's relevant wage and hour policies, the
26 exchange of detailed statistical data regarding shifts worked by Plaintiff and the Aggrieved
27 Employees, the production of hundreds of pages of documents, including a large sample of payroll
28 records and time records, and the exchange of detailed briefing and analysis in connection with the

1 mediation. The Parties also engaged in significant formal discovery: After engaging in the *Belaire*
2 *West* notice procedure, Plaintiff obtained the contact information of all of the aggrieved employees, as
3 well as other written discovery. Defendant, in turn, took Plaintiff's deposition in preparation for the
4 mediation. (Decl. Zakay at ¶5.)

5 Thereafter, on June 10, 2021, the Parties engaged in a full-day mediation with Mediator Steven
6 Serratore. At the conclusion of the full-day mediation, the Parties reached a settlement based on a
7 mediator proposal, which led to the signing of a Memorandum of Understanding memorializing the
8 settlement.² The settlement was negotiated in light of all known facts and circumstances and the
9 uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain
10 representative claims, the difficulty of proving Plaintiff's claims in a manageable trial, the merits of
11 Defendant's potential defenses, and the significant delay and potential appellate issues inherent to
12 litigation – and was reached after extensive arm's length negotiations over several months, with the
13 assistance of Mediator Steven Serratore. (Decl. Zakay at ¶5.)

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

15 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2)
16 (Settlement Agreement at §II(C)(1)). The Settlement Agreement negotiated by the Parties provides
17 for a "Gross Settlement Amount" payment in the amount of \$700,000 to resolve the PAGA Claim
18 (hereinafter referred to as the "PAGA Settlement"). From this PAGA Settlement of \$700,000, there
19 is a deduction of attorneys' fees in the amount of \$233,333 (which is one-third of the PAGA
20 Settlement), reimbursement of incurred costs in an amount not to exceed \$17,500, and Settlement
21 Administration Costs, which will not exceed \$9,000. (Settlement Agreement at §III(B)(2)(a)-(c)).³

22
23 ² As part of the settlement and in addition to the Gross Settlement Amount, Defendant has agreed to
24 separately settle Plaintiff's individual claims which is set forth in a separate Individual Settlement
25 Agreement. The Individual Settlement Agreement is confidential, but can be made available to the
26 Court for in-camera review upon request.

27 ³ In the event the Court approves less than One-Third of the PAGA Settlement Amount in Attorneys'
28 Fees or less than \$17,500 in Attorneys' Expenses to Plaintiff's Counsel, the unawarded difference will
be added to the Net Settlement Amount and not to Plaintiff's Counsel or Defendant (Settlement
Agreement at III(B)(2)(a)-(b)). In the event the Court approves less than \$9,000 to administer the
settlement or if the actual cost to administer the settlement is less than \$9,000, the difference will be
added to the Net Settlement Amount. (*Id.* at III(B)(2)(c)).

1 After these deductions, the amount remaining is the “PAGA Payment”, which is estimated to be
2 \$440,166.

3 Of the PAGA Payment amount, seventy-five percent (75%) will be paid to the LWDA and the
4 remaining twenty-five percent (25%) will be paid to the Aggrieved Employees (Settlement Agreement
5 at 5.04).⁴ This 75/25 allocation is required by Labor Code § 2699 as explained by *ZB, N.A. v. Superior*
6 *Court*, 8 Cal.5th 175 (2019).

7 The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of
8 biweekly payroll periods each Aggrieved Employee worked during the Settlement Period as a
9 percentage of the total pay periods worked by all Aggrieved Employees during the Settlement Period.
10 (*Id.* at II(C)(12)). The Settlement Period is the time period from June 4, 2019 through August 1, 2021.
11 (Settlement Agreement at §II(A)(19)).

12 During mediation, Defendant represented to Plaintiff’s Counsel the number of pay periods and
13 Aggrieved Employees. Defendant represented that there are approximately 602 Aggrieved Employees
14 who worked approximately 22,642 pay periods during the PAGA Period as of June 1, 2021.
15 (Settlement Agreement at § II(D)(6)).

