

1 **MESSRELIAN LAW INC.**

2 Harout Messrelian, Esq. (SB# 272020)

3 hm@messrelianlaw.com

4 500 N. Central Ave., Suite 840

5 Glendale, California 91203

6 Telephone: (818) 484-6531

7 Facsimile: (818) 956-1983

8 Attorneys for Plaintiff, JOSE JESUS SANCHEZ

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF RIVERSIDE**
11 **(UNLIMITED JURISDICTION)**

12 **JOSE JESUS SANCHEZ,**

13 Plaintiff,

14 vs.

15 JSJ FOODS, INC.; JEFFREY BARNES;
16 SHIRLEY BARNES; and DOES 1 to 25,
17 inclusive

18 Defendants.

Case no.: CVRI2403294

**NOTICE OF PLAINTIFF'S MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Action filed: June 10, 2024
Hearing Date: December 3, 2024
Hearing Time: 8:30 a.m.
Hearing Dept: 1, Hon. Harold W. Hopp
Reservation ID: 655004506505

Submitted Herewith Under Separate Cover:

1. Declaration of Harout Messrelian;
2. Declaration of Jose Jesus Sanchez;
3. Declaration of Michael Moore;
4. [Proposed] Order

1 TO ALL PARTIES, THE CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT
2 AGENCY, AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on December 3, 2024 at 8:30 a.m., or as soon thereafter as
4 the matter may be heard, in Department 1 of the Riverside County Superior Court, located at 4050
5 Main St., Riverside, CA 92501, Plaintiff Jose Jesus Sanchez ("Plaintiff" or "Sanchez") will and
6 hereby does move this Court for an order approving the Private Attorneys General Act (Labor
7 Code § 2698 *et seq.*) Settlement Agreement (the "Agreement" or "PAGA Settlement") and
8 entering the [Proposed] Order and Judgment Approving PAGA Settlement.

9 The PAGA Settlement is on behalf of Sanchez and all persons within the State of
10 California who are or were employed by Defendants JSJ Foods, Inc., Jeffrey Barnes, and Shirley
11 Barnes (collectively "Defendants" or "JSJ") from February 15, 2022 through Court approval (the
12 "Aggrieved Employees"). Plaintiff alleges that Defendants are liable to him and other Aggrieved
13 Employees for (1) failure to compensate for all hours worked, including minimum and overtime
14 wages; (2) failure to provide accurate, itemized wage statements; (3) failure to pay all wages owed
15 during and at the end of employment; (4) failure to maintain accurate records; (5) failure to give
16 rest breaks and meal breaks; and (6) failure to reimburse for business expenses.

17 The Motion is based on this Notice of Motion and Motion, the attached Memorandum of
18 Points and Authorities, the declaration of Harout Messrelian and Jose Jesus Sanchez, the PAGA
19 Settlement, all papers and pleadings on file with the Court in this action, all matters judicially
20 noticeable, and on such oral and documentary evidence as may be presented in connection with
21 the hearing on the Motion.

22 Respectfully submitted,

23 MESSRELIAN LAW INC.

24 Dated: November 6, 2024

25 By: 
26 Harout Messrelian
27 Attorneys for Plaintiff, Jose Jesus Sanchez
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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. FACTUAL AND PROCEDURAL BACKGROUND	1
A. Plaintiff’s Written Notice to the State of California and Lawsuit	1
B. Mediation With Eleanor Barr, Esq.	2
III. OVERVIEW OF SETTLEMENT	2
A. “Aggrieved Employees” Definition.....	2
B. Monetary Terms Of The Settlement	3
C. Funding and Distribution of the Settlement.....	3
D. Individual PAGA Payments and Uncashed Checks	4
E. Release of Claims For Aggrieved Employees Limited To Those That Could Reasonably Arise From the Facts Alleged In The Action.....	4
IV. ARGUMENT	5
A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT	5
B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF PAGA	6
C. THIS COURT SHOULD APPROVE THE PAGA SETTLEMENT BECAUSE IT IS FAIR, REASONABLE AND ADEQUATE	6
1. The PAGA Settlement Is A Result of Extensive, Non-Collusive Arm’s Length Negotiations Between The Parties.....	7
2. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter into an Informed and Reasonable Settlement	8
3. The Settlement Is Fair and Reasonable Based on the Risks and Costs of Further Litigation.....	9
4. Each Aggrieved Employee Will Be Paid Based on the Potential Extent of His or Her Injury Compared to Other Aggrieved Employees	13

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5. Counsel for the Parties Are Experienced in Similar Litigation13

6. The Proposed Attorneys’ Fees and Costs Are Fair, Adequate, and Reasonable and
Should Be Approved.....13

7. The Proposed Settlement Administration Costs Are Fair and Reasonable and Should
Be Approved.....15

V. CONCLUSION.....16

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Austin v. Foodliner, Inc.</i> (N.D.Cal. May 10, 2019) 2019 U.S. Dist. LEXIS 79638	14
<i>Carrington v. Starbucks</i> (2018) 30 Cal.App.5th 504	11, 12
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	14, 15
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	7
<i>Farm Raised Salmon Cases</i> (2008) 42 Cal.4th 1077	14
<i>Gutilla v. Aerotek, Inc.</i> (E.D.Cal. Mar. 21, 2017) 2017 U.S. Dist. LEXIS 41655	5, 7
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	5, 6
<i>In re Executive Life Ins. Co.</i> (1995) 32 Cal.App.4th 344	6
<i>In re Synacor ERISA Litigation,</i> (9th Cir. 2008) 516 F.3d 1095	6
<i>Juarez v. Villafan</i> (E.D.Cal. Aug. 24, 2017) 2017 U.S. Dist. LEXIS 137205	5, 7
<i>Laffitte v. Robert Half Internat. Inc.</i> (2016) 1 Cal.5th 480	14
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19	14
<i>Lopez v. Mgmt. & Training Corp.</i> (S.D.Cal. Apr. 20, 2020) 2020 U.S. Dist. LEXIS 70029	14
<i>Moorer v. Noble L.A. Events, Inc.</i> (2019) 32 Cal.App.5th 736	6

