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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

10 AMANDA BAILEY, an individual, on behalf of
11 the State of California as a private attorney
12 general, and on behalf of all others similarly
situated,

13 Plaintiff,

14 v.

15 NATIONAL THERAPEUTIC SERVICES,
16 INC., doing business as NORTHBOUND
17 TREATMENT SERVICES, a Nevada
18 corporation; JOSHUA HOUSE, LLC, a
California limited liability company; and DOES
1 through 50, inclusive,

19 Defendants.
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Case No.: 30-2020-01161466-CU-OE-CXC

Assigned for all purposes to:
Hon, Glenda Sanders
Dept. CX101

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Declarations of Jennifer L. Connor and
Amanda Bailey, and [Proposed] Order,
submitted concurrently herewith]

PAGA Approval Hearing

Date: March 11, 2022

Time: 1:30 p.m.

Dept: CX101

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 11, 2022 at 1:30 p.m., or as soon thereafter as
3 this matter may be heard by the Hon. Glenda Sanders in Department CX101 of the above-captioned
4 Court located at 751 West Santa Ana Blvd., Santa Ana, California 92701, Plaintiff Amanda Bailey
5 (“Plaintiff”) will and hereby does move this Court for an order approving a settlement pursuant to
6 the Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”).

7 This Motion is based upon this Memorandum of Points and Authorities; the Declarations of
8 Jennifer L. Connor and Amanda Bailey in support thereof; the Joint Stipulation of Representative
9 PAGA Action Settlement (the “Settlement Agreement”); the [Proposed] Order granting approval of
10 the PAGA settlement; all other records, pleadings, and papers on file in this action, and upon such
11 other evidence or argument as may be presented to the Court at the hearing on this motion.

12
13 Dated: December 01, 2021

Respectfully submitted,

14 COUNSELONE, PC

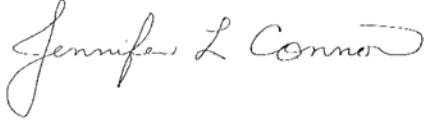
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17 By:
18 Jennifer L. Connor
19 Attorneys for Plaintiff, the State of
20 California, and Aggrieved Employees
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In this case, Plaintiff Amanda Bailey (“Plaintiff”) filed an action against National
4 Therapeutic Services, Inc. d/b/a Northbound Treatment Services (“NTS”) and Joshua House, LLC
5 (“JH”) (collectively, “Defendants”) for civil penalties under the Private Attorneys General Act of
6 2014, California Labor Code § 2698 *et seq.* (“PAGA”). Plaintiff claims that Defendants owe PAGA
7 penalties as a result of alleged violations of various Labor Code sections and applicable Industrial
8 Welfare Commission Wage Order(s). Plaintiff’s operative PAGA representative action complaint
9 seeks civil penalties as authorized by the PAGA on behalf of the State of California’s Labor &
10 Workforce Development Agency (“LWDA”), and on behalf of similarly situated non-exempt
11 employees who are or were employed by Defendants in the State of California during the PAGA
12 Period (May 21, 2019 until the date of approval of the settlement) (hereafter, “Aggrieved
13 Employees”). Plaintiff and Defendants are collectively referred herein as the “Parties.”

14 As will be explained in further detail below, based on the California Supreme Court’s
15 decisions in *Arias v. Superior Court* (2009) 46 Cal.4th 969 and *Iskanian v. CLS Transportation Los*
16 *Angeles, LLC* (2014) 59 Cal.4th 348, Plaintiff can seek appropriate civil penalties as called for under
17 the PAGA on behalf of the State of California and other similarly situated employees without
18 seeking class certification or meeting the requirements of class certification (*i.e.*, numerosity,
19 typicality, commonality, and adequacy). As such, the usual two-step preliminary and final approval
20 process is not required.

21 Rather, as called for under Labor Code § 2699(l), all that is required is an approval by this
22 Court of the PAGA settlement. The Parties have reached such an agreement, and thus, Plaintiff an
23 “aggrieved employee” under the PAGA, now respectfully moves this Court for an Order granting
24 approval of the Joint Stipulation of Representative PAGA Action Settlement (“Settlement
25 Agreement”). A true and correct copy of the Settlement Agreement entered into by the Parties, along
26 with the accompanying Notice of Settlement of PAGA Representative Action (“PAGA Payment
27 Letter”), are attached as Exhibit “1” and Exhibit “2” to the Declaration of Jennifer L. Connor
28

1 (“Connor Decl.”) filed concurrently herewith. As set forth herein, the settlement is fair, reasonable,
2 and adequate, and this Court should enter the Order approving the settlement.

3 **II. FACTUAL AND PROCEDURAL HISTORY**

4 Defendant NTS is a private, residential and outpatient alcohol and drug treatment center for
5 adults in Orange County, California. (Connor Decl. ¶ 10.) NTS offers a wide-range of treatment
6 services including, but not limited to: gender-specific residential treatment programs, dual-diagnosis
7 treatment, outpatient services, intensive outpatient programs, dorm-style sober living homes, inter-
8 disciplinary treatment teams of physicians/psychiatrists, psychologists, nurses, therapists, case
9 managers, family counselors, and client advocates, along with spiritual interventions such as 12-
10 Step models. (Ibid.) In 1995, NTS also opened Defendant JH as a residential bed facility in Costa
11 Mesa, California and, after a move and renovation in 2017, is an approximately 87-bed property
12 located in Newport Beach, California. (Ibid.) Most recently, NTS opened a drug rehab and alcohol
13 treatment facility in Garden Grove, California. (Ibid.)

