

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

3990 Old Town Avenue, Suite C204

San Diego, CA 92110

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

egarcia@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

3990 Old Town Avenue, Suite C204

San Diego, CA 92110

Telephone: (619) 255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiff LUIS ALBERTO LEDESMA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA BARBARA

LUIS ALBERTO LEDESMA, an individual
on behalf of himself and on behalf of other
Aggrieved Employees and the State of
California,

Plaintiff,

v.

TVJ SONS I, INC., a California corporation;
PORTER AND HOWARD, INC. (dba Toyota
of Santa Maria), a California Corporation; and
DOES 1-50, Inclusive,
Defendants.

Case No: 20CV03573

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Hearing Date: October 7, 2021

Hearing Time: 8:30 a.m.

Honorable Judge Jed Beebe
Department 4

Trial Date: Not Yet Set

Action Filed: October 29, 2020

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	RELEVANT FACTS.....	1
III.	THE TERMS OF THE PAGA SETTLEMENT.....	2
IV.	THE PARTIES HAVE SETTLED THE PAGA CLAIMS.....	5
V.	THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIM.....	5
	A. The PAGA Settlement Amount To be Paid is Fair and Reasonable.....	6
	B. The Remaining Settlement Terms are Fair and Reasonable.....	9
VI.	THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE.....	9
VII.	CONCLUSION.....	10

TABLE OF AUTHORITIES

CASES

Page:

<i>Boyd v. Bank of America</i> , 2014 WL 6473804, at *11 (C.D. Cal. 2014).....	10
<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012).....	8
<i>Cardenas v. McLane Foodservice, Inc.</i> , 2011 U.S. Dist. LEXIS 13126 *10 (C.D. Cal. 2011)	7
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018).....	6
<i>Fleming v. Covidien</i> , 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).	7
<i>Hopkins v. Stryker Sales Corp.</i> , No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013).....	10
<i>In re Taco Bell Wage & Hour Actions</i> , 2016 U.S. Dist. LEXIS 48557 *40-43 (E.D. Cal. Apr. 6, 2016)	7
<i>Iskanian v. CLS Transportation</i> , 59 Cal. 4th 348, 381 (2014).....	1
<i>Ketchum v. Moses</i> , 24 Cal.4th 1122, 1132 (2001).	10
<i>Laffitte v. Robert Half Int’l Inc.</i> , 1 Cal. 5th 480, 504 (2016).....	10
<i>Makabi v. Gedalia</i> , 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016).....	7
<i>N.A. v. Superior Court</i> , 8 Cal. 5th 175, 182, 196 (2019).....	1,3,5
<i>Pellegrino v. Robert Half Intern., Inc.</i> , 182 Cal.App.4th 278 (2010).....	10
<i>Stetson v. Grissom</i> , 821 F.3d 1157, 1166 (9th Cir. 2016).....	10
<i>Vandervort v. Balboa Capital Corp.</i> , 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	10

1	<i>Wershba v. Apple Computer, Inc.</i> ,	
2	91 Cal.App.4th 224, 254 (2001).....	10

Statutes, Rules and Regulations:

3	California Code of Civil Procedure §382	9
4	California Labor Code §201	4
5	California Labor Code §202	4
6	California Labor Code §203	4
7	California Labor Code §204.....	4
8	California Labor Code §210	4
9	California Labor Code §226	4
10	California Labor Code §226.3	4
11	California Labor Code §226.7	4
12	California Labor Code §227.3	4
13	California Labor Code §510	4
14	California Labor Code §512	4
15	California Labor Code §558	4
16	California Labor Code §558.1	4
17	California Labor Code §1194	4
18	California Labor Code §1197	4
19	California Labor Code §1197.1	4
20	California Labor Code §1198.....	4
21	California Labor Code §1198.5.....	4
22	California Labor Code §2689	2
23	California Labor Code §2698.....	4
24	California Labor Code §2699.....	<i>passim</i>