1	<i>Neary v. Regents of University of California</i>	
2	(1992) 3 Cal.4th 273	6
3	<i>Officers for Justice v. Civil Service Com.</i>	
4	(9th Cir. 1982) 688 F.2d 615	5
5	<i>Ramirez v. Benito Valley Farms, LLC</i>	
6	(N.D.Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137272	5, 7
7	<i>Rincon v. West Coast Tomato Growers, LLC</i>	
8	(S.D.Cal. Feb. 12, 2018) 2018 U.S. Dist. LEXIS 22886	5, 7
9	<i>Salazar v. Sysco Cent. Cal., Inc.</i>	
10	(E.D.Cal. Feb. 2, 2017) 2017 U.S. Dist. LEXIS 14971	5
11	<i>Serrano v. Priest</i>	
12	(1977) 20 Cal.3d 25	14
13	<i>Smith v. H.F.D. No. 55, Inc.</i>	
14	(E.D.Cal. Apr. 19, 2018) 2018 U.S. Dist. LEXIS 67192	5, 7
15	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
16	(2012) 203 Cal.App.4th 1112	11
17	<i>Wershba v. Apple Computer, Inc.</i>	
18	(2001) 91 Cal.App.4th 224	14
19	<i>Western Heritage Ins. Co. v. Frances Todd, Inc.</i>	
20	(2019) 33 Cal.App.5th 976	14
21	<i>Williams v. MGM-Pathe Communs. Co.</i>	
22	(9th Cir. 1997) 129 F.3d 1026	15
23	Statutes	
24	Lab. Code, section 201	5
25	Lab. Code, section 202	5
26	Lab. Code, section 203	5
27	Lab. Code, section 204	5
28	Lab. Code, section 210	5
	Lab. Code, section 226	5

1	Lab. Code, section 226.3	5
2	Lab. Code, section 226.7	5
3		
4	Lab. Code, section 510	5
5	Lab. Code, section 512	5
6	Lab. Code, section 558	5
7	Lab. Code, section 1174	5
8		
9	Lab. Code, section 1194	5
10	Lab. Code, section 1197	5
11	Lab. Code, section 1198	5
12	Lab. Code, section 2698 et seq.	1, 2
13	Lab. Code, section 2699	<i>passim</i>
14		
15	Lab. Code, section 2699.3	1
16	Lab. Code, section 2802	5
17	Rules	
18	California Rules of Court, rule 8.1115	14

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose Jesus Sanchez ("Plaintiff" or "Sanchez") submits this memorandum of
4 points and authorities in support of his motion for approval of the PAGA (Private Attorneys
5 General Act, Labor Code § 2698 *et seq.*) Settlement Agreement (the "Agreement" or "PAGA
6 Settlement")¹ for the civil penalties claim he brought against Defendants JSJ Foods, Inc.; Jeffrey
7 Barnes; and Shirley Barnes ("Defendants" or "JSJ") under the Labor Code Private Attorneys
8 General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA"). Plaintiff brings this motion because
9 Labor Code section 2699(l) of the PAGA requires Court-approval of any civil penalties sought as
10 part of a proposed settlement agreement. Through this motion, Plaintiff respectfully requests for
11 this Court to approve the PAGA Settlement.

12 **II. FACTUAL AND PROCEDURAL BACKGROUND**

13 Defendants operate Farmer Boys restaurant locations in Riverside County, California.
14 Plaintiff Jose Jesus Sanchez ("Plaintiff") was classified as an hourly, non-exempt employee and
15 worked for Defendants at the Farmer Boys located at 41300 Kalmia St., Murietta, CA 92562 as
16 a cook from approximately August 2020 through mid-July 2022. Plaintiff's latest rate of pay
17 was \$15.00 per hour. Declaration of Harout Messrelian (hereinafter HM), ¶ 5.

18 **A. Plaintiff's Written Notice to the State of California and Lawsuit**

19 Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under
20 the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA").
21 On October 25, 2022, Plaintiff Jose Jesus Sanchez on behalf of himself and Defendants' other
22 California non-exempt employees (hereafter collectively the "Aggrieved Employees") gave
23 written notice by electronic service to the California Labor and Workforce Development Agency
24 ("LWDA") and via certified mail to Defendants of their claims against Defendant. In his notice
25 to the LWDA, Plaintiff asserted on behalf of himself and the Aggrieved Employees that
26 Defendant (1) failed to compensate for all hours worked and to pay minimum wages (Labor

27 Footnote 1 – The PAGA Settlement Agreement in this case has been attached as Exhibit 1 to
28 the Declaration of Harout Messrelian, filed concurrently herein.

