Mark J. Bluer, SBN 157071
BLUER & BLUER, LLP
222 Sutter Street, Suite 600
San Francisco, California 94108
Telephone Number: 415-989-1281
Facsimile Number: 415-358-4306
Email: mbluer@bluerlaw.com

Attorneys for Plaintiffs MINYING ZHANG, CHAOJIE ZHOU, QITENG MA, ZHENHUA XU, CHUPING CHEN, and ZHIGUANG LI

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

UNLIMITED JURISDICTION

MINYING ZHANG, CHAOJIE ZHOU, QITENG MA, ZHENHUA XU, CHUPING CHEN, and ZHIGUANG LI, Plaintiffs, vs. HOT POT SACRAMENTO 1, LLC. and DOES 1- 25, Defendants.	Case No: 25CV023087 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT, AWARD OF ATTORNEYS' FEES AND COSTS, & REIMBURSEMENT OF SETTLEMENT ADMISTRATION EXPENSES** *[Filed concurrently: Notice of Motion; and Declaration of Mark J. Bluer;* Hearing Date: January 8, 2027_ Hearing Time: 9:00 a.m._ Hearing Location: Department 8A Date Action file: September 29, 2025 Trial Date: TBA **Reservation # A-23087-004**

I. INTRODUCTION

Plaintiff MINYING ZHANG ("Plaintiff") seeks the Court's approval, pursuant to Labor Code section 2699(s)(2) of a settlement of Plaintiff's claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), arising from Defendant HOT POT SACRAMENTO 1, LLC ('HOT POT SAC") alleged non-payment of wages, as well as other violations of the California Labor Code. For the reasons explained below, Plaintiff respectfully requests that the Court approve the settlement.

This Motion refers to, and is intended to, comply with the Court's Checklist for Approval of Class Action and/or PAGA Settlements (hereinafter "Court Checklist""). See Bluer Decl., ¶ 2.

II. FACTS & PROCEDURAL HISTORY [Court Checklist No. 1]

This Action involves individual labor claims brought by MINYING ZHANG, CHAOJIE ZHOU, QITENG MA, ZHENHUA XU, CHUPING CHEN, and ZHIGUANG LI, as well as PAGA claims brought by Plaintiff MINYING ZHANG. The individual claims relate to wage & hour violations. Plaintiff ZHANG also brought a claim of pregnancy discrimination under the Fair Employment & Housing Act. The individual claims were separately settled.

This PAGA dispute is approximately two years old. On October 18, 2024, Plaintiff ZHANG filed a notice with the Labor Workforce and Development Agency ("LWDA") alleging that Defendant HOT POT SACRAMENTO violated minimum wage and overtime laws, as well as labor laws governing earnings statement compliance, tip pooling and expense reimbursement. Bluer Decl., **EXHIBIT 'A,'** Notice to LWDA. The LWDA never communicated its intent to investigate Plaintiff ZHANG's alleged PAGA violations within 65 days of Plaintiff's LWDA notice. Bluer Decl., ¶ 3.

On November 11, 2024, MINYING ZHANG, ZHENHUA XU, CHUPING CHEN, and ZHIGUANG LI, and HOT POT SAC entered into a tolling agreement, which tolled the statute of limitations for both the individual and PAGA claims. Over the next 10 months, Plaintiffs and HOT POT SAC attempted to resolve Plaintiffs' respective claims. Despite their good faith efforts, the parties were unable to reach a settlement of either the individual claims or the PAGA claims. Bluer Decl., ¶ 4.

In or about mid-September 2025, Plaintiff ZHANG notified HOT POT SAC of their intent to terminate the tolling agreement. On September 29, 2025, Plaintiffs filed a Complaint alleging that Defendant HOT POT SAC violated Gov. Code § 12940 *et. sec.* (ZHANG), 29 U.S.C. 203, 216; Cal. Labor Code §§ 203, 226(e), 1194, 510, 226.7, 2802, IWC Wage Order 5-2001 (Split Shift Premiums). The Complaint also sought civil penalties under PAGA. Bluer Decl., ¶ 5, **EXHIBIT 'B',** Complaint.

