

CARLOS JATO, SB# 282710
819 Eddy Street
San Francisco, CA 94109
Tel: 415.771.6174
Fax: 415.474.3748
E-mail: cgjato@jato-law.com

Attorneys for Plaintiff HORACIO CAMPOS

SUPERIOR COURT OF CALIFORNIA
FOR THE CITY AND COUNTY OF SAN FRANCISCO

HORACIO CAMPOS

Plaintiff,

-vs-

KEZAR PUB INC et al

Defendants.

Case No. CGC-23-604685

**HORACIO CAMPOS NOTICE OF
MOTION AND MOTION TO
APPROVE THE PAGA
SETTLEMENT; DECLARATION OF
CARLOS JATO IN SUPPORT;
PROOF OF SERVICE.**

Date: May 29, 2024

Time: 9:30am

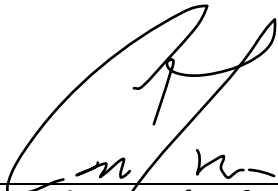
Dpt: 302

TO THE COURT, THE PARTIES AND THE LABOR WORKFORCE
DEVELOPMENT AGENCY, YOU ARE HEREBY NOTIFIED THAT HORACIO CAMPOS
(hereinafter referred to as Plaintiff) move this Court on May 29, 2024 at 9:30 a.m. or as soon
thereafter as the matter can be heard in department 302 of the above entitled Court for an Order to
Approve the Settlement of a cause of action filed under the Private Attorney General Act, Labor
Code § 2698 *et seq.* ("PAGA") reached between the Plaintiffs and Defendants KEZAR PUB INC,
and CYRIL HACKETT (hereinafter "Defendants").

The Court is requested to approve the PAGA settlement of \$100,000.00 (inclusive of the
PAGA attorney's fees of \$33,333.33 , litigation expenses of \$745.00 and administration costs of
\$3,000.00) as reached by the parties which compares positively to other PAGA settlements
approved by other courts. Notice of this motion and PAGA settlement has been provided to the
LWDA via their online process as shown in the accompanying proof of service.

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Dated: May 2, 2024



CARLOS JATO, Attorney for Plaintiff
HORACIO CAMPOS

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION:**

3 Plaintiff is a former kitchen employee of Defendants. Plaintiff worked for the defendants at the
4 bar known as KEZAR PUB in San Francisco. The parties have reached a confidential settlement for
5 the individual Claims of the Plaintiffs. In addition, the parties have reached a settlement of the
6 Plaintiffs' 10th Cause of Action seeking penalties under the California Private Attorneys General Act,
7 Labor Code §2698, *et seq.* ("PAGA").

8 In accordance with California Labor Code §2699(1), Plaintiffs now seek this Court's approval of
9 the settlement of their PAGA cause of action. It is important to highlight that this is not a settlement of
10 class action but a settlement of a PAGA claim. The release does not release the individual claims of any
11 employee other than the named Plaintiff, Horacio Campos. Labor Code §2699(g)(1); *Iskansian v. CLS*
12 *Transportation* (2014) 59 Cal.4th 348, 381. Also see Jato dec. exh "A" at p10:7-10

13 A copy of the PAGA settlement agreement is attached to the Declaration of Carlos Jato as
14 Exhibit "A". Pursuant to Labor Code § 2699(l)(1), the proposed settlement has been submitted to the
15 California Labor and Workforce Development Agency ("LWDA"). The Jato declaration also provides a
16 summary of the claims, Defendants' defenses thereto, and an analysis of the potential damages and a
17 breakdown of the amounts to be deducted from the PAGA settlement to compensate Plaintiffs' counsel
18 for his legal services for the benefit of the LWDA. *See*, Labor Code § 2699(g). As set forth in the Jato
19 declaration, the settlement of Plaintiffs' PAGA claim is fair, reasonable, and adequate in view of
20 PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize
21 enforcement of state labor laws.

22 The gross amount of the PAGA settlement is \$100,000.00. Jato Dec. Ex. A. The PAGA fees
23 and costs requested amount to 1/3 of the PAGA settlement, or \$33,333.33, litigation costs in the
24 amount of \$745 and \$3,000.00 in administration of the PAGA payments to the aggrieved employees.
25 The remaining net amount (net PAGA settlement) is 62,921.67 which is to be distributed as prescribed
26 by Labor Code § 2699 is as follows: 75% (or \$47,191.25) to the LWDA and 25% (or \$15,730.417) to be
27 distributed among the 39 aggrieved employees over 699 pay-periods. Jato Dec. ¶ 9.
28

1 **II. FACTUAL BACKGROUND**

2 Plaintiff was employed at Kezar Pub’s kitchen as a dishwasher for over a period of a year. In
3 this action Plaintiff alleges that Defendants failed to provide him with the law mandated meal and rest
4 periods, overtime compensation and paystubs during his employment.