1 Code Sections 1194, 1197, 1197.1); (2) failed to pay overtime compensation (Labor Code
2 Section 510); (3) failed to provide rest breaks (Labor Code Section 226.7); (4) failed to provide
3 meal breaks (Labor Code Sections 512, 226.7); (5) failed to timely pay wages due during
4 employment (Labor Code Section 204); (6) failed to provide accurate itemized wage statements
5 (Labor Code Section 226); (7) failed to keep accurate and complete payroll records (Labor Code
6 Section 1174/1174.5);(8) failed to pay wages at the end of employment (Labor Code section
7 203); and (9) failed to reimbursement business expenses (Labor Code section 2802). Attached
8 as **Exhibit 3** to this Declaration is a true and correct copy of Plaintiff's October 25, 2022 LWDA
9 PAGA Notice. On November 1, 2023, Plaintiff filed an amended LWDA PAGA Notice, adding
10 further factual details, and adding claims under Labor Code sections 221 and 224 for unlawful
11 deductions and under 351 and 353 for failure to pay tips. Attached as **Exhibit 4** to this
12 Declaration is a true and correct copy of Plaintiff's November 1, 2023 LWDA PAGA Notice.
13 Plaintiff filed his initial lawsuit against Defendants on June 10, 2024, in the Superior Court for
14 the State of California, County of Riverside, Case No. CVRI2403294, with one cause of action
15 for PAGA penalties. HM ¶ 6, Ex. 3 and 4.

16 **B. Mediation With Eleanor Barr, Esq.**

17 The Parties attended a full-day mediation with experienced mediator Eleanor Barr, Esq.
18 on July 31, 2023, and settled the matter at mediation. Before agreeing to the terms of the
19 Settlement Agreement, the Parties engaged in extensive informal discovery regarding
20 Defendants' policies, practices, operations, time and payroll information and other topics. Prior
21 to negotiation, Defendants produced Plaintiff's personnel file, time and payroll data for Plaintiff,
22 and time records and payroll records for 35 aggrieved employees falling within Plaintiff's
23 Aggrieved Employees definition and during the applicable PAGA period. Through extensive
24 arm's length negotiations and only after extensive discovery and investigation were performed,
25 the Parties agreed to settlement terms. HM, ¶ 9.

26 **III. OVERVIEW OF SETTLEMENT**

27 **A. "Aggrieved Employees" Definition**

28 The Aggrieved Employees are all current and former hourly, non-exempt employees who

1 worked for Defendants in California during the PAGA Period. Agreement, ¶ 1.4. The PAGA
2 Period means the period of time from February 15, 2022 through the date of Court approval.
3 Agreement, ¶ 1.24.

4 **B. Monetary Terms Of The Settlement**

5 Defendants have agreed to pay a total of \$70,000.00 (“Gross Settlement Amount” or
6 “GSA”) to settle the PAGA lawsuit. In consideration for the release of all claims of Plaintiff and
7 the Aggrieved Employees against Defendants (described more fully below), Defendants agreed
8 to pay \$70,000.00 toward the GSA from which all settlement payments for the Net Settlement
9 Amount, Court approved attorneys’ fees and costs, and Settlement Administration Costs shall be
10 paid. Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis
11 calculated based on the total number of pay periods each Aggrieved Employee worked as a non-
12 exempt hourly employee in California during the PAGA Period. Agreement, ¶¶ 1.11. The GSA
13 will be divided as follows:

- 14 1. PAGA Counsel Fees amounting to \$23,331 (33.33% of the GSA), and
15 PAGA Counsel’s Litigation Expenses in the amount of \$9,155.48 (the
16 Agreement provides up to \$10,000);
- 17 2. “Settlement Administration Costs” of \$4,500.00 to Phoenix Class Action
18 Administration Solutions (“Phoenix” or “Settlement Administrator”) to
administer the Settlement;
- 19 3. Approximately \$33,013.52 (“Net Settlement Amount”), divided as
20 follows:
 - 21 a. \$ 24,760.14 to the LWDA (75%); and
 - 22 b. \$ 8,253.38 to the Aggrieved Employees (25%)

23 Agreement, ¶ 3.

24 **C. Funding and Distribution of the Settlement**

25 Within sixty (60) days after the Effective Date², Defendants shall deposit the Gross
26 Settlement Amount with the Settlement Administrator. Agreement, ¶ 4.2.

27 ² “Effective Date” means the latest of the following dates: (1) the date the Court enters a Judgment on
28 its Order Approving the PAGA Settlement and the Judgment is final; or (2) if the LWDA files an
objection to the PAGA Action Settlement, the date there is a final resolution of the objection or appeal.

1 Within fourteen (14) days of the Effective Date, Defendants shall provide the Settlement
2 Administrator with the Aggrieved Employee data, which states each Aggrieved Employee's full
3 name, last known mailing address, social security number, and number of PAGA pay periods.
4 Agreement, ¶ 1.5, 4.2.

5 Within 14 calendar days after Defendants funds the Gross Settlement Amount, the
6 Settlement Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA
7 Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the
8 PAGA Counsel Litigation Expenses Payment. ¶ 4.4.

9 The Settlement Administrator will issue each Aggrieved Employee a check for his or her
10 share of the NSA along with the Notice of PAGA Settlement (**Exhibit 2** to HM Declaration) by
11 First-Class United States mail, postage prepaid, with directions to the Postmaster to forward the
12 Notice of PAGA Settlement and return all undeliverable Notices to the Settlement Administrator.
13 The Settlement Administrator will skip trace return mail and re-mail within seven (7) calendar
14 days. Agreement, ¶¶ 4.4.1-4.4.2.