16 A. Release of Claims by Non-Exempt Aggrieved Employees

17 Upon entry of Judgment and funding in full of the Settlement by Defendant, the Released
18 Parties shall be entitled to a release from the State of California and Plaintiff as to the following claims:
19 all claims for civil penalties under PAGA that were actually alleged or that could have been alleged in
20 the Action by Plaintiff, on behalf of the State of California, herself and the PAGA Employees, based
21 on the facts alleged in the Complaint, including but not limited to: (a) penalties pursuant to Labor
22 Code sections 201-204, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558, 1102.5, 1194, 1197, 1197.1,
23 1197.5, 1198, 1198.5, 2698-2699.3 and 2802 and sections 3-5, 11 and 12 of the applicable Wage
24

25 _____
26 ⁴ “Aggrieved Employees” means all current and former hourly or non-exempt employees that worked
27 for OneMain General Services Corporation in the State of California at any time during the PAGA
28 Period. (Settlement Agreement at § 1.01(iii)). The PAGA Period is June 4, 2019 through August 1,
2021 and resolves any and all claims relating to the facts and claims asserted in the Action or any other
claims, under PAGA, based on the facts alleged in the LWDA letters and the operative Complaint.

1 Order, (b) claims for the attorney’s fees and costs incurred in the prosecution of this Action on behalf
2 of the PAGA Employees; (c) any other remedies, penalties, or interest based on the facts alleged in
3 the Complaint; and (d) all claims that Plaintiff and/or the PAGA Employees may have against the
4 Released Parties relating to: (i) the payment, taxation, and allocation of attorney’s fees and costs to
5 Plaintiff’s Counsel pursuant to this Settlement Agreement; and (ii) the payment, taxation, and
6 allocation of Plaintiff’s Payment pursuant to this Settlement Agreement. The release of the Released
7 Claims shall be effective as to the Settlement Period. (“Released Claims”) (Settlement Agreement at
8 §II(A)(13)). The Settlement Agreement does not release any individual claims of any individuals
9 other than Plaintiff.

10 The Gross Settlement Amount shall be due by Defendant to the Settlement Administrator
11 within 30 business days of the Effective Date as defined by the Settlement Agreement. (Settlement
12 Agreement at II(C)(7)).

13 Notice will be provided to the Aggrieved Employees in the following manner: Defendant will
14 provide the necessary information about the Aggrieved Employees to the Settlement Administrator
15 (ILYM Group) on or before the Effective Date as defined in the Settlement Agreement. (Settlement
16 Agreement at §III(C)(6)). Within ten (10) calendar days after receipt of the Gross Settlement Amount
17 from Defendant, the Settlement Administrator will issue to each Aggrieved Employee a check for their
18 Individual PAGA Payment at their last known home address along with notice which has been
19 mutually approved by the parties. (Settlement Agreement at § III(C)(11)). Checks will remain
20 negotiable for one hundred twenty (120) days. (*Id.* at § III(C)(11)). Any checks returned as non-
21 deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S.
22 Mail to the forwarding address affixed thereto. (*Id.*) If no forwarding address is provided, the
23 Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or
24 other search using the name, address, Social Security number, phone number, credit reporting and
25 social media of the Aggrieved Employee involved and will then perform a re-mailing. (*Id.*) If the
26 check remains uncashed by the expiration of the 120-day period, the funds from such uncashed checks
27 will be paid by *cy pres* consistent with California Code of Civil Procedure § 384 to the Children
28 Advocacy Group. Pursuant to California Code of Civil Procedure § 384.4, the attorneys who signed

1 the Settlement Agreement hereby notify the Court that they and their respective firms have no
2 relationship with or connection to the Cy Pres recipient that could create an appearance of impropriety.
3 The Individual PAGA Payments are 100% penalties and shall be reported using IRS tax form 1099.
4 (Settlement Agreement § II(A)(7))

