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8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

11 DANIEL ALVAREZ, on behalf of the general
public as private attorney general,

12 Plaintiff,

13 v.
14

15 CULINART OF CALIFORNIA INC., a
California Corporation; CULINART GROUP
16 INC., a New York Corporation; and DOES 1-
50, inclusive,

17
18 Defendants.

Case No.: 22STCV39814
Assigned for all Purposes to:
Hon. Gregory Keosian
Dept.: 61

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

Date: June 5, 2024
Time: 10:00 a.m.
Dept.: 61

RESERVATION ID: 872281871392

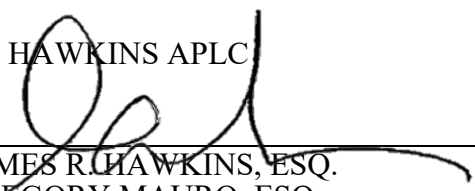
1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**
2 **YOU ARE HEREBY NOTIFIED THAT** at June 5, 2024 at 10:00 a.m. or as soon thereafter as
3 the matter can be heard, in Department 31 of the above entitled Court before the Honorable
4 Gregory Keosian, Plaintiff Daniel Alvarez, ("Plaintiff") will and hereby does move for an order
5 approving the settlement of the PAGA claim alleged against Defendants Culinart of California
6 Inc., and Culinart Group Inc., ("Defendants") in accordance with Labor Code §2699(l). The
7 proposed settlement is set forth in the accompanying Settlement Agreement and Release
8 ("Settlement", "Agreement" or "Settlement Agreement"). This PAGA Settlement resolves this
9 action in its entirety.

10 This Motion will be based on this notice, the accompanying points and authorities, the
11 Declaration of James Hawkins, the Declaration of Daniel Alvarez, and the complete files and
12 records in this action. The Labor Workforce Development Agency has been served with this
13 motion and the Settlement Agreement as set forth in the accompanying proof of service.

14 Dated: April 26, 2024

15 Respectfully submitted,

16 JAMES HAWKINS APLC

17 By: 

18 JAMES R. HAWKINS, ESQ.
19 GREGORY MAURO, ESQ.
20 MICHAEL CALVO, ESQ.

21 Attorneys for Plaintiff individually and on
22 behalf of the general public as Private
23 Attorney General

1 **I. INTRODUCTION**

2 Plaintiff Daniel Alvarez ("Plaintiff") reached a settlement of the California Private
3 Attorneys General Act, Cal. Labor Code §2699, et seq. ("PAGA") claim asserted in this action
4 against Defendants Culinart of California Inc., and Culinart Group Inc., ("Defendants"). The only
5 claim in this action is the representative PAGA claim. In accordance with California Labor Code
6 §2699(l), Plaintiff now asks this Court to review and approve the settlement of Plaintiff's PAGA
7 claims. This is only a settlement of the PAGA claims for civil penalties, and is not a class
8 settlement and does not release the individual claims, if any, of the affected employees other than
9 the Plaintiff. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381
10 (2014).

11 The PAGA settlement is set forth in the accompanying Settlement Agreement and Release
12 ("Settlement", "Agreement" or "Settlement Agreement"). A true and correct copy of the
13 Settlement Agreement, which sets forth the terms for the settlement of the PAGA claims, is
14 attached as Exhibit 1 to the Declaration of James Hawkins, filed herewith. Capitalized terms
15 shall have the same meaning as defined in the Settlement Agreement. The LWDA was served
16 notice of this Settlement and this motion as set forth in the accompanying proof of service. The
17 Notice of Settlement to PAGA Members is attached to the James Hawkins declaration as Exhibit
18 A.

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

21 **II. RELEVANT FACTS**

22 On December 22, 2022, Plaintiff filed the PAGA Representative Action in the Superior
23 Court of California in and for the County of Los Angeles, styled *Daniel Alvarez, on behalf of the*
24 *general public as private attorney general v. Culinart of California Inc., et al., and Does 1*
25 *through 50, Inclusive*, Case No. 22STCV39814 and alleged a singular cause of action under
26 PAGA for Defendant's alleged (1) failure to pay wages including overtime; (2) failure to timely
27 pay final wages at separation; (3) failure to provide accurate wage statements, and (4) failure to
28

1 reimburse necessary business expenses.¹ (Hawkins Decl., at ¶ 3).