14 During the relevant time period, Plaintiff alleges that Defendants engaged in a series of
15 unlawful wage and hour practices, including, but not limited to: (1) failure to pay minimum wages
16 for all hours worked; (2) failure to pay all overtime wages for all hours worked; (3) failure to provide
17 timely and compliant duty-free meal periods and pay premiums owed thereon; (4) failure to
18 authorize and permit timely and compliant duty free rest breaks and pay premiums owed thereon;
19 (5) failure to maintain accurate itemized wage statements; (6) failure to furnish accurate itemized
20 wage statements; (7) failure to reimburse all necessary business expenses incurred; and (8) failure
21 to timely pay wages during and upon termination of employment. (Id. at ¶ 12.)

22 On May 21, 2020, Plaintiff gave written notice on behalf of herself and other Aggrieved
23 Employees, via certified mail to the LWDA and Defendants, outlining the facts and legal theories
24 to support the claims of Defendants’ alleged violation of wage-and-hour laws. (Id. at ¶ 13.) This
25 notice is required under Labor Code § 2699.3(a)(1) as a prerequisite to bringing a PAGA
26 representative claim against an employer. (Ibid.) The LWDA did not respond to this notice of its
27 intent to investigate within the allotted 65-calendar day time period, thus allowing Plaintiff to file
28 the instant lawsuit against Defendants. (Ibid.)

1 Plaintiff's Counsel began their investigation into the at-issue allegations prior to filing the
2 original complaint. (*Id.* at ¶ 14.) Early in the case, among the information and documents produced
3 related to Plaintiff's employee and personnel file, Defendants provided a copy of an arbitration
4 agreement signed by Plaintiff. (*Ibid.*) While Plaintiff does not concede the enforceability of the
5 arbitration agreement, the decision was made to pursue a claim solely under the PAGA rather than
6 to pursue putative class claims. (*Ibid.*)

7 On September 22, 2020, Plaintiff filed a representative action complaint entitled *Bailey v.*
8 *National Therapeutic Services, Inc., et al.* in this Superior Court of California for the County of
9 Orange (the "Action"). (Representative Action Complaint filed on September 22, 2020; Connor
10 Decl. ¶ 15.) Through her PAGA claim, Plaintiff seeks penalties for Defendants' violation of
11 California Labor Code sections 201, 202, 203, 204, 210, 212, 221, 226, 226.3, 226.7, 450, 510, 512,
12 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802, along with the applicable IWC Wage
13 Order(s). (Representative Action Complaint ¶ 3; Connor Decl. ¶ 15.)

14 On December 29, 2020, Defendants filed their Answer with a general denial and asserting
15 twenty-one affirmative defenses. (Connor Decl. ¶ 16.)

16 Plaintiff propounded and served multiple sets of formal written discovery (i.e., form
17 interrogatories, requests for production, and special interrogatories). (*Id.* at ¶ 17.)

18 Although Defendants denied the allegations and vowed to vigorously defend against them,
19 the Parties agreed to participate in mediation. (*Id.* at ¶ 18.) In preparation for mediation, the Parties
20 exchanged documents and information that allowed both sides to evaluate the potential exposure
21 and potential risk, such as a 20 percent random sampling of time and payroll records for Plaintiff
22 and Aggrieved Employees, Defendants' employee handbooks, timekeeping and overtime policies,
23 relevant meal and rest break procedures, along with purported waiver agreements, the total number
24 of putative aggrieved employees during the PAGA period, along with counts of former employees,
25 pay periods, and average hourly pay rate. (*Id.* at ¶ 19.) The Parties met and conferred regarding the
26 discovery. (*Ibid.*) Furthermore, Plaintiff's Counsel analyzed, researched, and investigated the law
27 as applied to the facts and potential defenses to the claims, engaged in the calculation of potential
28

1 damages, interviewed Plaintiff and witnesses, consulted with an expert, and obtained supporting
2 facts and documents, assessed trial management, appellate issues, and litigation risks. (*Id.* at ¶ 20.)

3 On June 30, 2021, the Parties attended mediation with the Honorable Leo S. Papas (Ret.), a
4 well-respected mediator with considerable experience mediating wage and hour class actions and
5 PAGA representative actions. (*Id.* at ¶ 21.) During the mediation, the Parties exchanged further
6 information and discussed all aspects of the case, including the risks and delays of litigation, the
7 risk associated with proceeding in a representative capacity, liability under the claims asserted, and
8 the ability to recover and measure penalties. (*Ibid.*) The settlement negotiations were at all times at
9 arm's-length and although conducted in a professional matter, were adversarial. (*Ibid.*) At the
10 conclusion of the mediation, the Parties reached an agreement to resolve the Action pursuant to the
11 terms set forth in a Memorandum of Understanding. (*Ibid.*) The settlement was the culmination of
12 protracted discussions between the Parties following a thorough analysis of the pertinent facts and
13 law at issue. (*Id.* at ¶ 23.) The Parties now present the Settlement Agreement to this Court for
14 approval.