On November 5, 2025, Defendants filed a Petition to Compel Binding Arbitration, which was originally set for hearing on January 30, 2026. On its own motion, the Court continued the hearing to April 17, 2026. Between November 5, 2025 and mid-April 2026, the Parties continued to negotiate the resolution of the individual and PAGA claims through both oral and written communications.

As part of the parties' informal efforts to resolve the labor claims, HOT POT SAC agreed to provide relevant documents, including Plaintiffs' personnel files, payroll and time records, and documents concerning the policies and practices at issue in Plaintiffs' PAGA claims. The aggrieved employees consist of 18 cashiers, food servers, and bussers. The records from the six Plaintiffs (i.e., two cashiers and four food servers) represent approximately 33% of the PAGA group. *See* Bluer Decl., ¶ 6. PAGA counsel relied on these records to evaluate the strength of the PAGA claims.

III. SETTLEMENT AGREMENT, TERMS, AND VALUATION OF PAGA CLAIMS (Checklist Nos. 2-5, 7, 9-12)

A. Settlement Agreement and Settlement Amount (Court Checklist Nos. 2, 3, 4 and 18)

In exchange for the dismissal of the PAGA claims set forth in Section B, below, HOT POT SAC has agreed to make a one-time gross payment in the sum of $50,000.00 (all cash, no non-cash consideration). The proposed net settlement, if approved by the Court, is expected to include the following expenses:

Nature of Expenses	Amount
Attorney's Fees	$11,365.00
Litigation Costs	$1,135.00
Settlement Administrator Fees ("not to exceed")	$2,500.00
TOTAL DEDUCTIONS	**$15,000.00**

For details, *see* Bluer Decl., ¶¶ 12,17, and 18.

Based on the foregoing, the net settlement amount is **$35,000.00.** The PAGA representative, Plaintiff Minying Zhang, is not requesting an incentive award.

A copy of the PAGA Settlement Agreement is attached to the Declaration of Mark J. Bluer as **EXHIBIT 'C. '**

B. Summary of the Claims being Settled (Court Checklist Nos. 5, 7, 11).

The payment shall be made within 15 days of the date the Court enters Judgment in this matter **(Court Checklist No. 11).** Plaintiff ZHANG and HOT POT SAC agreed that the settlement will result in the dismissal of claims of all labor code violations alleged in the complaint: The PAGA-related claims stem from the following categories of violations –unpaid wages (Labor Code § 1197), tip pooling violations (Labor Code § 351), and failure to reimburse expenses (Labor Code § 2802). Each of these alleged violations is disputed by Defendant HOT POT SAC.

The PAGA agreement does not impose any affirmative obligations on either the aggrieved parties or PAGA counsel. **(Court Checklist No. 5)**

Unpaid Wages - Plaintiff ZHANG's core allegation in this action is that she and the aggrieved employees were required to work off-the clock, including a requirement to arrive 15 minutes prior to clocking in. The alleged off-the-clock hours worked by the aggrieved employees were unpaid. This unpaid wage claim triggers several violations alleged by Plaintiff, including Failure to Pay Minimum Wage (Section 1197), Failure to Pay Overtime Wages (Section 510), non-complaint earnings statements as required by Cal. Labor Code 226(a), the failure to record and timely pay wages under Labor Code Section 204, as well as the failure to immediately pay of all wages owed at the time of an employee's termination under Labor Code Section 203.

Each of the aforementioned violations, if proven, would give rise to PAGA civil penalties as provided in Labor Code Sections 558 and 2699.5. However, as stated below, these civil penalties may be limited due to prohibitions against stacking.

Tip Pooling Violations – Labor Code section 351 prohibits the employer or its agents (i.e., management) from sharing tips with employees. Plaintiff ZHANG alleges that the food servers pooled their tips and the restaurant manager, an agent of HOT POT SAC, shared tips with the aggrieved employees.

The aforementioned violations, if proven, would give rise to PAGA civil penalties as provided in Labor Code Section 2699.3(c).