5 Plaintiff filed his complaint on February 15, 2023, asserting ten causes of action and seeking
6 back wages and labor code penalties and damages for his termination in violation of public policy. The
7 allegations included the 10th Cause of Action under PAGA supported by the prerequisite December 9,
8 2022 PAGA letter.

9 The relevant time period of the PAGA claim is December 9, 2021 through April 30, 2024 (Jato
10 dec. exh “A” at 3:17). See *Brown v. Ralphs Grocery Co.* (2018) 28 Cal.App.5th 824, 839 (“The statute
11 of limitations for PAGA claims is one year.”)

12 During the course of litigation, Plaintiffs propounded discovery and reviewed documents that
13 Defendants produced related to Plaintiff’s employment at Kezar Pub. Jato Dec. ¶7. The parties begun
14 entertaining settlement discussion on October 26, 2023 and these continued over the following months
15 until February 27, 2024 when an agreemeint in principle was reached. However, the settlement
16 agreement was not executed until much later, on April 4, 2024. (Jato dec. at ¶9-10). The parties entered
17 into a PAGA settlement and a confidential settlement of plaintiff’s individual claims.

18 Through this motion and as explained below, Plaintiff respectfully request that the Court issue
19 an order: (1) approving the proposed PAGA settlement in its entirety, and (2) scheduling a hearing in
20 late August 2024 to confirm disbursement of the PAGA settlement checks to the aggrieved employees
21 and the LWDA.

22 **III. DEFENDANTS’ EVIDENCE AND ARGUMENTS RE PLAINTIFFS’ PAGA CLAIM**

23 During the litigation, Defendants produced payroll and time records for the relevant PAGA
24 period in order to allow plaintiff’s counsel to consider the strength of the PAGA claim. In their
25 defenses, defendants have asserted the following arguments:

- 26 ○ That Defendants provided employees who worked more than five hours in a day
27 with an unpaid 30 minute, uninterrupted meal period starting no later than the end of
28

1 the fifth hour of work. that Defendants provided employees who worked more than
2 10 hours in a day with a second unpaid 30-minute, uninterrupted meal period starting
3 no later than the end of the 10th hour of work. (Jato dec. 11a)

- 4 ○ Defendants also claim that they authorized and permitted employees working at
5 least three and one-half hours in a day to take a ten-minute, off-duty paid rest period
6 for each four hours worked or major fraction thereof. The 10 minutes do not include
7 the reasonable time it takes to walk to and from a break area or that employees who
8 work more than 10 hours in a day may take a third rest period. (Jato dec. ¶11b)
- 9 ○ According to Defendants, as a perk, they claim they provide free meals to employees
10 during their lunch breaks or that employees were not required to take their meal
11 breaks at the restaurant. (Jato dec. ¶11c)
- 12 ○ In verified discovery responses, defendants vehemently denied any wrongdoing: by
13 stating: “defendant denies that plaintiff or any other employee was denied overtime,
14 meal and rest breaks, and/or any other compensation.” (Jato dec. ¶11d)

15 According to Defendants, the foregoing established that the employment practices at Kezar Pub
16 Inc. complied with California Labor laws. However, by pointing out to inconsistencies in the payroll
17 records and other evidence, plaintiff was able to educate defendants as to the risks they faced in
18 protracted litigation defending the alleged violations. This allowed Plaintiff and the LWDA to secure a
19 very positive settlement on behalf of the PAGA penalties claim.

20 **IV. TERMS OF THE PAGA SETTLEMENT**

21 The Settlement Agreement negotiated by the parties provides for a total PAGA payment of
22 \$100,000.00.

23 Nothing in the proposed PAGA settlement is out of the allowed statutory framework of PAGA.
24 The settlement provides for a deduction of attorneys fees, litigation costs and cost of administration.
25 Jato Decl. ¶12. With the net proceeds to be paid out as provided by the statute: 75% to the LWDA and
26 25% to the Aggrieved Employees. *Id.* ¶12b.

