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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

INEZ PARQUETTE, an individual, on behalf
of herself, and on behalf of all other aggrieved
employees,

PLAINTIFFS,

vs.

INLAND VALLEY PARTNERS, LLC; and
Does 1 through 50, Inclusive,

DEFENDANTS.

Case No: 22STCV04406

Action Filed: February 4, 2022

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
PAGA SETTLEMENT AND JUDGMENT**

Date: November 30, 2022

Time: 8:30 a.m.

Reservation ID: 386297176530

Dept.: 24

Judge: Kristin S. Escalante

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Inez Parquette (“Plaintiff”) reached a settlement of the California Labor Code Private
4 Attorneys General Act of 2004, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this action
5 against Defendant Inland Valley Partners, LLC (“Defendant”) (collectively, the “Parties”). In
6 accordance with California Labor Code § 2699(l), Plaintiff now asks this Court to review and approve
7 the settlement of Plaintiff’s PAGA claims¹. The PAGA settlement is fair, reasonable, and adequate
8 as to the Aggrieved Employees and satisfies all statutory criteria for approval. This is only a settlement
9 of the PAGA claims for civil penalties and is not a class settlement and does not release the individual
10 wage claims, if any, of the affected employees other than Plaintiff herself. Cal. Labor Code §
11 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*,
12 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

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

20 **II. RELEVANT FACTS**

21 Plaintiff provided services to Defendant and Defendant’s clients as a non-exempt employee in
22 California during the PAGA Period of November 24, 2020 to July 26, 2022. On November 24, 2021,
23 Plaintiff, on behalf of herself and on behalf of other “Aggrieved Employees” submitted a notice and
24 draft complaint to the LWDA memorializing claims against Defendant for alleged violations of the
25 California Labor Code, including claims for failure to pay all minimum, regular, and overtime wages
26 in violation of Labor Code sections 510, 1194, 1197, and 1197.1; 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 provide accurate itemized wage statements in violation of Labor Code section
4 226; claims for violations of Labor Code sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226,
5 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199,
6 2802, and 2804; Violation of the applicable Industrial Welfare Commission Wage Order(s); and
7 claims for civil penalties and other relief pursuant to Labor Code section 2699, and the sections
8 preceding and following section 2699. (LWDA Case No. 854436-21.)

9 On February 4, 2022, Plaintiff filed a complaint against Defendant in the Superior Court of
10 Los Angeles, Case No. 22STCV04406, alleging a single cause of action for violations of PAGA based
11 on the above Labor Code and Wage Order violations. (Zakay Dec. at ¶ 4.)

12 Plaintiff and Defendant agreed to mediate the action with Steven J. Serratore, Esq., an
13 experienced wage and hour PAGA action mediator. Prior to the mediation, the Parties engaged in
14 significant informal discovery in order to investigate Plaintiff's claims and to evaluate Defendant's
15 potential liability exposure. As a result, Plaintiff obtained thousands of pages of documents, including
16 but not limited to, Defendant's written wage and hour policies and time and payroll data for the
17 Aggrieved Employees. Based on this extensive discovery, Plaintiff was able to perform damages
18 calculations and assess her claims relevant to Defendant's defenses. (Zakay Dec. at ¶ 5.)

19 Thereafter, on July 26, 2022, the Parties engaged in a full-day mediation with Mr. Serratore.
20 At the conclusion of the full-day mediation, the Parties were reached a settlement which is
21 memorialized by the Settlement Agreement. The settlement was negotiated in light of all known facts
22 and circumstances and the uncertainty associated with litigation – including the risk of Plaintiff not
23 being able to maintain representative claims and establishing manageability, the difficulty of proving
24 Plaintiff's claims in a manageable trial, the merits of Defendant's potential defenses, and the
25 significant delay and potential appellate issues inherent to litigation – and was reached after extensive
26 arm's length negotiations, with the assistance of Mr. Serratore. (Zakay Dec. at ¶ 6.)