15 **III. PAGA AND ITS REQUIREMENTS**

16 Prior to the enactment of the PAGA, many of the penalties provided for violations of certain
17 Labor Code provisions were exclusively within the province of the State of California and its
18 agencies to seek, enforce, and assess. (*Arias, supra*, 46 Cal.4th at p. 980.) However, due to the lack
19 of financing for California's agencies, and the substantial number of Labor Code violations by
20 California employers, the California Legislature found that it was in the public interest to allow
21 aggrieved employees to act as "private attorneys general" to enforce and recover penalties on behalf
22 of similarly situated aggrieved employees for Labor Code violations committed by their employers.
23 (*Ibid.*)

24 PAGA was enacted to allow such enforcement and recovery by private individuals who have
25 been aggrieved by their employers. The statute calls for 75 percent of any penalties recovered to be
26 paid to California's LWDA and the remaining 25 percent to the aggrieved employees. (*See* Labor
27 Code § 2699.3(a)(1).)

1 In order to enforce and seek penalties under the PAGA in a civil action, an aggrieved
2 employee must first provide written notice to the LWDA and the employer of the particular Labor
3 Code violations the aggrieved employee alleges the employer has violated. (*See* Labor Code §
4 2699.3(a)(1).) Once the LWDA notifies the aggrieved employee that it does not intend to investigate
5 the alleged violations, or if the LWDA does not respond within a certain period of time, the
6 aggrieved employee is then allowed to proceed in a civil action against the employer on behalf of
7 the LWDA and all other similarly situated aggrieved employees. (*See* Labor Code §
8 2699.3(a)(2)(A).)

9 In 2009, the California Supreme Court considered the issue of whether the aggrieved
10 employee who brings a PAGA representative claim needs to meet class action requirements. (*Arias*,
11 *supra*, 46 Cal.4th at p. 976.) After substantial review of the legislative history of the PAGA, the
12 Court held that an aggrieved employee's representative action brought on behalf of other aggrieved
13 employees against an employer for PAGA violations does not need to meet requirements for class
14 certification. (*Id.* at pp. 975, 980-988.) As the Court held, a plaintiff bringing suit under the PAGA
15 does so as a proxy or agent of California's labor law enforcement agencies. (*Id.* at p. 986.) Because
16 the employee's PAGA action functions as a substitute for an action brought by the government
17 itself, a judgment in the PAGA action binds all those who would be bound by a judgment in an
18 action brought by the government. (*Ibid.*)

19 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court shall
20 "review and approve any settlement of any civil action filed pursuant to this part." (Labor Code §
21 2699(l)(2).) The Parties to this current PAGA action have reached such a settlement and now seek
22 this Court's approval of the settlement. Plaintiff's Counsel have also submitted the proposed
23 settlement to the LWDA as required by Section 2699(l)(2). (Settlement Agreement ¶ 54; Connor
24 Decl. ¶ 35.)

25 **IV. DEFENDANTS' DENIAL OF WRONGDOING OR LIABILITY**

26 Under the settlement, Defendants deny any liability or wrongdoing as to all of the claims
27 alleged, and the settlement is not an admission by Defendants of any fault, wrongdoing, or liability.
28 (Settlement Agreement ¶ 59.) There has been no determination by this court or any court as to the

merits of the claims asserted by Plaintiff against Defendants. (Connor Decl. ¶ 22.) Defendants state that they concluded that given the risks and costs of litigation, it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement. (Ibid.)

V. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

The following is a summary of the principal terms of the Settlement Agreement.

A. Aggrieved Employees and Terms of the Settlement

Aggrieved Employees are defined as all non-exempt individuals who are or were employed by Defendants in the State of California during the PAGA Period (May 21, 2019 until the earlier of (i) date of approval of the settlement or (ii) December 30, 2021). (Settlement Agreement ¶ 2.) If any Aggrieved Employee is incompetent or deceased, then that person's legal guardian, executor, heir or successor-in-interest is an Aggrieved Employee for purposes of this settlement. (Ibid.) Defendants have estimated that there are approximately 174 Aggrieved Employees. (Ibid.)

The settlement provides that Defendants will pay a *non-reversionary maximum settlement amount of Two Hundred And Fifty Thousand Dollars (\$250,000.00)* (the "Gross PAGA Settlement Amount"), inclusive of payments to the LWDA and Aggrieved Employees, payment of Plaintiff's Counsel's Attorneys' Fees and Costs, PAGA Representative Enhancement Award payment to Plaintiff, as well as payment of Settlement Administration Costs. (Id. at ¶ 10.) Plaintiff's Counsel request a fee of 33 ⅓ percent (or \$83,333.00) of the Gross PAGA Settlement Amount and costs in the amount of \$8,975.00.¹ (Settlement Agreement ¶¶ 4, 34(a).) Plaintiff requests a PAGA Representative Enhancement Award of \$6,500.00 from the Gross PAGA Settlement Amount in recognition of her time and service to the Aggrieved Employees and the State of California in pursuing the Action and in fulfilling her obligations as the lead Aggrieved Employee, and in exchange for her individual general release of claims. (Settlement Agreement ¶¶ 17, 34(b), 43, 44.) The Parties selected CPT Group, Inc. as the Settlement Administrator, and its costs of \$12,000 are

¹ Notwithstanding that the Settlement Agreement allocated up to \$15,000, Plaintiff's Counsel's total costs as of today are \$8,725.07 (Connor Decl. ¶ 65). (Settlement Agreement ¶¶ 4, 34(a).) Note: this amount does not include costs to be incurred in connection with filing and serving approval papers and appearing at the PAGA approval hearing estimated at \$250.00, thus \$8,975.00.