15 **D. Individual PAGA Payments and Uncashed Checks**

16 The settlement checks issued to Aggrieved Employees will remain valid for one hundred
17 eighty (180) days. Any settlement checks remaining uncashed for more than one hundred eighty
18 (180) days after issuance will be distributed to the California State Controller's Office Unclaimed
19 Property Fund with an identification of the amount of unclaimed funds attributable to each
20 Aggrieved Employee. All settlement payments to Aggrieved Employees will be treated as
21 miscellaneous income for which an IRS Form 1099 will be issued by the Settlement Administrator
22 if required by law. Agreement, ¶¶ 3.2.1, 3.2.4.2, 4.4.1, 4.4.3.

23 **E. Release of Claims For Aggrieved Employees Limited To Those That Could**
24 **Reasonably Arise From the Facts Alleged In The Action.**

25 Upon the Effective Date of this Settlement, Plaintiff, Aggrieved Employees, and the State
26 of California are deemed to release, on behalf of themselves and their respective former and
27 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
28 Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have
been alleged, based on the factual allegations in the PAGA Action Complaint and/or amended

1 LWDA Notice.

2 The Released PAGA Claims include:

3 Violations under California Labor Code Sections 201, 202, 203, 204, 208, 221,
4 224, 226, 226.3, 226.7, 351, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198,
5 1198.5, 2800, 2802, as well as California Industrial Welfare Commission Wage
6 Order No. 5.

7 Agreement, ¶ 5.

8 **IV. ARGUMENT**

9 **A. STANDARD FOR APPROVAL OF A PAGA SETTLEMENT**

10 The Settlement of a PAGA claim requires court approval. Lab. Code §2699(l)(2). The
11 Court necessarily has broad discretion in making the decision to approve or reject a settlement
12 for civil penalties as the statutory scheme authorizes the Court to determine whether, in certain
13 circumstances, penalties should be assessed and, if so assessed, the appropriate amount of
14 penalties based on the facts and circumstances of the particular case. *See id.* at § 2699(e)(1)-(2).
15 Although the PAGA does not set forth the particular standards against which a PAGA settlement
16 should be evaluated, the LWDA has provided guidance for approval that mirrors the standards
17 for evaluating class action settlements. HM, ¶ 12; *See, e.g., Salazar v. Sysco Cent. Cal., Inc.*,
18 2017 U.S. Dist. LEXIS 14971, *6, n.4-5 (E.D. Cal. 2017) (stating, based on the LWDA's
19 guidance, that approval of PAGA settlements may be had where the statutory requirements of
20 the PAGA are met and the terms of the settlement are fundamentally fair, reasonable, and
21 adequate). The established standards for evaluating whether class action settlements are fair,
22 reasonable, and adequate provide a familiar, useful framework for the Court to evaluate PAGA
23 settlements and have been adopted by several courts. *Id.*, *See Juarez v. Villafan*, 2017 U.S. Dist.
24 LEXIS 137205, *5 n.4 (E.D. Cal. 2017) (*citing Officers for Justice v. Civil Serv. Comm'n of City*
25 *& Cty. of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982)); *Ramirez v. Benito Valley Farms,*
26 *LLC*, 2017 U.S. Dist. LEXIS 137272, *8-9 (N.D. Cal. 2017) (*citing Hanlon v. Chrysler Corp.*,
27 150 F.3d 1011, 1026 (9th Cir. 1998)); *Gutilla v. Aerotek, Inc.*, 2017 U.S. Dist. LEXIS 41655, *7,
28 n.4 (E.D. Cal. 2017); *Smith v. H.F.D. No. 55, Inc.*, 2018 U.S. Dist. LEXIS 67192, *6 (E.D. Cal.
2018); *Rincon v. W. Coast Tomato Growers, LLC*, 2018 U.S. Dist. LEXIS 22886, *6 (S.D. Cal.
2018).

1 In making the determination whether a settlement taken as a whole is fair, reasonable,
2 and adequate, the Court should be careful to still give “proper deference to the private consensual
3 decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual
4 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
5 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
6 collusion between, the negotiating parties” *Hanlon*, 150 F.3d at 1027. The law favors
7 settlement of lawsuits, particularly complex litigation cases where substantial resources can be
8 conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents*
9 *of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992); *In re Synacor ERISA Litigation*, 516 F.3d 1095,
10 1101 (9th Cir. 2008); *In re Exec. Life Ins. Co.*, 32 Cal.App.4th 344, 382 (1995).

11 **B. THE SETTLEMENT MEETS THE STATUTORY REQUIREMENTS OF**
12 **PAGA**

13 PAGA imposes two requirements for the settlement of a PAGA claim. Both are met here.
14 First, any civil penalties recovered, whether by judgment or settlement, must be distributed as
15 follows: 75 percent to the LWDA, and the remaining 25 percent to the aggrieved employees. *See*
16 *Moorer v. Noble L.A. Events, Inc.* (2019) 32 Cal.App.5th 736, 742; Cal. Lab. Code, § 2699(i).
17 The parties’ Settlement so provides. Agreement, ¶¶ 3.3.1 and 3.3.2. Second, the LWDA must be
18 given notice of the settlement so that it may be heard before the Court decides whether to grant
19 approval. Cal. Lab. Code § 2699(l)(2). Here, notice is being given to the LWDA concurrently
20 with the filing of this motion. HM, ¶¶ 35, Ex. 8. As a result, Plaintiff has met all procedural
21 statutory requirements for settling a PAGA action.