2 During the course of this action Defendants and Plaintiff exchanged numerous documents
3 and information as well as an approximate 55% sample of the time and pay records for the
4 aggrieved employees. Defendants also produced policies and other relevant data points for
5 Plaintiff to conduct a thorough analysis. With this information, Plaintiff and Defendant agreed to
6 mediate this action with mediator Kelly Knight, a respected and experienced wage and hour class
7 action mediator. On October 27, 2023, the Parties participated in an all day mediation with the
8 mediator. During the mediation the Parties engaged in extensive, arms-length negotiations. As a
9 result of the Parties' efforts, the matter was fully resolved. The Parties engaged in significant
10 efforts to obtain the facts regarding the claims asserted, including the exchange of detailed
11 statistical data regarding weeks and pay periods worked by individuals and Plaintiff. Thereafter,
12 the parties worked together to finalize the terms of the long form settlement agreement that is
13 now placed before this Court for approval. (Hawkins Decl., at ¶¶ 4, 5, 8).

14 **III. TERMS OF THE AGREEMENT**

15 The Agreement negotiated by the parties provides for Defendants to pay \$145,000.00 as
16 the Gross Settlement Amount ("GSA"). (Agreement at § 1.10). The "Net Settlement Amount"
17 ("NSA") is the amount remaining of the GSA minus the Court-approved amounts awarded for the
18 Attorneys Fees and Costs, Settlement Administration Fees, Enhancement Award to Plaintiff (if
19 any), and the LWDA Payment. (Agreement at § 1.12). The Net Settlement Amount is estimated
20 to be \$63,478.48. (Hawkins Decl. ¶ 6).

21 The NSA is calculated as follows: (1) \$50,750.00 (i.e. 35% of the GSA) shall be paid to
22 Plaintiff's Counsel for payment of attorneys' fees; (2) Plaintiff's Counsel's litigation expenses not
23 to exceed \$20,000.00 (Plaintiff's counsel's litigation costs to date is \$16,781.52, (Agreement at §
24 1.16); (3) \$10,000.00 Enhancement Award to the Plaintiff for Plaintiff's time and risks in
25 prosecuting this case and Plaintiff's service to the PAGA Members as well as for Plaintiff's
26 general release of Plaintiff's Released Claims; (4) Administration costs not to exceed \$10,000.00

27
28 ¹ On November 14, 2023, the Court Ordered Plaintiff's individual claims into arbitration and stayed the remaining
representative claims pending resolution of arbitration.

1 (The current estimated Administrator’s fee is \$3,990.00). (Agreement at §§ 1.9, 1.26). Any
2 difference from these maximum amounts will be added to the Net Settlement Amount. (Hawkins
3 Decl., ¶ 7).

4 The Gross Settlement Amount is subject to Court approval consistent with Labor Code §
5 2699. Should the Net Settlement Amount increase or decrease, the amount to be distributed shall
6 be adjusted according to the changes made by the Court. Upon approval, the Net Settlement
7 Amount shall be allocated 75% (\$47,6068.86) to the LWDA and 25% (\$15,869.62) among
8 PAGA Group Members. The share of the Net Settlement Amount to be distributed to each PAGA
9 Member is based on the number of his or her Pay Periods worked in the PAGA Period in relation
10 to the aggregate number of Pay Periods worked by the Settlement Group during the PAGA
11 Period. (Agreement at § 1.11). The 75/25 allocation is required by Labor Code § 2699 as
12 explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019). Each PAGA member will receive
13 approximately \$3.00 per pay period worked. (Hawkins Decl. ¶ 8).

14 The “PAGA Members” are defined as “all persons who worked for Defendants as non-
15 exempt, hourly employees in the State of California at any time from October 17, 2021 through
16 December 31, 2023.” There are approximately 110 PAGA Members who worked approximately
17 5,400 pay periods. (Agreement at § 5.7). The PAGA Period is October 17, 2021 through
18 December 31, 2023. (Agreement at §1.18). (Hawkins Decl. ¶ 9).

