X. Young Lai, #275396
Law Offices of X. Young Lai
84 W. Santa Clara St. Ste 700
San Jose, CA 95113
TEL: (408)228-3995
FAX: (866)610-9505
gagelegal@gmail.com

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

YUE ZHOU, GUOHUO ZHENG, TIANMAO ZHU, YIWEI ZENG Plaintiffs vs. SIN KIONG CHAI a.k.a. SIN-KIONG CHAI an individual, d.b.a. TASTE OF CHINA; and HUEI LI CHU CHAI a.k.a. HUEI LI CHU, an individual, d.b.a. TASTE OF CHINA Defendants	CASE NO. : 21-cv-06067-AMO NOTICE OF MOTION AND MOTION FOR COURT'S APPROVAL OF PAGA SETTLEMENT Date: 5/8/2025 Time: 2:00 p.m. Location: by Zoom Judge: ARACELI MARTÍNEZ-OLGUÍN

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED that on the date and time and in the Department set forth above or as soon thereafter as the matter may be heard, at the United States District Court for the Northern District of California, Plaintiffs will move this Court to approve a settlement of the claims for penalties brought under the California Private Attorneys General Act of 2004, California Labor Code Section 2698 *et seq*.

This Motion is made pursuant to California Labor Code Section 2699(*l*)(2), and is based on this Notice of Motion and Motion; the Memorandum of Points and Authorities in Support of this Motion filed and served with this Notice; the Declaration of X. Young Lai filed and served with this Notice; the pleadings and papers on file in this matter; and, any evidence accepted at the hearing on this Motion.

Dated: 3/31/2025

X. Young Lai

Attorney for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

The parties have reached a global resolution of this action and pursuant to that resolution, the Plaintiffs submit their request for approval of a settlement of all claims asserted in the Third Amended Complaint seeking an award of penalties under the California Private Attorneys General Act of 2004, California Labor Code Section 2698 *et seq*. (PAGA). The settlement occurred as a result of extensive arm's-length negotiations by experienced counsel before Magistrate Judge Susan van Keulen.

Defendants authorize Plaintiffs to inform the Court that Defendants do not oppose this Motion, and by this statement, Plaintiffs are so informing the Court.

Plaintiffs have, as required by California Labor Code Section 2699, duly notified the California Labor & Work Force Department Agency ("LWDA") of the settlement of the PAGA claims and this Motion, and the LWDA will effectively consent to the PAGA settlement if it files no objection. Therefore, the settlement is binding on all "Aggrieved Employees" and on the LWDA, and any subsequent civil penalty claims that may be made in the future by or on behalf of any "Aggrieved Employees" are barred. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.)

LEGAL STANDARD

Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of other current or former employees to recover civil penalties for Labor Code violations. (*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.) PAGA is intended to augment the limited enforcement capability of [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency. (*Id.* at p.383.) A judgment in a PAGA action binds all those who would be bound by a judgment in an action brought by the government. (*Id.* at p.381.) Seventy-five percent (75%) of any PAGA penalties go to the LWDA, leaving the remaining twenty-five percent (25%) for the employees. (*Ibid*. at p.380, citing Lab. Code, § 2699, subd. (i).)

A PAGA action need not meet the requirements of a class action lawsuit. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 975.) A court does not, for example, have a fiduciary duty to protect putative class members. Nonetheless, Labor Code section 2699, subdivision (l), provides that "[t]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to [PAGA]."

The relief provided in a PAGA settlement must be "genuine and meaningful, and consistent with the underlying purpose of the statute to benefit the public." (*Viceral v. Mistras Grp., Inc.* (N.D.Cal. Oct. 11, 2016, No. 15-cv-02198-EMC) 2016 U.S.Dist.LEXIS 140759, at *27.) "The settlement must be reasonable in light of the potential verdict value. (See *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

A settlement may be substantially discounted, however, because that courts often exercise their discretion to award PAGA penalties below the statutory maximum even when a claim succeeds at trial. (See *Viceral*, at *25-26, citing Cal. Lab. Code, § 2699 (e)(2).) In *Viceral*, the Court approved a settlement that allocated $20,000 to PAGA claims, which equaled 0.15% of the verdict value, and explained that "the PAGA claims are subject to a very high risk on the merits." (See *Viceral*, at *28.) Similarly, in the matter of *Hernandez v. Harrell Hospitality Group California, Inc.* (filed with the Superior Court of California for the County of Santa Clara, with the case number 2014-1-CV-270276), the Court approved the parties' preliminary class settlement, with a maximum class settlement amount of $550,000, of which only a total of $6,000 was allocated to civil penalties for PAGA. From that PAGA payout, each 385 employees involved would receive $3.90.

DISCUSSION

Here, Plaintiffs and Defendants desire to bring these claims and controversies to a conclusion and to avoid incurring further costs and expenses incidental to their prosecution and defense. Thus, for the purpose of the settlement only, and without Defendants waiving any of their objections and defenses, the parties agree that a certain amount of the settlement funds should be allocated for the PAGA settlement.