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

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

12 The claim before this Court is the representative claim under the PAGA on behalf of the State
13 of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this PAGA
14 claim in its entirety after significant formal and informal discovery, and an arm's length mediation.
15 (Declaration of Shani O. Zakay, at ¶5.) The settlement is intended to fully and finally resolve the
16 PAGA Released Claims asserted by Plaintiff on behalf of the State of California. This is only a
17 settlement of the PAGA claims for civil penalties, and is not a class settlement and does not release
18 the individual claims, if any, of the Aggrieved Employees. This settlement does not release any claim
19 that is not a PAGA claim.⁵ Attorneys' fees equal to one-third of the PAGA Settlement amount
20 (\$233,333) and litigation expenses in an amount not to exceed \$17,500 will also be paid to Plaintiff's
21 Counsel as part of the settlement in accordance with California Labor Code § 2699(g)(1) as set forth
22 in the Settlement Agreement.⁶ Lastly, payment to the Settlement Administrator in an amount not to
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26 ⁵ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: "Nonparty employees are bound
27 by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

28 ⁶ As set forth in the accompanying Declaration of Shani O. Zakay, Plaintiff's Counsel incurred costs
in the current amount of \$12,853.10 which is less than the cost allocation in the Settlement Agreement.
See Declaration of Zakay at ¶ 20.

1 exceed \$9,000 to perform the administrative duties to distribute the settlement money shall also be
2 paid. (Declaration of Shani O. Zakay, at ¶6.)

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

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

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

11 Plaintiff and her counsel believe that the PAGA Settlement amount is fair and reasonable and
12 therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency has
13 released data on PAGA settlement amounts. After removing the outliers at the low and high end, the
14 average, total settlement amount of PAGA claims is approximately \$10,000. Here, the PAGA
15 Settlement Amount of \$700,000 is significantly more and constitutes almost \$31 per pay period.
16 (Declaration of Zakay, at ¶11.)

17 California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the
18 maximum civil penalty if based on the facts and circumstances to do otherwise would result in an
19 award that is "unjust, arbitrary and oppressive or confiscatory." Before and during the mediation,
20 Defendant argued, among other things, that it was unlikely that any Judge would award more than the
21 actual amounts owed on the claims, let alone the full \$100 or \$200 per violation. In *Carrington v.*
22 *Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial
23 which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties
24 awarded in this case could be significantly less than Plaintiff's calculation, even had Plaintiff prevailed
25 on the PAGA claim. Here, multiplying the number of violations identified, assumed, and extrapolated
26 by Plaintiff's expert (a maximum of 105,242 violations)⁷ by \$5 results in a total potential liability of

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⁷ Assuming 24,906 pay periods.

1 **\$526,210.** Further, multiplying the maximum number of pay periods (24,906) by **\$5** results in a total
2 potential liability of **\$124,530.** Therefore, even assuming Plaintiff would have prevailed on all of his
3 claims in trial, the result obtained by Plaintiff in the Settlement exceeds the amount Plaintiff would
4 have recovered had the Court relied on *Carrington* in awarding the PAGA penalties.

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

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

21 Defendant maintains that Plaintiff and the Aggrieved Employees were properly compensated,
22 and that it did not violate the Labor Code. In summary, Defendant denied that it violated the Labor
23 Code sections at issue based on the following arguments:

- 24 • Its Wage & Hour Policy sets forth that an employee must accurately record all time
25 worked—including any daily or weekly overtime—and approve all time entries to
26 ensure they are complete and accurate. Workday, the timekeeping system used by
27 Defendant, allows employees to input time after the fact. Meaning that even if they
28 forget to clock in/out contemporaneously for each start and stop time, the employees

1 can accurately input the actual start and stop times of each work period and meal period.
2 Defendant further argued that under applicable legal precedent it only had to provide
3 meal periods, it did not have to force employees to take them. Defendant further
4 presented evidence that employees regularly certified that they were provided with and
5 took their meal periods.

