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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN FRANCISCO**

SHANNON HEUKLOM, MICHAEL  
BURRIS, ROSEMARIE BERSABE,  
JANICE CAHAMBING, CASSANDRA  
COLEMAN, LAUREN POPPEN, NICOLE  
MARIE SACHKAR, KELSEY ADAMS,  
ERIC SEVERIANO and JONATHAN  
RUSHING, on behalf of the State of  
California, as private attorney generals,

Plaintiffs,

vs.

CLARA MEDICAL GROUP, P.C., a  
California Professional Corporation; and  
GOFORWARD, INC., a Corporation; and  
DOES 2 through 50, inclusive,

Defendants.

Lead Case No. CGC-20-587942  
[Consolidated with Case No.: CGC-21-591081]

**NOTICE OF MOTION AND MOTION  
TO APPROVE PAGA SETTLEMENT;  
and,**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION**

Hearing Date: March 16, 2022  
Hearing Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer  
Dept.: 302

Date Action Filed: November 4, 2020  
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 YOU ARE HEREBY NOTIFIED THAT at 9:30 a.m. on March 16, 2022, or as soon  
3 thereafter as the matter can be heard, in Department 302 of the above entitled Court before  
4 the Honorable Richard B. Ulmer, Plaintiffs Shannon Heuklom, Michael Burris, Eric  
5 Severiano, Jonathan Rushing, Cassie Coleman, Janice Cahambing, Rosemarie Bersabe,  
6 Lauren Poppen, Nicole Marie Sachkar and Kelsey Adams (“Plaintiffs”) will and hereby do  
7 move for an order approving the settlement of the PAGA claim alleged against Defendants  
8 Clara Medical Group, P.C. and GoForward, Inc. (“Defendants”) in accordance with Labor  
9 Code §2699(1). The proposed settlement is set forth in the accompanying Settlement  
10 Agreement (“Settlement Agreement”).

11 This Motion will be based on this notice, the accompanying points and authorities, the  
12 Declaration of Kyle Nordrehaug, the Settlement Agreement, and the complete files and  
13 records in this action. The Labor Workforce Development Agency has been served with this  
14 motion and the Settlement Agreement as set forth in the accompanying proof of service.

15 Respectfully submitted,

16 Dated: February 15, 2022

**BLUMENTHAL NORDREHAUG  
BHOWMIK DE BLOUW LLP**

17 By: /s/ Kyle Nordrehaug  
18 Kyle R. Nordrehaug

19 *Attorneys for Plaintiffs*  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2  
3 **I. INTRODUCTION**

4 Plaintiffs Shannon Heuklom, Michael Burris, Eric Severiano, Jonathan Rushing,  
5 Cassie Coleman, Janice Cahambing, Rosemarie Bersabe, Lauren Poppen, Nicole Marie  
6 Sachkar and Kelsey Adams (“Plaintiffs”) reached a settlement of the California Private  
7 Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this  
8 action against Defendants Clara Medical Group, P.C. and GoForward, Inc.  
9 (“Defendants”)(collectively, the “Parties”) which provides for a “Gross PAGA Settlement  
10 Amount” payment in the amount of \$600,000. In accordance with California Labor Code  
11 §2699(l), Plaintiffs now ask this Court to review and approve the settlement of Plaintiffs’  
12 PAGA claims.<sup>1</sup> This is only a settlement of the PAGA claims for civil penalties, and is not a  
13 class settlement and does not release the individual wage claims, if any, of the affected  
14 employees other than the Plaintiffs themselves. Cal. Labor Code § 2699(g)(1); *Iskanian v.*  
15 *CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175,  
16 182 (2019) (unpaid wages are not recoverable under PAGA).

17 The PAGA settlement is set forth in the accompanying Settlement Agreement  
18 (“Settlement Agreement”). A true and correct copy of the Settlement Agreement which sets  
19 forth the terms for the settlement of the PAGA claims is attached as Exhibit #1 to the  
20 Declaration of Kyle Nordrehaug, filed herewith. Capitalized terms shall have the same  
21 meaning as defined in the Settlement Agreement. The LWDA received notice of this  
22 Settlement and this motion as set forth in the accompanying proof of service.