19 Defendants provided Plaintiff’s Counsel with information concerning the PAGA
20 Members, including statistical data concerning the weeks and pay periods worked. Defendants
21 represented that PAGA Group Members consisted of approximately 110 employees who worked
22 approximately 5,400 pay periods during the PAGA Period. (Agreement at § 5.7).

23 Within five (5) days of the Effective Date ² Defendant will provide the Settlement
24 Administrator with the Gross Settlement Amount. (Agreement at § 7.1).

25 ² Effective Date shall be the later of the time when: (i) the date of final affirmance of the Judgment on an
26 appeal of the Judgment, the expiration of the time for, or the denial of, a petition to review the Judgment,
27 or if review is granted, the date of final affirmance of the Judgment following review pursuant to that
28 grant, (ii) the date of final dismissal of any appeal from the Judgment or the final dismissal of any
proceeding to review the Judgment, provided that the Judgment is affirmed and/or not reversed in any part,
(iii) the final resolution (or withdrawal) of any filed appeal in a way that affirms the Final Approval Order

1 Within 30 calendar days of the Effective Date, the Administrator will pay to Settlement
2 Group Members, their Individual Settlement Payments via first-class regular U.S. Mail; to PAGA
3 Counsel, the Court-awarded Attorneys Fees and Litigation Expenses Payment; to the LWDA, the
4 Court-approved LWDA Payment; Enhancement Award to Plaintiff (if any); and to the
5 Administrator, the Court-awarded Administration Fees and Expenses. (Agreement at § 7.2).

6 Settlement Group Members shall have one hundred eighty days (180) to cash their checks.
7 Any funds associated with uncashed checks after one hundred eighty (180) days will be sent to
8 the Controller of the State of California to be held pursuant to the Unclaimed Property Law,
9 California Civil Code § 1500 et seq., for the benefit of those Settlement Group Members whose
10 checks were voided. (Agreement at § 7.3).

11 Each PAGA Member will grant in favor of each Released Party, and be subject to,
12 the settlement Release. The Released Claims means

13 [A]ll PAGA claims and theories that were set forth, or that could have been set
14 forth based on the facts alleged in the Action during the PAGA Period for PAGA
15 claims for civil penalties under the California Labor Code including, but not
16 limited to, under California Labor Code sections 201-203, 510, 512, 558, 226,
17 226.3, 226.7, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802 and related
18 IWC Wage Orders, based on the various theories of liability, including, but not
19 limited to, Defendants alleged failure to: pay all wages earned and owed upon
20 separation, provide accurate written wage statements, and reimburse business
21 expenses. This release is intended only to release aggrieved employees' PAGA
22 claims.

23 (Agreement at §1.23).

24 The California Labor Workforce Development Agency ("LWDA") is being served with a
25 copy of this motion with the Settlement Agreement through the online process as required by

26
27 and Judgment in a form substantially identical to the form of the Final Approval Order entered by the
28 Court, and the time to petition for review with respect to any appellate decision affirming the Final
Approval Order has expired; or (iv) if no appeal is filed, the sixty-first (61st) day after the Court enters
final approval of the settlement and the Judgment approving this Agreement. (Agreement at § 1.8).

1 Labor Code § 2699(l). This service on the LWDA is verified in the separately filed proof of
2 service. (Hawkins Decl., ¶ 30).

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

4 The claim before this court is the representative claim under PAGA on behalf of the State
5 of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this
6 PAGA claim in its entirety after discovery and arm's length mediation. (Hawkins Decl., at ¶¶ 4-
7 5.) The settlement is intended to fully and finally resolve the PAGA claims asserted by Plaintiff
8 on behalf of the State of California. This is only a settlement of the PAGA claims for civil
9 penalties, and is not a class settlement and does not release the individual claims, if any, of the
10 PAGA Members. Attorneys' fees equal to \$50,750.00 and actual litigation costs in the amount of
11 \$16,781.52 will also be paid to Plaintiff's Counsel, subject to Court approval as part of the
12 settlement in accordance with California Labor Code § 2699(g)(1) as set forth in the Agreement.
13 There is also payment of up to \$10,000 to the Settlement Administrator to perform the
14 administrative duties to distribute the settlement money and a \$10,000.00 Enhancement Award to
15 Plaintiff. (Hawkins Decl., ¶¶ 4-7.)

