

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
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)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for Plaintiff LUIS A. RENDON

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

LUIS A. RENDON, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

HEALTHCARE INVESTMENTS, INC. (dba
Rosecrans Care Center), a California
Corporation; and Does 1 through 50,
Inclusive,

Defendants.

Case No: 20STCV39775

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

Date: May 31, 2022

Time: 8:30 a.m.

Reservation ID: 162345658677

Dept.: 72

Judge: Hon. Curtis A. Kin

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Luis A. Rendon (“Plaintiff”) reached a settlement of the California Labor Code
4 Private Attorneys General Act of 2004, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in
5 this action against Defendant Healthcare Investments, Inc. (dba Rosecrans Care Center) (“Defendant”)
6 (collectively, the “Parties”). In accordance with California Labor Code § 2699(l), Plaintiff now asks
7 this Court to review and approve the settlement of Plaintiff’s PAGA claims.¹ The PAGA Settlement
8 is fair, reasonable, and adequate as to the PAGA Members and satisfies all statutory criteria for
9 approval. This is only a settlement of the PAGA claims for civil penalties and is not a class settlement
10 and does not release the individual wage claims, if any, of the affected employees other than Plaintiff
11 himself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014);
12 *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under
13 PAGA).

14 The PAGA settlement is set forth in the accompanying Stipulation of Settlement of PAGA
15 Claims and Release of PAGA Claims (“Settlement Agreement”). A true and correct copy of the
16 Settlement Agreement which sets forth the terms for the settlement of the PAGA claims is attached as
17 Exhibit #1 to the Declaration of Shani O. Zakay (“Zakay Dec.”), filed herewith. Capitalized terms
18 shall have the same meaning as defined in the Settlement Agreement. The LWDA received notice of
19 this Settlement and this motion as set forth in the Zakay Dec. A proposed order confirming review
20 and approval of the PAGA settlement is submitted herewith.

21 **II. RELEVANT FACTS**

22 Plaintiff provided services to Defendant and Defendant’s patients as a non-exempt employee
23 in California during the PAGA period of April 6, 2019, through December 13, 2021. On May 1, 2020,
24 Plaintiff Luis A. Rendon on behalf of himself and on behalf of other “Aggrieved Employees”
25 submitted a notice and draft complaint to the LWDA memorializing claims against Defendant for
26 alleged violations of the California Labor Code, including claims for failure to provide compliant meal
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 periods or compensation in lieu thereof in violation of Labor Code sections 226.7, and 512; failure to
2 provide compliant rest periods or compensation in lieu thereof in violation of Labor Code sections
3 226.7, and 512; failure to allow employees to take duty-free, off-the-premises rest periods; failure to
4 pay all minimum, regular, and overtime wages; failure to maintain true and accurate records in
5 violation of Labor Code sections 1174 and 1174.5; failure to provide accurate itemized wage
6 statements in violation of Labor Code sections 226, 226.2, 1174, and 1175; failure to timely pay wages
7 due during, and upon termination of employment; claims for violations of Labor Code sections 201,
8 202.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194,
9 1197, 1197.14, 1198, and 1199; and claims for civil penalties and other relief pursuant to Labor Code
10 section 2699, and the sections preceding and following section 2699. (LWDA Case No. 785157-20.)
11 On October 15, 2020, Plaintiff filed a complaint against Defendant in the Superior Court of Los
12 Angeles County, Case No. 20STCV39775, alleging a single cause of action for violations of PAGA
13 based on the above Labor Code violations. (Zakay Dec. at ¶ 4.)

14 A. Mediation

15 Plaintiff and Defendant agreed to mediate the action with Hon. Carl J. West (Ret.) (“Judge
16 West”), a respected jurist and an experienced wage and hour PAGA action mediator. Prior to the
17 mediation, in order to evaluate the potential value of the claims, the Parties engaged in significant
18 efforts to obtain evidence regarding the claims asserted, including all of Defendant’s relevant wage
19 and hour policies, the exchange of detailed statistical data regarding assignments performed by
20 Plaintiff and the Aggrieved Employees, the production of hundreds of pages of documents, including
21 a large sample of payroll records and time records, and the exchange of detailed briefing and analysis
22 in connection with the mediation. Based on this extensive discovery, Plaintiff was able to perform
23 damages calculations and assess her claims relevant to Defendant’s defenses. (Zakay Dec. at ¶ 5.)