The proposed settlement was based on Plaintiffs' independent investigation and evaluation and all facts and circumstances known to Plaintiffs before the settlement, including the risk of significant defenses asserted by Defendants, Plaintiffs' counsel is of the opinion that the settlement is fair, reasonable, and adequate.

The "Aggrieved Employees," as that term is used in Labor Code Section 2699, is specifically defined as follows: "The employees who worked for Defendants from July 25, 2020 through December 6, 2022." The one-year statute of limitations for PAGA claims under California Civil Procedure, § 340(a) has been well established in California federal district court cases. (E.g., *Thomas v. Home Depot USA*

Inc. (N.D.Cal. 2007) 527 F.Supp.2d 1003, 1007.) "The one-year limitations period for PAGA civil penalties begins to toll upon filing notice to the LWDA for a PAGA investigation." (*Taylor v. Interstate Grp, LLC* (N.D.Cal. Mar. 7, 2016, No. 15-cv-05462-YGR) 2016 U.S.Dist.LEXIS 29673, at *8.)

The notice was sent on July 24, 2021. Defendants sold the restaurant on January 7, 2023. Defendants' supplemental response to Plaintiffs' requests for admission, No. 36 was dated January 30, 2023, and Defendants' other supplemental responses were dated December 6, 2022. Therefore, to afford Defendants the benefit of the doubt, December 6, 2022 is used as the end of the PAGA period. There are 124 weeks within the PAGA period. Defendants issued wage statements to employees every two weeks. Therefore, there are 62 pay periods.

The Third Amended Complaint ("TAC") seeks PAGA penalties for alleged (1) failure to pay minimum wages; (2) failure to furnish accurate itemized wage statement; (3) failure to provide rest breaks; (4) failure to pay split-shift premiums. (TAC, ¶¶83-84.) However, the Court has determined that the named plaintiffs did not suffer the split-shift violations, and thus are not "aggrieved employees" and cannot serve as PAGA representatives with respect to the violations. (Ord. re MSJ, Dkt. 98, p.22). Therefore, failure to pay split-shift premiums is inapplicable to PAGA penalties.

For the 1st claim, the PAGA penalty is $100 per employee per pay period for the initial violation and $250 per pay period for each subsequent violation. (Cal. Lab. Code, § 1197.1(a).) For the 2nd claim, the PAGA penalty is $50 per employee per pay period for the initial violation and $100 per pay period for each subsequent violation. (Cal. Lab. Code, § 558.) For the 3rd claim, the PAGA penalty is $250 per employee per pay period for the initial violation and $1,000 per pay period for each subsequent violation. (Cal. Lab. Code, § 226.3.)

Defendants' employees can generally be classified as waitstaff and kitchen staff. At all times within the statute of limitations of PAGA claims, Defendants had three (3) full-time cooks and six (6) full-time non-cook employees (such as waiters and kitchen helpers.) (Ord. Adopting Magistrate Judge's Report and Recommendation, Dkt. 90.)

The 3rd claim of violations of itemized wage statement applies to all nine (9) employees. Defendants have admitted that they failed to show "the last four digits of his or her social security number or an employee identification number other than a social security number" on the wage statements for all employees. (Resp. to RFA, no. 39.) However, because wage statement omissions are based on a technicality and the restaurant has already been sold, the Court is most likely to drastically reduce the penalty.

"[A] court may award a lesser amount than the maximum civil penalty amount specified by this part, …, if, 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, subd. (e) (2), emphasis added.) It is of Plaintiffs' opinion that, to avoid unjust or oppressive result, one initial penalty for each nine (9) employees will be appropriate and sufficient to serve the penalty purposes. The penalites amoun to $2,250[=$250x9].

The 1st and 2nd claims of unpaid minimum and overtime wages apply only to the three (3) kitchen staff. The claims were based upon the factual allegation that they were paid a fixed monthly salary, which is deemed to provide compensation only for their "regular, nonovertime hours" under California Labor Code 515. TAC alleged no overtime or minimum wage violations with respect to the waitstaff.

The maximum exposure to PAGA penalties are as follows: on minimum wage violations, $46,050[=($100x1+$250x61)x3]; on overtime wage violations, $18,450 [=($50x1+$100x61)x3]. Thus, the total exposure amounts to $64,500 [=$46,050+$18,450].

Given the questions of proof and the fact that the Court already denied Plaintiffs' Motion for summary judgment on PAGA claims, Plaintiffs' counsel is of the opinion that 5% of the maximum exposure will be appropriate and sufficient to serve the penalty purposes. The penalties amount to $3,225[=%5x64,500.]

Thus, the total PAGA penalties proposed by Plaintiffs amount to $5,475 [=$2,250+3,225.]

Good cause exists to grant this Motion because: (a) approval of the settlement of the PAGA claims will fully and entirely resolve this case; (b) the parties are operating under the expectation that the matter has been resolved and, thus, are not taking action that otherwise would need to be taken (e.g., preparation for trial or summary judgment motions.) if the case is not resolved.

CONCLUSION

For the foregoing reasons, the Motion should be granted.

Dated: 3/31/2025 X. Young Lai______
Attorney for Plaintiffs