16 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
17 **SETTLEMENT OF THE PAGA CLAIM**

18 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of
19 any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to
20 the agency at the same time that it is submitted to the court." Consequently, the parties
21 respectfully ask the Court to review and approve the settlement of the PAGA claims and the
22 Maximum and Net Settlement Amounts to be paid as part of the proposed settlement.

23 **A. The PAGA Group Recovery to Be Paid Is Fair and Reasonable**

24 The Parties believe that the PAGA Group Recovery is fair and reasonable and therefore
25 "shall" be reviewed and approved. The Labor and Workforce Development Agency has released
26 data on PAGA settlement amounts. The Gross Settlement Amount of \$145,000.00 constitutes
27 approximately \$26.85 per pay period before deductions for fees, costs, enhancement award, and
28

1 administration costs. The Gross Settlement Amount accounts for approximately 32% of the
2 maximum potential recovery. (Hawkins Decl. ¶17).

3 Since the filing of the complaint, the Parties have exchanged extensive discovery and
4 engaged in numerous discussions regarding the factual and legal issues surrounding this case.
5 Throughout the litigation, Defendants produced voluminous pages of information and data,
6 including policies, handbooks, time and payroll records for the PAGA Members reflecting time
7 punches at the start of employees' shifts, and at the end of the shift, and meal period punches as
8 well as the applicable pay rates. Defendant also provided Plaintiff's personnel file, records
9 regarding documents identifying the non-exempt positions and information regarding the number
10 of employees holding these positions during the relevant time period. Defendants also provided
11 substantial information concerning the total number of potential size of the PAGA group, the total
12 number of workweeks and pay periods at issue, and the applicable hourly rates and other
13 summary data related to the alleged PAGA Members. The Parties have conducted themselves in
14 informed, good faith arms-length negotiations after conducting discovery and exchanging
15 extensive evidence and information about the claims and defenses of this lawsuit and engaging in
16 pre-mediation discussions, telephone conferences, and correspondence all aimed at settling their
17 dispute (Hawkins Decl., ¶ 10.).

18 In preparation for the mediation, Plaintiff reviewed the entire discovery produced. The
19 information had to be extrapolated and processed to figure out the amount of compensation
20 Plaintiff contends are due to the PAGA Members. Defendants also provided substantial
21 information concerning the total number of potential PAGA Members, the total number of
22 workweeks and pay periods at issue, and the applicable hourly rates and other summary data
23 related to the alleged class. The evidence and information gathered and reviewed by Plaintiff's
24 counsel provided a factual framework for a comprehensible and reliable damage model pertaining
25 to all Settlement PAGA Members. The mediation and subsequent negotiations included
26 discussion and examination of the PAGA Members and the Parties' respective positions on the
27 legal and factual issues raised in the Complaint. This was both a thorough and exhaustive process.
28 (Hawkins Decl., ¶¶ 10-11).

1 The PAGA Members recovery compares favorably to the estimated amount of PAGA
2 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
3 statutory PAGA civil penalties was potentially \$1,100,000 based on 5,400 pay periods multiplied
4 by a maximum per pay period violation rate of \$200. These were for penalties for violations of
5 Labor Code § 226.7/ 512/ (meal periods) at a 26% pay period violation rate, penalties for
6 violation of Labor Code § 226.7/ 512 (rest periods) also valued at a 25% violation rate, penalties
7 for violation of Labor Code § 226, penalties under Labor Code §510/558 at a 60% violation rate
8 assessment, and penalties for violation of Labor Code §§ 201/202/203 for 83 former employees at
9 approximately \$8,300. Importantly, however, in total, these calculations were performed at the
10 \$200 statutory rate for the penalties for the first violation, and it is likely that any penalties
11 awarded would be at a much lower rate given the facts of this case. California Labor Code
12 Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if
13 based on the facts and circumstances to do otherwise would result in an award that is "unjust,
14 arbitrary and oppressive or confiscatory." (Hawkins Decl., ¶ 12). The maximum exposure here
15 would be approximately \$1,100,000 if the Court awarded 100% penalties for each and every pay
16 period at \$200 per pay period. Of course, these amounts would probably have been reduced
17 given the policies in place, and manageability issues, the issues of why someone missed a meal
18 break on any occasion or worked off the clock, and the issues of payment of meal period
19 premiums. Given the risks involved, a reasonable Risk Value reduction would put the realistic
20 possibility of recovery of penalties at approximately \$440,000 taking account for a reasonable
21 40% chance of recovery. The risks include manageability issues, not prevailing on the merits,
22 prevailing on certain claims for certain periods, reduced penalty amounts awarded by the trial
23 Court, and reversal on appeal. (Hawkins Decl. ¶¶ 12-24).