24 Thereafter, on September 1, 2021, the Parties engaged in a full-day mediation with Judge West.
25 At the conclusion of the full-day mediation, the Parties were unable to reach a settlement. However,
26 after months of negotiations, with the assistance of Judge West, the Parties reached an agreement for
27 settlement based on Judge West’s proposal, which led to the signing of a Stipulation of Settlement of
28 PAGA Claims and Release of PAGA Claims memorializing the settlement. The settlement was

1 negotiated in light of all known facts and circumstances and the uncertainty associated with litigation
2 – including the risk of Plaintiff not being able to maintain representative claims and establishing
3 manageability, the difficulty of proving Plaintiff’s claims in a manageable trial, the merits of
4 Defendant’s potential defenses, and the significant delay and potential appellate issues inherent to
5 litigation – and was reached after extensive arm’s length negotiations, with the assistance of Judge
6 West. (Zakay Dec. at ¶ 6.)

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

8 The PAGA settlement is subject to Court approval consistent with Labor Code § 2699(1)(2)
9 (Settlement Agreement at III(J)). The Settlement Agreement negotiated by the Parties provides for a
10 “Gross Settlement Amount” payment in the amount of \$282,500 to resolve the PAGA Claims
11 (hereinafter referred to as the “PAGA Settlement”). From this PAGA Settlement of \$282,500, there
12 is a deduction of attorneys’ fees in the amount of \$94,166.66 (which is one-third of the PAGA
13 Settlement), reimbursement of incurred costs in an amount not to exceed \$20,000, and Settlement
14 Administration Costs, which will not exceed \$8,000. (Settlement Agreement at III(I)(7)-(8)).² After
15 these deductions, the amount remaining is the “PAGA Payment”, which is estimated to be
16 \$160,333.34. (Zakay Dec. at ¶ 7.)

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

21 The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of
22 pay periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total
23 pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement Agreement at
24

25 ² In the event the Court approves less than One-Third of the PAGA Settlement Amount in Attorneys’
26 Fees or less than \$20,000 in Attorneys’ Expenses to Plaintiff’s Counsel, the unawarded difference will
27 be added to the PAGA Payment and not to Plaintiff’s Counsel or Defendant (Settlement Agreement
28 at III(I)(7)).

³ “Aggrieved Employees” means all of Defendant’s current and former non-exempt employees
employed in California during the PAGA Period. (Settlement Agreement at (I)(B)). The PAGA Period
is April 6, 2019, through December 13, 2021.

1 III(I)(1)). The PAGA Period is the time period from April 6, 2019, through December 13, 2021.
2 (Settlement Agreement at I(N)). (Zakay Dec. at ¶ 9.)

3 At the time of mediation, Defendant estimated that there were 500 Aggrieved Employees who
4 worked approximately 7,500 pay periods during the PAGA Period. (Settlement Agreement at
5 III(A)(2)). (Zakay Dec. at ¶ 10.)

6 A. Release of Claims

7 Upon entry of Judgment and funding in full of the Settlement by Defendant, the Released
8 Parties shall be entitled to a release from the State of California and Plaintiff as to the following claims:

9 “Released PAGA Claims” mean any and all claims for civil penalties under PAGA,
10 arising during the PAGA Period, based on the facts alleged by Plaintiff in the operative
11 complaint at the time of approval and Plaintiff’s notice letter to the LWDA and any
12 resulting claim for attorneys’ fees and costs under PAGA, which occurred during the
13 PAGA Period.

14 (Settlement Agreement at I(U)). (Zakay Dec. at ¶ 11.)