22 **C. THIS COURT SHOULD APPROVE THE PAGA SETTLEMENT BECAUSE**
23 **IT IS FAIR, REASONABLE AND ADEQUATE**

24 To make its determination that the PAGA settlement is fair, reasonable, and adequate, the
25 Court may consider several factors, including:
26 the strength of the Plaintiff’s case, the risk, expense, complexity and
27 likely duration of further litigation, the risk of maintaining class
28 action status through trial, the amount offered in settlement, the
extent of discovery completed and the stage of the proceedings, and
the experience and views of counsel.

1 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Juarez*, 2017 U.S. Dist. LEXIS
2 137205, *5 n.4; *Ramirez*, 2017 U.S. Dist. LEXIS 137272, *8-9; *Gutilla*, 2017 U.S. Dist. LEXIS
3 41655, *7, n.4; *Smith*, 2018 U.S. Dist. LEXIS 67192, *6; *Rincon*, 2018 U.S. Dist. LEXIS 22886,
4 *6. However, this Court should begin its analysis with a presumption that the proposed
5 settlement is fair. “A presumption of fairness exists where: (1) the settlement is reached through
6 arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
7 court to act intelligently; (3) counsel is experienced in similar litigation” *Dunk*, 48 Cal.
8 App. 4th at 1802.

9 The PAGA Settlement warrants a presumption of fairness for several reasons: (1) The
10 parties reached the Settlement through arm’s-length bargaining with the aid of a respected
11 mediator; (2) The parties conducted sufficient investigation and discovery to allow Counsel and
12 the Court to act intelligently. Plaintiff requested and Defendants provided the number Aggrieved
13 Employees, the total number of pay periods during the PAGA Period, all policies in effect during
14 the PAGA Period, and a sampling of time records; and (3) Counsel for the Parties are experienced
15 with PAGA cases. HM, ¶ 13. Moreover, neither Plaintiff nor Plaintiff’s Counsel have any
16 conflicts of interest with the absent Aggrieved Employees and there are no issues of
17 ascertainability. HM, ¶ 13. For the reasons discussed below, this Court should approve the PAGA
18 Settlement.

19 **1. The PAGA Settlement Is A Result of Extensive, Non-Collusive Arm’s Length**
20 **Negotiations Between The Parties.**

21 The Parties attended a full-day mediation with experienced mediator Eleanor Barr, Esq.
22 on July 31, 2023, and settled the matter at mediation. Before agreeing to the terms of the
23 Settlement Agreement, the Parties engaged in extensive informal discovery regarding
24 Defendants’ policies, practices, operations, time and payroll information and other topics. Prior
25 to negotiation, Defendants produced Plaintiff’s personnel file, time and payroll data for Plaintiff,
26 and time records and payroll records for 35 aggrieved employees falling within Plaintiff’s
27 Aggrieved Employees definition and during the applicable PAGA period. Through extensive
28 arm’s length negotiations and only after extensive discovery and investigation were performed,
the Parties agreed to settlement terms. HM, ¶ 9.

1 The Parties conducted investigation of the facts and law the lawsuit was filed. Counsel
2 for the Parties have further investigated the applicable law as applied to the facts discovered
3 regarding Plaintiff's claims, the defenses thereto, and the Labor Code violations claimed by
4 Plaintiff. Based on their own independent investigations and evaluations, the Parties and their
5 respective counsel are of the opinion that the Settlement for the consideration and on the terms
6 set forth in this Motion are fair, reasonable and adequate and are in the best interests of Plaintiff,
7 the PAGA Members, and Defendants in light of all known facts and circumstances and the risks
8 inherent in litigation, especially in this post-pandemic era when most California businesses in
9 the restaurant industry are still struggling to remain afloat, much less prosper and make a large
10 profit. HM, ¶ 10.

11 **2. The Extent of Investigation and Discovery Completed Provided Ample**
12 **Information to Enter into an Informed and Reasonable Settlement**

13 Plaintiff considered various sources of information in the lead-up to and during the
14 mediation of July 31, 2023 that enabled him to achieve the PAGA Settlement at issue. HM, ¶ 14.
15 Among other things, Plaintiff considered the following:

- 16 • Defendants produced and Plaintiff's counsel reviewed Plaintiff's personnel file.
- 17 • Plaintiff's counsel requested that Defendants provide any and all policies, memos, and
18 guides regarding overtime and double-time wages, off the clock work, expense
19 reimbursement, meal periods, rest breaks, meal period waivers and agreements,
20 arbitration agreements, among others, in effect during the relevant time period.
21 Defendants produced those policies, both independently where they existed, and as part
22 of their employee handbook.
- 23 • Plaintiff's counsel requested that Defendants provide the total number of employees,
24 paychecks, and the pay cycles during the relevant period. Defendants provided the
25 answers to each of these questions.
- 26 • Plaintiff's counsel requested a sample of time and payroll records for the relevant time
27 period. Defendants provided a sampling of time and pay records for 35 of its employees.
28 This represents approximately 17% of the total employees (206) that Defendants
employed during the PAGA Period based on data available at the time.
- Plaintiff's counsel then retained a professional data analyst, James Toney, to examine
the records and determine the meal period violation rates, if there was any pay
discrepancy in timesheet hours versus paid hours, regular rate of pay violations, and if

there was any rounding/time shaving issues.

HM, ¶ 14.

3. The Settlement Is Fair and Reasonable Based on the Risks and Costs of Further Litigation

Through informal discovery and at mediation, Defendants produced records and represented that they employed approximately 206 workers falling within Plaintiff's Aggrieved Employees definition for the period from February 15, 2022 (per the parties' stipulation as the start time for the PAGA period since a lawsuit has not yet been filed) through July 25, 2023, who worked approximately 3,411 pay periods that same time period. HM, ¶ 7.