1 to be deducted from the Gross PAGA Settlement Amount. (Settlement Agreement ¶¶ 25, 34(c).)
2 After payment of the attorneys’ fees and costs, Plaintiff’s enhancement payment, and administration
3 costs, approximately \$139,192.00 will remain as the estimated net proceeds for distribution to the
4 LWDA and Aggrieved Employees (the “Net Settlement Amount”). (Id. at ¶ 13; Connor Decl. ¶ 25.)

5 **B. Settlement Allocation to the LWDA and Aggrieved Employees**

6 Pursuant to the Settlement Agreement, the entire Net Settlement Amount shall be designated
7 as PAGA civil penalties to be allocated as follows: 75 percent (\$104,394.00) shall be distributed to
8 the LWDA and 25 percent (\$34,798.00) to Aggrieved Employees (divided *pro rata* based on each
9 employee’s proportionate number of pay periods during the PAGA Period). (*See* Labor Code §
10 2699(i) [“Except as provided in subdivision (j), civil penalties recovered by aggrieved employees
11 shall be distributed as follows: 75 percent to the [LWDA] enforcement of labor laws and education
12 of employers and employees about their rights and responsibilities under this code...and 25 percent
13 to the aggrieved employees.”].) (Settlement Agreement ¶¶ 36-37.)

14 Assuming *arguendo* that distribution was *pro rata* across the approximately 174 Aggrieved
15 Employees (in reality, it is *pro rata* based on proportionate pay periods worked), the average
16 payment to each Aggrieved Employee is estimated to be \$200.00. (Connor Decl. ¶ 27.)

17 **C. Settlement Payments and the Notice**

18 The settlement is non-reversionary and does not require Aggrieved Employees to submit a
19 claim form to reap financial benefit from the settlement. (Settlement Agreement ¶ 10.) Within ten
20 (10) calendar days after the Effective Date, Defendants will tender to the Settlement Administrator
21 the Gross PAGA Settlement Amount and the Aggrieved Employee List (which is an Excel
22 spreadsheet containing each Aggrieved Employee’s: (a) full name, (b) last known address, (c) last
23 known telephone number, (d) Social Security number, (e) dates of employment, and (f) the
24 respective number of pay periods that each Aggrieved Employee worked as a non-exempt employee
25 for Defendants in California during the PAGA Period). (Id. at ¶¶ 3, 33, 46.)

26 Within fifteen (15) calendar days after the Effective Date, the Settlement Administrator will
27 distribute payments to Aggrieved Employees along with the PAGA Payment Letter (*i.e.*, notice) –
28 *see* Exhibit “2” to Connor Decl. – via First-Class U.S. Mail. (Settlement Agreement ¶ 48.) Before

1 mailing, Settlement Administrator will perform a National Change of Address database search for
2 information to update and locate the most current addresses for Aggrieved Employees. (Id. at ¶ 49.)
3 If any PAGA Payment Letters are returned without a forwarding address, Settlement Administrator
4 shall attempt to locate a current address by performing an additional skip-trace. (Ibid.)

5 Aggrieved Employees will have 180 days to cash their checks. (Id. at ¶¶ 51-52.) Any
6 settlement checks remaining uncashed after 180 days shall be cancelled and the funds associated
7 with such cancelled checks will be transmitted to a *cy pres* in conformity with the requirements of
8 California Code of Civil Procedure section 384. (Ibid.) In the event that an Aggrieved Employee
9 does not negotiate his or her check, the terms of the final judgment including the PAGA Released
10 Claims will nevertheless be binding upon that Aggrieved Employee. (Id. at ¶ 51.)

11 **D. The Releases and Settlement Payment to Plaintiff**

12 Importantly, the California Supreme Court has explained that other employees are bound by
13 a PAGA adjudication only with respect to civil penalties, just as they would be “bound by a
14 judgment in an action brought by the government.” (*Arias, supra*, 46 Cal.4th at p. 986.) In
15 accordance with this rule, the release of Aggrieved Employees herein is narrowly tailored to release
16 from liability for “any and all claims for the recovery of civil penalties under PAGA only, that could
17 have been asserted in the Action based on the facts alleged,” which “includes a full release of the
18 PAGA claim for underlying violations of Labor Code §§ 201, 202, 203, 204, 210, 212, 221, 226,
19 226.3, 226.7, 450, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 1199, 2800, and 2802, along with
20 relevant IWC Wage Order(s), including Wage Order 4-2001 Sections 11 and 12, and for any other
21 PAGA violations based on the facts alleged or that could have been alleged in the Complaint during
22 the PAGA Period.” (“PAGA Released Claims”). (Settlement Agreement ¶¶ 16, 41; Connor Decl. ¶
23 32.) The Parties are not aware of any potentially overlapping lawsuits other than Plaintiff’s
24 individual pending lawsuit described *infra*.