24 Defendants dispute that the penalties assessed by Plaintiff and his expert would have
25 been awarded. Further, it is Defendants' contention that PAGA penalties cannot be stacked,
26 and that at most just one PAGA penalty can be awarded to an aggrieved employee in
27 any one pay period. See Labor Code section 2699 (f)(2) (authorizing awardable PAGA
28 penalties to be measure by "each "each aggrieved employee per pay period"); *Smith v. Lux*

1 *Retail North America, Inc.*, 2013 WL 2932243, at *1, *4 (N.D. Cal. 2013) (rejecting a pleading
2 that sought the “stacking of penalties”; “[f]or the single mistake of failing to include
3 commissions in the overtime base, plaintiff has asserted *five* (count them, five) separate labor
4 code violations that could lead to statutory penalties;” “is it plausible that we would really pile
5 one penalty on another for a single substantive wrong?”; noting that “no actual holding in any
6 judicial decision has ever blessed such stacking”). As such, and for this initial reason,
7 Defendant contends that the maximum potential recovery in this action is significantly lower
8 than as stated by Plaintiff. (*Id.*)

9 Further, Defendants argue that Plaintiff’s calculation of penalties as applicable to any
10 employee and for any pay period, is inflated for an additional reason. Defendants argue that
11 even were liability established, one does not reach the second-tier penalty for that violation
12 unless and until the employer is first cited for the violation, and that Defendant has never been
13 cited. *See Amalgamated Transit Union Local 1309, AFL-CIO v. Laidlaw Transit Servs., Inc.*,
14 2009 WL 2448430 *1, *9 (S.D. Cal. 2009) (“For the purposes of subsequent violation penalties,
15 the issue is not whether [defendant] willfully violated the Labor Code, but rather whether a
16 court or commissioner had notified it of any violation.”); *Amaral v. Cintas Corp. No. 2*, 163
17 Cal. App. 4th 1157, 1209 (2008) (“[u]ntil the employer has been notified that it is violating a
18 Labor Code provision (whether or not the Commissioner or court chooses to impose penalties),
19 the employer cannot be presumed to be aware that its continuing underpayment of employees is
20 a ‘violation’ subject to penalties” at a second tier); *Robinson v. Open Top Sightseeing San*
21 *Francisco, LLC*, No. 14-CV-00852-PJH, 2018 WL 895572, at *20 (N.D. Cal. Feb. 14, 2018)
22 (applying “initial” penalty to each violation of § 226 and § 2699(f)(2) because there was no
23 evidence showing defendant was previously notified its practice violated § 226); *Willis v. Xerox*
24 *Bus. Servs., LLC*, 2013 WL 605383, at *1, *6 (E.D. Cal. 2013) (“for a plaintiff to recover for a
25 ‘subsequent violation,’ an employer must have notice that it has violated the Labor Code”). As
26 such, Defendants contends that Plaintiff’s calculation are inflated not only because the “stack”
27 penalties for a single person during a single pay period, but because the penalties Plaintiff would
28 award in each instances are at an inapplicable (doubled) rate. (*Id.*)

1 Defendants further argue that Plaintiff would still face significant practical problems in
2 any material exposure, as each violation would need to be proven as to each person and for each
3 period for which recovery is sought.³ As an example, for purposes of section 226, “a good faith
4 dispute presents when there is (1) uncertainty in the law; (2) representations by an authority that
5 compliance was not required; or (3) an employer’s good faith mistaken belief grounded in a good
6 faith dispute.” *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058 (N.D. Cal. 2019).
7 “Mere recklessness” is not a basis for liability. *Pedroza*, 2012 WL 9506073, *5. (*Id.*)

