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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

MELINA WILSON, an individual, on behalf
of herself, on behalf of all persons similarly
situated,

Plaintiffs,

vs.

SPREEN, INC. dba SPREEN HONDA;
HUDSON MOTOR CARS, LLC dba
SPREEN ACURA; JTS MOTOR CARS,
LLC dba SPREEN MAZDA; HUNTER
MOTOR CARS, INC. dba SPREEN HONDA
CORONA; and Does 1 through 50, Inclusive,

Defendants.

Case No. CIVSB2119857

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

Date: April 5, 2022

Time: 10:00 a.m.

Dept.: S26

Judge: Hon. David Cohn

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Melina Wilson (“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 Defendants Spreen, Inc. dba Spreen Honda; Hudson Motor Cars, LLC dba Spreen Acura; JTS
6 Motor Cars, LLC dba Spreen Mazda; and Hunter Motor Cars, Inc. dba Spreen Honda Corona
7 (“Defendants”) (collectively, the “Parties”). In accordance with California Labor Code § 2699(l),
8 Plaintiff now asks this Court to review and approve the settlement of Plaintiff’s PAGA claim.¹ This
9 is only a settlement of the PAGA claim for civil penalties and is not a class settlement and does not
10 release the individual wage claims, if any, of the affected employees other than Plaintiff herself. Cal.
11 Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v.*
12 *Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA). Nor does
13 this waive Defendants’ right to assert *res judicata* or other defense to any other claims or suits asserted.

14 The PAGA settlement is set forth in the accompanying Private Attorneys General Act (Labor
15 Code Section 2698 *et seq.*) Settlement Agreement and Limited Release (“Settlement Agreement”). A
16 true and correct copy of the Settlement Agreement which sets forth the terms for the settlement of the
17 PAGA claim is attached as Exhibit #1 to the Declaration of Shani O. Zakay (“Zakay Dec.”), filed
18 herewith. Capitalized terms shall have the same meaning as defined in the Settlement Agreement.
19 The Labor and Workforce Development Agency (“LWDA”) received notice of this Settlement and
20 this motion as set forth in the Zakay Dec. A proposed order confirming review and approval of the
21 PAGA settlement is submitted herewith.

22 **II. RELEVANT FACTS**

23 Plaintiff was employed by Defendants as a non-exempt employee in California during the
24 PAGA period. On March 16, 2021, Plaintiff served Defendant Spreen Inc. and the LWDA with a
25 Notice of Violations (“PAGA Notice”) and draft complaint memorializing claims against Defendants
26 for alleged violations of the California Labor Code, including causes of action for: failure to pay
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 minimum wages in violation of Labor Code sections 1194, 1197, and 1197.1; failure to pay overtime
2 wages in violation of Labor Code sections 510, 1194, and 1198; failure to provide required meal
3 periods in violation of Labor Code sections 226.7 and 512; failure to provide required rest periods in
4 violation of Labor Code sections 226.7 and 512; failure to provide accurate itemized wage statements
5 in violation of Labor Code section 226; and failure to provide wages when due in violation of Labor
6 Code sections 201, 202, and 203. (LWDA Case No. 825994-21). On July 9, 2021, Plaintiff filed a
7 complaint against Defendants in the Superior Court of San Bernardino County, Case No.
8 CIVSB2119857, alleging a single cause of action for violations of PAGA based on the above Labor
9 Code violations. (Decl. Zakay at ¶4).

10 A. Mediation

11 Plaintiff and Defendants agreed to mediate the action with Hon. Carl J. West (Ret.) (“Judge
12 West”), an experienced and reputable mediator and jurist. Prior to the mediation, in order to evaluate
13 the potential value of the claims, the Parties engaged in significant efforts to obtain the facts regarding
14 the claims asserted, including all of Defendants’ relevant wage and hour policies, the exchange of
15 detailed statistical data regarding assignments performed by Plaintiff and the Aggrieved Employees,
16 the production of hundreds of pages of documents including a large sample of time records and payroll
17 records, and the exchange of detailed briefing and analysis in connection with the mediation. (Decl.
18 Zakay at ¶5.)

19 Thereafter, on April 21, 2021, the Parties participated in a full-day mediation with Judge West.
20 After extensive, arms-length negotiations and bargaining, the Parties reached an agreement to settle
21 based on Judge West’s proposal, which led to the signing of a PAGA Settlement Agreement and
22 Limited Release memorializing the settlement. The settlement was negotiated in light of all known
23 facts and circumstances and the uncertainty associated with litigation – including the risk of Plaintiff
24 not being able to maintain representative claims and establishing manageability, the difficulty of
25 proving Plaintiff’s claims in a manageable trial, the merits of Defendants’ potential defenses, and the
26 significant delay and potential appellate issues inherent to litigation – and was reached after extensive
27 arm’s length negotiations, with the assistance of Judge West. (Decl. Zakay at ¶6.)