1	California Labor Code §2699(1)(2)	<i>passim</i>
2	California Labor Code §2802	4

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Luis Alberto Ledesma (“Plaintiff”) reached a settlement of the California Private
4 Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this action against
5 Defendants TVJ Sons I, Inc. and Porter and Howard, Inc. (“Defendants”) (collectively, the “Parties”).
6 In accordance with California Labor Code §2699(l), Plaintiff now asks this Court to review and
7 approve the settlement of Plaintiff’s PAGA claims.¹ This is only a settlement of the PAGA claims for
8 civil penalties, and is not a class settlement and does not release the individual wage claims, if any, of
9 the affected employees other than the Plaintiff himself. Cal. Labor Code § 2699(g)(1); *Iskanian v.*
10 *CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182
11 (2019) (unpaid wages are not recoverable under PAGA).

12 The PAGA settlement is set forth in the accompanying Settlement Agreement (“Settlement
13 Agreement”). A true and correct copy of the Settlement Agreement which sets forth the terms for the
14 settlement of the PAGA claim is attached as Exhibit #1 to the Declaration of Shani O. Zakay, filed
15 herewith. Capitalized terms shall have the same meaning as defined in the Settlement Agreement.
16 The LWDA received notice of this Settlement and this motion as set forth in the accompanying proof
17 of service.

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

20 **II. RELEVANT FACTS**

21 On August 24, 2020, Plaintiff gave written notice to the LWDA of his intent to assert a claim
22 under PAGA and his alleged basis for the claim. More than 65 days passed after the letter and amended
23 letter were sent to the LWDA, and the LWDA has not indicated that it intends to investigate the alleged
24 violations referenced in the letter. On October 29, 2020, Plaintiff filed a Complaint against Defendants
25 in the Superior Court of the State of California, County of Santa Barbara. The Complaint alleged a
26

27
28 ¹ Section 2699(1)(2) provides as follows: “The superior court shall review and approve any settlement
of any civil action pursuant to this part.”

1 single claim for: (1) Violation of the Private Attorneys General Act California Labor Code §§2689, *et*
2 *seq.* (“PAGA”). (Decl. Zakay at ¶4).

3 A. Mediation

4 Prior to filing of the Complaint, Plaintiff and Defendants agreed to mediate with Steve
5 Serratore, an experienced and reputable wage and hour and PAGA actions mediator. (Decl. Zakay at
6 ¶5.) In preparation for the mediation, the Parties engaged in significant informal discovery, including
7 a production of all of Defendants’ relevant wage and hour policies, the exchange of detailed statistical
8 data regarding shifts worked by Plaintiff and the PAGA Group members, the production of hundreds
9 of pages of documents, including a large sample of payroll records and time records, and the exchange
10 of detailed briefing and analysis in connection with the mediation. This information and data allowed
11 Plaintiff’s counsel, with the assistance of an economic damages consultant, to intelligently model
12 Defendants’ potential liability exposure in advance of the mediation.

13 On April 16, 2021, Plaintiff and Defendants engaged in a full-day mediation with Steve
14 Serratore. At the conclusion of the full-day mediation, the Parties were able to reach a settlement,
15 which led to the signing of a Memorandum of Understanding memorializing the settlement.
16 Thereafter, on July 2, 2021, Plaintiff, Defendants, and their counsel fully executed the long-form
17 settlement agreement. The settlement was negotiated in light of all known facts and circumstances and
18 the uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain
19 representative claims, the difficulty of proving Plaintiff’s claims in a manageable trial, the merits of
20 Defendants’ potential defenses, and the significant delay and potential appellate issues inherent to
21 litigation. (Decl. Zakay at ¶5.)

22 **III. TERMS OF THE PAGA SETTLEMENT**

23 The PAGA settlement is subject to Court approval consistent with Labor Code §2699(1)(2)
24 (Settlement Agreement at § II(C)). The Settlement Agreement negotiated by the Parties provides for
25 a “Gross Settlement Amount” payment in the amount of \$350,000 to resolve the PAGA Claims
26 (hereinafter referred to as the “PAGA Settlement”). From this PAGA Settlement of \$350,000, there
27 is a deduction of attorneys’ fees in the amount of \$116,666.67 (which is one-third of the PAGA
28 Settlement), reimbursement of incurred costs in an amount not to exceed \$20,000, and Settlement

1 Administration Costs, which will not exceed \$6,000.00. (Settlement Agreement at § VI, X).² After
2 these deductions, the amount remaining is the “PAGA Payment”, which is estimated to be
3 \$207,333.33.