23 A proposed order confirming review and approval of the PAGA settlement is  
24 submitted herewith.

25 ///

26 ///

27 \_\_\_\_\_  
28 <sup>1</sup> 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 **II. RELEVANT FACTS**

2 PAGA Counsel mailed the necessary correspondence to the California Labor and  
3 Workforce Development Agency (“LWDA”) on April 15, 2020 on behalf of Plaintiffs  
4 Shannon Heuklom and Michael Burris (Nurse Practitioners), requesting authorization from  
5 the LWDA to seek civil penalties as provided by the Private Attorney General Act of 2004  
6 (“PAGA”) for the wage and hour violations alleged in the LWDA Notice. The 65-day notice  
7 period for the LWDA to notify of its intent to investigate expired on June 19, 2020.

8 On November 4, 2020, Plaintiffs Shannon Heuklom and Michael Burris filed the  
9 instant Representative Action Complaint against Defendant Clara Medical Group, P.C.  
10 alleging a single cause of action for recovery of civil penalties for Violation of the PAGA  
11 [Labor Code §§ 2698, *et seq.*].

12 PAGA Counsel mailed the necessary correspondence to the California Labor and  
13 Workforce Development Agency (“LWDA”) on January 5, 2021 on behalf of Plaintiffs  
14 Jonathan Rushing and Eric Severiano (Care Coordinators), requesting authorization from the  
15 LWDA to seek civil penalties as provided by the Private Attorney General Act of 2004  
16 (“PAGA”) for the wage and hour violations alleged in the LWDA Notice. The 65-day notice  
17 period for the LWDA to notify of its intent to investigate expired on March 11, 2021.

18 On April 15, 2021, Plaintiffs Eric Severiano and Jonathan Rushing filed a  
19 Representative Action Complaint against Defendant Clara Medical Group, P.C. alleging a  
20 single cause of action for recovery of civil penalties for Violation of the PAGA [Labor Code  
21 §§ 2698, *et seq.*] in the Superior Court of the State of California, County of San Francisco  
22 (Case No.CGC-21-591081).

23 On August 3, 2021 Plaintiffs Eric Severiano and Jonathan Rushing filed an  
24 Amendment to the Complaint in the *Severiano* Action adding GoForward, Inc. as a Doe  
25 Defendant. The Court issued an Order adding GoForward, Inc. as a Defendant on September  
26 22, 2021.

27 The Parties thereafter agreed to mediate with Jeffrey Ross. Prior to the mediation, in  
28 order to evaluate the potential value of the claims, the Parties engaged in significant efforts

1 to obtain the facts regarding the claims asserted, including the exchange of detailed statistical  
2 data regarding shifts worked by Plaintiffs and the Aggrieved Employees, the production of  
3 hundreds of pages of documents, and the exchange of detailed briefing and analysis in  
4 connection with the mediation. (Declaration of Kyle Nordrehaug, at ¶3).

5 Defendants offer medical services to subscribers who pay a monthly fee. Instead of  
6 insurance and a co-pay, Defendants, among other things, offer unlimited access to their  
7 medical staff, baseline screening, blood and genetic testing, wellness and nutrition  
8 counseling and ongoing monitoring from wearable sensors. Plaintiffs' theory of PAGA  
9 liability as argued at mediation alleged that Defendants misclassified workers known as  
10 Nurse Practitioners and Care Coordinators as independent contractors. Plaintiffs allege  
11 Defendants are not simply a technology platform– they are a controlling, overseer boss and  
12 employer that uses technology to control and micromanage every aspect of the work of the  
13 Care Coordinators and Nurse Practitioners who are Defendants' employees and who  
14 generate Defendants' revenue. Plaintiffs allege that Defendants heavily control the manner  
15 and means by which Care Coordinators and Nurse Practitioners perform their jobs from  
16 home and how they are to communicate with Defendants and other workers. (Declaration of  
17 Kyle Nordrehaug, at ¶3).

