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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE**

NORMA REYES, on behalf of herself, other
Aggrieved Employees, and the State of
California,

Plaintiff,

v.

SIMPSON GARDEN GROVE, INC. (dba
Simpson Chevrolet of Garden Grove); and
DOES 1-50, Inclusive,

Defendants.

Case No: 30-2020-01175614-CU-OE-CJC

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

Hearing Date: May 12, 2021
Hearing Time: 10:00 AM
Reservation No.: 73502141

Honorable Judge Fred W. Slaughter
Department C64

Trial Date: August 22, 2022
Action Filed: December 22, 2020

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Norma Reyes (“Plaintiff”) reached a settlement of the California Private Attorneys
4 General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this action against Defendant
5 Simpson Garden Grove, Inc. (“Defendant”) (collectively, the “Parties”). In accordance with
6 California Labor Code §2699(l), Plaintiff now asks this Court to review and approve the settlement of
7 Plaintiff’s PAGA claims.¹ This is only a settlement of the PAGA claims for civil penalties, and is not
8 a class settlement and does not release the individual wage claims, if any, of the affected employees
9 other than the Plaintiff herself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59
10 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are
11 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 18, 2020, Plaintiff gave written notice to the LWDA of her intent to assert a claim
22 under PAGA and her alleged basis for the claim. On September 17, 2020, Plaintiff submitted an
23 amended notice to the LWDA, further advising of her intent to assert a claim under PAGA and her
24 alleged basis for the claim. More than 65 days passed after the letter and amended letter were sent to
25 the LWDA, and the LWDA has not indicated that it intends to investigate the alleged violations
26 referenced in the letters. On November 2, 2020, the Parties entered into a tolling agreement, tolling in
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 place the statute of limitations applicable to Plaintiff's representative PAGA action, which may apply
2 to any and all California Labor Code violations, in the state they existed on October 28, 2020 until
3 December 25, 2020. On December 22, 2020, Plaintiff filed a Complaint against Defendant in the
4 Superior Court of the State of California, County of Orange. The Complaint alleged a single claim
5 for: (1) Violation of the Private Attorneys General Act California Labor Code §§2689 et seq.
6 ("PAGA"). (Decl. Zakay at ¶4).

7 A. Mediation

8 Prior to filing of the Complaint, Plaintiff and Defendant agreed to mediate with Hon. William
9 C. Pate (Ret.), an experienced and reputable Jurist and wage and hour and PAGA actions mediator.
10 (Decl. Zakay at ¶5.) Prior to the mediation, in order to evaluate the potential value of the claims, the
11 Parties engaged in significant informal discovery, including a production of all of Defendant's relevant
12 wage and hour policies, the exchange of detailed statistical data regarding shifts worked by Plaintiff
13 and the PAGA Settlement Members, the production of hundreds of pages of documents, including a
14 large sample of payroll records and time records, and the exchange of detailed briefing and analysis
15 in connection with the mediation.

16 On December 18, 2020, Plaintiff and Defendant engaged in a full-day mediation with the Hon.
17 William C. Pate (Ret.) At the conclusion of the full-day mediation, the Parties were able to reach a
18 settlement, which led to the signing of a Memorandum of Understanding memorializing the settlement.
19 Thereafter, on March 9, 2021, Plaintiff, Defendant, and their counsel fully executed the long-form
20 settlement agreement.² The settlement was negotiated in light of all known facts and circumstances
21 and the uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain
22 representative claims, the difficulty of proving Plaintiff's claims in a manageable trial, the merits of
23 Defendant's potential defenses, and the significant delay and potential appellate issues inherent to
24 litigation. (Decl. Zakay at ¶5.)

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27 ² As part of the settlement and in addition to the Gross Settlement Amount, Defendant has agreed to
28 separately settle Plaintiff's individual claims which is set forth in a separate Individual Settlement
Agreement. The Individual Settlement Agreement is attached to the PAGA Settlement Agreement as
Exhibit B.

III. TERMS OF THE PAGA SETTLEMENT

The PAGA settlement is subject to Court approval consistent with Labor Code §2699(1)(2) (Settlement Agreement at §5.02). The Settlement Agreement negotiated by the Parties provides for a “Gross Settlement Amount” payment in the amount of \$240,000 to resolve the PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this PAGA Settlement of \$240,000, there is a deduction of attorneys’ fees in the amount of \$80,000 (which is one-third of the PAGA Settlement), reimbursement of incurred costs in an amount not to exceed \$10,000, and Settlement Administration Costs, which will not exceed \$3,050. (Settlement Agreement at §4.01-4.04).³ After these deductions, the amount remaining is the “PAGA Payment”, which is estimated to be \$146,950.