Failure to Reimburse Expenses – Plaintiff ZHANG alleges that she and the aggrieved employees were required to drive their own vehicles to pick up restaurant food and supplies.

They were never reimbursed for the mileage driven (or fuel used). Section 2802 of the Labor Code requires employers to reimburse employees for all expenses incurred on behalf of the employer. The aforementioned alleged violations, if proven, would give rise to PAGA civil penalties as provided in Labor Code Section 2699.5.

Though the Complaint alleges other PAGA violations, they are beyond the scope of the October 18, 2024 PAGA notice. For this reason, they are not summarized herein.

C. How the settlement was reached (Court Checklist No. 7).

As set forth above, the settlement of the PAGA claims was reached 19 months after Plaintiff ZHANG's counsel initially demanded that HOT POT SAC cure the aforementioned violations. PAGA Counsel initially obtained evidence directly from Plaintiffs. These records included work schedules and earnings statements. PAGA Counsel then followed up with a request for HOT POT SAC to produce all six Plaintiffs' personnell and payroll records pursuant to Labor Code §§ 432 and 1198.5. HOT POT SAC complied with this request. These records provided sufficient documentation to evaluate the strength of the labor code violations. Bluer Decl., ¶ 9. Plaintiff's efforts to resolve the case prior to filing the instant civil action included drafting a demand letter, follow-up emails, telephonic and video calls with opposing counsel regarding settlement. Bluer Decl., ¶ 10.

Dissatisfied with the progress of the negotiation, Plaintiffs filed the instant civil Action; in response, Defendant HOT POT SAC filed a Petition to Compel Arbitration. The filing of the suit renewed settlement discussions between counsel (oral and written). The parties had discussed engaging a mediator, but were able to make a breakthrough in their negotiations, which obviated the need to engage a mediator. Just prior to the April 17, 2026 hearing on the Petition for the Motion to Compel Arbitration, the parties agreed upon the terms of settlement for the PAGA claims as well as for the individual claims.   Bluer Decl., ¶ 10. The Non-PAGA claims were separately settled between Plaintiffs and HOT POT SAC.

PAGA counsel's investigation into the claims included meeting with 6 aggrieved employees (all meetings were conducted in Chinese); a review and evaluation of documents provided by the aggrieved parties; forensic evaluation of the aggrieved employee's payroll records; follow up demands for supplemental payroll records (which were successfully obtained); damages calculations; and propounding special interrogatories. Bluer Decl., ¶ 11.

D. Release of PAGA claims (Court Checklist Nos. 7 & 8)

Pursuant to Section 3.1 of the PAGA Settlement Agreement, the aggrieved parties are releasing all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint *during the PAGA Period*. Bluer Decl., ¶ 8, **EXHIBIT 'C,'** PAGA Settlement Agreement. This release is limited to the 19 pay periods (October 19, 2023 through July 21, 2024) because Plaintiffs lack sufficient evidence to prosecute a claim for PAGA civil penalties beyond the PAGA period. The parties have agreed to set the PAGA period as less than one year. This limitation allows for the LWDA or another PAGA representative to bring claims for violations that were alleged to have occurred after July 21, 2024. Bluer Decl., ¶ 12.

E. Notice of Settlement to LWDA (Court Checklist No. 10).

On August 17, 2026, PAGA Counsel provided the LWDA with notice of settlement. Bluer Decl., **EXHIBIT 'F.',** LWDA confirmation of receipt of notice.

F. Estimated penalty distribution to aggrieved employees (Court Checklist No. Nos. 6, 12 & 13).

There are eighteen (18) aggrieved employees. These persons are defined as employees who worked the front of restaurant staff (i.e., food servers, cashiers and bussers) during the PAGA period (October 19, 2023 to July 21, 2024). There were a total of 19 bimonthly payroll periods in the PAGA period. The eighteen (18) aggrieved employees worked an aggregate total of 253 PAGA payroll periods.

Each aggrieved employee will receive $48.42 per pay period worked ($12,250 ÷ 253 pay periods). The estimated average amount an aggrieved employee will receive as his or her share on the distribution will be $680.57 [(253 ÷18 employees = 14.05 pay periods per employee) x $48.42].