18 Plaintiffs' position is that the workers here are not engaged in an independently  
19 established business. They lack business autonomy, they do not run their own business, and  
20 cannot accept work requests or provide these services to Defendants' members without strict  
21 adherence to Defendants' policies, practices and procedures. As such, these workers should  
22 have been classified as employees for purposes of the Labor Code and applicable wage  
23 order. Due to Defendants' alleged misclassification, Defendants did not: pay minimum and  
24 overtime wages; provide meal and rest periods; reimburse workers for business expenses (eg.  
25 cell phone and home office expenses); provide accurate itemized wage statements; and  
26 timely pay all wages due during and upon separation of employment. (Declaration of Kyle  
27 Nordrehaug, at ¶3). On September 16, 2021, the Parties engaged in an all-day mediation  
28 session before Mediator Ross, a respected and experienced mediator knowledgeable of both

1 the wage and hour laws and the representative claims at issue in this action. Through arms-  
2 length negotiations with the assistance of the mediator, the Parties reached an agreement to  
3 settle the PAGA claims in this action which led to the signing of a Memorandum of  
4 Understanding memorializing the settlement.<sup>2</sup> The settlement was negotiated in light of all  
5 known facts and circumstances and the uncertainty associated with litigation – including the  
6 risk of Plaintiffs not being able to maintain representative claims, the difficulty of proving  
7 Plaintiffs’ claims in a manageable trial, the merits of Defendants’ potential defenses, and the  
8 significant delay and potential appellate issues inherent to litigation – and was reached after  
9 extensive arm’s length negotiations, with the assistance of Mediator Ross. (Declaration of  
10 Kyle Nordrehaug, at ¶3).

11 As part of this Settlement, Plaintiffs Shannon Heuklom and Michael Burris are filing  
12 a Consolidated Complaint in the *Heuklom* Action adding Rosemarie Bersabe, Janice  
13 Cahambing, Cassandra Coleman, Lauren Poppen, Nicole Marie Sachkar, Kelsey Adams as  
14 Plaintiffs and adding Plaintiffs Eric Severiano and Jonathan Rushing and the alleged claims  
15 from the *Severiano* Action.

### 16 **III. TERMS OF THE PAGA SETTLEMENT**

17 The PAGA settlement is subject to Court approval consistent with Labor Code  
18 §2699(1)(2). (Settlement Agreement at §III(5)(a).) The Settlement Agreement negotiated by  
19 the Parties provides for a “Gross PAGA Settlement Amount” payment in the amount of  
20 \$600,000 to resolve the PAGA Released Claims (hereinafter referred to as the “PAGA  
21 Settlement”). From this PAGA Settlement of \$600,000, there is a deduction of attorneys’

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22  
23 <sup>2</sup> In addition to the Gross PAGA Settlement Amount, Defendants have agreed to separately settle  
24 Plaintiffs’ individual claims pursuant to separate confidential Individual Settlement Agreements.  
25 (Settlement Agreement at §III(6)(b).) The individual claims were not at issue in this action and exist  
26 independent and apart from the PAGA claims at issue before the Court. *See Kim v. Reins Int’l Cal.,*  
27 *Inc.*, 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does not strip an aggrieved  
28 employee of standing, as the state’s authorized representative, to pursue PAGA remedies” nor  
resolve the PAGA claims.). If the Court requires the Parties to submit the terms of the Individual  
Settlements Agreements to obtain approval of the PAGA settlement, the Parties agree that the terms  
of the Individual Settlement Agreement(s) will only be submitted under seal or disclosed to the  
Court in some other way to ensure that the Individual Settlement Amounts are not disclosed  
publicly. (Settlement Agreement at §III(6)(b).)

1 fees in the amount of \$200,000 (which is one-third of the PAGA Settlement), reimbursement  
2 of incurred costs in an amount not to exceed \$20,000, Settlement Administration Costs not to  
3 exceed \$4,000 and enhancement awards of \$10,000 for each of the ten Plaintiffs (\$100,000  
4 total). (Settlement Agreement at §III(5)(b)-(c).)<sup>3</sup> After these deductions, the amount  
5 remaining is the “PAGA Payment”, which is estimated to be \$276,000. (Declaration of Kyle  
6 Nordrehaug, at ¶4.) Of the PAGA Payment amount, seventy-five percent (75%) will be paid  
7 to the LWDA and the remaining twenty-five percent (25%) will be paid to the Aggrieved  
8 Employees (Settlement Agreement at III(5)(a)(1).)<sup>4</sup> This 75/25 allocation is required by  
9 Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