15 The Gross Settlement Amount shall be due by Defendant to the Settlement Administrator via
16 wire transfer as follows: (1) \$35,000 payable within sixty (60) calendar days of the Effective Date
17 (“Initial Payment”), and (2) eighteen (18) equal monthly installments in the amount of \$13,750 equal
18 to \$247,500 paid monthly thereafter, commencing on the first day of the first month following the
19 Initial Payment, and on the first day of every month thereafter until the Gross Settlement Amount is
20 fully funded. (Settlement Agreement at III(A)(3)). Defendant will provide the necessary information
21 about the Aggrieved Employees to the Settlement Administrator (ILYM Group) within five (5)
22 calendar days of the approval of the Effective Date. (Settlement Agreement at III(H)). The Settlement
23 Administrator will mail the Individual Aggrieved Employee Payments by regular First-Class U.S.
24 Mail to the Aggrieved Employees’ last known mailing address no later than fifteen (15) calendar days
25 after the Funding Date.⁴ (Settlement Agreement at III(I)(4)). Checks will remain valid and negotiable
26 for one hundred eighty (180) days. (Settlement Agreement at III(I)(5)). If an Aggrieved Employee

27 ⁴ Aggrieved Employees will receive their individual settlement payments first, before the LWDA
28 receives its payment and before counsel and the administrator receive their fees and costs.
Accordingly, the agreed upon payment plan will not cause a delay in the payment to the employees.

1 does not cash his or her settlement check within ninety (90) days, the Settlement Administrator will
2 send a letter to such persons, advising that the check will expire after the 180th day, and invite that
3 Aggrieved Employee to request reissuance in the event the check was destroyed, lost, or misplaced.
4 (*Id.*) In the event Aggrieved Employee Payment checks have not been cashed within one hundred and
5 eighty (180) days, the Settlement Administrator shall cause the aggregate sum represented by those
6 uncashed checks, plus any interest accrued thereon, to be sent to the Controller of the State of
7 California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*,
8 in the names and corresponding amounts associated with each Aggrieved Employee whose check(s)
9 are cancelled. (*Id.*) The Individual PAGA Payments are 100% penalties and shall be reported using
10 IRS tax form 1099. (Settlement Agreement III(I)(2)). (Zakay Dec. at ¶ 12.)

11 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
12 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion
13 for settlement approval as set forth in the accompanying proof of service in compliance with Labor
14 Code section 2699(1). In addition, Plaintiff will submit to the LWDA a copy of the Court's judgment
15 and order approving the Settlement Agreement within ten (10) days after entry of judgment or order.
16 (Zakay Dec. at ¶ 13.)

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

18 The claim before this Court is a representative claim under the PAGA on behalf of the State of
19 California for civil penalties pursuant to the PAGA. The parties have agreed to settle the PAGA claims
20 in their entirety after significant informal discovery, and an arm's length mediation. The settlement
21 is intended to fully and finally resolve the PAGA Released Claims asserted by Plaintiff on behalf of
22 the State of California. This is only a settlement of the PAGA claims for civil penalties and is not a
23 class settlement and does not release the individual claims, if any, of the Aggrieved Employees. This
24 settlement does not release any claim that is not a PAGA claim.⁵ Attorneys' fees equal to one-third of
25 the PAGA Settlement amount (\$94,166.66) and litigation expenses in an amount not to exceed \$20,000
26 will also be paid to Plaintiff's Counsel as part of the settlement in accordance with California Labor
27

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

Code § 2699(g)(1) as set forth in the Settlement Agreement.⁶ Lastly, payment to the Settlement Administrator in an amount not to exceed \$8,000 to perform the administrative duties to distribute the settlement money shall also be paid. (Zakay Dec. at ¶ 14.)