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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 PAGA Settlement Fund” payment in the amount of \$300,000 to resolve the PAGA Claim. The Gross PAGA Settlement Fund encompasses attorneys’ fees in the amount of \$100,000 (which is one-third of the PAGA Settlement), reimbursement of incurred costs in an amount not to exceed \$15,000, and Settlement Administration Costs, which will not exceed \$10,000. (Settlement Agreement at §§ 5.2 and 5.3). Once the Attorney Fee/Cost Payment and Administration Costs have been deducted from the Gross PAGA Settlement Fund, the remaining funds will be referred to as the “Net PAGA Settlement Fund.”

The Net PAGA Settlement Fund, approximately \$175,000, shall be allocated as follows: a total of seventy-five percent (75%) shall be paid to the LWDA and the remaining twenty-five percent (25%) shall be paid to the PAGA Employees. (Settlement Agreement at § 5.5.1).² 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 Settlement Share for each PAGA Employee shall be based on the number of payroll periods each PAGA Employee worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period. (Settlement Agreement at § 5.6). The PAGA Period is the time period between March 16, 2020 and July 21, 2021. (Settlement Agreement at § A).

During mediation, Defendant represented to Plaintiff’s Counsel that there are approximately 240 Aggrieved Employees who worked approximately 7,000 pay periods during the PAGA Period. (Settlement Agreement at § 5.1.1).

A. Release of Claims

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

² “PAGA Employees” means all current or former hourly, non-exempt, piece rate, and/or commission-pay employees employed by Defendants in California at any time during the PAGA Period. (Settlement Agreement at § A). The PAGA Period between March 16, 2020 and July 21, 2021.

1 All claims for civil penalties under PAGA, arising during the PAGA Period, based on the facts alleged
2 in the operative complaint and Plaintiff's notice letter to the LWDA³ and any resulting claim for
3 attorneys' fees and costs under PAGA, which occurred during the PAGA Period. ("Released Claims")
4 (Settlement Agreement at § 2.2). The Released Claims in the Settlement Agreement excludes all
5 PAGA claims outside the PAGA Period, all PAGA claims not alleged in the operative complaint or
6 LWDA Notice, and all non-PAGA claims. (*Id.*) The Settlement Agreement does not release any
7 individual claims. (*Id.*)

8 Defendants shall provide the Settlement Administrator, ILYM Group, with a list of all PAGA
9 Employees (the "PAGA Employee List") within ten (10) business days after the Effective Date.
10 (Settlement Agreement at § 4.1). The effective date ("Effective Date") shall be the date the Court signs
11 the order approving the Litigation and PAGA Settlement ("Court Approval Order") and Defendants
12 fund the Gross PAGA Settlement Fund in full. Provided that the Order of Approval is entered by the
13 Court, Defendants hereby agree to fund the Gross PAGA Settlement Fund within thirty (30) days after
14 the Court Approval Order. (Settlement Agreement at § 5.1). No later than ten (10) business days after
15 receipt of the Gross PAGA Settlement Fund from Defendants, the Settlement Administrator will mail
16 settlement checks and a letter explaining why the check is being sent ("Notice"), to the PAGA
17 Employees identified on the PAGA Employees List by postmarked First Class U.S. Mail. (Settlement
18 Agreement at § 4.2). Should any of the Notices be returned as undeliverable, the Settlement
19 Administrator will have five (5) calendar days after it receives the returned undeliverable mail to
20 search for a more current address for the PAGA Employee (via a skip trace or other reasonable
21 method) and to re-mail Notices to the traced address. (Settlement Agreement at § 4.2). Settlement
22 checks issued to PAGA Employees will expire one hundred eighty (180) days from the date they are
23 issued by the Settlement Administrator. (Settlement Agreement at § 5.8). If the check remains
24 uncashed by the expiration of the 180-day period, the Settlement Administrator shall remit any
25 unclaimed funds to the California Unclaimed Fund of the PAGA Employees, and the amounts
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³ A copy of Plaintiff's notice to the LWDA is attached as an exhibit to the Zakay Dec.

1 allocated to each. (*Id.*). The Individual PAGA Payments are 100% penalties and shall be reported
2 using IRS tax form 1099. (Settlement Agreement § 5.7).

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

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

9 The claim before this Court is the representative claim under the PAGA on behalf of the State
10 of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this PAGA
11 claim in its entirety after significant informal discovery, and an arm's length mediation. (Zakay Dec.
12 at ¶14.) The settlement is intended to fully and finally resolve the PAGA Released Claims asserted
13 by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA claims for civil
14 penalties and is not a class settlement and does not release the individual claims, if any, of the PAGA
15 Employees. This settlement does not release any claim that is not a PAGA claim.⁴ Nor does this
16 settlement waive Defendants' right to assert *res judicata* or other available defense to any asserted
17 claim or lawsuit.