25 Under the terms of the settlement, Plaintiff will receive a PAGA Representative
26 Enhancement Award, to be paid in recognition of her time and service to Aggrieved Employees and
27 the State of California in pursuing the Action and in fulfilling her obligations as the lead Aggrieved
28 Employee, and in exchange for her individual general release of claims except for the carve-out of

her wrongful termination action pending against Defendant National Therapeutic Services, Inc. (Orange Co. Sup. Ct. Case No. 30-2021-01192045-CU-WT-NJC) (“Wrongful Termination Action”), in addition to the PAGA Released Claims, in the amount of \$6,500. (Settlement Agreement ¶¶ 17, 23, 34(b); Connor Decl. ¶ 33.)

E. Attorneys’ Fees and Costs

Plaintiff’s Counsel request 33 ⅓ percent of the Gross PAGA Settlement Amount in attorneys’ fees and \$8,975.00 in reimbursement of litigation costs.² (Settlement Agreement ¶¶ 4, 34(a); Connor Decl. ¶ 34.) Further discussion and support for the requested awards is set forth in Section VII, *infra*, and the accompanying Connor Decl. ¶¶ 50-64.

VI. THE PAGA SETTLEMENT SHOULD BE APPROVED

In 2016, PAGA was amended to require the Court to “review and approve any settlement of any civil action filed pursuant to this part.” Labor Code § 2699(l)(2). The amendment to Labor Code section 2699(l)(2) also requires that the “proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.” As such, on the day of filing of this Motion, the settlement is also being concurrently submitted to the LWDA in accordance with this section. (Settlement Agreement ¶ 54; Connor Decl. ¶ 35.)

A. Standards for Approval of a PAGA Settlement

The legislative history of PAGA makes little mention of the approval requirement in section 2699, subdivision (l). PAGA was passed by the legislature as Senate Bill (“SB”) 796, and it was signed by the Governor and filed with the Secretary of State on October 12, 2003. (*See* Legislative Digest re Senate Bill No. 796.) It took effect on January 1, 2004.

The original version of the act did not contain the court approval requirement now codified in section 2699(l). That subdivision was added as part of the amendments to the Act that were introduced as SB 1809 in February 2004 and signed by the Governor on August 11, 2004. (*See*

² Notwithstanding that the Settlement Agreement allocated up to \$15,000, Plaintiff’s Counsel’s total costs as of today are \$8,725.07 (Connor Decl. ¶ 65). (Settlement Agreement ¶¶ 4, 34(a).) Note: this amount does not include costs to be incurred in connection with filing and serving approval papers and appearing at the PAGA approval hearing estimated at \$250.00, thus \$8,975.00.

1 Legislative Digest re Senate Bill No. 1809.) Those amendments took effect immediately, and the
2 Court approval requirement of section 2699(1) was one of the provisions that the legislature made
3 retroactive to January 1, 2004. (*Ibid.*)

4 Senator Joseph L. Dunn authored both the original PAGA bill (SB 796) and the amendments
5 (SB 1809). On July 29, 2004, during the consideration of the amendments in SB 1809, Senator Dunn
6 sent a letter addressed to the President Pro Tem of the Senate, which was published in the Senate
7 Daily Journal, “to clarify the extent of subdivision (1)” of what is now section 2699. He was sending
8 this letter “in response to an issue raised by the Judicial Council of California.” (*Ibid.*) In the letter,
9 Senator Dunn stated:

10 The purpose of court review of the penalties in subdivision (1) is to ensure that
11 settlements involving penalties arising out of Labor Code Section 2699 do not
12 undercut the dual statutory purposes of punishment or deterrence, or result in unjust,
arbitrary, and oppressive, or confiscatory settlements. *Id.*

13 The broad criteria appear to give the Court wide latitude in determining whether to approve the
14 penalties proposed as part of a PAGA settlement. Interestingly, the criteria focus on the effect the
15 penalties may have on the defendant-employer rather than the LWDA or the aggrieved employees
16 who will receive the penalties. (*See Iskanian, supra*, 59 Cal.4th at p. 313 [stating that while the State
17 clearly has an interest “in receiving the proceeds of civil penalties,” the penalties are “used to deter
18 violations.”].) This is different than the analysis of a class action settlement, which typically focuses
19 on the amount received by the class and compares that to the reasonable range of potential outcomes
20 in this case. (*C.f., e.g., Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)
21 Moreover, “there is not [*sic*] requirement that the Court certify a PAGA claim for representative
22 treatment” as in a class action. (*Villalobos v. Calandri Sunrise Farms LP* (C.D. Cal. July 2015) 2015
23 WL 12732709, at *5.)