8 Defendants also note that PAGA grants the Court discretion to lower any PAGA penalty
9 otherwise due. See Labor Code section 2699 (e)(2). Defendants also argue that the Court could
10 reduce any penalty potentially due where, as Defendants contend, any technical violation of law
11

12 ³ Defendant argues that claims of this sort tend to require individualized proof sets, and
13 are not the subject of “common proof.” See e.g., *Mateo v. V.F. Corp.* 2009 WL 3561539, at *6
14 (N.D. Cal. Oct. 27, 2009) (denying collective treatment of off-the-clock (OTC) and overtime
15 claims as involving individualized proof); *Lawrence v. City of Philadelphia* (E.D. Pa. 2004) WL
16 945139 at *1-3 (rejecting OTC claims for collective treatment; “each of the plaintiffs potentially
17 may claim that on any given day he or she arrived early or departed outside their regularly
18 scheduled hours and were not compensated for such. The circumstances of those individual
19 claims potentially vary too widely to conclude that in regard to their OTC claim, the plaintiffs
20 are similarly situated. The questions of fact will likely differ for each Plaintiff and will be unduly
21 burdensome to both Defendants and to the Court in managing as a collective action.”); *Basco v.*
22 *Wal-Mart Stores, Inc.* (E.D. La. 2002) 216 F.Supp.2d 592, 603 (individual issues arise from
23 “myriad of possibilities that could be offered to explain why any one of the plaintiffs worked
24 OTC” and predominate; rejecting collective treatment of such claims); *Chavez v. Zaldivar*, 2012
25 U.S. Dist. LEXIS 40984 *1, at *23-24 (N.D. Cal. 2012) (“To determine whether staffing levels
26 resulted in missed meal periods, the Court would need to engage in individualized questions
27 concerning the staffing requirements at each of [defendants’] locations. Additionally, these
28 staffing requirements would vary from day to day.”); *Washington v. Joe’s Crab Shack*, 271
F.R.D. 629, 641 (N.D. Cal. 2010) (“an individualized inquiry will be required to determine
whether any single employee failed to take a meal break because he/she was too busy and also to
determine whether a particular employee signed a waiver based on a decision not to take meal
breaks. For this reason alone, common issues do not predominate with regard to the meal break
claim”); *Ruiz v. Affinity Logistics Corp.*, 2009 WL 648973, *7-8 (S.D. Cal. 2009) (holding that
inquiry into the reasonableness and necessity of the expenses required a “case-by-case analysis
in which common questions did not predominate over individual questions.”). See also
Nikmanesh v. Wal-Mart Stores, Inc., No. 8:15-cv-00202-AG-JCG, ECF Dkt. 200, slip op. at 4-5
(C.D. Cal. Mar. 22, 2017) (dismissing uncertified PAGA claim “as unmanageable,” where court
previously “pointed to other examples of individualized variables when it denied class
certification for failure of common questions to ‘predominate over questions affecting only
individual class members’”); *Salazar v. McDonald’s Corp.*, No. 14-CV-02096-RS, 2017 WL
88999, at *7-9 (N.D. Cal. Jan. 5, 2017) (striking representative PAGA claims as unmanageable
where underlying claims would require individualized determinations).

1 would have been inadvertent and in good faith, particularly where the law is undefined and
2 capable of differing interpretations. Section 226, for example, is not violated where the employer
3 acted in “good faith.” See *Pedroza v. PetSmart, Inc.*, 2012 WL 9506073 (C.D. Cal. June 14,
4 2012) (“The good faith defense to the willfulness element of these sections [226, 203] is clearly
5 established under California law); *Woods v. Vector Mktg. Corp.*, 2015 WL 2453202, at *3 (N.D.
6 Cal. May 22, 2015) (“The ‘good faith dispute’ rule has been extended by courts to apply to
7 California Labor Code Section 226. (Id.)

8 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
9 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period.
10 Therefore, at trial, any PAGA penalties awarded could be significantly less than Plaintiffs’
11 calculation even where Plaintiffs prevailed on the PAGA claim. If the amount of \$5 per pay
12 period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties would be
13 only \$65,000, which is less than this settlement provides.