Of the PAGA Payment amount, seventy-five percent (75%) will be paid to the LWDA and the remaining twenty-five percent (25%) will be paid to the PAGA Settlement Members (Settlement Agreement at 4.05).⁴ This 75/25 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

The Individual PAGA Payment for each PAGA Settlement Member shall be based on the number of biweekly payroll periods each PAGA Settlement Member worked during the PAGA Period as a percentage of the total pay periods worked by all PAGA Settlement Members during the PAGA Period. (*Id.*) The PAGA Period is the time period from April 6, 2019 to December 18, 2020. (Settlement Agreement at § 1.01(xvii)).

Defendant has represented to Plaintiff’s Counsel the number of pay periods and PAGA Settlement Members. Defendant represents that there are approximately 117 PAGA Settlement Members who worked approximately 2,808 pay periods during the PAGA Period. (Settlement

³ In the event the Court approves less than One-Third of the PAGA Settlement Amount in Attorneys’ Fees or less than \$10,000 in Attorneys’ Expenses to Plaintiff’s Counsel, the unawarded difference will be added to the PAGA Payment and not to Plaintiff’s Counsel or the Defendant (Settlement Agreement at 4.03). In the event the Court approves less than \$3,050 to administer the settlement or if the actual cost to administer the settlement is less than \$3,050, the difference will be added to the PAGA Payment. (*Id.* at 4.04).

⁴ “PAGA Settlement Member” means all individuals who are or previously were employed by Defendant in California who were classified as hourly, piece-rate, and/or commissioned employees during the time period April 6, 2019 to December 18, 2020. (Settlement Agreement at § 1.01(xvii)).

1 Agreement at § 5.02).

2 Upon entry of Judgment and funding in full of the Settlement by Defendant, the Released
3 Parties shall be entitled to a release from the State of California and the PAGA Settlement Members
4 only as to all PAGA claims and PAGA penalties arising from the factual allegations in Plaintiff's
5 August 18, 2020 notice to the LWDA, Plaintiff's September 17, 2020 amended notice to the LWDA,
6 and in the operative complaint which occurred during the PAGA Period, including civil penalties
7 pursuant to Labor Code section 2699, et seq. for violations of Labor Code sections 201, 202, 203, 204,
8 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14,
9 1198, 1199, and the Applicable Wage Orders and expressly excluding claims for wrongful
10 termination, discrimination, unemployment insurance, disability, and workers' compensation, and
11 claims outside of the PAGA Period. ("PAGA Released Claims") (Settlement Agreement at
12 §1.01(xxii)).

13 This PAGA Released Claims in the Settlement Agreement expressly excludes all PAGA
14 claims outside the PAGA Period, all PAGA claims not alleged in the operative complaint, August 18,
15 2020 LWDA notice, or September 17, 2020 amended LWDA notice, and all non-PAGA claims. (*Id.*)
16 The Settlement Agreement does not release any individual claims of any individuals other than
17 Plaintiff. (*Id.*)

18 The Gross Settlement Amount shall be due by Defendant to the Settlement Administrator
19 within 15 days after the Effective Date. (Settlement Agreement at 5.04(c)).

20 Notice will be provided to the PAGA Settlement Members in the following manner: Defendant
21 will provide the necessary information about the PAGA Settlement Members to the Settlement
22 Administrator (Simpluris) within fifteen (15) days of the approval of the PAGA settlement by the
23 Court. (Settlement Agreement at §5.03(a)(1)). Within ten (10) days after receipt of the PAGA
24 Settlement Amount from Defendant, the Settlement Administrator will issue to each PAGA Settlement
25 Member a check for their Individual PAGA Payment at their last known home address along with an
26 explanatory letter which will be mutually approved by the parties. (Settlement Agreement at §
27 5.03(a)(2)). Checks will remain negotiable for one hundred eighty (180) days. (*Id.* at § 5.04(d)) Any
28 checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via