V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIMS

Labor Code § 2699(l) requires that the Court “shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. Further, the Court in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 stated that “the trial court must review and approve a PAGA settlement (§ 2699, subd.(l)(2)), and the Supreme Court has in dictum referred to this review as a safeguard.” (Citing *Kim v. Reins Int’l California, Inc.* (2020) 9 Cal.5th 73, 88; internal quotations omitted.) “The Supreme Court has also observed that trial court approval ensures that any negotiated resolution is fair to those affected,” leading the Court in *Moniz* to determine that “adoption of a standard of review for settlements that prevents fraud, collusion or unfairness, and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted.” (*Moniz, supra*, 72 Cal.App.5th at 77; citing *Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 549; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800–01; internal citations omitted.) In other words, “[i]n review and approval of a proposed settlement under section 2699, subd. (l)(2), a trial court thus must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state’s interests, and hence the public interest.” (*Moniz, supra*, 72 Cal.App.5th at 88.) The proposed settlement shall be submitted to the 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. Here, the PAGA Settlement Amount of \$282,500 is

⁶ As set forth in the accompanying Zakay Dec., Plaintiff’s Counsel incurred costs in the current amount of \$15,546.51 which is less than the cost allocation in the Settlement Agreement. See Zakay Dec. at ¶ 29.

significantly larger than amounts previously approved by Courts throughout California. (Zakay Dec. at ¶ 15.)

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, Defendant 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 calculation, even had Plaintiff prevailed on the PAGA claim. Here, multiplying the number of violations identified, assumed, and extrapolated by Plaintiff (14,166 violations) by \$5 results in a total potential liability of **\$70,830**. Further, multiplying the number of pay periods (7,500) by \$5 results in a total potential liability of **\$37,500**. Therefore, even assuming Plaintiff would have prevailed on all of her claims at trial, the result obtained by Plaintiff in the Settlement exceeds the amount Plaintiff would have recovered had the Court relied on *Carrington* in awarding the PAGA penalties. (Zakay Dec. at ¶ 16.)

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

Plaintiff’s claims and corresponding PAGA penalties can be broken down as follows:

Labor Code Section	Number of employees	Statutory penalty	Number of pay periods / violations	Violation rate	Total Penalties
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1194, 1197, and, 1197.1, (unpaid minimum/straight wages)	500 Aggrieved Employees	\$100	6,650	88.7% of total pay periods	\$665,000
226.2, 226.7 and 512 (rest break violations)	377 Aggrieved Employees	\$100	1,715	22.8% of total pay periods	\$171,500
226.7 (unpaid meal break violations)	377 Aggrieved Employees	\$100	1,715	22.8% of total pay periods	\$171,500
510 (unpaid overtime)	432 Aggrieved Employees	\$100	5,801	77.3% of total pay periods	\$580,100
226 (wage statement violations)	500 Aggrieved Employees	\$100	7,500	100% of total pay periods	\$750,000

Thus, at the time of mediation, Plaintiff's Counsel estimated Defendant's maximum liability exposure at \$2,338,100. Consequently, the Total Settlement Amount of \$282,500 is 12% of Defendant's maximum liability exposure – before any reduction. (Zakay Dec. at ¶ 17.)

In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant.”). Here, Plaintiff would need to prove that each Aggrieved Employee suffered a violation for each period the employee worked in relation to meal or rest period violations, failure to pay minimum or overtime wages, and failure to provide accurate itemized wage statements. (Zakay Dec. at ¶ 18.)

Defendant maintains that Plaintiff and the Aggrieved Employees were properly compensated, and that it did not violate the Labor Code. Most importantly and relevant to this case, Defendant argued that the Supreme Court decision in *Brinker v. Super. Ct.*, 53 Cal.4th 1004 (2012), weakened, if not eliminated, Plaintiff's claims, on liability, value, and discretion with respect to the PAGA penalties, as to the meal and rest period claims. A major component of the penalties alleged to have been owed

