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Attorneys for Plaintiff JUAN CARLOS TRISTAN VARGAS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

JUAN CARLOS TRISTAN VARGAS, an
individual,

Plaintiff,

v.

DUK MOO HAN, individually and doing
business as NOZOMI II SUSHI & BBQ; SON
A HAN, individually and doing business as
NOZOMI II SUSHI & BBQ; and DOES 1
through 50, inclusive,

Defendants,

Defendants.

CASE NO.: 37-2022-00004713-CU-OE-CTL

**JOINT EX PARTE NOTICE AND
APPLICATION FOR APPROVAL OF
SETTLEMENT OF PLAINTIFF'S
PRIVATE ATTORNEYS GENERAL
ACT ("PAGA") CLAIM;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
RODOLFO RUIZ-VELASCO**

I/C: Hon. Katherine Bacal
Dept.: C-69

Date: July 21, 2022
Time: 8:45 a.m.

Date of First Paper: February 4, 2022
Trial date: None yet set

[IMAGED FILE]

PLEASE TAKE NOTICE that on July 21, 2022 at 8:45 a.m., or as soon thereafter as this
matter may be heard in Department C-69 of the above-entitled Court, located at 330 West

1 Broadway, San Diego, California, Plaintiff Juan Carlos Tristan Vargas (“Plaintiff”) and
2 Defendants Son A Han and Duk Moo Han dba Nozomi Sushi & BBQ II (“Defendants”)
3 (collectively, the “Parties”) will and hereby apply jointly, *ex parte*, for approval of settlement of
4 Plaintiff’s Private Attorneys General Act of 2004 (“PAGA”) claim.
5

6 The Parties bring this request on an *ex parte* basis so that the settlement funds can more
7 quickly be distributed and to reduce the attorneys’ fees and costs that could otherwise be
8 consumed in further proceedings in this case.

9 This *ex parte* application is based on this Application, the attached memorandum of
10 points and authorities, the declaration of Rodolfo Ruiz-Velasco, the complete files and records in
11 this action, and any other matters that may be presented to the Court.
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13 Dated: July 18, 2022

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16 Rodolfo Ruiz-Velasco, Esq.
17 Attorneys for Plaintiff,
18 Juan Carlos Tristan Vargas
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION & BACKGROUND**

3 The above referenced wage and hour case has been settled in full in a confidential
4 settlement between Plaintiff and Defendants, pending final approval of the Court as it pertains to
5 the eighth cause of action for PAGA penalties. The parties agree as to the amount and the method
6 of distribution of the PAGA penalties. Based upon the factors set forth below, the amount of the
7 PAGA penalties is reasonable because (1) Defendants dispute the violations, (2) Defendants have
8 cooperated with Plaintiff's investigation in providing the necessary records, (3) Defendants'
9 business has suffered significant financial setbacks due to the COVID-19 pandemic, and (4) the
10 parties have decided to compromise on the claims to save on fees and costs that would
11 significantly increase upon further litigation. The California Labor Workforce Development
12 Agency ("LWDA") has been served with a copy of these Ex Parte Notice papers (Ruiz-Velasco
13 Decl., filed herewith).

14 The Parties therefore, respectfully request that this Court approve the PAGA settlement as
15 set forth in the proposed order filed concurrently herewith pursuant to Labor Code §2699(1)(2).

16 **II. PAGA CLAIMS CANNOT BE SETTLED WITHOUT COURT APPROVAL**

17 Pursuant to Labor Code Section 2699(1)(2): "The superior court shall review and approve
18 any settlement of any civil action filed pursuant to this part."

19 **III. THE COURT HAS WIDE DISCRETION IN APPROVING PAGA**
20 **PENALTIES THAT ARE BINDING**

21 Pursuant to Labor Code Section 2699(e)(2) the Court has discretion as it pertains to the
22 amount of the penalty and "may award a lesser amount than the maximum civil penalty amount
23 specified by this part if, based on the facts and circumstances of the particular case, to do
24 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

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1 **IV. THE PROPOSED PAGA PENALTIES ARE REASONABLE GIVEN THAT**
2 **DEFENDANTS DISPUTE THE LABOR CODE VIOLATIONS ALLEGED BY**
3 **PLAINTIFF, DEFENDANTS HAVE COOPERATED WITH PLAINTIFF’S**
4 **INVESTIGATION, DEFENDANT’S FINANCIAL CONDITION GIVEN THE COVID-19**
5 **PANDEMIC, AND THAT THE PARTIES WOULD LIKE TO COMPROMISE TO SAVE**
6 **ON FEES AND COSTS THAT WOULD INCREASE SIGNIFICANTLY UPON**
7 **FURTHER LITIGATION**

8 “[The] Legislature's purpose in enacting the PAGA was to augment the limited
9 enforcement capability of the Agency by empowering employees to enforce the Labor Code as
10 representatives of the Agency.” *Iskanian*, supra, 59 Cal.4th at 383.