18 Attorneys' fees equal to one-third of the PAGA Settlement amount (\$100,000) and litigation
19 expenses in an amount not to exceed \$15,000 will also be paid to Plaintiff's Counsel as part of the
20 settlement in accordance with California Labor Code § 2699(g)(1) as set forth in the Settlement
21 Agreement. Lastly, payment to the Settlement Administrator in an amount not to exceed \$10,000 to
22 perform the administrative duties to distribute the settlement money shall also be paid. (Zakat Dec.,
23 at ¶14.)

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28 ⁴ 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."

1 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT**
2 **OF THE PAGA CLAIM**

3 Labor Code § 2699(l) requires that the Court “shall review and approve any settlement of any
4 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
5 agency at the same time that it is submitted to the court.” Further, the Court in *Moniz v. Adecco USA,*
6 *Inc.* (2021) 72 Cal.App.5th 56, 77 stated that “the trial court must review and approve a PAGA
7 settlement (§ 2699, subd.(l)(2)), and the Supreme Court has in dictum referred to this review as a
8 safeguard.” (Citing *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 88; internal
9 quotations omitted.) “The Supreme Court has also observed that trial court approval ensures that any
10 negotiated resolution is fair to those affected,” leading the Court in *Moniz* to determine that “adoption
11 of a standard of review for settlements that prevents fraud, collusion or unfairness, and protects the
12 interests of the public and the LWDA in the enforcement of state labor laws is warranted.” (*Moniz,*
13 *supra*, 72 Cal.App.5th at 77; citing *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549; *Dunk v.*
14 *Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-1801; internal citations omitted.) In other words,
15 “[i]n review and approval of a proposed settlement under section 2699, subd. (l)(2), a trial court thus
16 must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the
17 state’s interests, and hence the public interest.” (*Moniz, supra*, 72 Cal.App.5th at 88.) Consequently,
18 the parties respectfully ask the Court to review and approve the settlement of the PAGA claims and
19 the PAGA Payment to be paid as part of the proposed settlement.

20 A. The Gross PAGA Settlement Fund is Fair and Reasonable

21 Plaintiff and her counsel believe that the Gross PAGA Settlement Fund amount is fair and
22 reasonable and therefore "shall" be reviewed and approved. The Labor and Workforce Development
23 Agency has released data on PAGA settlement amounts. After removing the outliers at the low and
24 high end, the average, total settlement amount of PAGA claims is approximately \$10,000. Here, the
25 Gross PAGA Settlement Fund of \$300,000 is significantly larger. (Zakay Dec., at ¶15.)

26 California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the
27 maximum civil penalty if, based on the facts and circumstances, to do otherwise would result in an
28 award that is "unjust, arbitrary and oppressive or confiscatory." Before and during the mediation,

Defendants argued, among other things, that it was unlikely that any Judge would award more than the actual amounts owed on the claims, let alone the full \$100 or \$200 per violation. In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at trial, any PAGA penalties awarded in this case could be significantly less than Plaintiff's calculation, even had Plaintiff prevailed on the PAGA claim. Here, multiplying the number of violations identified, assumed, and extrapolated by Plaintiff (28,210 violations) by \$5 results in a total potential liability of **\$141,050**. Further, multiplying the number of pay periods (7,000) by \$5 results in a total potential liability of **\$35,000**. 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.

Pursuant to 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
203 (waiting time violations)	105 terminated employees	\$100	105	100% of pay periods when an employee was terminated	\$10,500

1198, 558 (unpaid wages)	240 aggrieved employees	\$100	7,000	100% of total pay periods	\$700,000
226.2, 226.7, & 512 (rest break violations)	240 aggrieved employees	\$100	7,000	100% of total pay periods	\$700,000
226.7 (unpaid meal break violations)	240 aggrieved employees	\$100	7,000	100% of total pay periods	\$700,000
227.3 (vested vacation time violations)	105 former aggrieved employees	\$100		100% of total pay periods when an employee was terminated	\$10,500
226 (wage statement violations)	240 aggrieved employees	\$100	7,000	100% of total pay periods	\$700,000

The settlement amount is 10.6% of Defendants' total exposure.

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 PAGA 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, failure to provide accurate itemized wage statements, failure to pay wages when due, and/or failure to maintain required records.

Defendants maintain that Plaintiff and the Aggrieved Employees were properly compensated, and that they did not violate the Labor Code.