The settlement does not provide for a *cy pres* distribution **(Court Checklist No. 13).**

G. Settlement Administration process and procedures (Court Checklist No. 14).

As set forth in the Settlement Agreement, the Parties agreed to engage Phoenix Class Action Administrative Solutions to serve as the PAGA Settlement Administrator (hereinafter, "Phoenix"). HOT POT SAC will fund the settlement; provide Phoenix with names, addresses and tax identification information for all 18 employees in the PAGA class, as well as the employment term of each employee. Phoenix will be responsible for mailing settlement notices; distributing the Settlement Fund in accordance with the Court's order; calculating payments (including the LWDA Payment, and workweek-based payments to Covered Employees); and preparing and mailing all settlement checks and IRS Forms 1099. The Settlement Administrator has agreed to perform all necessary settlement administration duties for a reasonable fee of $2,500.00. This proposed expense is fair, adequate, and reasonable given the number of Covered Employees (18) and the duties to be performed. Bluer Decl., ¶ 12.

IV. LEGAL ARGUMENT

A. The Purposes and Policies of PAGA

PAGA was passed because the Legislature believed it necessary "to achieve maximum compliance with state labor laws" and "to ensure an effective disincentive for employers to engage in unlawful and anticompetitive business practices." 2003 Cal. Legis. Serv. Ch. 906 §1(a). The Legislature further found that, while self-policing efforts have had some success, "in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor Code." *Id.* at § 1(b). Through PAGA, the Legislature thus: (1) sought to "enlist[] willing citizens in the task of private enforcement," *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 390; (2) "deputized" aggrieved employees to sue on behalf of the State to enforce state labor laws; and (3) authorized them to recover civil penalties, attorneys' fees, and costs. 2003 Cal. Legis Serv. Ch. 906 (Legislative Counsel's Digest). In bringing a PAGA action, "[t]he employee-plaintiff acts as the proxy or agent of the state labor enforcement agencies, representing the same legal right and interest as those agencies . . . ." *Iskanian*, 59 Cal.4th at 394.

B. Standard of Review

Labor Code § 2699(s)(2) states that "the superior court shall review and approve" PAGA settlements. The Appellate Court in *Moniz v. Adecco USA, Inc*. defined the standard for review in PAGA settlements. It held that the trial court must ensure that the settlement is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56, 77.

C. The Settlement Is "Just" and "In the Public Interest" (Court Checklist No. 9)

The proposed settlement is adequate and just considering the small number of employees in the PAGA class (18 employees), the total pay periods (253) and the risks of litigating all of the claims. In valuing the claims, Plaintiff and her PAGA counsel considered the relative strength and value of each individual claim:

1. **Unpaid Wage Claims (Disputed/Stacking issue)** This category of claims stems from Plaintiff ZHANG's claim that the aggrieved parties were required to work prior to clocking in. This failure to pay wages may implicate several other PAGA violations, including failure to pay minimum wages (CLC § 1197.1), failure to pay overtime wages (CLC § 1194), earnings statement violations (CLC § 226), late payment penalties (CLC § 204) and waiting time penalties (CLC § 203). These violations probably do not trigger separate civil penalties they were derivative of the underlying unpaid wage violation. These violations may not be recoverable if they are deemed to be stacking. Cal. Labor Code §2699(i). Should Plaintiff prevail, the probable value of this claim is $100 civil penalty x 290 pay periods ($29,000.00). However, if this matter were litigated and the requirement to make the aggrieved parties show up early for work was deemed "oppressive," there could the per violation civil penalty equal to $200. Labor Code 2699(f)(2)(B). If so, the total civil penalty for the unpaid wages claim would be $58,000.00.
2. **Illegal Tip Pooling – (Disputed Liability)** Plaintiff ZHANG alleges that the aggrieved parties were forced to share their tips with the restaurant manager in violation of CLC Section 351. Defendants contend that management did not share in the tips, and that the alleged manager was only a "lead" food server. The maximum value of this claim estimate is $100 civil penalty [per Cal. Labor Code 2699(f)(2)] x 290 pay periods ($29,000.00).
3. **Failure to Reimburse (Limited Violations):** Plaintiff's estimate is that there were 6 aggrieved employees who were required to use their own vehicles without receiving reimbursement. The maximum civil penalty estimate is $100 civil penalty [per Cal. Labor Code 2699(f)(2)] x 19 pay periods x 6 employees ($6,000).