Plaintiff alleges a broad range of PAGA claims but believes that the strongest claims are that Plaintiff and other PAGA Members were not provided meal and rest breaks under the law. HM, ¶ 14.

As it relates to Plaintiff's argument for meal break violations, Plaintiff's data analysis revealed an aggregate shift violation rate of 4.5% for short, late, or no meal breaks for shifts greater than 5 hours (which occurred in 97.9% of the workdays in the sample data). If you extrapolate the 4.5% shift violation rate, it amounts to 30% of pay periods having at least one meal period violation. As such, the maximum exposure for meal period violations in the PAGA period would be **\$50,100.00**, which is calculated as follows: 3,411 pay periods x 97.9% (to calculate the number of pay periods that had shifts over 5 hours long) equates to 3,339 pay periods. 3,339 pay periods x 30% pay period violation rate equates to approximately 1,002 pay periods wherein there was a meal period violation. 1,002 pay periods x \$50/pay period (civil penalty) amounts to \$50,100.00 in exposure. The latter exposure calculation does not take into account the fact that Defendants had written meal period policies. HM, ¶ 15.

As it relates to Plaintiff's argument for rest break violations, while Plaintiff did not have any rest break data to analyze since Defendants' employees did not clock in and clock out for rest breaks, Plaintiff utilized the meal period violation data to extrapolate for rest period violations. As such, if you extrapolate the 4.5% shift violation rate, it amounts to 30% of pay periods having at least one rest period violation. As such, the maximum exposure

1 for rest period violations in the PAGA period would be **\$100,200.00**, which is calculated as
2 follows: 3,411 pay periods x 97.93% (to calculate the number of pay periods that had shifts over
3 3.5 hours long) equates to 3,340 pay periods. 3,340 pay periods x 30% pay period violation rate
4 equates to approximately 1,002 pay periods wherein there would be a rest period violation.
5 1,002 pay periods x \$100/pay period (civil penalty) amounts to \$100,200.00 in exposure. The
6 latter exposure calculation does not take into account the fact that Defendants had written rest
7 period policies. HM, ¶ 16.

8 As it relates to Plaintiff's argument for overtime violations, including regular rate
9 of pay violations, Plaintiff's expert found that overtime was paid properly and that there were
10 only 2 days in the entire sample that had over 8.0 hours worked. Moreover, no bonuses, incentive
11 payments, or shift differential payments were noted in the sampling. HM, ¶ 17.

12 As it relates to Plaintiff's claims for unpaid "off the clock" work, there is no
13 documentary evidence or data at this stage that would support those claims, and Plaintiff
14 recognizes the challenges in proving these alleged violations. As it relates to Plaintiff's claims
15 for minimum wage violations due to rounding or time shaving, Plaintiff's data analyst did not
16 see any violations in the sampling data and noted that hours were paid past the third decimal
17 point. The other claims for violations of Labor Code sections 203, 204, 226, and 1174.5 for not
18 being paid all wages owed every pay period or at the end of employment, not receiving accurate,
19 itemized wage statements, and not keeping accurate time records, would only be derivative in
20 nature based on potential meal/rest period violations and not recoverable. As to claims for
21 business expense reimbursement for uniforms, unlawful deductions, reporting time violations,
22 and gratuity/tip violations, the records and investigation did not evidence liability. As far as the
23 uniform issue is concerned, while Plaintiff asserted that he needed to wear his own pants, shirts,
24 and shoes to work, it was not of a specific nature/color or design so to as be reimbursable by
25 JSJ. HM, ¶ 18.

26 Based on the above calculations, Plaintiff's aggregate potential exposure for the
27 strongest disputed claims would be **\$150,300.00** and this also represents a penalty figure which
28 Plaintiff believes Defendants would have to pay after a court trial. Assuming that Plaintiff's

1 calculations and analysis are accurate, the maximum exposure presumes that the Court will not
2 reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory. Furthermore, Plaintiff
3 believes there is a very low probability that any of the alleged violations would be found to be
4 knowing and intentional based on the nature of Plaintiff's strongest claims relating to statutory
5 breaks. Based on the above analysis, a gross settlement in the amount of \$70,000.00 is a strong
6 result, especially in light of the risk factors as discussed above. Moreover, Plaintiff is aware of
7 no California state courts awarding Plaintiff multiple PAGA penalties for the same violation for
8 the same pay period under different Labor Code provisions. As such, one of the risks Plaintiff
9 faces is that the Court would refuse to "stack" civil penalties arising under the various Labor
10 Code statutes. At best, Plaintiff could hope to recover one penalty for each pay period (regardless
11 of the different Labor Code violations that potentially occurred for the same employee, during
12 the same pay periods). Furthermore, judges have awarded extremely small sums to PAGA
13 claimants in the past. Defendants also adamantly dispute all of Plaintiff's allegations in the
14 operative Complaint. HM, ¶ 19.