27 Each allegedly aggrieved employee will be entitled to a share from 25% of the PAGA
28 settlement funds based in proportion to the number of pay periods they worked during the relevant PAGA

period. Jato Dec. ¶12b. A check will be mailed to the last known addresses of each aggrieved employee with a cover letter stating the information as described in p. 8:16-20 of settlement agreement Jato dec. exh “A” which reads:

“You are receiving this check as your share of the settlement of the Private Attorney General Act civil penalties settlement reached in the matter of Horacio Campos v. Kezar Pub Inc. et al. San Francisco Superior Court Case # CGC-23-604685. If you seek further information regarding this PAGA Settlement you can contact the attorney for employee and the Labor Workforce Development Agency, Carlos Jato, by email at cgjato@jato-law.com or the attorney for the employer, Alexei Offill-Klein aklein@cmtrlaw.com, Please do not contact the clerk of Court for information about this case.”

Funds represented by settlement checks returned as undeliverable and those settlement checks remaining un-cashed for more than 180 days after issuance will be sent to the *cy pres* beneficiary Legal Aid at Work (180 Montgomery St. #600 San Francisco, CA). *Id.* ¶8:16-9:9).

The LWDA is being served with a copy of this motion and the Settlement Agreement through the online process as required by Labor Code § 2699(1) and therefore has notice of this PAGA settlement. Jato dec. at ¶12f.

V. THE PARTIES REQUEST APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIM REPRESENTS A POSITIVE OUTCOME OF THE PAGA CAUSE OF ACTION

The \$100,000.00 PAGA payment is “fair, adequate, and reasonable” and therefore should be approved by the Court. *See, Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.4th 56, 64 (setting forth standard for approval of PAGA settlements). During litigation, Defendants disclosed that there are a total of 699 pay periods in the PAGA period and a total of 39 employees including Plaintiff. Jato Dec. ¶9. Assuming Plaintiffs could establish that each aggrieved employee suffered one meal period, one rest period, one overtime and one paystub violation per pay period—which Defendants dispute as outlined above—that would amount to a \$100 x 4= \$400 penalty¹ for a total of \$279,600.00 in penalties (i.e., \$400 per 699 pay periods withing the PAGA relevant period).² As such, the portion of the settlement attributed to PAGA penalties equals a recovery of approximately 35% of the penalties

¹ *See*, Labor Code § 2699(f)(2).

² The case law contested that Plaintiffs would have been entitled to the \$200 penalty set forth in Labor Code § 2699(f)(2), arguing that such a penalty could not be assessed unless and until Defendants were notified by the LWDA or a Court that they were in violation of the Labor Code—(of which there is no evidence of) *Gunther v. Alaska Airlines, Inc.* (2021) 72 Cal.App.5th 334, 355-35.

1 Plaintiffs could have recovered for the alleged violation had plaintiff prevailed on all the claims. Jato
2 dec. ¶15.

3 While the stacking of penalties is an issues unsettled, the above calculations follows the
4 methods applied by several courts in the computation of the PAGA penalties by not disfavoring
5 stacking of penalties of the same kind: *See, Hamilton v. Juul Labs, Inc.* (N.D. Cal., Nov. 16, 2021)
6 2021 U.S.Dist.LEXIS 221416 at *27; *see also, Snow v. United Parcel Services, Inc.* (C.D. Cal April 1,
7 2020) 2020 U.S. Dist. LEXIS 58317, 2020 WL 1638250, *3 (“plaintiffs may only recover a set of civil
8 penalties for each type of violation.”); *Salazar v. PODS Enterprise, LLC* (C.D. Cal. May 8, 2019) 2019
9 U.S. Dist. LEXIS 78001, 2019 WL 2023726, *6 (“it is possible (although highly unlikely) that
10 [plaintiff] could recover PAGA penalties for each separate type of Labor Code violation”); *Smith v. Lux*
11 *Retail North America* (N.D. Cal. June 13, 2013) 2013 U.S. Dist. LEXIS 83562, 2013 WL 2932243, *4
12 (questioning whether it was “really plausible that we would pile one penalty on another for a single
13 substantive wrong”).

14 Defendants further asserted that, even if Plaintiffs recovered PAGA penalties, the Court would
15 have discretion to reduce any penalty award that it deemed “unjust, arbitrary and oppressive, or
16 confiscatory. Labor Code § 2699(e)(2). Such a reduction might have been entertained by the trial
17 court in this case for several reasons: first, public records search of the name of the defendant “Kezar
18 Pub Inc.” in the San Francisco Court web site, the San Francisco Labor Commissioner case list search
19 and the Department of Industrial Relations PAGA portal reveal no prior wage a hour cases filed. (Jato
20 dec. ¶15) Since the nature of the PAGA claims is that of a penalty to discourage future violations
21 particularly to repeat offenders, it is possible that the trial court would have been more lenient at
22 establishing the final amount of penalties. As such, even if Plaintiffs prevailed on their claim, there is
23 no guarantee Plaintiffs would have recovered the full amount of PAGA penalties claimed. Jato Dec.
24 ¶9(j).