4 Of the PAGA Payment amount, seventy-five percent (75%) will be paid to the LWDA and the
5 remaining twenty-five percent (25%) will be paid to the PAGA Settlement Members (Settlement
6 Agreement at § I(J)).³ This 75/25 allocation is required by Labor Code §2699 as explained by *ZB,*
7 *N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

8 The Individual PAGA Payment for each PAGA Settlement Member shall be based on the
9 number of biweekly payroll periods each PAGA Settlement Member worked during the PAGA Period
10 as a percentage of the total pay periods worked by all PAGA Settlement Members during the PAGA
11 Period. (Settlement Agreement at § VIII(A).) The PAGA Period is the time period from August 24,
12 2019 to June 15, 2021. (*Id.* at § I(M).).

13 At the mediation, Defendants represented to Plaintiff’s Counsel the number of pay periods and
14 PAGA Settlement Members. Defendants represented that there are approximately 303 members of
15 the PAGA Group who worked approximately 8,000 pay periods during the PAGA Period. (Settlement
16 Agreement at § II(Q).).

17 Upon entry of Judgment and funding in full of the Settlement Amount by Defendants, the
18 Released Parties shall be entitled to a release from the State of California and the PAGA Settlement
19 Members only as to “Any and all Private Attorneys’ General Act of 2004 Cal. Lab. Code § 2698
20 (PAGA) for alleged violations of the IWC Wage Orders and/or the California Labor Code based on
21 the facts and claims that were asserted in the Plaintiff’s PAGA Letter to the LWDA and/or Complaint,
22

23 ² In the event the Court approves less than One-Third of the PAGA Settlement Amount in Attorneys’
24 Fees or less than \$20,000 in Attorneys’ Expenses to Plaintiff’s Counsel, the unawarded difference will
25 be added to the PAGA Payment and not to Plaintiff’s Counsel or the Defendants (Settlement
26 Agreement at § X). In the event the Court approves less than \$6,000.00 to administer the settlement
or if the actual cost to administer the settlement is less than \$6,000.00, the difference will be added to
the PAGA Payment. (*Id.* at § VI).

27 ³ “PAGA Settlement Member” means all persons within the State of California who are or were
28 previously employed by Defendants in the State of California that were classified as non-exempt, paid
by hourly rate or by commission, at any time from August 24, 2019 to June 15, 2021. (Settlement
Agreement at § I(L)-(M).).

1 including but not limited to Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3,
2 510, 512, 558, 558.1, 1194, 1197, 1197.1, 1198, 1198.5, 2698, 2699, *et seq.*, 2802, and any other
3 claims asserted in the PAGA Letter and/or the Complaint. This release extends only to the penalties
4 available through PAGA and does not release individual claims. As a result of this release, the PAGA
5 Group will be precluded from initiating or participating in any PAGA action, or otherwise seeking any
6 civil penalties under PAGA, arising from the released claims that occurred during the PAGA Period.
7 (“PAGA Released Claims”) (Settlement Agreement at § V(A)).

8 This PAGA Released Claims in the Settlement Agreement expressly excludes all PAGA
9 claims outside the PAGA Period, all PAGA claims not alleged in either the operative complaint or the
10 August 24, 2020 LWDA notice, and all non-PAGA claims. (*Id.*) The Settlement Agreement does not
11 release any individual claims of any individuals other than Plaintiff. (*Id.*)

12 The Gross Settlement Amount shall be due by Defendants to the Settlement Administrator
13 within 30 days after the Effective Date. (*Id.* at VIII(B).)