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

28 The PAGA Settlement is subject to Court approval consistent with Labor Code § 2699(1)(2).

1 (Settlement Agreement at III(C).) The Settlement Agreement negotiated by the Parties provides for a
2 “Gross Settlement Amount” payment in the amount of \$270,000 to resolve the PAGA claims
3 (hereinafter referred to as the “PAGA Settlement”). From this PAGA Settlement of \$270,000, there
4 is a deduction of a Plaintiff’s Counsel Award for attorneys’ fees in the amount of \$90,000 (which is
5 one-third of the PAGA Settlement), plus costs and expenses not to exceed \$15,000, and payment of
6 Settlement Administration Costs estimated in the amount of \$8,000. (Settlement Agreement at
7 III(I)(8)-(9).) After these deductions, the amount remaining – \$157,000 – is the “Net Settlement
8 Amount.” (Settlement Agreement at I(K).) (Zakay Dec. at ¶ 7.)

9 Of the Net Settlement Amount, seventy-five percent (75%) will be paid to the LWDA, and the
10 remaining twenty-five percent (25%) will be paid to the Aggrieved Employees. (Settlement
11 Agreement at I(K).)² This 75/25 allocation is required by Labor Code § 2699 as explained by *ZB*,
12 *N.A. v. Superior Court*, 8 Cal.5th 175 (2019). (Zakay Dec. at ¶ 8.)

13 The individual PAGA payment for each Aggrieved Employee shall be based on the number of
14 pay periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total
15 pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement Agreement at
16 III(I)(1).) The PAGA Period is the time period between November 24, 2020 to July 26, 2022.
17 (Settlement Agreement at I(O).) (Zakay Dec. at ¶ 9.)

18 Defendant provided that there were 491 Aggrieved Employees who collectively worked
19 12,500 pay periods during the PAGA Period. (Settlement Agreement at III(A)(2).) (Zakay Dec. at ¶
20 10.)

21 A. Release of Claims

22 Upon entry of Judgment and funding in full of the PAGA Settlement by Defendant, the
23 Released Parties shall be entitled to a release from the State of California and Plaintiff as to the
24 following claims: “Released PAGA Claims” means all PAGA claims alleged in the operative
25 complaint and Plaintiff’s November 24, 2021 Notice to the LWDA which occurred during the PAGA
26

27
28 ² “Aggrieved Employees” means individuals employed by Defendant as non-exempt employees in California during the PAGA Period. (Settlement Agreement at I(B).)

1 Period. (Settlement Agreement at I(V).) (Zakay Dec. at ¶ 11.)

2 The Gross Settlement Amount shall be due by Defendant to the Settlement Administrator via
3 wire transfer or check on or before the Funding Date. (Settlement Agreement at III(A)(3).) Defendant
4 will provide the Employee Data to the Settlement Administrator (ILYM Group) no later than five (5)
5 calendar days after the Effective Date. (Settlement Agreement at III(H).) The Settlement
6 Administrator will mail the individual Aggrieved Employee Payments by regular First-Class U.S. Mail
7 to the Aggrieved Employees' last known mailing address no later than five (5) calendar days after the
8 Funding Date. (Settlement Agreement at III(I)(4).) Any individual Aggrieved Employee Payments
9 returned to the Settlement Administrator as non-delivered on or before the check cashing expiration
10 deadline shall be re-mailed to any forwarding address provided. (Settlement Agreement at III(I)(5).)
11 If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine
12 a correct address by lawful use of skip-tracing, or other similar search, and shall then perform a re-
13 mailing. (*Id.*) Checks will remain valid and negotiable for one hundred eighty (180) days. (Settlement
14 Agreement at III(I)(6).) Aggrieved Employees who received a re-mailed individual Aggrieved
15 Employee payment shall have their check expiration deadline extended fifteen (15) days from the
16 original check expiration deadline. (Settlement Agreement at III(I)(5).) If an Aggrieved Employee
17 does not cash his or her settlement check within ninety (90) days, the Settlement Administrator will
18 send a letter to such persons, advising that the check will expire after the 180th day, and invite that
19 Aggrieved Employee to request reissuance in the event the check was destroyed, lost, or misplaced.
20 (Settlement Agreement at III(I)(6).) In the event Aggrieved Employee payment checks have not been
21 cashed within one hundred and eighty (180) days or the extended deadline defined above, the
22 Settlement Administrator shall transmit all funds represented by such uncashed checks, plus any
23 interest accrued thereon, to the Controller of the State of California to be held pursuant to the
24 Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the names and corresponding
25 amounts associated with each Aggrieved Employee whose check(s) are cancelled. (Settlement
26 Agreement at III(I)(6).) The individual PAGA payments are 100% penalties and shall be reported
27 using IRS tax form 1099. (Settlement Agreement III(I)(2).) (Zakay Dec. at ¶ 12.)
28