10 The Individual PAGA Payment for each Aggrieved Employee shall be based on the  
11 number of pay periods each Aggrieved Employee worked during the relevant CC PAGA  
12 Period or NP PAGA Period as a percentage of the total pay periods worked by the Aggrieved  
13 Employees during the respective CC PAGA Period or NP PAGA Period. (*Id.*) The CC  
14 PAGA Period is the time period from January 5, 2020 to February 1, 2022. The NP PAGA  
15 Period is April 15, 2019 to February 1, 2022. (Settlement Agreement at § I(10).)

16 Defendants have represented to PAGA Counsel the number of pay periods and  
17 Aggrieved Employees. Defendants represent that there are approximately 54 Aggrieved  
18 Employees who worked as Nurse Practitioners and 13 Aggrieved Employees who worked as  
19 Care Coordinators and that both groups of Aggrieved Employees collectively worked 1,620  
20

21  
22 <sup>3</sup> In the event approval is required and a payment of less than One-Third of the Gross PAGA  
23 Settlement Amount in Attorneys’ Fees or less than \$20,000 in Attorneys’ Expenses to PAGA  
24 Counsel, the unawarded difference will be added to the PAGA Payment and not to PAGA Counsel  
25 or the Defendants. (Settlement Agreement at III(4)(b).) In the event the Court approves less than  
\$4,000 to administer the settlement or if the actual cost to administer the settlement is less than  
\$4,000, the difference will be added to the PAGA Payment. (*Id.* at III(4)(c).)

26 <sup>4</sup> “Aggrieved Employees” means all individuals who were engaged by either Defendant Clara  
27 Medical Group, P.C. and/or Defendant GoForward, Inc. in California as Care Coordinators and  
28 classified as independent contractors during the period January 5, 2020 to February 1, 2022; and all  
individuals who were engaged by either Defendant Clara Medical Group, P.C. and/or Defendant  
GoForward, Inc. in California as Nurse Practitioners and classified as independent contractors during  
the period April 15, 2019 to February 1, 2022. (Settlement Agreement at § I (2)(a-b).)

1 pay periods during the NP PAGA Period and CC PAGA Period. (Settlement Agreement at §  
2 III(4).) (Declaration of Kyle Nordrehaug, at ¶4.)

3       Upon entry of final judgment, the Released Parties<sup>5</sup> shall be entitled to a release from  
4 the State of California and the Aggrieved Employees only for any “PAGA Released Claims”,  
5 which means the claims for civil penalties under California Labor Code §§ 2698 *et seq.*,  
6 predicated on the California Labor Code violations that are asserted in the LWDA Notice  
7 and operative complaint in the *Heuklom* and *Severiano* Actions, or that could have been  
8 asserted in the LWDA Notice and operative complaint in the *Heuklom* and *Severiano*  
9 Actions based on the facts alleged therein, which are for civil penalties pursuant to Labor  
10 Code section 2699, *et seq.* for violations alleged in or based on the facts asserted in the  
11 operative complaint in the *Heuklom* and *Severiano* Actions, including Labor Code sections  
12 §§ 201, 202, 203, 204, 210, 226(a), 226.7, 226.8, 245, 351, 510, 512, 558, 1194, 1197,  
13 1197.1, 1198, 2802 and applicable Industrial Welfare Commission Wage Orders (the  
14 “PAGA Released Claims”)(Settlement Agreement at §III(6)(a)). The release does not  
15 include underlying wage and hour claims, claims for wrongful termination, discrimination,  
16 unemployment insurance, disability, worker’s compensation, and claims outside of the CC  
17 PAGA Period and/or NP PAGA Period. (*Id.*) The Settlement Agreement expressly confirms  
18 that “In no event shall the release of the Released PAGA Claims in this Settlement  
19 Agreement release any individual claims of any individuals.” (*Id.*).