14 Notice will be provided to the PAGA Groups in the following manner: Defendants will provide
15 the necessary information about the PAGA Group to the Settlement Administrator (ILYM Group, Inc.)
16 within thirty (30) days of the approval of the PAGA settlement by the Court. (Settlement Agreement
17 at § VII.) Within thirty (30) days after receipt of the PAGA Settlement Amount from Defendants, the
18 Settlement Administrator will issue to each PAGA Settlement Member a check for their Individual
19 PAGA Payment at their last known home address along with an explanatory letter which will be
20 mutually approved by the parties. (*Id.*) Checks will remain negotiable for one hundred eighty (180)
21 days. (*Id.* at § VIII(B).) Any checks returned as non-deliverable on or before the check cashing
22 deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed
23 thereto. (*Id.*) If no forwarding address is provided, the Settlement Administrator will promptly attempt
24 to determine the correct address using a skip-trace, or other search using the name, address, Social
25 Security number, phone number, credit reporting and social media of the PAGA Group member
26 involved and will then perform a re-mailing. (*Id.*) Settlement checks mailed to the PAGA Group shall
27 remain valid for 180 after mailing. (*Id.*) The Settlement Administrator will remit the entire amount of
28 each PAGA Group member’s uncashed check to the California State Controller for deposit in the

1 Unclaimed Property Fund in the name of the PAGA Settlement Member to whom the uncashed
2 Individual PAGA Payment was drafted. (*Id.*) The Individual PAGA Payments are 100% penalties and
3 shall be reported using IRS tax form 1099. (*Id.* at § XI.)

4 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
5 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion
6 for settlement approval as set forth in the accompanying Declaration of Shani O. Zakay in compliance
7 with Labor Code section 2699(1).

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

9 The claim before this court is the representative claim under PAGA on behalf of the State of
10 California for civil penalties pursuant to the PAGA. The parties have agreed to settle this PAGA
11 action in its entirety after significant informal discovery and an arm's length mediation. (Declaration
12 of Shani O. Zakay, at ¶5.) The settlement is intended to fully and finally resolve the PAGA Released
13 Claims asserted by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA
14 claims for civil penalties, and is not a class settlement and does not release the individual claims, if
15 any, of the PAGA Group. This settlement does not release any claim that is not a PAGA claim.⁴
16 Attorneys' fees equal to one-third of the PAGA Settlement amount (\$116,666.67) and litigation
17 expenses in an amount not to exceed \$20,000 will also be paid to Plaintiff's Counsel as part of the
18 settlement in accordance with California Labor Code § 2699(g)(1) as set forth in the Settlement
19 Agreement.⁵ Lastly, payment to the Settlement Administrator in an amount not to exceed \$6,000 to
20 perform the administrative duties to distribute the settlement money shall also be paid. (Declaration
21 of Shani O. Zakay, at ¶8.)

22 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT** 23 **OF THE PAGA CLAIM**

24 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any
25 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the

26 ⁴ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: "Nonparty employees are bound
27 by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

28 ⁵ As set forth in the accompanying Declaration of Shani O. Zakay, Plaintiff's Counsel incurred costs
in the current amount of \$10, 944.58 which is less than the cost allocation in the Settlement Agreement.
See Declaration of Zakay at ¶ 18.

agency at the same time that it is submitted to the court.” Consequently, the parties respectfully ask the Court to review and approve the settlement of the PAGA claims and the PAGA Payment to be paid as part of the proposed settlement.

A. The PAGA Settlement Amount To Be Paid Is Fair And Reasonable

Plaintiff and his counsel believe that the PAGA Settlement amount is fair and reasonable and therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency has released data on PAGA settlement amounts. After removing the outliers at the low and high end, the average, total settlement amount of PAGA claims is approximately \$10,000. Here, the PAGA Settlement Amount of \$350,000 is significantly more and constitutes approximately \$43.75 per pay period. (Declaration of Zakay, at ¶9.)