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

23 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each
24 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
25 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff
26 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
27 the Labor Code by the defendant.”). Here, Plaintiff would need to prove that each PAGA Group
28 Member suffered all violations for each pay period the employee worked.

1 The claims in this PAGA action are based upon the wage and hour practices of
2 Defendant. The settlement provides a recovery of approximately \$26.85 per pay period before
3 deductions. This provides the aggrieved employees money now rather than in the future to some
4 undetermined date and undetermined amounts. (Hawkins Decl. ¶ 17).

5 Upon approval, approximately \$47,606.86 will be sent to the State of California and
6 approximately \$15,869.62 will be shared with aggrieved employees. This equates to
7 approximately \$144.26 to each aggrieved employee. (*Id.*)

8 The claims in this action are regarding meal periods, rest periods and off the clock work
9 during meal periods due to work interruptions and as a result of limited staffing ratios, and also
10 as to rounding. Plaintiff alleges that Defendants' practices do not provide proper payment for
11 missed meal periods, rest periods and pay for all overtime for off the clock work and due to
12 rounding practices. Defendants contend that it had compliant meal and rest period policies in
13 place and such policies also prohibited employees from working off the clock. (Hawkins Decl. ¶
14 11-23).

15 Defendants contend that Plaintiff and the PAGA Members were properly compensated,
16 and that they did not violate the Labor Code as to any of them. Defendants asserted additional
17 defenses to the PAGA claim as discussed above. These defenses present a risk to the
18 PAGA claim and the potential that some or all of the PAGA penalties sought may not be
19 awarded. (*Id.*)

20 Given Defendants' potential defenses to the violations at issue, the risks and costs of
21 continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and
22 reasonable. (Hawkins Decl., ¶¶ 19.) Plaintiff's Counsel have significant experience litigating
23 wage and hour claims including claims for PAGA penalties, and the PAGA Group Recovery here
24 is similar to or greater than similar settlements that courts have approved. (Hawkins Decl., ¶ 26.)
25 The PAGA employees recovery, along with the other terms of the proposed settlement, were
26 negotiated by experienced counsel at arm's length with the assistance of a private mediator, Kelly
27 Knight. (Hawkins Decl., at ¶ 4)

28 As set forth in the accompanying proof of service, the LWDA has been provided notice of

1 this motion and the PAGA settlement. The decision of LWDA to accept the PAGA settlement
2 and not oppose the motion should be given considerable weight. This is not a situation where the
3 Court needs to be concerned about the rights of absent employees as in a class settlement, as this
4 PAGA-only settlement does not release the individual claims of absent employees, and the
5 LWDA is a sophisticated government entity that is more than able to look out for its own rights.

6 **B. The Remaining Settlement Terms Are Fair and Reasonable**

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

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

14 PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiffs'
15 position is that the payment of attorneys' fees and costs in this settlement is a matter of contract
16 for a contingent representation. Nevertheless, should this Court review the requested attorneys'
17 fees, it is clear that the requested fees and costs are reasonable.

18 First, the requested fees are justified by the result achieved. Plaintiff's Counsel negotiated
19 a recovery of \$145,000.00 and this result justifies the requested fees equal to 35% of this
20 recovery. This percentage is within the standard contingent recovery. Second, the fee award is
21 justified by the work performed. As detailed in the accompanying Declaration of Plaintiff's
22 Counsel, the fee award is reasonable as Plaintiff's Counsel represents its current lodestar far
23 exceeds the requested amount of \$50,750.00. (Hawkins Decl. ¶¶ 25-28).

24 Generally, the Ninth Circuit and California Courts award multipliers between 2 to 4 times
25 the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining
26 good results. *See, e.g., Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier
27 between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010)
28 (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier);

1 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can
2 range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D.
3 Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of*
4 *America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a
5 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL
6 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76
7 as falling within the "majority" range for risk multipliers). Here, no multiplier is requested as
8 Plaintiff's Counsel's lodestar exceeds the amount of requested fees.