24 **B. The Penalties Are Appropriate Under the Circumstances.**

25 Here, the penalties are appropriate when considered in light of the principles discussed in
26 Senator Dunn’s letter. Plaintiff contends that the *non-reversionary* Gross PAGA Settlement
27 Amount of \$250,000.00 represents an excellent recovery and is large enough to punish or deter
28 Defendants. (Connor Decl. ¶ 36.) It is particularly poignant to garner any penalty given that

1 Defendants are financially cash strapped with liens on their account receivables. (*Ibid.*)
2 Additionally, Defendants have a facially compliant meal period policy, and time records and wage
3 statements show Defendants often, but not always, paid meal period premiums and overtime pay.
4 (*Ibid.*) Moreover, in addition to asserting that any claims on a class basis would fail due to arbitration
5 agreements signed by Defendants' workforce (including Plaintiff), Defendants also relied on meal
6 period waivers to assert a reduction in liability. (*Ibid.*) Further, Defendants' rounding policy/practice
7 ceased in early 2021. (*Ibid.*) Finally, although Defendants' rest break policy as stated in the 2017
8 Employee Handbook is facially unlawful because, contrary to *Augustus v. ABM Security Services,*
9 *Inc.* (2016) 2 Cal.5th 257, it explicitly forbids employees to leave the premises, the offensive
10 language was changed in the June 2019 Employee Handbook; however, the June 2019 Employee
11 Handbook was not immediately circulated throughout Defendants' workforce. (*Ibid.*) Thus, the
12 settlement is sufficient to punish/deter Defendants, and provides a fair and reasonable monetary
13 recovery for the LWDA and Aggrieved Employees in the face of hotly disputed claims.

14 **First**, although PAGA and its legislative history do not seem to require a comparison with
15 the "maximum" value of the claims to the actual settlement amount, the penalties are reasonable
16 when considered in this context as well. As of July 1, 2021, the number of Aggrieved Employees in
17 the PAGA Period is approximately 174 and the number of PAGA-eligible pay periods totals 2,742.
18 (*Settlement Agreement* ¶ 2; *Connor Decl.* ¶ 37.) The value of the PAGA claim, unstacked using the
19 default "initial" \$100 and "subsequent" \$200 per pay period rates, is \$531,000. (*Connor Decl.* ¶ 37.)

20 In order for Plaintiff to prevail on the PAGA claim, Plaintiff's Counsel would have to prove
21 the underlying California Labor Code violations, demonstrate that Aggrieved Employees suffered,
22 and demonstrate that Defendants' conduct gives rise to penalties. (*See, e.g., Elliot v. Spherion Pac.*
23 *Work, LLC* (C.D. Cal. 2008) 572 F.Supp.2d 1169, 1181-82 ["Plaintiff's claim under [PAGA] is
24 wholly dependent upon her other claims. Because all of plaintiff's other claims fail as a matter of
25 law, so does her PAGA claim."].) (*Connor Decl.* ¶ 38.)

26 Although wage-and-hour actions are amenable to resolution as to a group of employees some
27 courts have also found that, for various reasons, the issues raised by Plaintiff raise individualized
28 issues and/or are unmanageable and thus not suitable for adjudication as to a group of employees.

1 (Connor Decl. ¶ 39.) Defendants contended that courts have required, and that due process requires,
2 that the adjudication of PAGA claims meet a “manageability” requirement. (*See, e.g., Liu v. Merrill*
3 *Lynch & Co.* (C.D. Cal. Nov. 10, 2014) No. CV-14-0425-PA, 2014 WL 5904904, at **3-4 [Court
4 dismissed the PAGA claim because a multitude of individualized assessments would be necessary,
5 making the PAGA claim unmanageable].) (Connor Decl. ¶ 39.)

6 Defendants maintained several defenses to Plaintiff’s theory of liability, which, if
7 successfully argued and proven, had the potential to eliminate or substantially reduce recovery.
8 (Connor Decl. ¶ 40.) Defendants maintained, and continue to maintain, that they had legally
9 compliant employment policies and practices throughout the time period at issue. (Ibid.) Defendants
10 denied, and continue to deny, that they ever violated any provision of the California Labor Code,
11 including, but not limited to, those sections for which Plaintiff seeks penalties under the PAGA.
12 (Ibid.) Defendants further denied, and continue to deny, that Plaintiff’s lawsuit is appropriate for
13 representative treatment for any purpose other than the settlement. (Ibid.)

14 Defendants contended that the work experiences of Aggrieved Employees varied because
15 they have different job positions with widely varying responsibilities across different locations, and
16 that these factors would pose a challenge to proving injuries to all Aggrieved Employees and to the
17 manageability and viability of representative adjudication of the PAGA claim. (Id. at ¶ 41.)

18 Defendants also argued that an important feature of the PAGA is that the Court retains
19 discretion to lower the penalties if, based on the facts and circumstances of the particular case, to do
20 otherwise would result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” (*See*
21 *Labor Code § 2699(e)(2); see also Thurman v. Bayshore Transit Management, Inc.* (2012) 203
22 *Cal.App.4th 1112, 1136* [holding that a court may reduce the amount of PAGA penalties awarded
23 to an employee based upon discretionary factors].) (Connor Decl. ¶ 42.) Again, Defendants deny
24 that they ever violated any provision of the California Labor Code. (Connor Decl. ¶ 42.) Even if,
25 *arguendo*, such violations occurred, which Defendants deny, Defendants contended that said
26 violations would only be considered “initial violations” and thus heightened “subsequent violation”
27 penalties were not warranted. (*See Labor Code § 2699(f)(2); see also Amaral v. Cintas Corp. No. 2*
28 *(2008) 163 Cal.App.4th 1157, 1208-09* [“Until the employer has been notified that it is violating a

1 Labor Code provision [...], the employer cannot be presumed to be aware that its continuing
2 underpayment of employees is a ‘violation’ subject to penalties.”].) (Connor Decl. ¶ 42.)