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

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

8 The claim before this Court is a representative claim under the PAGA on behalf of the State of
9 California for civil penalties pursuant to the PAGA. The Parties have agreed to settle the PAGA claims
10 in their entirety after significant informal discovery, and an arm's length mediation. The settlement is
11 intended to fully and finally resolve the Released Claims asserted by Plaintiff on behalf of the State of
12 California. This is only a settlement of the PAGA claims for civil penalties and is not a class settlement
13 and does not release the individual claims, if any, of the Aggrieved Employees. This settlement does
14 not release any claim that is not a PAGA claim.³ Attorneys' fees equal to one-third of the PAGA
15 Settlement amount (\$90,000) and litigation expenses in an amount not to exceed \$15,000 will also be
16 paid to Plaintiff's Counsel as part of the settlement in accordance with California Labor Code §
17 2699(g)(1) as set forth in the Settlement Agreement.⁴ Lastly, payment to the Settlement Administrator
18 estimated in the amount of \$8,000 to perform the administrative duties to distribute the settlement
19 money shall also be paid. (Zakay Dec. at ¶ 14.)

20 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT** 21 **OF THE PAGA CLAIMS**

22 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any
23 civil [PAGA] action filed pursuant to this part. Further, the Court in *Moniz v. Adecco USA, Inc.* (2021)
24 72 Cal.App.5th 56, 77 stated that "the trial court must review and approve a PAGA settlement (§ 2699,

25
26 ³ 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 ⁴ As set forth in the accompanying Zakay Dec., Plaintiff's Counsel incurred costs in the current
amount of \$18,416.51, which is greater than the cost allocation in the Settlement Agreement. See
Zakay Dec. at ¶ 29.

1 subd.(1)(2)), and the Supreme Court has in dictum referred to this review as a safeguard.” (Citing *Kim*
2 *v. Reins Int’l California, Inc.* (2020) 9 Cal.5th 73, 88; internal quotations omitted.) “The Supreme
3 Court has also observed that trial court approval ensures that any negotiated resolution is fair to those
4 affected,” leading the Court in *Moniz* to determine that “adoption of a standard of review for
5 settlements that prevents fraud, collusion or unfairness, and protects the interests of the public and the
6 LWDA in the enforcement of state labor laws is warranted.” (*Moniz, supra*, 72 Cal.App.5th at 77;
7 citing *Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 549; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
8 1794, 1800–01; internal citations omitted.) In other words, “[i]n review and approval of a proposed
9 settlement under section 2699, subd. (1)(2), a trial court thus must scrutinize whether, in resolving the
10 action, a PAGA plaintiff has adequately represented the state’s interests, and hence the public interest.”
11 (*Moniz, supra*, 72 Cal.App.5th at 88.) The proposed settlement shall be submitted to the agency at the
12 same time that it is submitted to the court. Consequently, the Parties respectfully ask the Court to
13 review and approve the settlement of the PAGA claims and the PAGA Settlement amount to be paid
14 as part of the proposed settlement.

15 A. The PAGA Settlement Amount to Be Paid Is Fair and Reasonable

16 Plaintiff and Plaintiff’s Counsel believe that the PAGA Settlement amount is fair and
17 reasonable and therefore “shall” be reviewed and approved. Here, the PAGA Settlement amount of
18 \$270,000 is significantly larger than amounts previously approved by Courts throughout California.
19 (Zakay Dec. at ¶ 15.)