Based on the foregoing estimates, the maximum aggregate recovery of civil penalties is $93,000.00 (but probably $64,000.00, if the heightened penalty does not apply). In agreeing to settle the PAGA claims for $50,000, the following factors were considered: (1) As to many of the claims, liability is disputed by defendant; (2) if the settlement is not approved at this time, this case is likely to proceed to a fact-intensive and costly litigation for the next two years; (3) expenses, including interpreter fees, translation fees, deposition transcripts and expert witnesses would be substantial (they could easily exceed the settlement amount if this case is not resolved at this time); and (4) a time-consuming litigation could result in a substantial attorney's fees award that could adversely affect the net PAGA recovery for the LDWA and the aggrieved employees.

Though Plaintiff believes she had a reasonable chance of prevailing if she had an opportunity to conduct further discovery, substantial costs and legal fees would have been incurred. Rather than increasing the total net amount of civil penalties (i.e., after fees and costs), these anticipated expenses could have rendered the litigation impractical by causing the legal fees and costs to "eat into" a future settlement of the civil penalties. Thus, an early settlement in the sum of $50,000.00 appears to be the most expeditious and sensible resolution of the PAGA claims. Bluer Decl., ¶ 14.

Lastly, public policy strongly favors the settlement of litigation. *Consumer Advocacy Group v. Kintetsu* (2006) 141 Cal.App.4th at 46, 63. Because the proposed settlement is neither unjust nor ignores the public interest, it should be approved. *Id.*

D. Payment of Attorneys' Fees and Costs. (Court Checklist Nos. 15 and 17)

As set forth below in detail, PAGA Counsel's requested fee award in the sum of $11,365.00 and cost reimbursement in the sum of $1,135.00 are reasonable and appropriate. There is no fee splitting agreement and Plaintiff ZHANG has given approval of the proposed fee award. Bluer Decl., ¶¶ 17, 18.

1. The Contingent Nature of the Fee and Financial Burden Borne by PAGA Counsel Over the Course of Representation.

The representation provided by PAGA counsel has been wholly contingent. He spent over 30 hours of attorney time on the PAGA claims[1] and advanced $1,135 in out-of-pocket costs to obtain relief for the PAGA Group Members and the State of California (hereinafter "LWDA"). See Bluer Decl. ¶14. PAGA counsel risked not receiving any compensation unless and until recovery from Defendants is obtained. PAGA counsel's law firm bore a significant contingent risk in order to be able to take public interest actions such as this one.

2. PAGA Counsel's Time and Labor.

PAGA counsel initiated these PAGA claims over 21 months ago. During that time, he dedicated considerable labor and monetary resources to prosecute this case. PAGA counsel conducted a significant amount of investigation into the factual and legal issues, Defendants' businesses, and their operations and employment policies, practices, and procedures. PAGA counsel also interviewed and obtained information from Plaintiffs, who do not speak fluent English. PAGA counsel, Mark J. Bluer, Esq, is fluent in Mandarin Chinese and all communications with Plaintiffs were conducted in Chinese. Bluer Decl., ¶ 16. PAGA Counsel conducted legal research, reviewed and analyzed a large volume of documents and data, evaluated the PAGA claims and calculated the potential monetary recovery under the PAGA. PAGA counsel also met and conferred with Defendant's counsel over numerous PAGA-related issues relating to discovery (formal and informal), possible mediation, and settlement. PAGA

---

[1] This total is based on PAGA counsel's estimate of actual attorney time related solely to the PAGA claims.

counsel also performed other work including, *inter alia*, case strategy and analysis; as well as drafting, reviewing, and revising pleadings. Bluer Decl., ¶ 17.