3 Moreover, Defendants contended that the Court was unlikely to assess cumulative PAGA
4 penalties for the maximum number of possible, separate California Labor Code violations, because
5 it would be unjust, arbitrary, oppressive, and/or confiscatory, especially where certain conduct may
6 be regulated by multiple provisions of the California Labor Code that are interrelated and work in
7 tandem. (Connor Decl. ¶ 43.) As such, Defendants contended that cumulative penalties and
8 heightened penalties would be unjust, arbitrary, oppressive, and confiscatory. Finally, many of the
9 claims were derivative of each other, which tended to undermine any stacking of penalties. (Ibid.)

10 While Plaintiff disagrees with Defendants’ contentions and maintains that her PAGA claim
11 has merit, in reaching the settlement, Plaintiff and her counsel took into account the strengths and
12 weaknesses of each side’s position and the uncertainty of how the case might have concluded as
13 litigation continued, at trial, and/or appeals. (Id. at ¶ 44.) The PAGA settlement amount is reasonable
14 in light of significant risks and uncertainties associated with the PAGA claim in this case.

15 **Second**, the scope of the release is necessarily strictly confined to those PAGA civil penalties
16 that are or could have been alleged based on the facts in the operative complaint. (Id. at ¶ 45.) The
17 PAGA Released Claims do not release any Aggrieved Employee’s non-PAGA claims for alleged
18 violations of the Labor Code. (Ibid.) The settlement also requires that each Aggrieved Employee
19 receive a notice, *i.e.*, the PAGA Payment Letter, which describes this litigation and the settlement.
20 (Ibid.) Plaintiff contends that this notice will educate Aggrieved Employees as to the requirements
21 of the Labor Code, something that is in the public interest and consistent with the PAGA’s purposes.
22 (*See* Labor Code § 2699(j) [stating that civil penalties recovered under PAGA shall be distributed to
23 the LWDA for [among other things] “education of employers and employees about their rights and
24 responsibilities under this code.”].) (Connor Decl. ¶ 45.)

25 **Third**, “the very essence of a settlement is compromise, ‘a yielding of absolutes and an
26 abandoning of highest hopes.’” (*Officers for Justice v. Civil Service Comm’n* (9th Cir. 1981) 688
27 F.2d 615, 624.) “The proposed settlement is not to be judged against a hypothetical or speculative
28 measure of what might have been achieved by the negotiators.” (*Id.* at p. 625.) Here, the settlement,

1 even with deductions, provides a substantial sum of \$104,394.00 to the State and \$34,798.00 to
2 Aggrieved Employees. (Connor Decl. ¶ 46.) The settlement is a compromise of highly disputed
3 claims. (Ibid.) Plaintiff and her counsel recognize the expense and length of continued proceedings
4 necessary to litigate the matter through trial and any possible appeals. (Ibid.) They have also
5 considered the uncertainty and risk of the outcome of further litigation, and the difficulties and
6 delays inherent in such litigation. (Ibid.) Plaintiff and her counsel are also aware of the burdens of
7 proof necessary to establish liability, both generally and in response to Defendants' defenses thereto,
8 and the difficulties in establishing Defendants' liability for, and the right to recover, penalties on
9 behalf of Plaintiff, the State of California, and other Aggrieved Employees. (Ibid.; *see also*
10 Defendants' Answer to Complaint dated December 29, 2019 (asserting a general denial along with
11 twenty-one (21) affirmative defenses).) Plaintiff and her counsel have also taken into account
12 Defendants' agreement to enter into a settlement that confers significant relief upon Aggrieved
13 Employees and the State of California. (Ibid.)

14 Considering all of the facts in this case, Plaintiff and her counsel have determined that the
15 settlement represents a fair, adequate, and reasonable resolution of the PAGA claim, and that it is in
16 the best interests of Aggrieved Employees and the State of California. (Id. at ¶ 47.) The settlement
17 secured by Plaintiff here is greater than other PAGA penalty awards approved by California state
18 courts, which often range between \$7,500.00 and \$15,000.00 for PAGA claims impacting hundreds
19 or thousands of individuals, resulting in much lower PAGA penalty payments on a per capita basis.
20 (*See, e.g., Penaloza v. PPG Industries Inc.* (Super. Ct. L.A. County, May 20, 2013) Case No.
21 BC471369, 2013 WL 2917624, at *2 [approving PAGA penalties of \$5,000.00 to class of 667
22 members]; *Cabrera v. Advantage Sale & Marketing, LLC* (Super. Ct. L.A. County, March 12, 2013)
23 Case No. BC485259, 2013 WL 1182822 [approving PAGA penalties of \$10,000.00 for class of
24 approximately 3,000 members].) The result achieved in this case, and the monetary recovery
25 provided by this settlement, are well-within the range of an acceptable settlement under the
26
27
28

1 circumstances, especially when compared to the settlement of PAGA claims in other cases.³ (Connor
2 Decl. ¶ 48.)