20 California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the
21 maximum civil penalty if, based on the facts and circumstances, to do otherwise would result in an
22 award that is “unjust, arbitrary and oppressive or confiscatory.” Before and during the mediation,
23 Defendant argued, among other things, that it was unlikely that any judge would award more than the
24 actual amounts owed on the claims, let alone the full \$100 or \$200 per violation. In *Carrington v.*
25 *Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial
26 which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties
27 awarded in this case could be significantly less than Plaintiff’s calculation, even had Plaintiff prevailed
28 on the PAGA claim. Here, multiplying the number of pay periods (12,500) by \$5 results in a total

1 potential liability of **\$62,500**. Therefore, even assuming Plaintiff prevailed on each claim at trial, the
2 result obtained by Plaintiff in the PAGA Settlement exceeds the amount Plaintiff would have
3 recovered had the Court relied on *Carrington* in awarding the PAGA penalties. (Zakay Dec. at ¶ 16.)

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

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

13 Labor Section	14 Code	15 Number of employees	16 Statutory penalty	17 Number of pay periods / violations	18 Violation rate	19 Total Penalties
20 226 (wage statement violations)		491	\$100	12,500	100% of total pay periods	\$1,250,000
21 510, 558, 1194 and 1197 (unpaid wages)		491	\$100	2,262	18.1% of total pay periods	\$226,200
22 512 and 226.7 (meal period violations)		491	\$50	6,887	55.1% of total pay periods	\$344,350
23 512 and 226.7 (rest period violations)		491	\$50	6,887	55.1% of total pay periods	\$344,350
24 2802 (unreimbursed business expenses)		491	\$100	6,250	50% of total pay periods	\$625,000

25 Thus, at the time of mediation, Plaintiff’s Counsel estimated Defendant’s maximum liability
26 exposure at \$2,790,000. Consequently, the PAGA Settlement amount of \$270,000 is 9.7% of
27 Defendant’s estimated maximum liability exposure – before any reduction. (Zakay Dec. at ¶ 17.)
28

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

9 Defendant maintains that Plaintiff and the Aggrieved Employees were properly compensated,
10 and that it did not violate the Labor Code. Most importantly and relevant to this case, Defendant
11 argued that the Supreme Court decision in *Brinker v. Super. Ct.*, 53 Cal.4th 1004 (2012), weakened,
12 if not eliminated, Plaintiff’s claims, on liability, value, and discretion with respect to the PAGA
13 penalties, as to the meal and rest period claims. Before and during the mediation, Defendant
14 aggressively argued that Defendant’s policies and culture afforded the Aggrieved Employees an
15 opportunity to take timely meal and rest breaks, and that employees like Plaintiff *chose* not to take
16 compliant breaks. Specifically, Defendant argued its written policies were compliant with the
17 California Labor Code and provided for compliant meal and rest breaks. Defendant argued, therefore,
18 that under the *Brinker* decision it has no liability for the missed breaks whatsoever. Defendant argued
19 that it adopted and strictly enforced lawful policies and afforded Plaintiff and the Aggrieved
20 Employees adequate time to take compliant meal periods and rest breaks. Because Plaintiff’s claims
21 were largely based on the missed meal and rest breaks, and because Defendant’s policies were indeed
22 compliant, this presented a very real concern for Plaintiff. If successful, this defense could eliminate
23 or substantially reduce any recovery under PAGA. While Plaintiff believes that this defense, and
24 others, could be overcome, Defendant maintains these defenses have merit, which therefore presents
25 a serious risk to recovery of penalties. (Zakay Dec. at ¶ 19.)

26 Accordingly, Defendant disputes and denies Plaintiff’s allegations and claims asserted in the
27 operative complaint which are resolved by the Settlement Agreement. Defendant asserted additional
28 defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties.

1 Defendant could argue that no penalties prior to the PAGA notification should be awarded because
2 the violations were not intentional, and at least one court has so ruled. These defenses present a risk
3 to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be
4 awarded. (Zakay Dec. at ¶ 20.)