20       Within fifteen (15) days after receipt of the Gross PAGA Settlement Amount from  
21 Defendants, the Settlement Administrator will issue to each Aggrieved Employee a check for  
22 their Individual PAGA Payment at their last known home address along with an explanatory  
23 letter mutually approved by the parties. (Settlement Agreement at §IV(3)). Checks will  
24 remain negotiable for one hundred eighty (180) days. (*Id.*) Subject to Court approval, all  
25 checks not cashed within one hundred eighty (180) days of payment shall be paid to the  
26 California Controller’s Unclaimed Property Fund State in the name of the absent aggrieved  
27 employee who failed to cash the check, where the individual may claim the funds. (*Id.*)

28 <sup>5</sup> “Released Parties” means Defendants and any of their past or present agents, officers, directors, employees,  
stockholders, members, parent corporations, subsidiaries, affiliates, partners, predecessors and successors and  
predecessors in interest, insurers, and assigns of the foregoing (expressly including, but not limited to Adrian Aoun).

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

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

8 The claim before this court is the representative claim under PAGA on behalf of the  
9 State of California for civil penalties pursuant to the PAGA. The parties have agreed to  
10 settle this PAGA claim in its entirety after investigation and arm's length mediation.  
11 (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and finally  
12 resolve the PAGA Released Claims asserted by Plaintiffs on behalf of the State of California.  
13 This is only a settlement of the PAGA claims for civil penalties, and is not a class settlement  
14 and does not release the individual claims, if any, of the Aggrieved Employees. This  
15 settlement does not release any claim that is not a PAGA claim.<sup>6</sup> Attorneys' fees equal to  
16 one-third of the Gross PAGA Settlement amount (\$200,000) and litigation expenses in an  
17 amount not to exceed \$20,000 will also be paid to PAGA Counsel as part of the settlement in  
18 accordance with California Labor Code § 2699(g)(1) as set forth in the Settlement  
19 Agreement.<sup>7</sup> Lastly, payment to the Settlement Administrator in an amount not to exceed  
20 \$4,000 to perform the administrative duties to distribute the settlement money shall also be  
21 paid as well as enhancement awards of \$10,000 for each of the 10 Plaintiffs. (Declaration of  
22 Kyle Nordrehaug, at ¶¶ 4-5.)

#### 23 **V. REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIM**

24 Labor Code § 2699(l) requires that the Court "shall review and approve any  
25

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26 <sup>6</sup> 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 <sup>7</sup> As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs  
in the current amount of \$16,137.58, which is less than the cost allocation in the Settlement  
Agreement. See Declaration of Nordrehaug at ¶ 9.

1 settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement  
2 shall be submitted to the agency at the same time that it is submitted to the court.”  
3 Consequently, the parties respectfully ask the Court to review and approve the settlement of  
4 the PAGA claims and the PAGA Payment to be paid as part of the proposed settlement.

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

6 The Parties believe that the PAGA Settlement amount is fair and reasonable and  
7 therefore "shall" be reviewed and approved. The Labor and Workforce Development  
8 Agency has released data on PAGA settlement amounts. After removing the outliers at the  
9 low and high end, the average, total settlement amount of PAGA claims is approximately  
10 \$10,000. Here, the Gross PAGA Settlement Amount of \$600,000 is significantly more and  
11 constitutes approximately \$370 per pay period. (Declaration of Nordrehaug, at ¶6.)

12 This PAGA Settlement amount compares favorably to the estimated amount of PAGA  
13 penalties. With the assistance of an expert, Plaintiffs calculated that the maximum amount of  
14 statutory PAGA civil penalties was potentially \$162,000 based on 1,620 pay periods.<sup>8</sup>  
15 (Declaration of Nordrehaug, at ¶6.) Importantly, however, these calculations were  
16 performed at the maximum statutory rate for the penalties, when in fact, it is likely that any  
17 penalties awarded would be at a lower rate. California Labor Code Section 2699(e)(1)  
18 permits a Court to award a lesser amount than the maximum civil penalty if based on the  
19 facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary  
20 and oppressive or confiscatory."

21 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal  
22 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay  
23 period. Therefore, at trial, any PAGA penalties awarded could be significantly less than  
24 Plaintiffs' calculation even where Plaintiffs prevailed on the PAGA claim. If the amount of

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25 <sup>8</sup> Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.  
26 The valuation of \$162,000 is the civil penalty amount without stacking. If stacking is permitted, then  
27 the valuation increases with each additional penalty added to each pay period, and here, if penalties  
28 are stacked for each of the eight (8) alleged violations, the total penalties would be as high as  
\$1,924,900. Plaintiff, however, is not aware of any PAGA award which permitted stacking and in  
the cases cited herein, only one penalty per pay period was assessed.