1 by Defendant are attributed to non-compliant meal and rest breaks. Before and during the mediation,
2 Defendant aggressively argued that Defendant's policies and culture afforded the Aggrieved
3 Employees an opportunity to take timely meal and rest breaks, and that employees like Plaintiff *chose*
4 not to take compliant breaks. Specifically, Defendant's written policies encouraged Aggrieved
5 Employees to take meal periods and rest breaks according to schedules compliant with the California
6 Labor Code. The policy further *required* employees who performed any work for any reason during
7 their meal period to record that time so that they could be paid. Employees who felt they were not
8 provided an opportunity to take a meal or a rest break were required to notify a supervisor immediately
9 so that Defendant could ensure that employees' duty-free meal periods were available to them.
10 Defendant argued, therefore, that under the *Brinker* decision it has no liability for the missed breaks
11 whatsoever. Defendant argued that it adopted and strictly enforced lawful policies and afforded
12 Plaintiff and the Aggrieved Employees adequate time to take compliant meal periods and rest breaks.
13 Because Plaintiff's claims were largely based on the missed meal and rest breaks, and because
14 Defendant's policies were indeed compliant, this presented a very real concern for Plaintiff. If
15 successful, this defense could eliminate or substantially reduce any recovery under PAGA. While
16 Plaintiff believes that this defense, and others, could be overcome, Defendant maintains these defenses
17 have merit, which therefore presents a serious risk to recovery of penalties. (Zakay Dec. at ¶ 19.)

18 Accordingly, Defendant disputes and denies Plaintiff's allegations and claims asserted in the
19 operative complaint which are resolved by the Settlement Agreement. Defendant asserted additional
20 defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties.
21 Defendant could argue that no penalties prior to the PAGA notification should be awarded because
22 the violations were not intentional, and at least one court has so ruled. These defenses present a risk
23 to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be
24 awarded. (Zakay Dec. at ¶ 20.)

25 Given Defendant's potential defenses to the violations at issue and the risks and costs of
26 continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and
27 reasonable. Further, Plaintiff's investigation included an evaluation of Defendant's finances, as well
28 as consideration of Defendant's financial position as a single-facility nursing home operator

1 weathering unprecedented challenges resulting from the global pandemic, which support the monthly
2 installment plan set forth in the Settlement Agreement. Plaintiff's Counsel have significant experience
3 litigating wage and hour claims including claims for PAGA penalties, and the PAGA Settlement here
4 is similar to or greater than similar settlements that courts have approved. The PAGA Settlement,
5 along with the other terms of the proposed settlement, were negotiated by experienced counsel at arm's
6 length with the assistance of an experienced and reputable mediator, Judge West. (Zakay Dec. at ¶
7 21.)

8 As set forth in the accompanying proof of service, the LWDA has been provided notice of this
9 motion and the PAGA settlement. The decision of the LWDA to accept the PAGA Settlement and
10 not oppose the motion should be given considerable weight. This is not a situation where the Court
11 needs to be concerned about the rights of absent employees as in a class settlement, as this PAGA-
12 only settlement does not release the individual claims of absent employees, and the LWDA is a
13 sophisticated government entity that is more than able to look out for its own rights. (Zakay Dec. at ¶
14 22.)

15 Based on our investigation, analysis and discounts for risk factors, Plaintiff adequately
16 represented the interests of both the State and the public in resolving this action and reaching the
17 proposed PAGA settlement. (Zakay Dec. at ¶ 23.)

18 Notably, in the pending *Viking River Cruises, Inc. v. Moriana* case, the Supreme Court will
19 examine whether the Federal Arbitration Act requires enforcement of a bilateral arbitration agreement
20 providing that an employee cannot raise representative claims, including under PAGA. Given the
21 Supreme Court's pending decision, there is a strong possibility that this action could be dismissed
22 altogether if the Supreme Court finds that Plaintiff could waive her right to bring a PAGA action. The
23 proposed PAGA settlement allows Plaintiff to resolve the claims on her behalf, on behalf of the
24 Aggrieved Employees, and on behalf of the State of California before *Viking River Cruises* is decided
25 and potentially rids them of the opportunity to receive a settlement at all. (Zakay Dec. at ¶ 24.)