5 Given Defendant's potential defenses to the violations at issue and the risks and costs of
6 continued litigation, Plaintiff and her attorneys believe that the PAGA Settlement is fair and
7 reasonable. Plaintiff's Counsel have significant experience litigating wage and hour claims including
8 claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than similar
9 settlements that courts have approved. The PAGA Settlement, along with the other terms of the
10 proposed settlement, were negotiated by experienced counsel at arm's length with the assistance of an
11 experienced and reputable mediator, Mr. Serratore. (Zakay Dec. at ¶ 21.)

12 As set forth in the accompanying proof of service, the LWDA has been provided notice of this
13 motion and the PAGA Settlement. The decision of the LWDA to accept the PAGA Settlement and
14 not oppose the motion should be given considerable weight. This is not a situation where the Court
15 needs to be concerned about the rights of absent employees as in a class settlement, as this PAGA-
16 only settlement does not release the individual claims of absent employees, and the LWDA is a
17 sophisticated government entity that is more than able to look out for its own rights. (Zakay Dec. at ¶
18 22.)

19 Based on Plaintiff's Counsel's investigation, analysis and discounts for risk factors, Plaintiff
20 adequately represented the interests of both the State and the public in resolving this action and
21 reaching the proposed PAGA Settlement. (Zakay Dec. at ¶ 23.)

22 Notably, in the recent decision in *Viking River Cruises, Inc. v. Moriana*, (2022) 142 S.Ct. 1906,
23 the United States Supreme Court held that the Federal Arbitration Act requires enforcement of a
24 bilateral arbitration agreement providing that an employee cannot raise representative claims,
25 including under PAGA. Given the Supreme Court's decision, this action could be dismissed
26 altogether. In fact, the Supreme Court's decision in *Viking River Cruises* created a tremendous amount
27 of uncertainty at the time the Parties negotiated a settlement. The proposed PAGA Settlement allows
28 Plaintiff to resolve the claims on her behalf, on behalf of the Aggrieved Employees, and on behalf of

1 the State of California before *Viking River Cruises* rids them of the opportunity to receive a settlement
2 at all. (Zakay Dec. at ¶ 24.)

3 Finally, Plaintiff's diligent and efficient litigation of this action resulted in the creation of an
4 ascertainable common fund of \$270,000 that will substantially benefit the State of California and the
5 Aggrieved Employees. (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 \$90,000, representing one-third of the \$270,000 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 \$270,000, 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 PAGA Settlement was possible because Counsel was able to persuade Defendant that there was
4 an 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 Declaration of Shani O. Zakay at ¶ 28, and the Declaration of Jean-Claude Lapuyade at ¶ 4, the fee
8 award represents Plaintiff's Counsel's current combined lodestar of \$72,908.00 with a multiplier of
9 1.23, and with additional work to be performed such that the multiplier will ultimately be even lower.
10 Generally, the Ninth Circuit and California Courts award multipliers between 2 to 4 times the lodestar
11 to reward counsel for accepting the contingent risks of the litigation or obtaining good results. *See*,
12 *e.g.*, *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier between 2.03 and 2.13);
13 *Pellegrino v. Robert Half Int'l, Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0
14 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91
15 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v.*
16 *Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which
17 was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal.
18 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales*
19 *Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award
20 that represented a multiplier of 2.76 as falling within the "majority" range for risk multipliers). (Zakay
21 Dec. at ¶ 27.)

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

27 Based on Plaintiff's Counsel's lodestar, Plaintiff's Counsel's requested fee award reflects a
28 request for a reasonable hourly rate of \$625.43. Specifically, dividing \$90,000 by the number of hours

1 spent by Plaintiff's Counsel on the case (143.9), results in an average hourly rate of \$625.43, which is
2 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 the \$15,000 allocation for costs in the Settlement Agreement, which is less than
5 the \$18,416.51 actually incurred. These expenses are documented in the accompanying Zakay Dec.
6 at ¶ 29, and JCL Dec. at ¶ 3.

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: November 2, 2022

ZAKAY LAW GROUP, APC

12
13 By:



Shani O. Zakay
Julieann Alvarado