25 The PAGA payment negotiated as part of this settlement constitutes a recovery of 35% of the
26 estimated PAGA penalties the aggrieved employees might have obtained if the case proceeded to trial
27 and obtained a full victory on their claims. Jato Dec. ¶15. This PAGA settlement to potential claims
28 ratio is an excellent result and exceeds the recovery in similar PAGA cases involving similar claims.

Specifically, the amount of the PAGA penalties reached in this case greatly exceeds the amounts that have been approved by courts. For example, in *Chu v. Wells Fargo Investments, LLC*, No. C 2011 WL 672645, at * 1 (N.D.Cal. Feb. 16, 2011) the court approved a PAGA settlement payment of \$7,500 to the LWDA to be distributed for as many as 2,754 class members. Similarly, in *Franco v. Ruiz Food Products, Inc.*, 2012 WL5941801 (E.D. Cal. 2012), the court approved a total PAGA penalty amount of \$10,000.00 with the \$2,500 employee portion divided between as many as 2,055 current and former employees. In *Schiller v. David's Bridal, Inc.* 2012 WL2117001 (E.D. Cal. 2012), the court also approved a PAGA penalty amount of \$10,000 with the \$2,500 employee portion divided between as many as 3,326 individuals.

Given Defendant's potential defenses to the claimed Labor Code violations at issue, and the risks and costs of continued litigation, counsel endorses and support this PAGA settlement. Jato Dec. ¶15. The PAGA settlement was negotiated by experienced counsel (*Id.* ¶3) after propounding discovery, reviewing pay and time records and obtaining the contact information of the aggrieved employees. Then, the settlement was reached through arms-length negotiation and only after being able to evaluate the strengths and weaknesses of the PAGA claim. Jato Dec. ¶¶7-9 and 15.

As noted, the LWDA has been given notice of this motion (see proof of service of this motion attached hereto) and the decision of the LWDA to accept the PAGA settlement and not oppose the motion should be given considerable weight. This is not a situation where the Court needs to be concerned about the rights of absent class members because this is not a class action. PAGA settlement requires none of the various findings required by C.C.P. § 382 and related case law. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 499 (“class action requirements do not apply to representative actions brought under the PAGA”) (*citing, Arias v. Sup. Ct.* (2009) 46 Cal.4th 969, 984). As such, the entire pre-settlement judicial process and Court involvement in class actions is inapplicable to PAGA cases. *Id.* For example, there is no certification process or order, which frequently dominates most of the pre-settlement life of a typical class action. However, while in PAGA settlements there are no class members,³ the LWDA is a beneficiary to the settlement and as part of this

³ The settlement does not release the individual Claims of absent employees other than the claims of the named Plaintiffs. Jato dec. Exh “A” at 10:7-10

1 approval process the LWDA is given an opportunity to raise any objections to the settlement on or
2 before the hearing of this motion. The absence of any opposition will be indicative that the settlement
3 is fair, adequate, and reasonable.

4 **VI. THE ATTORNEY’S FEES ARE REASONABLE UNDER THE CIRCUMSTANCES.**

5 This case has settled within 13 months of being filed with the court. Certainly, this could not
6 have been reached without the extensive past experience of Plaintiffs’ counsel in wage and hour
7 litigation.

8 It took 47.2 hours of attorney time to investigate, plead, evaluate, negotiate, settle and present
9 the PAGA claims to this court for approval. *Id.* ¶13-14. Plaintiffs’ counsel requests to be compensated,
10 at a the rate of \$750.00/hr for what is an example of efficient work in litigation. Pursuant to the PAGA
11 statute, plaintiff seeks approval of the fees (and litigation cost) incurred in the PAGA portion of the
12 case of 1/3 of the PAGA settlement or \$6,666.66. *Id.*

13 Under the PAGA statute, prevailing employees are entitled to “reasonable attorney’s fees and
14 costs.” Labor Code § 2699(g)(1). Further, it is proper to award from a fund attorney’s fees and costs “to
15 a party who has recovered or preserved a monetary amount for the benefit of himself or herself and
16 others.” *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 488-89.