This PAGA Settlement amount compares favorably to the estimated amount of PAGA penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of statutory PAGA civil penalties was potentially \$9,035,800 based on 6,692 pay periods at issue as of the mediation date.⁶ (Declaration of Zakay, at ¶9.) Importantly, however, these calculations were performed at the maximum statutory rate for the penalties, when in fact, it is likely that any penalties awarded would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if based on the facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory."

Before and during the mediation, Defendants argued, among other things, that it was unlikely that any Judge would award more than the actual amounts owed on the claims, let alone the full \$100 or \$200 per violation. In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties awarded in this case could be significantly less than Plaintiff's

⁶ In preparation for mediation, Defendants provided Plaintiff with the time and payroll records of PAGA Group members for the date range of September 16, 2019 to February 28, 2021. Plaintiff's expert extrapolated these records to reflect the April 16, 2021 mediation date and calculated the pay period value at 6,692 pay periods. Pursuant to the Parties' Memorandum of Understanding and Settlement Agreement, the Parties agreed to increase the pay period value to 8,000 pay periods in order to serve as a buffer for the PAGA Released Claims during the PAGA Period.

1 calculation, even had Plaintiff prevailed on the PAGA claim. Here, multiplying the number of
2 violations identified, assumed, and extrapolated by Plaintiff's expert (a maximum of 19,251
3 violations)⁷ by \$5 results in a total potential liability of **\$96,225**. Further, multiplying the maximum
4 number of pay periods (6,692) by \$5 results in a total potential liability of **\$33,460**. Therefore, even
5 assuming Plaintiff would have prevailed on all of his claims in trial, the result obtained by Plaintiff in
6 the Settlement exceeds the amount Plaintiff would have recovered had the Court relied on *Carrington*
7 in awarding the PAGA penalties. (Declaration of Zakay at ¶10.).

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

16 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of
17 the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
18 LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot
19 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
20 Code by the defendant."). Here, Plaintiff would need to prove that each PAGA Group Member
21 suffered a violation for each period the employee worked in relation to meal or rest period violations,
22 failure to pay minimum or overtime wages, failure to provide accurate itemized wage statements,
23 failure to pay wages when due, and/or failure to reimburse all business expenses.

24 Defendants maintain that Plaintiff and the PAGA Group were properly compensated, and that
25 it did not violate the Labor Code.

26
27
28

⁷ Assuming 6,692 pay periods.

1 Most importantly and relevant to this case, Defendants argued that the Supreme Court decision
2 in *Brinker v. Superior Court*, 53 Cal.4th 1004 (2012), weakened, if not eliminated, Plaintiff's claims,
3 on liability, value, and discretion with respect to the PAGA penalties, as to the meal and rest period
4 claims. A major component of the penalties alleged to have been owed by Defendants are attributed
5 to non-compliant meal and rest breaks. Before and during the mediation, Defendants argued that
6 Defendants' policies and culture afforded the PAGA Group an opportunity to take timely meal and
7 rest breaks, and that employees like the Plaintiff *chose* not to take compliant breaks. Specifically,
8 Defendants' written policies encouraged PAGA Group members to take meal periods and rest breaks
9 according to schedules compliant with the California Labor Code. The policy further *required*
10 employees who felt they were not provided an opportunity to take a meal or a rest break to notify their
11 supervisor immediately. Defendants argued, therefore, that under the *Brinker* decision it has no
12 liability for the missed breaks whatsoever. Defendants argued that it adopted and strictly enforced
13 lawful policies and afforded Plaintiff and the PAGA Settlement Members compliant meal and rest
14 breaks. Because Plaintiff's claims were largely based on the missed meal and rest breaks, and because
15 Defendants' policies were, indeed, compliant, this presented a very real concern for Plaintiff. If
16 successful, this defense could eliminate or substantially reduce any recovery under PAGA.

17 Accordingly, Defendants dispute and deny Plaintiff's allegations and claims asserted in the
18 operative complaint which are resolved by the Settlement Agreement. Defendants asserted additional
19 defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties.
20 Defendants could argue that no penalties prior to the PAGA notification should be awarded because
21 the violations were not intentional, and at least one Court has so ruled. In addition, Defendants argued
22 that any Court would substantially reduce the PAGA penalty awards in light of decisions like
23 *Carrington*. These defenses present a risk to the PAGA claim and the potential that some or all of the
24 PAGA penalties sought may not be awarded. (Declaration of Zakay, at ¶14.)