1 \$5 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil  
2 penalties would be only \$8,100, which is less than this settlement provides.

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

12 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove  
13 each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*,  
14 2011 U.S. Dist. LEXIS 13126, \*10 (C.D. Cal. 2011) ("Given the statutory language [of  
15 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven  
16 suffered a violation of the Labor Code by the defendant."). Here, Plaintiffs would need to  
17 prove Defendants misclassified Nurse Practitioners and Care Coordinators as independent  
18 contractors and that each Aggrieved Employee suffered a violation for each period the  
19 employee worked in relation to meal or rest period violations, failure to pay minimum or  
20 overtime wages, failure to provide accurate itemized wage statements, failure to reimburse  
21 for business expenses and failure to provide wages when due.

22 Defendants maintain that Plaintiffs and the Aggrieved Employees were properly  
23 treated as independent contractors and otherwise compensated in compliance with the law,  
24 that they did not violate the Labor Code and that their conduct was not willful with respect to  
25 any alleged failure to pay any wages or penalties. Accordingly, Defendants dispute and deny  
26 Plaintiffs' allegations and claims asserted in the consolidated complaint which are resolved  
27 by the Settlement Agreement. Defendants asserted both procedural and substantive  
28 additional defenses to the PAGA claim, not only as to liability but also as to the amount of

1 the penalties. Defendants could argue that no penalties prior to the PAGA notification  
2 should be awarded because the violations were not intentional, and at least one Court has so  
3 ruled. These defenses present a risk to the PAGA claim and the potential that some or all of  
4 the PAGA penalties sought may not be awarded. (Declaration of Nordrehaug, at ¶7.)

5 Given Defendants' potential defenses to the violations at issue, the risks and costs of  
6 continued litigation, Plaintiffs and their attorneys believe that the PAGA Settlement is fair  
7 and reasonable. (Declaration of Nordrehaug, at ¶7.) Defendants have similarly concluded  
8 that it is desirable that this action is settled in the manner and upon the terms and conditions  
9 set forth in the Settlement Agreement in order to avoid further expense, inconvenience and  
10 distraction of further legal proceedings, as well as the uncertainty of litigation. Defendants  
11 have determined that it is desirable and beneficial to put to rest the claims in this action and  
12 Defendants agree that the PAGA Settlement is fair, reasonable, and adequate.

13 PAGA Counsel have significant experience litigating wage and hour claims including  
14 claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than  
15 similar settlements that courts have approved. (Declaration of Nordrehaug, at ¶10.) The  
16 PAGA Settlement, along with the other terms of the proposed settlement, were negotiated by  
17 experienced counsel at arm's length with the assistance of a private mediator, Jeffrey Ross.  
18 (Declaration of Nordrehaug, at ¶7.)

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

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

27 Although PAGA requires that a court approve the proposed PAGA settlement, Labor  
28

1 Code § 2699(1) does not require that a court approve any other elements of the proposed  
2 settlement. Because there are no class allegations for which Plaintiffs seek approval, the  
3 approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not  
4 apply. Accordingly, the Court only needs to approve the settlement of the civil penalties  
5 sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for  
6 service enhancement awards and for attorneys’ fees and costs are reasonable.

### 7 **C. The Enhancement Awards Are Fair and Reasonable**

8 Plaintiffs each seek an enhancement award of \$10,000 for their service on behalf of  
9 the Aggrieved Employees and the LWDA. Courts routinely award “service payments” to  
10 plaintiffs in successful representative actions, in recognition of the crucial role they play in  
11 enforcing public-interest statutes and vindicating the rights of absent class members. Service  
12 payments “are intended to compensate class representatives for work done on behalf of the  
13 class, to make up for financial or reputational risk undertaken in bringing the action, and,  
14 sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez v.*  
15 *West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009). Although this is a PAGA case, not  
16 a class action, the Court should likewise award service payments here for the same reasons:  
17 to compensate Plaintiffs for the considerable time and resources they expended, and the  
18 reputational and financial risks they incurred in service of the successful prosecution of the  
19 claims against Defendants.