1 regular First-Class U.S. Mail to the forwarding address affixed thereto. (*Id.*) If no forwarding address
2 is provided, the Settlement Administrator will promptly attempt to determine the correct address using
3 a skip-trace, or other search using the name, address, Social Security number, phone number, credit
4 reporting and social media of the PAGA Settlement Member involved and will then perform a re-
5 mailing. (*Id.*) If a PAGA Settlement Member's check is not cashed within 120 days after its first
6 mailing to the PAGA Settlement Member the Settlement Administrator shall send the affected PAGA
7 Settlement Members notice informing them that unless their check is cashed in the next 60 days, it
8 will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but
9 not cashed. (*Id.*) If the check remains uncashed by the expiration of the 60-day period after this notice,
10 the funds from such uncashed checks will be paid by *cy pres* consistent with California Code of Civil
11 Procedure § 384 to the Children Advocacy Institute, subject to Court approval, and the PAGA
12 Settlement Members shall remain bound by the Settlement. (*Id.*) Pursuant to California Code of Civil
13 Procedure §384.4, the attorneys who signed the Settlement Agreement hereby notify the Court that
14 they and their respective firms have no relationship with or connection to the Cy Pres recipient that
15 could create an appearance of impropriety. (*Id.*) The Individual PAGA Payments are 100% penalties
16 and shall be reported using IRS tax form 1099. (*Id.*)

17 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
18 Settlement Agreement and this motion to the LWDA concurrently with the filing of the instant motion
19 for settlement approval as set forth in the accompanying Declaration of Shani O. Zakay in compliance
20 with Labor Code section 2699(1). In addition, Plaintiff shall submit to the LWDA a copy of the
21 Court's judgment and order approving the Settlement Agreement within ten (10) days after entry of
22 judgment or order.

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

24 The claim before this court is the representative claim under PAGA on behalf of the State of
25 California for civil penalties pursuant to the PAGA. The parties have agreed to settle this PAGA
26 action in its entirety after significant informal discovery and an arm's length mediation. (Declaration
27 of Shani O. Zakay, at ¶5.) The settlement is intended to fully and finally resolve the PAGA Released
28 Claims asserted by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA

1 claims for civil penalties, and is not a class settlement and does not release the individual claims, if
2 any, of the PAGA Settlement Members. This settlement does not release any claim that is not a PAGA
3 claim.⁵ Attorneys' fees equal to one-third of the PAGA Settlement amount (\$80,000) and litigation
4 expenses in an amount not to exceed \$10,000 will also be paid to Plaintiff's Counsel as part of the
5 settlement in accordance with California Labor Code § 2699(g)(1) as set forth in the Settlement
6 Agreement.⁶ Lastly, payment to the Settlement Administrator in an amount not to exceed \$3,050 to
7 perform the administrative duties to distribute the settlement money shall also be paid. (Declaration
8 of Shani O. Zakay, at ¶6.)

9 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT**
10 **OF THE PAGA CLAIM**

11 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any
12 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
13 agency at the same time that it is submitted to the court." Consequently, the parties respectfully ask
14 the Court to review and approve the settlement of the PAGA claims and the PAGA Payment to be
15 paid as part of the proposed settlement.

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

17 Plaintiff and her counsel believe that the PAGA Settlement amount is fair and reasonable and
18 therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency has
19 released data on PAGA settlement amounts. After removing the outliers at the low and high end, the
20 average, total settlement amount of PAGA claims is approximately \$10,000. Here, the PAGA
21 Settlement Amount of \$240,000 is significantly more and constitutes approximately \$85 per pay
22 period. (Declaration of Zakay, at ¶9.)

23 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
24 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of statutory
25 PAGA civil penalties was potentially \$4,709,100 based on 2,808 pay periods at issue as of the

26 ⁵ 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 ⁶ As set forth in the accompanying Declaration of Shani O. Zakay, Plaintiff's Counsel incurred costs
in the current amount of \$5,500 which is less than the cost allocation in the Settlement Agreement.
See Declaration of Zakay at ¶ 18.

1 mediation date. (Declaration of Zakay, at ¶9.) Importantly, however, these calculations were
2 performed at the maximum statutory rate for the penalties, when in fact, it is likely that any penalties
3 awarded would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to award
4 a lesser amount than the maximum civil penalty if based on the facts and circumstances to do otherwise
5 would result in an award that is "unjust, arbitrary and oppressive or confiscatory."

6 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed
7 a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at
8 trial, any PAGA penalties awarded could be significantly less than Plaintiff's calculation even if
9 Plaintiff prevailed on the PAGA claim. If the amount of \$5 per pay period from *Carrington v.*
10 *Starbucks* is used, the potential recovery of civil penalties would be only \$14,040, which is
11 significantly less than this settlement provides.