11 Labor Code section 2699 allows for a maximum penalty of one-hundred dollars (\$100)
12 for the first pay period in which there was violation of applicable sections and two-hundred
13 dollars (\$200) per pay check for each pay period thereafter pursuant to subsection (f)(2), “except
14 those for which a civil penalty is specifically provided” pursuant to subsection (f).

15 In the instant action there were five categories of underpayment claimed by Plaintiff:
16 minimum wage pay violations, overtime wage violations, meal and rest period violations, failure
17 to reimburse, and records violations.

18 Labor Code section 2699.3 requires that the representative employee(s) “give written
19 notice by online filing with the Labor and Workforce Development Agency and by certified mail
20 to the employer of the specific provisions of this code alleged to have been violated, including
21 the facts and theories to support the alleged violation.” Labor Code section 2699.3(a)(1)(A).
22 Plaintiff gave said notice on November 1, 2021. See Decl. of Rodolfo Ruiz-Velasco, ¶2.

23 The parties were able to compromise the claims reaching a global confidential settlement
24 of the entire action. Four thousand dollars (\$4,000.00) has been deemed and agreed by the
25 Parties to be an appropriate allotted amount to settle the 8th cause of action for PAGA civil
26 penalties with nonexempt restaurant employees of Defendants as the aggrieved employees
27 (“aggrieved employees”) and where the PAGA period is deemed from one year before the date of
28 filing of PAGA written notice of November 1, 2021, or November 1, 2020, to the date of this

1 hearing, which is July 21, 2022 (“PAGA period”). (Ruiz-Velasco Decl.). Defendants’ counsel
2 shall distribute the PAGA civil penalties to the aggrieved employees who worked during the
3 PAGA Period on a pro rata basis depending on the number of pay periods they worked during the
4 PAGA Period, and Plaintiff’s attorney shall distribute the civil penalties to the California LWDA.

5 Here, Defendants own and operate a restaurant in San Diego County named Nozomi II
6 Sushi & BBQ. Plaintiff was employed by Defendants as a cook. Plaintiff was paid weekly.
7 Plaintiff claims that Defendants underpaid his hours worked and earned. Plaintiff also claims that
8 his shift was split, however, he was not paid split shift premium pay in violation of minimum
9 wage laws. Plaintiff also claims that he was not fully relieved of his duties during his meal and
10 rest periods. In fact, the records produced by Defendant show that Plaintiff worked overtime
11 hours, however, that he was not paid all overtime wages (“wage theft”), and was not fully
12 relieved of his duties during his meal and rest periods in violation of California Labor Code
13 226.7 and 512 and California Wage Order 5, and that he was not paid the split shift premiums. As
14 a consequence of the above violations, the pay records produced are inaccurate in violation of
15 Labor Code Section 226 and Wage Order 5.

16 The total potential PAGA civil penalties Plaintiff calculated are at least \$99,000 for at
17 least approximately 11 employees per pay period from November 1, 2020 to July 21, 2022,
18 calculated as 90 pay periods x 11 aggrieved employees x \$100 = at least \$99,000 in potential
19 PAGA civil penalties (Ruiz-Velasco Decl.). Defendants deny all violations. The PAGA penalties
20 settlement amount of \$4,000 is 4% of the total minimum potential PAGA penalties claimed by
21 Plaintiff.

22 All of Plaintiffs’ individual causes of action were resolved in a confidential settlement on
23 or about July 11, 2022. Plaintiff does not object to the \$4,000 PAGA penalties amount because
24 (1) the Defendant cooperated with Plaintiff’s investigation by providing payroll records, time
25 records, and other records, (2) the Defendants disputed all claimed violations, (3) the Defendants
26 provided that it is undergoing financial difficulties due to COVID-19, and (4) the parties have
27 decided to compromise to save attorneys’ fees and costs given the uncertainties of litigation and
28 because further litigating this case would significantly increase fees and costs for the Parties.