15 Additionally, PAGA states a court has discretion to award a lesser amount than the
16 maximum penalty. *See Lab. Code* § 2699(e)(2) ("...a court may award a lesser amount than the
17 maximum civil penalty amount specified by this part if, based on the facts and circumstances of
18 the particular case, to do otherwise would result in an award that is unjust, arbitrary and
19 oppressive, or confiscatory."); *see also Thurman v. Bayshore Transit Management, Inc.* (2012)
20 203 Cal.App.4th 1112, 1135 (reducing PAGA award). There is a substantial risk that the Court
21 could reduce civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence
22 of willful and intentional conduct. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504
23 ("*Carrington*") illustrates this. In that case, the Court of Appeal affirmed a trial court's heavily
24 discounted award of only \$5 per violation because it was within the Court's discretion to
25 significantly reduce PAGA penalties even when there is a finding that a violation of the
26 California Labor Code occurred. The plaintiff in *Carrington* had requested penalties in excess of
27 \$70 million and was successful in proving the PAGA claim during a bench trial. However, the
28 trial court reduced the total award after trial to only \$150,000 (30,000 violations x \$5) and stated

1 that this reduction was warranted because imposing the maximum penalty would be “unjust,
2 arbitrary, and oppressive”, based on Starbucks’s “good faith attempts” to comply with meal break
3 obligations and because the Court found the violations were minimal. Applying the same formula
4 here and assuming there was one violation during each pay period, the award of civil penalties
5 could not exceed \$17,055.00 in PAGA penalties (3,411 violations x \$5). As such, this Settlement
6 is a great result based solely on the risk the Court chooses to apply the *Carrington* formula. Thus,
7 the chance of Plaintiff recovering a higher amount than the Gross Settlement Amount is
8 uncertain. HM, ¶ 20.

9 The Parties further recognize that the issues presented in the representative PAGA claim
10 are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that
11 further litigation will cause inconvenience, distraction, disruption, delay, and expense
12 disproportionate to the maximum potential benefits to the Aggrieved Employees and Plaintiff
13 from continued litigation, especially in the post pandemic era where further and extensive
14 litigation may cause businesses to shut down, especially in the restaurant industry, resulting in
15 no monetary compensation to Plaintiff, Plaintiff’s attorneys, other Aggrieved Employees, and
16 the State of California. HM, ¶ 21.

17 The settlement of the representative PAGA claim involves monetary relief to all
18 Aggrieved Employees, Plaintiff, his attorneys, and the State of California. The Settlement is
19 reasonable given the uncertainties this lawsuit entails. It is also reasonable given the structure
20 and purpose of the PAGA, since the PAGA is not a restitution statute. Rather, it is essentially a
21 punishment statute. It provides for civil penalties only. Within the PAGA framework he is bound
22 by, Plaintiff, considering the evidence he faced, achieved a great result for the employees
23 concerned. Furthermore, any employees who are dissatisfied with the amount they received in
24 civil penalties can pursue any damages they believe they are owed by the Defendants. The
25 Settlement does not require them to opt out to do so. HM, ¶ 22.

26 Furthermore, Plaintiff recognizes that continued litigation presents significant risks that
27 support a significant downward departure from Plaintiff’s estimated civil penalties amount. In
28 view of the risks, the Settlement represents a fair, adequate, and reasonable compromise amount

1 for these claims and is in the best interest of Plaintiff and Aggrieved Employees and thus,
2 warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3,
3 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just, reasonable,
4 adequate, and equitable to Defendants, Plaintiff, and the State, especially in light of the current
5 economic climate, and are the product of good faith, and informed arms-length negotiations
6 between the Parties consistent with public policy and fully comply with applicable provisions of
7 law. HM, ¶ 23.

8 As such, the settlement of PAGA penalties in the gross sum of \$70,000, of which 75% of
9 the net amount after attorney's fees, litigation costs, and settlement administration costs
10 (\$24,760.14) will be paid to the LWDA and 25% (\$8,253.38) will be distributed to the Aggrieved
11 Employees, is reasonable and appropriate under the circumstances. HM, ¶ 24.

12 **4. Each Aggrieved Employee Will Be Paid Based on the Potential Extent of His or**
13 **Her Injury Compared to Other Aggrieved Employees**

14 Each Aggrieved Employee will receive a portion of the civil penalties on a pro-rata basis
15 depending on the number of pay periods Defendants employed them for during the PAGA Period.
16 Agreement, ¶ 1.12. With a total of 206 Aggrieved Employees, the average estimated individual
17 PAGA payment for each Aggrieved Employee is approximately \$40.06 (25% of the estimated
18 Net Settlement of \$8,253.38) / 206 Aggrieved Employees). HM, ¶ 25.

19 **5. Counsel for the Parties Are Experienced in Similar Litigation**

20 Plaintiff's counsel has considerable experience in wage and hour litigation and is
21 qualified to evaluate the PAGA claims, the value of settlement versus moving forward with
22 litigation, and viability of possible affirmative defenses. Similarly, Defendants' counsel, have
23 vast experience in handling employment matters and wage and hour litigation. *See* HM, ¶¶ 2,
24 32.

25 **6. The Proposed Attorneys' Fees and Costs Are Fair, Adequate, and Reasonable**
26 **and Should Be Approved.**

27 Of the \$70,000.00 allocated towards the GSA, Plaintiff's counsel requests \$23,331.00
28 (33.33% of the GSA) in attorney's fees and \$9,155.48 in litigation expenses, which is fair and

1 reasonable. HM, ¶ 30.

2 It is an accepted practice in wage and hour class action settlements to award attorneys’
3 fees to Plaintiff’s counsel based on a percentage of the total settlement value agreed upon by the
4 parties. California courts have long recognized that an appropriate method for awarding
5 attorneys’ fees in class actions is to award a percentage of the common fund. (*Serrano v. Priest*
6 (1977) 20 Cal.3d 25, 48-49 [“when a number of persons are entitled in common to a specific
7 fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation
8 or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the
9 fund”]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254; *Lealao v. Beneficial*
10 *California, Inc.* (2000) 82 Cal.App.4th 19, 26-30.)