20 The Plaintiffs actively participated in this litigation. They spent substantial time  
21 meeting with Plaintiffs’ counsel, and provided valuable information about the day-to-day  
22 operations of Defendant. They spent numerous hours gathering information. They all  
23 assisted counsel in preparing for mediation, and made themselves available on the day of the  
24 mediation. (Declaration of Nordrehaug, at ¶8.)

25 Service awards are also appropriate because Plaintiffs, like class representatives,  
26 undertook significant risks. Courts widely recognize that plaintiffs undertake a “reputational  
27 risk” by suing their employers. *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir.  
28 2009); *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). And, given the ease with

1 which prospective employers can run a background check, filing a lawsuit can also  
2 negatively impact a plaintiff's future employment opportunities. For these reasons, many  
3 employees are unwilling to risk jeopardizing their employment by filing a class or  
4 representative lawsuit against their employer on behalf of their fellow employees. Not only  
5 did Plaintiffs undertake reputational risks, but they also assumed the risk of a judgment  
6 against them and personal liability for an award of costs to Defendants in the event of an  
7 adverse outcome. In class action losses, the class representative is deemed the losing party  
8 and thus potentially liable for the prevailing party's costs. *Earley v. Superior Court*, 79  
9 Cal.App.4th 1420, 1433-1434 (2000).

10 In short, Plaintiffs conferred a substantial benefit on the LWDA and Aggrieved  
11 Employees. The requested service awards are reasonable and will further PAGA's goal of  
12 incentivizing workers to step forward and take on the costs and risks of prosecuting Labor  
13 Code violations.

#### 14 15 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

16 PAGA Counsel seeks approval of attorneys' fees from the PAGA settlement in the  
17 amount of \$200,000 representing one-third of the \$600,000 Gross PAGA Settlement  
18 Amount. PAGA does not have any requirements for reviewing attorneys' fees, and  
19 Plaintiffs' position is that the payment of attorneys' fees and costs in this settlement is a  
20 matter of contract for a contingent representation. Nevertheless, should this Court review the  
21 requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

22 First, the requested fees are justified by the result achieved. PAGA Counsel  
23 negotiated a recovery of \$600,000, and this result justifies the requested fees equal to one  
24 third of this recovery. This percentage is within the standard contingent recovery percentage  
25 of one-third, and this percentage is what was expressly approved by the Supreme Court in  
26 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.,*  
27 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that “fee awards in class actions  
28 average around one-third of the recovery” regardless of “whether the percentage method or

1 the lodestar method is used.” (quoting *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11  
2 (2008)).

3 Second, the fee award is justified by the work performed and contributions to the  
4 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶9, the fee award  
5 represents PAGA Counsel’s current lodestar of \$186,878.25 with a negligible multiplier of  
6 1.1, with significant additional work to be performed such that the fee award will be  
7 equivalent to the lodestar.

8 Generally, the Ninth Circuit and California Courts award positive multipliers between  
9 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation  
10 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award  
11 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182  
12 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and  
13 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254  
14 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa*  
15 *Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which  
16 was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at \*11 (C.D.  
17 Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v.*  
18 *Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at \*6 (N.D. Cal. Feb. 6,  
19 2013) (approving fee award that represented a multiplier of 2.76 as falling within the  
20 "majority" range for risk multipliers).

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

27 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation  
28 expenses in the combined total amount of \$16,137.58, which is less than the \$20,000

1 allocation for costs in the Settlement Agreement, so the difference of \$3,862.42 will be  
2 added to the PAGA Payment amount. These expenses are documented in the accompanying  
3 Declaration of Nordrehaug at ¶9.

4  
5 **VII. CONCLUSION**

6 Based on the foregoing, Plaintiffs respectfully request this Court approve the PAGA  
7 settlement as set forth in the Settlement Agreement and enter the proposed order and  
8 judgment submitted herewith.

9  
10 Dated: February 15, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP**

12 By: /s/ Kyle Nordrehaug  
13 Kyle R. Nordrehaug

14 Attorneys for Plaintiffs  
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