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

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

1 Defendant maintains that Plaintiff and the PAGA Settlement Members were properly
2 compensated, and that it did not violate the Labor Code.

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

19 Moreover, Defendant argued that the Court of Appeal decision in *Vaquero v. Stoneledge*
20 *Furniture, LLC* (2017) 9 Cal.App.5th 98 does not require paid rest periods be separately compensated
21 at the regular rate of pay and, further, that its policy of separately compensating paid rest periods at
22 the applicable minimum wage complies with California labor laws. Plaintiff's counsel, on the other
23 hand, argues that the *Vaquero* Court, implicitly, if not explicitly, accepted that like piece-rate
24 employees, sales persons earning commission compensation, like the PAGA Settlement Members,
25 must be separately compensated for paid rest periods at their regular rate of pay. While Plaintiff
26 believes that these defenses, and others, could be overcome, Defendant maintains these defenses have
27 merit and therefore present a serious risk to recovery of penalties. (Decl. Zakay at ¶13).

1 Accordingly, Defendant disputes and denies Plaintiff's allegations and claims asserted in the
2 operative complaint which are resolved by the Settlement Agreement. Defendant asserted additional
3 defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties.
4 Defendant could argue that no penalties prior to the PAGA notification should be awarded because
5 the violations were not intentional, and at least one Court has so ruled. In addition, Defendant argued
6 that any Court would substantially reduce the PAGA penalty awards in light of decisions like
7 *Carrington*. These defenses present a risk to the PAGA claim and the potential that some or all of the
8 PAGA penalties sought may not be awarded. (Declaration of Zakay, at ¶14.)

9 Given Defendant's potential defenses to the violations at issue, the risks and costs of continued
10 litigation, Plaintiff and their attorneys believe that the PAGA Settlement is fair and reasonable.
11 (Declaration of Zakay, at ¶14.) Plaintiff's Counsel have significant experience litigating wage and
12 hour claims including claims for PAGA penalties, and the PAGA Settlement here is similar to or
13 greater than similar settlements that courts have approved. (Declaration of Zakay, at ¶15.) The PAGA
14 Settlement, along with the other terms of the proposed settlement, were negotiated by experienced
15 counsel at arm's length with the assistance of an experienced and reputable mediator, Hon. William C.
16 Pate (Ret.). (Declaration of Zakay, at ¶15.)

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

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

24 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
25 2699(1) does not require that a court approve any other elements of the proposed settlement. Because
26 there are no class allegations for which Plaintiff seek approval, the approval provisions applicable to
27 class settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs
28

1 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
2 herein, the settlement terms for attorneys' fees and costs are reasonable.

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

4 Plaintiff's Counsel seek approval of attorneys' fees from the PAGA settlement in the amount
5 of \$80,000 representing one-third of the \$240,000 PAGA Settlement amount. PAGA does not have
6 any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys'
7 fees and costs in this settlement is a matter of contract for a contingent representation. Nevertheless,
8 should this Court review the requested attorneys' fees, it is clear that the requested fees and costs are
9 reasonable.

10 First, the requested fees are justified by the result achieved. Plaintiff's Counsel negotiated a
11 recovery of \$240,000, and this result justifies the requested fees equal to one third of this recovery.
12 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
13 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
14 480, 504, (2016).

15 Second, the fee award is justified by the work performed. As detailed in the accompanying
16 Declaration of Shani O. Zakay at ¶19, the fee award represents Plaintiff's Counsels' current combined
17 lodestar of \$60,955 with a multiplier of 1.3 with additional work to be performed such that the
18 multiplier will ultimately be even lower. Generally, the Ninth Circuit and California Courts award
19 multipliers between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of
20 the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee
21 award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th
22 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier);
23 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range
24 from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014)
25 (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014
26 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of
27 lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal.
28

1 Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority"
2 range for risk multipliers).

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

8 Finally, as to litigation expenses, Plaintiff's Counsel will be recovering litigation expenses in
9 the total amount of \$5,500 which is less than the \$10,000 allocation for costs in the Settlement
10 Agreement, so the difference of \$4,500 will be added to the PAGA Payment amount. These expenses
11 are documented in the accompanying Declaration of Zakay at ¶18.

12 VII. CONCLUSION

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

16 Dated: April 2, 2021

ZAKAY LAW GROUP, APC

17 By:


18 Shani O. Zakay