The Declaration of Mark J. Bluer sets forth in detail the actual time he spent performing tasks related to the prosecution of the PAGA claims. Bluer Decl. ¶¶ 19, 20. These hours were required to bring the case to its successful conclusion. Based on the modest number of hours spent and his reasonable hourly rate, the lodestar totals $15,000 (30 hrs. x $500/hr.), including anticipated time through the hearing on this Motion. Bluer Decl., ¶ 16. The Lodestar sum exceeds the $11,365.00 fee that PAGA counsel seeks to have the Court approved. This modest fee ensures that the LWDA and the aggrieved employees receive a reasonable share of the settlement.

3. A Lodestar Cross-Check Also Confirms Reasonableness of the Requested Fee.

In this case, the requested fee award of $11,365.00 falls below the lodestar ($500/hr. x 30 hours = $15,000.00). PAGA Counsel has not requested a multiplier above 1.0, and no additional fees (clerical or paralegal) have been added to the calculation. Here, the approval of the requested fee is compelling in that it ensures that the LWDA and the aggrieving parties can receive a reasonable recovery.

4. PAGA Counsel Hours Worked were Reasonable.

The total hours worked by counsel (30 hours) are reasonable and conservative estimate of the hours that will be spent on this case through the hearing of this Motion. Bluer Decl. ¶ 14. Considering the facts and circumstances of this case, as well as the results achieved, PAGA Counsel has spent a reasonable number of hours on this matter.

5. PAGA Counsel's Hourly Rate is within the range of hourly rates for other Attorney's with Similar Backgrounds.

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and incentivized to enforce important rights and protections like those at issue in this matter. *See Ketchum*, *supra*, 24 Cal.4th at 1132–33. In awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases." *Fleury v. Richemont North America, Inc.* (N. D. Cal. Nov. 4, 2008) 2009 WL 1010514, at *5 (quoting *In re Wash. Pub. Power Supply Sys. Secs. Litig*. (9th Cir. 1994) 19 F.3d 1291, 1299); *see also Rader v. Thrasher* (1962) 57 Cal. 2d 244, 253 (confirming that "[a] contingent fee contract, since it involves a gamble on the result, may properly provide for a larger compensation than would otherwise be reasonable") (internal quotation marks omitted). The $500 hourly rate of PAGA Counsel Mark J. Bluer, Esq. is within the range of prevailing rates for attorneys with his professional background and experience handling employment litigation, and in the community. In view of the reasonable hourly rate and the relatively small attorney's fees request, PAGA counsel defers to the wisdom and experience of the Court to adjudicate the reasonableness of PAGA counsel's fee request.

6. The Proposed Fee Award allows for the LWDA and the Aggrieved Parties to Receive a Sufficient Portion of the Recovery.

In percentage terms, the requested fee award is significantly less than the amount PAGA counsel would receive if he requested compensation based on his hourly rate and his hours worked. Accordingly, Plaintiff respectfully requests that the Court approve an attorney's fees award in the amount of $11,365.00 because it is reasonable and justified in light of the hours actually spent by counsel; it is supported by a lodestar cross-check, and maximizes the net recovery to both the LWDA and to the aggrieved employees. Bluer Decl., ¶ 17.

E. PAGA Counsel's Litigation Costs Should Be Approved (Court Checklist No. 18).

Attorneys are permitted to recover their litigation costs and expenses under the common fund doctrine and PAGA. *See Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424, n.6; Cal. Lab. Code§ 2699(g)(1). PAGA counsel seeks to recover reasonable out-of-pocket PAGA-related costs in the amount of $1,135.00. *See* Bluer Decl., ¶ 18.

V. CONCLUSION

For all the reasons discussed above, the parties request that the Court approve the proposed settlement.

August 17, 2026

BLUER & BLUER, LLP

Mark Bluer

Mark J. Bluer, Attorneys for
Plaintiffs MINYING ZHANG,
CHAOJIE ZHOU, QITENG MA,
ZHENHUA XU, CHUPING CHEN,
and ZHIGUANG LI