1 The time period of November 2020 to July 21, 2022 was used as the time period in
2 question to reflect the one-year statute of limitations for penalties from the time of filing the
3 written PAGA notice with the LWDA to the heat of this ex parte hearing on Joint Application for
4 Approval of Settlement of PAGA claim. Of the four thousand dollars (\$4,000.00), three
5 thousand dollars (\$3,000.00) or seventy-five percent (75%) will be paid by Defendants to the
6 California Labor Workforce Development Agency (“LWDA”) and one thousand dollars
7 (\$1,000.00) or twenty-five percent (25%) will be paid by Defendants to the aggrieved employees
8 pro rata depending on the number of pay periods worked.
9

10 The Parties were able to reach a compromised confidential settlement after mediation and
11 after undertaking significant written discovery involving review of over 300 pages of records
12 produced by Defendants, including financial records, plus records from Plaintiff, and 8 sets of
13 written discovery with meet and confer communications and supplemental responses,
14 preparation for depositions, and multiple communications and negotiations between Plaintiff’s
15 and Defendants’ counsel required to finally settle all causes of action for the Plaintiff on his
16 individual seven causes of action as follows for (1) failure to pay wages, (2) failure to timely
17 furnish accurate itemized wage statements in violation of Labor Code section 226(a), (3) unfair
18 business practices, (4) waiting time penalties per Labor Code section 203, (5) meal and rest
19 period violations, (6) failure to timely provide copy of personnel file and payroll records and
20 failure to maintain accurate time records, and (7) failure to reimburse business expenses, along
21 with the eighth cause of action for PAGA penalties.
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1 **V. CONCLUSION**

2 Based upon the totality of the facts and circumstances, Plaintiff respectfully requests the
3 Court that the PAGA civil penalty amount of \$4,000.00 be judicially approved pursuant to Labor
4 Code section 2699 and be imposed on Defendants.
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6 Dated: July 18, 2022

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8 Rodolfo Ruiz-Velasco, Esq.
9 Attorneys for Plaintiff,
10 Juan Carlos Tristan Vargas

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1. I am an attorney licensed to practice law in the state of California and am the attorney for Plaintiff Matthew A. Carter (“Plaintiff”) in the above referenced action.

3. On or about February 4, 2022 Plaintiff filed his Complaint in this case alleging claims for (1) failure to pay wages, (2) failure to timely furnish accurate itemized wage statements in violation of Labor Code section 226(a), (3) unfair business practices, (4) waiting time penalties per Labor Code section 203, (5) meal and rest period violations, (6) failure to timely provide copy of personnel file and payroll records and failure to maintain accurate time records, and (7) failure to reimburse business expenses, along with the eighth cause of action for PAGA penalties pursuant to Labor Code section 2699 et seq.

5. Plaintiff alleges that the records produced by Defendant show violations in that the pay records show that Defendants underpaid Plaintiff, show split shifts but no split shift premiums

1 paid, show meal period violations, and as a consequence of these violations, show records
2 violations in violation of the Labor Code.

3 6. Plaintiff claimed in this litigation unpaid wages due to wage theft, spit shift premiums,
4 unpaid premium wages due to failure to fully relieve of duties during meal and rest periods,
5 interest on wages, split shift premiums, and premium wages, waiting time penalties, and
6 inaccurate paycheck statement damages, plus penalties pursuant to PAGA, and plus fees and
7 costs. The PAGA period is one year from the date of filing of the PAGA notice of November 1,
8 2021 or November 1, 2020, to the date of this hearing on approval of the PAGA claim settlement,
9 which is July 21, 2022 ("PAGA period"). PAGA penalties are estimated at over \$98,000.00,
10 calculated as 90 pay periods x 11 aggrieved employees x \$100 per pay period = at least \$98,000
11 in potential PAGA civil penalties. Defendants deny all violations. Plaintiff has incurred well over
12 \$30,000 in attorneys' fees and costs in proving his case.

13 7. Despite the above differences and disputes regarding the viability of said claims, after
14 multiple negotiation discussions before and after this case was filed, the parties were able to
15 compromise the claims reaching a tentative global settlement to settle all causes of action
16 including the eighth cause of action for PAGA civil penalties and fees and costs. Upon Court
17 approval of this settlement, Plaintiff will request to dismiss this case in its entirety.

18 8. Defendant has agreed to a confidential global settlement regarding Plaintiff's claims,
19 including PAGA civil penalties of \$4,000.00, of which 75% or \$3,000.00 is to be distributed to
20 the California LWDA by my office and 25% or \$1,000.00 is to be distributed pro rata to the
21 aggrieved employees who worked from November 1, 2020 to July 21, 2022 by Defendants'
22 counsel.