26 Finally, Plaintiff's diligent and efficient litigation of this action resulted in the creation of an
27 ascertainable common fund of \$282,500 that will substantially benefit the State of California and the
28 Aggrieved Employees. PAGA Counsel's efforts also resulted in significant non-monetary relief for

1 the State of California and the Aggrieved Employees by catalyzing Defendant to change its meal break
2 policy and practices to pay premiums for meal break violations retroactively and on a forward-going
3 basis. Thus, PAGA Counsel obtained greater Labor Code compliance and a change to Defendant's
4 policies that accomplishes the primary objective of PAGA as set for by the Labor Commissioner in
5 *Price v. Uber Techs.*, Los Angeles Superior Court Case No. BC544512. (Zakay Dec. at ¶ 25.)

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

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

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

14 Plaintiff's Counsel seeks approval of attorneys' fees from the PAGA settlement in the amount
15 of \$94,166.66 representing one-third of the \$282,500 PAGA Settlement amount. PAGA does not have
16 any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of
17 attorneys' fees and costs in this settlement is a matter of contract for a contingent representation.
18 Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees
19 and costs are reasonable.

20 First, the requested fees are justified by the result achieved. Plaintiff's Counsel negotiated a
21 recovery of \$282,500, and this result justifies the requested fees equal to one third of this recovery.
22 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
23 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
24 480, 504 (2016). At the time this case was brought, the result was far from certain. Defendant's
25 defenses to the merits of the case created difficulties with proof and complex legal issues for Counsel
26 to overcome. Here, a number of defenses asserted by Defendant present serious threats to the claims
27 of the Plaintiff and the Aggrieved Employees. Defendant asserted that their employment practices
28 complied with all applicable Labor laws. If successful, Defendant's defenses would eliminate *any*

1 recovery to the Aggrieved Employees. While Plaintiff believes that these defenses could be overcome,
2 Defendant maintains these defenses have merit which therefore presents a serious risk to recovery.
3 The Settlement was possible because Counsel was able to persuade Defendant that there was an
4 appreciable risk that Plaintiff would prevail on the factual and legal issues underlying liability and
5 overcome difficulties in proof as to monetary relief. (Zakay Dec. at ¶ 26.)

6 Second, the fee award is justified by the work performed. As detailed in the accompanying
7 Declarations of Shani O. Zakay and Jean-Claude Lapuyade at ¶ 4, the fee award represents Plaintiff's
8 Counsels' current combined lodestar of \$82,594.17 with a multiplier of 1.14 with additional work to
9 be performed such that the multiplier will ultimately be even lower. Generally, the Ninth Circuit and
10 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for accepting
11 the contingent risks of the litigation or obtaining good results. *See, e.g., Laffitte*, 1 Cal. 5th at 506
12 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Int'l,*
13 *Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
14 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting
15 that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d
16 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar);
17 *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund,
18 which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK,
19 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier
20 of 2.76 as falling within the "majority" range for risk multipliers). (Zakay Dec. at ¶ 27.)

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

26 Finally, based on Plaintiff's Counsel's lodestar, Plaintiff's Counsel's requested fee award
27 reflects a request for a reasonable hourly rate of \$535.77. Specifically, dividing \$94,166.66 by the
28

1 number of hours spent by Plaintiff's Counsel on the case (175.76), results in an average hourly rate of
2 \$535.77, which is reasonable and should be awarded. (Zakay Dec. at ¶ 28.)

3 Finally, as to litigation expenses, Plaintiff's Counsel will be recovering litigation expenses in
4 the total amount of \$15,546.51 which is less than the \$20,000 allocation for costs in the Settlement
5 Agreement, so the difference of \$4,453.49 will be added to the PAGA Payment amount. These
6 expenses are documented in the accompanying Zakay Dec. at ¶ 29.

7 **VII. CONCLUSION**

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

11 Dated: May 5, 2022

ZAKAY LAW GROUP, APC

12 By:


13 Shani O. Zakay
14 Julieann Alvarado
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