Most importantly and relevant to this case, Defendants argued that the Supreme Court decision in *Brinker v. Superior Court*, 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 by Defendants are attributed to non-compliant meal and rest breaks. Before and during the mediation, Defendants aggressively

1 argued that Defendants' policies and culture afforded the PAGA Aggrieved Employees an opportunity
2 to take timely meal and rest breaks, and that employees like Plaintiff *chose* not to take compliant
3 breaks. Specifically, Defendant's written policies encouraged PAGA Aggrieved Employees to take
4 meal periods and rest breaks according to schedules compliant with the California Labor Code. The
5 policy further *required* employees who felt they were not provided an opportunity to take a meal or a
6 rest break to notify and provide an explanation to their manager no later than the next day. Defendants
7 argued, therefore, that under the *Brinker* decision it has no liability for the missed breaks whatsoever.
8 Defendants argued that it adopted and strictly enforced lawful policies and afforded Plaintiff and the
9 PAGA Aggrieved Employees compliant meal and rest breaks. Because Plaintiff's claims were largely
10 based on the missed meal and rest breaks, and because Defendants' policies were, indeed, compliant,
11 this presented a very real concern for Plaintiff. If successful, this defense could eliminate or
12 substantially reduce any recovery under PAGA. While Plaintiff believes that this defense, and others,
13 could be overcome, Defendants maintain that these defenses have merit and therefore present a serious
14 risk to recovery of penalties. (Decl. Zakay at ¶19).

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

22 Given Defendants' potential defenses to the violations at issue, the risks and costs of continued
23 litigation, Plaintiff and her attorneys believe that the PAGA Settlement is fair and reasonable.
24 Plaintiff's Counsel have significant experience litigating wage and hour claims including claims for
25 PAGA penalties, and the PAGA Settlement here is similar to or greater than similar settlements that
26 courts have approved. The PAGA Settlement, along with the other terms of the proposed settlement,
27 were negotiated by experienced counsel at arm's length with the assistance of an experienced and
28 reputable mediator, Judge Carl West (Ret.). (Declaration of Zakay, at ¶21.)

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

7 Based on our investigation, analysis and discounts for risk factors, Plaintiff adequately
8 represented the interests of both the State and the public in resolving this action and reaching the
9 proposed PAGA settlement.

10 **B. The Remaining Settlement Terms Are Fair and Reasonable**

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

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

18 Plaintiff's Counsel seeks approval of attorneys' fees from the PAGA settlement in the amount
19 of \$100,000 representing one-third of the \$300,000 Gross PAGA Settlement Fund. PAGA does not
20 have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of
21 attorneys' fees and costs in this settlement is a matter of contract for a contingent representation.
22 Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees
23 and costs are reasonable.

24 First, the requested fees are justified by the result achieved. Plaintiff's Counsel negotiated a
25 recovery of \$300,000, and this result justifies the requested fees equal to one third of this recovery.
26 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
27 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
28 480, 504, (2016). At the time this case was brought, the result was far from certain. Defendants'

1 defenses to the merits of the case created difficulties with proof and complex legal issues for Counsel
2 to overcome. Here, a number of defenses asserted by Defendants present serious threats to the claims
3 of the Plaintiff and the PAGA Employees. Defendants asserted that their employment practices
4 complied with all applicable Labor laws. If successful, Defendants' defenses would eliminate *any*
5 *recovery* to the PAGA Employees. While Plaintiff believes that these defenses could be overcome,
6 Defendants maintain that these defenses have merit and therefore present a serious risk to recovery.
7 The Settlement was possible because Counsel was able to persuade Defendants that there was an
8 appreciable risk that Plaintiff would prevail on the factual and legal issues underlying liability and
9 overcome difficulties in proof as to monetary relief.

10 Second, the fee award is justified by the work performed. As detailed in the accompanying
11 Declaration of Shani O. Zakay at ¶23-25, the fee award represents Plaintiff's Counsel's current
12 combined \$72,680.00 with a multiplier of 1.37 with additional work to be performed such that the
13 multiplier will ultimately be even lower. Generally, the Ninth Circuit and California Courts award
14 multipliers between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of
15 the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee
16 award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th
17 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier);
18 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range
19 from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014)
20 (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014
21 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of
22 lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal.
23 Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority"
24 range for risk multipliers).

25 Third, consideration of the enhancement factors justifies the enhancement of the lodestar.
26 Courts multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the
27 quality of work, and the novelty and difficulty of the issues involved. See *Ketchum v. Moses*, 24
28

1 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in cases that meet these criteria is an
2 abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016).

3 **VII. CONCLUSION**

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

7
8 Dated: March 11, 2022

ZAKAY LAW GROUP, APC

9
10 By:


Shani O. Zakay