17 “fee awards should be fully compensatory.” (Ketchum, supra, 24 Cal.4th at 1132.) Full
18 compensation effectuates the aim of the fee-shifting statutes: “to enable private parties to obtain legal
19 help in seeking redress for injuries resulting from the actual . . . violation of specific . . . laws” by
20 providing attorneys with “statutory assurance that, if they obtain a favorable result for their client, they
21 will actually receive the reasonable attorney fees provided for by the Legislature” (*Flannery v.*
22 *Prentice* (2001) 26 Cal.4th 572, 583 [citing *Pennsylvania v. Del. Valley Citizens’ Council* (1986) 478
23 U.S. 546, 565].) Thus, “an award of attorneys’ fees is not a gift. It is just compensation for expenses
24 actually incurred in vindicating a public right.” (*Sundance v. Mun. Court* (1987) 192 Cal.App.3d 268,
25 273.) The “percentage of recovery” method is appropriate in common fund cases, because, among other
26 reasons, it aligns the incentives of counsel and class, and it encourages early settlement. *Id.* at 490. This
27 is especially true when a “lodestar cross-check” confirms that the fee amount is indeed fair and
28 reasonable. *See Id.* at 504.

1 Here, a thirty-three percent (33.33%) award is reasonable. California courts have consistently
2 found fees in the 33% range appropriate. *See e.g. Laffitte*, 1 Cal.5th at 506 (affirming 33% award).
3 A lodestar calculation is made “by multiplying the number of hours reasonably expended by counsel by
4 a reasonable hourly rate.” *Laffitte*, 1 Cal.5th at 489 (internal quotation marks and citation omitted).
5 Counsel’s 47.2 hours of work in the PAGA claim yields a lodestar of \$35,400.00. Checking this
6 lodestar against the requested fees of \$33,333.33 further demonstrates that such a fee award is
7 reasonable. *Id.* 13-14.

8 Finally, the lack of “clear sailing” agreement on the settlement agreement underlines the
9 reasonableness of the fee request and the lack of collusion:

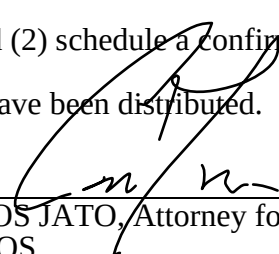
10 The fact that class counsel did not receive “red-carpet treatment” on fees (*Dunk, supra*,
11 48 Cal.App.4th at p. 1808, 56 Cal.Rptr.2d 483) also justified diminished concern about
12 collusion. Class action settlements frequently contain a “clear sailing” agreement,
13 whereby the defendant agrees not to object to an attorney fee award up to a certain
14 amount. (*See Consumer Privacy Cases, supra*, 175 Cal.App.4th at pp. 552–553, 96
15 Cal.Rptr.3d 127.) Plaintiffs in this case obtained no such agreement.

16 *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1120 [104 Cal.Rptr.3d
17 275, 283].

18 **VII. CONCLUSION**

19 Based on the foregoing, Plaintiffs respectfully request that this Court (1) approve the PAGA
20 settlement and the Plaintiffs’ proposed allocation of settlement payments (including Plaintiffs’
21 counsel’s PAGA fees) as detailed herein, and (2) schedule a confirmation hearing in late August 2024
22 to confirm that the PAGA settlement funds have been distributed.

23 Dated: May 2, 2024

24 
25 CARLOS JATO, Attorney for Plaintiff HORACIO
26 CAMPOS
27
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PROOF OF SERVICE

My business address is 819 Eddy St. San Francisco, California 94109. I am employed in the County and City of San Francisco where this service occurs. I am over the age of 18 years and not a party to the within case.

On May 2, 2024, following ordinary business practice, I caused to have served the foregoing document(s) described as:

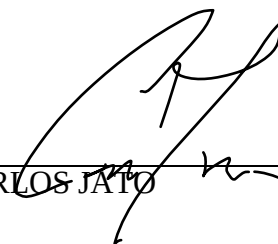
NOTICE OF MOTION AND MOTION TO APPROVE THE PAGA SETTLEMENT PURSUANT TO CALIFORNIA LABOR CODE SEC. 2699 et seq.; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CARLOS JATO.

On the parties listed below:

Alexei Offill-Klein <aklein@cmtrlaw.com>	
Labor Workforce Development Agency	
By transmitting a copy of the entire motion electronically on the day in this proof of service through the agency's portal at	
https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html	

(x) (VIA ELECTRONIC SERVICE) by transmitting electronically via email the document(s) listed above to the recipient(s) set forth above (or as stated in the attached service list) on this date.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Francisco, California on May 2 2024.


CARLOS JATO