25 Given Defendants' potential defenses to the violations at issue, the risks and costs of continued
26 litigation, Plaintiff and their attorneys believe that the PAGA Settlement is fair and reasonable.
27 (Declaration of Zakay, at ¶14.) Plaintiff's Counsel have significant experience litigating wage and
28 hour claims including claims for PAGA penalties, and the PAGA Settlement here is similar to or

1 greater than similar settlements that courts have approved. (Declaration of Zakay, at ¶15; Declaration
2 of Jean-Claude Lapuyade, Esq. at ¶ 11.) The PAGA Settlement, along with the other terms of the
3 proposed settlement, were negotiated by experienced counsel at arm's length with the assistance of an
4 experienced and reputable mediator, Steve Serratore. (Declaration of Zakay, at ¶15.)

5 As set forth in the accompanying Declaration of Shani O. Zakay, the LWDA has been provided
6 notice of this motion and the PAGA settlement. The decision of the LWDA to accept the PAGA
7 Settlement and not oppose the motion should be given considerable weight. This is not a situation
8 where the Court needs to be concerned about the rights of absent employees as in a class settlement,
9 as this PAGA-only settlement does not release the individual claims of absent employees, and the
10 LWDA is a sophisticated government entity that is more than able to look out for its own rights.

11 **B. The Remaining Settlement Terms Are Fair And Reasonable**

12 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
13 2699(1) does not require that a court approve any other elements of the proposed settlement. Because
14 there are no class allegations for which Plaintiff seek approval, the approval provisions applicable to
15 class settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs
16 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
17 herein, the settlement terms for attorneys' fees and costs are reasonable.

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

19 Plaintiff's Counsel seek approval of attorneys' fees from the PAGA settlement in the amount
20 of \$116,666.67 representing one-third of the \$350,000 PAGA Settlement amount. PAGA does not
21 have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of
22 attorneys' fees and costs in this settlement is a matter of contract for a contingent representation.
23 Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees
24 and costs are reasonable.

25 First, the requested fees are justified by the result achieved. Plaintiff's Counsel negotiated a
26 recovery of \$350,000, and this result justifies the requested fees equal to one third of this recovery.
27 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
28

1 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
2 480, 504, (2016).

3 Second, the fee award is justified by the work performed. As detailed in the accompanying
4 Declaration of Shani O. Zakay at ¶19, the fee award represents Plaintiff's Counsels' current combined
5 lodestar of \$86,800.00 with a multiplier of 1.3 with additional work to be performed such that the
6 multiplier will ultimately be even lower. Generally, the Ninth Circuit and California Courts award
7 multipliers between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of
8 the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee
9 award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th
10 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier);
11 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range
12 from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014)
13 (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014
14 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of
15 lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal.
16 Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority"
17 range for risk multipliers).

18 Third, consideration of the enhancement factors justifies the enhancement of the lodestar.
19 Courts multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the
20 quality of work, and the novelty and difficulty of the issues involved. See *Ketchum v. Moses*, 24
21 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in cases that meet these criteria is an
22 abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016).

23 Finally, as to litigation expenses, Plaintiff's Counsel will be recovering litigation expenses in
24 the total amount of \$10,944.58 which is less than the \$20,000 allocation for costs in the Settlement
25 Agreement, so the difference of \$9,055.42 will be added to the PAGA Payment amount. These
26 expenses are documented in the accompanying Declaration of Zakay at ¶18.

27
28 ///

1 **VII. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests this Court approve the PAGA settlement
3 as set forth in the Settlement Agreement and enter the proposed order and judgment submitted
4 herewith.

5 Dated: September 9, 2021

ZAKAY LAW GROUP, APC

6
7 By:



Shani O. Zakay