

1 X. Young Lai, #275396
2 Law Offices of X. Young Lai
3 84 W. Santa Clara St. Ste 700
4 San Jose, CA 95113
5 TEL: (408)228-3995
6 FAX: (866)610-9505
7 gagelegal@gmail.com

8 Attorney for Plaintiffs

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 YUE ZHOU, GUOHUO ZHENG,
12 TIANMAO ZHU, YIWEI ZENG

13 Plaintiffs

14 vs.

15 SIN KIONG CHAI a.k.a. SIN-KIONG CHAI
16 an individual, d.b.a. TASTE OF CHINA; and
17 HUEI LI CHU CHAI a.k.a. HUEI LI CHU,
18 an individual, d.b.a. TASTE OF CHINA

19 Defendants

CASE NO. : 21-cv-06067-AMO

DECLARATION OF COUNSEL IN
SUPPORT OF PLAINTIFFS' MOTION FOR
COURT'S APPROVAL OF PAGA
SETTLEMENT

Date: 6/12/2025
Time: 2:00 p.m.
Location: by Zoom
Judge: ARACELI MARTÍNEZ-OLGUÍN

20 I, X. Young Lai, declare:

- 21 1. I am X. Young Lai, Esq., attorney in this action for Plaintiffs. I have personal knowledge of the
22 following facts and am competent to testify thereto.
- 23 2. The original Complaint in this action was filed on August 6, 2021. On September 28, 2021,
24 Plaintiffs filed a First Amended Complaint ("FAC."). On November 13, 2021, Plaintiffs filed a Second
25 Amended Complaint ("SAC.") On December 28, 2021, Plaintiffs filed a Third Amended Complaint
26 ("TAC.")
- 27 3. In the operating TAC, Plaintiffs seeks an award of civil penalties under the California Private
28 Attorneys General Act of 2004, California Labor Code Section 2698 et seq (PAGA). The SAC seeks

PAGA penalties for alleged (1) failure to pay minimum wages; (2) failure to pay overtime compensation; (3) failure to furnish accurate itemized wage statement; (4) failure to pay split-shift premiums. (TAC, 83-84.)

4. 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.

5. 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.)

6. On July 24, 2021, Counsel for Plaintiffs sent a notice and amended notice to California Labor and Workforce Development Agency (“LWDA”) and Defendants, pursuant to Cal. Lab. Code § 2699.3. Plaintiffs, thus, have satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, including, without limitation, the penalty Pursuant to Cal. Lab. Code § 2699.3 (a) (2) (C).

7. No notice of investigation has been received from the LWDA in the statutorily proscribed 65-day period since the mailing of the notice of the action and as a result, Plaintiffs, as a representative of the people of the State of California, seek any and all penalties otherwise capable of being collected by the LWDA and/or the Department of Labor Standards Enforcement (“DLSE”).

8. On January 29, 2025, the parties participated in a settlement conference before Magistrate Judge Susan van Keulen. During the settlement conference, an agreement was reached to resolve all Plaintiffs’ claims, including those for PAGA penalties.

9. Although the terms of the settlement agreement are confidential, the Parties have agreed that the individual claims and PAGA claims will be dismissed with prejudice.

10. In support of the motion for the settlement, I have made the following calculations.

11. A one-year statute of limitations applies to PAGA claims under Section 340 (a) of the California Code of Civil Procedure.

12. In addition, 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, the end of the PAGA period is deemed December 6, 2022.

13. Thus, "Aggrieved Employees" is defined in the Settlement Agreement as "the employees who worked for Defendants from July 25, 2020 through December 6, 2022.."

14. 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.)

15. 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.

16. "[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).) 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 penalties amount to \$2,250[=\$250x9].

17. 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.

1 18. The maximum exposure to PAGA penalties are as follows: on minimum wage violations,
2 \$46,050[=(\$100x1+\$250x61)x3]; on overtime wage violations, \$18,450 [=(50x1+\$100x61)x3]. Thus,
3 the total exposure amounts to \$64,500 [=\$46,050+\$18,450].

4 19. And given the questions of proof and the fact that the Court already denied Plaintiffs' motion for
5 summary judgment on PAGA claim, Plaintiffs' counsel is of opinion that 5% of the maximum exposure
6 will be appropriate and sufficient to serve the penalty purposes. The penalties amount to
7 \$3,225[=%5x64,500.]

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

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

13 22. Defendants have stated that they will not oppose the motion. Notice of the motion and the motion
14 and supporting documents were served on California Labor & Workforce Development Agency
15 ("LWDA") through its online filing system on March 31, 2025.

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

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21
22 I declare under penalty of perjury under the laws of the United States that the foregoing is true
23 and correct.

24 Executed 3/31/2025, at San Jose, California.

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26 X. Young Lai
27 Attorney for Plaintiffs
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