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1 9. I have given Defendants' counsel Haewon Kim and the California Workforce
2 Development Agency ("LWDA") notice of this hearing, and have also served them with a copy
3 of these Ex Parte papers (See proof of service, filed concurrently herewith).
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5 10. I have been in practice full time as a litigator for over 12 years. I received my law
6 degree from California Western School of Law in May of 2009, took and passed the California
7 Bar exam in August of 2009, and was sworn in as a member of the California State Bar in
8 December of 2009. I have been a practicing litigator since then. I have handled over one hundred
9 employment and wage and hour cases, four wage and hour trials in this Court of which I was
10 successful in all four, including a PAGA trial in 2015 involving over 70 employees in Dept. 73
11 (Case No. 37-2013-00058208-CU-OE-CTL) and was also successful in the appeal on this case
12 with our Fourth District Court of Appeals, which is now a published opinion (*Atempa v.*
13 *Pedrazzani*, (2018) 27 Cal.App. 5th 809), and a PAGA trial in 2017 in Dept. 61 (now Dept. 64)
14 in which I was awarded a lodestar rate of \$400.00 per hour plus a multiplier of 2.0 on my fees in
15 that PAGA trial (Case No. 37-2015-00030224-CU-OE-CTL), six unemployment appeal hearings
16 in which I was successful in all, and three matters with the Labor Commissioner which were all
17 resolved prior to trial. I was a member of the San Diego County Bar Association from 2009 to
18 2014, and a barrister member of the William B. Enright Inns of Court from 2011 to 2015. I
19 volunteered with Legal Aid Society of San Diego from 2010 to 2013, and was awarded with the
20 Wiley W. Manuel Award for pro bono legal services in 2011 and 2012. I was a member of
21 Consumer Attorneys of San Diego from 2011-2018 and wrote a wage and hour law related article
22 in its publication, Trial Bar News entitled "The Shell Game: When Corporate Officers Take the
23 Money and Run". I am an active member of California Employment Lawyers Association
24 (CELA) since 2015 and was a featured speaker in their 12th Annual Advanced Wage and Hour
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1 Seminar in 2016 in a program called "PAGA Developments, Trial Practice and Case
2 Management", and have been invited to speak at their events on multiple occasions. I have been
3 selected as a Super Lawyer Rising Star in Employment Litigation in San Diego County
4 (2017-2022).
5

6 I declare under penalty of perjury under the laws of the state of California that foregoing
7 is true and correct and based upon my personal knowledge.
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9 Dated: July 18, 2022

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11 Rodolfo Ruiz-Velasco, Esq.
12 Attorney for Plaintiff,
13 Juan Carlos Tristan Vargas
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1 *Tristan Vargas v. Han, et al.*
2 *Superior Court Case No. 37-2022-0000413-CU-OE-CTL*

3 **PROOF OF SERVICE**

4 I am employed in the County of San Diego, State of California. I am over eighteen years
5 of age and not a party to this action; my business address is 600 W. Broadway Suite 700, San
6 Diego, California, 92101.

7 On **July 18, 2022**, I served a true copy of the foregoing document(s):

8 JOINT EX PARTE NOTICE AND APPLICATION FOR APPROVAL OF SETTLEMENT OF
9 PLAINTIFF'S PRIVATE ATTORNEYS GENERAL ACT ("PAGA") CLAIM;
10 MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF RODOLFO RUIZ-
11 VELASCO
12 [PROPOSED] ORDER

13 on all interested parties in this action as follows:

14 Haewon Kim, Esq. Law Offices of Haewon Kim 3580 Wilshire Blvd., Suite 1275 Los Angeles, CA 90010	Attorneys for Defendants SON A HAN and DUK MOO HAN
16 California Labor Workforce Development Agency 455 Golden Gate Ave, 9th Floor San Francisco, CA 94102 (by online submission only at https:// www.dir.ca.gov/Private-Attorneys-General- Act/Private-Attorneys-General-Act.html)	California Labor Workforce Development Agency (LWDA)

21 ☒ **E-mail service:** I emailed and/or e-served the above-documents to the e-mail(s) of
22 counsel above pursuant to agreement between counsel.

23 ☒ **Online submission:** I submitted the above-documents online via the website above.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct. Executed on **July 18, 2022** at San Diego, California.

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28 Rodolfo Ruiz-Velasco