11 California courts have the discretion to employ (or decline to employ) a “lodestar cross-
12 check” on a request for a percentage of the fund award. *Laffitte v. Robert Half Intern, Inc.* (2016)
13 1 Cal. 5th 480, 505 (“*Laffitte*”). However, the California Supreme Court in *Laffitte* has now made
14 clear that this cross-check is not required and approved one-third of the class action settlement
15 fund as reasonable attorney fees as “[t]he percentage of the fund method survives in California
16 class action cases....” *Id.* at 574. As other courts have acknowledged since *Laffitte*, “California
17 courts routinely award attorneys’ fees of one-third of the common fund.” *Lopez v. Mgmt. &*
18 *Training Corp.*, 2020 U.S. Dist. LEXIS 70029. The *Lopez* court explained that it need not “engage
19 in a full-blown lodestar analysis when the primary basis remains the percentage method...” The
20 lodestar calculation is merely a “useful perspective on the reasonableness of a given percentage
21 award.” *Id.* See also *Austin v. Foodliner, Inc.*, 2019 U.S. Dist. LEXIS 79638 (“Trial courts ‘also
22 retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
23 reasonableness of a requested percentage fee.’”³ *Id.* (citing *Laffitte*)).

24 “[R]egardless whether the percentage method or the lodestar method is used, fee awards
25 in class actions average around one-third of the recovery.” (See *Chavez v. Netflix, Inc.* (2008)

26
27 ³ The prohibition on citing unpublished California decisions (Cal. Rules of Court, rule 8.1115(a)) does not apply to
28 unpublished decisions from the lower federal courts. (*Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1096, fn.
18 [“Citing unpublished federal opinions does not violate our rules.”].) Like published decisions of the lower federal
courts, unpublished decisions are not binding on us even on questions of federal law, but they are persuasive
authority. (*Western Heritage Ins. Co. v. Frances Todd, Inc.* (2019) 33 Cal.App.5th 976, 989, fn. 6.)

1 162 Cal.App.4th 43, 66, fn.11 (“*Chavez*”)); *In re Pacific Enter. Sec. Litig.* (9th Cir. 1995) 47 F.3d
2 373, 379 (“*Pacific*”) [affirming 33% fee award]; *Williams v. MGM-Pathe Communications Co.*
3 (9th Cir. 1997) 129 F.3d 1026, 1027 (“*MGM*”) (awarding 33% of total fund amount).) This is
4 also consistent with Plaintiff’s Counsel’s experience in wage and hour class and PAGA
5 settlements. HM, ¶ 28.

6 Should the Court elect to use Plaintiff’s Counsel’s lodestar as the method for awarding
7 fees, notwithstanding courts’ clear preference for the percentage method, Plaintiff’s counsel’s
8 request for attorney’s fees of \$23,331.00 (33.33% of the Gross Settlement Amount) is fair and
9 reasonable based on Plaintiff’s counsel’s lodestar as cross-checked against the percentage of the
10 recovery. HM, ¶¶ 29, 30. Plaintiff’s counsel’s previous experience in litigating wage and hour
11 class actions and the caliber of opposing counsel also support the reasonableness of the fee
12 request. HM, ¶ 32. The award of attorneys’ fees sought is also justified by the contingency nature
13 of the attorney-client relationship, the risks of non-payment and non-reimbursement, the delay
14 in payment and cost reimbursement, and the great results Plaintiff’s Counsel has achieved for the
15 Aggrieved Employees. HM, ¶ 33.

16 In addition, Plaintiff’s Counsel incurred substantial costs, \$9,155.48 to date, including the
17 costs of a mediator, to aid in the representation of the Aggrieved Employees. HM, ¶ 31. All of
18 these costs are documented and reasonably incurred. *Id.* Accordingly, they warrant the Court’s
19 approval.

20 **7. The Proposed Settlement Administration Costs Are Fair and Reasonable and**
21 **Should Be Approved.**

22 With regard to the settlement administration costs provision, it is reasonable. Before
23 agreeing to Phoenix Class Action Administration Solutions, the Parties sought and reviewed bids
24 from other reputable third-party administrators which provided higher bids. HM, ¶ 34, Exs. 5-7.
25 *See generally* Declaration of Michael Moore. Thus, the settlement administration costs provision
26 should be given approval.

27 ///

28 ///

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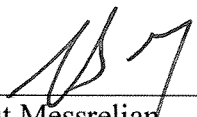
1 **V. CONCLUSION**

2 For the reasons stated above, this Court should grant the Plaintiff's Motion in its entirety
3 and adopt the proposed order submitted concurrently herewith.

4 Respectfully submitted,
5

6 MESSRELIAN LAW INC.

7
8 Dated: November 6, 2024

9 By: 
10 Harout Messrelian
11 Attorneys for Plaintiff,
12 Jose Jesus Sanchez
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Court Reservation Receipt

Reservation

Reservation ID:
655004506505

Reservation Type:
Motion for Approval of PAGA Settlement

Case Number:
CVRI2403294

Filing Party:
JOSE JESUS SANCHEZ (Plaintiff)

Date/Time:
December 3rd 2024, 8:30AM

Status:
RESERVED

Number of Motions:
1

Case Title:
SANCHEZ vs JSJ FOODS, INC.

Location:
Historic Court House - Department 1

Confirmation Code:
CR-ZCTXQWYIU8BDOHNFK

Fees

Description	Fee	Qty	Amount
Motion for Approval of PAGA Settlement	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount:
\$0.00

Type:
NOFEE

[◀ Back to Main](#)

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