9 Finally, the award of litigation expenses is based upon the actual expenses incurred by the
10 Plaintiff's Counsel. (Hawkins at ¶¶ 28-29). Plaintiff's Counsel will be recovering litigation
11 expenses in the total amount of \$16,781.52. These expenses are documented in the billing
12 statement attached to the Declaration of Hawkins as Exhibit 2.

13 **VII. THE ENHANCEMENT TO THE PLAINTIFF IS REASONABLE**

14 "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they
15 should be compensated for the expense or risk they have incurred in conferring a benefit on other
16 members of the class." *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785 (2009).

17 Approximately 110 PAGA Members will share a \$145,000.00 settlement fund due entirely to the
18 effort and commitment of Plaintiff. Subject to Court approval, therefore, the Settlement provides for an
19 Enhancement Payment of \$10,000. The Enhancement Payment is fair and reasonable compensation for
20 Plaintiff's efforts in pursuing the action, serving as private attorneys general under PAGA, assisting
21 counsel with the litigation and settlement, regularly conferring with counsel on the status of their case and
22 the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are
23 fair and provide adequate relief for the Settlement Class. (Hawkins Decl. ¶ 25; see generally Declaration of
24 Plaintiff Alvarez filed concurrently herewith.)

25 Based on the foregoing, Plaintiff respectfully request this Court approve the PAGA
26 enhancement to Plaintiff in the amount of \$10,000.00.

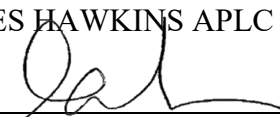
27 **VIII. CONCLUSION**

28 Based on the foregoing, Plaintiff respectfully request this Court approve the PAGA

1 settlement and the PAGA Member recovery as set forth in the Agreement and enter the proposed
2 order submitted herewith.

3 Dated: April 26, 2024

JAMES HAWKINS APLC

4 By: 

5 JAMES R. HAWKINS, ESQ.
6 JAMES HAWKINS, ESQ.
7 MICHAEL CALVO, ESQ.

8 Attorneys for Plaintiff DANIEL ALVAREZ,
9 individually and on behalf of the general
10 public as Private Attorney General
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PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On April 26, 2024, I served on the interested parties in this action the following document(s) entitled:

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

**DECLARATION OF JAMES HAWKINS IN SUPPORT OF MOTION TO APPROVE
PAGA SETTLEMENT**

**DECLARATION OF DANIEL ALVAREZ IN SUPPORT OF PLAINTIFF'S MOTION
FOR APPROVAL PAGA SETTLEMENT**

[PROPOSED] ORDER APPROVING PAGA SETTLEMENT AND JUDGMENT

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

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Culinar of California, Inc

Via LWDA Website Only
Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
[http://www.dir.ca.gov/Private-Attorneys-
General-Act](http://www.dir.ca.gov/Private-Attorneys-General-Act)

[XX] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on April 26, 2024, at Irvine, California

Alma Chavarin
Alma Chavarin



Make a Reservation

DANIEL ALVAREZ, ON BEHALF OF THE GENERAL PUBLIC AS PRIVATE ATTORNEY GENERAL vs CULINART OF CALIFORNIA INC., A CALIFORNIA CORPORATION, et al.

Case Number: 22STCV39814 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2022-12-22 Location: Stanley Mosk Courthouse - Department 61

Reservation

Case Name:
DANIEL ALVAREZ, ON BEHALF OF THE GENERAL PUBLIC AS PRIVATE ATTORNEY GENERAL vs CULINART OF CALIFORNIA INC., A CALIFORNIA CORPORATION, et al.

Case Number:
22STCV39814

Type:
Motion for Order (PAGA Approval)

Status:
RESERVED

Filing Party:
DANIEL ALVAREZ, on behalf of the general public as private attorney general (Plaintiff)

Location:
Stanley Mosk Courthouse - Department 61

Date/Time:
06/05/2024 10:00 AM

Number of Motions:
1

Reservation ID:
872281871392

Confirmation Code:
CR-WBB7TAYRFZEFVC3JM

Fees			
Description	Fee	Qty	Amount
Motion for Order (name extension)	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount:
\$0.00

Type:
NOFEE

Account Number:
n/a

Authorization:
n/a

Payment Date:
1969-12-31

Print Receipt

[+ Reserve Another Hearing](#)