- 6 • Employees are required to review and approve their time each pay period.
- 7 • That it pays overtime based on the provisions of the applicable Wage Order, including
8 daily overtime and double-time when appropriate. It further presented evidence that
9 overtime is paid on commissions and other incentives.
- 10 • The meal period policy provides that employees are to take an unpaid one hour duty
11 free meal break during the middle of the work shift to all nonexempt team members for
12 each workday of more than five hours, that it must begin before the fifth hour of work,
13 and that premiums will be paid if the employee is not provided with a legally compliant
14 meal period. It also provides for second meal periods where appropriate.
- 15 • Defendant affords all nonexempt team members the opportunity to take a ten minute
16 paid rest break for each four (4) hour period or major fraction thereof worked.
- 17 • The Confidentiality Agreement at issue was clearly written to require employees with
18 knowledge of another employees compensation, due to their position, to keep that
19 information confidential. It did not prevent employees from discussion their own
20 compensation if they chose to do so.
- 21 • It had an expense reimbursement policy to fully pay employees for all business
22 expenses incurred in carrying out their work duties.
- 23 • Defendant paid final wages in compliance with California law, and if it could not do so
24 it provided additional pay to cover any days that it was late.
- 25 • There was no evidence of any violation of California's reporting time pay provision.
- 26 • Defendant presented evidence that its wage statements substantially complied with
27 Labor Code section 226, and that ultimately Plaintiff could not prevail because a
28 plaintiff must show: (1) the violation was knowing and intentional; and (2) an injury

suffered because of the violation. Cal. Lab. Code § 226(e), something Plaintiff could not do.

- Defendant presented evidence that Plaintiff, despite knowing how to do so, made no complaints of alleged violations of the Labor Code at issue in this matter.
- Defendant presented arguments and case law that stacking of PAGA penalties is not permitted, and that the potential penalties sought by Plaintiff would be reduced as “unjust, arbitrary and oppressive, or confiscatory” in light of its good faith efforts to comply with California law.

Accordingly, Defendant disputes and denies Plaintiff’s allegations and claims asserted in the operative complaint which are resolved by the Settlement Agreement. Defendant asserted additional defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties. Defendant could argue that no penalties prior to the PAGA notification should be awarded because the violations were not intentional, and at least one court has so ruled. These defenses present a risk to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be awarded. (Declaration of Zakay, at ¶15.)

Given Defendant’s potential defenses to the violations at issue, the risks and costs of continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and reasonable. Plaintiff’s Counsel have significant experience litigating wage and hour claims including claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than similar settlements that courts have approved. The PAGA Settlement, along with the other terms of the proposed settlement, were negotiated by experienced counsel at arm’s length with the assistance of an experienced and reputable mediator, Steven Serratore. (Declaration of Zakay, at ¶16.)

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

1 B. The Remaining Settlement Terms Are Fair And Reasonable

2 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
3 2699(1) does not require that a court approve any other elements of the proposed settlement. Because
4 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to
5 class settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs
6 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
7 herein, the settlement terms for attorneys' fees and costs are reasonable.

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

9 Plaintiff's Counsel seeks approval of attorneys' fees from the PAGA settlement in the amount
10 of \$233,333 representing one-third of the \$700,000 PAGA Settlement amount. PAGA does not have
11 any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys'
12 fees and costs in this settlement is a matter of contract for a contingent representation. Nevertheless,
13 should this Court review the requested attorneys' fees, it is clear that the requested fees and costs are
14 reasonable.

15 First, the requested fees are justified by the result achieved. Plaintiff's Counsel negotiated a
16 recovery of \$700,000, and this result justifies the requested fees equal to one third of this recovery.
17 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
18 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
19 480, 504, (2016).

20 Second, the fee award is justified by the work performed. As detailed in the accompanying
21 Declaration of Shani O. Zakay at ¶18 - ¶20 and Declaration of Jean-Claude Lapuyade, the fee award
22 represents Plaintiff's Counsels' current combined lodestar of \$172,325.00 with a multiplier of 1.3 with
23 additional work to be performed such that the multiplier will ultimately be even lower. Generally, the
24 Ninth Circuit and California Courts award multipliers between 2 to 4 times the lodestar to reward
25 counsel for accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*,
26 1 Cal. 5th at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino*
27 *v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0
28 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th

224, 254 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk multipliers).

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

Finally, as to litigation expenses, Plaintiff's Counsel will be recovering litigation expenses in the total amount of \$12,853.10 which is less than the \$17,500 allocation for costs in the Settlement Agreement, so the difference of \$4,646.90 will be added to the PAGA Payment amount. These expenses are documented in the accompanying Declaration of Zakay at ¶19-20.

VII. CONCLUSION

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

Dated: September 17, 2021

ZAKAY LAW GROUP, APC

By:


Shani O. Zakay