3 **Fourth**, public policy strongly favors the settlement of litigation. (*Consumer Advocacy*
4 *Group v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.) Because the proposed
5 settlement is neither unjust nor ignores the public interest, it should be approved. (Connor Decl. ¶
6 49.)

7 **VII. THE ATTORNEYS' FEES AND COSTS ARE REASONABLE**

8 Here, Plaintiff moves for approval of attorneys' fees of 33 ⅓ percent, or \$83,333, of the
9 common fund. (Settlement Agreement ¶¶ 4, 34(a).) Pursuant to Labor Code section 2699(g)(1), the
10 prevailing party in a PAGA action is entitled to reasonable attorney's fees and costs. Plaintiff is not
11 claiming that she is the prevailing party, but nevertheless the settlement of a PAGA action must
12 consider the fees that have been incurred as an element of the liability analysis and ultimate
13 settlement. (Connor Decl. ¶ 50.)

14 This request for attorneys' fees is supported by California law under the common fund
15 doctrine. The main advantage of the settlement here is that it creates a significant fund to benefit the
16 LWDA and Aggrieved Employees. As noted by the trial court in *Harrington v. Payroll*
17 *Entertainment Services, Inc.* (2008) 160 Cal.App.4th 589, plaintiff's attorneys should share in this
18 recovery. These circumstances are analogous to cases, like wage and hour class actions, where the
19 common fund doctrine is applied. The common fund doctrine has been applied "consistently in
20 California when an action brought by one party creates a fund in which other persons are entitled to

22 ³ See, e.g., *DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP4833
23 (May 2017) (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA
24 claims); *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575, at *3 (approving the amount of
25 \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller v. David's Bridal, Inc.*,
26 2012 WL 2117001, at *14 (approving the amount of \$10,000 out of \$518,245 toward settlement of
27 PAGA claims); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (approving the
28 amount of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco v. Ruiz Food*
Products, Inc., 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of \$2.5 million
toward settlement of PAGA claims); *Nordstrom Commission Cases* (Cal. Ct. App. Jul. 7, 2010),
G042772 No. JCCP4419 (finding no abuse of discretion by the trial court in approving a settlement
that allocates \$0 toward the settlement of PAGA claims that were at issue in the lawsuit). Here, the
value obtained for settlement of the PAGA claims is significant, and it will be distributed in
accordance with and in fulfillment of the objectives of the PAGA statute.

1 share.” (*City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110.) (Connor Decl. ¶
2 51.)

3 An award of fees from the gross settlement amount under the common fund doctrine
4 prevents unjust enrichment of those who benefit from the common fund through the successful
5 efforts of plaintiff’s counsel and furthers the important goal of attracting competent counsel to
6 handle representative actions enforcing minimum labor standards. (*Laffitte v. Robert Half Int’l, Inc.*
7 (2016) 1 Cal.5th 480, 503.) In affirming the use of the common fund doctrine in California, the
8 California Supreme Court summarized the benefits of the percentage method of recovery stating:

9 The recognized advantages of the percentage method – including relative ease of
10 calculation, alignment of incentives between counsel and the class, a better
11 approximation of market conditions in a contingency case, and the encouragement it
12 provides counsel to see an early settlement and avoid unnecessarily prolonging the
litigation [citations] – convince us the percentage method is a valuable tool that should
not be denied our trial courts. *Id.*

13 (*See also, Lealao v. Beneficial Cal. Ins.* (2000) 82 Cal.App.4th 19, 48 [observing that the key
14 advantage of the common-fund method is that it focuses on the total benefit conferred on the
15 beneficiaries resulting from the efforts of counsel].) Thus, the common fund approach is the most
16 reasonable one here, given the nature of the case and of the Parties’ settlement. (Connor Decl. ¶¶
17 51-55.)

18 The attorney fee award requested is also consistent with what courts have awarded in other
19 representative action cases. The following list shows PAGA actions and PAGA/class action cases
20 where attorney’s fees were awarded on a common fund basis in a range between 33.33% and 40%:

- 21 • *Banda v. Verizon California, Inc.*, Los Angeles Superior Court Case No. BC434587
22 (**35% fee awarded** on \$15,000,000 settlement of mixed PAGA/class claims);
- 23 • *Padilla v. Staffmark Investment, Inc.*, San Bernardino County Superior Court Case
24 No. CIVDS1408641 (**33.33% fee awarded** on \$2,000,000 settlement of a PAGA only case);
- 25 • *Birch v. Office Depot*, United States District Court for the Southern District of
26 California, Case No. 06cv1690 DMS (**40% fee awarded** on \$16,000,000 settlement of mixed
27 PAGA/class claims);

28 ///

1 • *Zelada v. Majestic Terminal Services*, San Bernardino Superior Court Case No.
2 CIVDS1916968 (**38% fee awarded** on \$1,800,000 settlement of a PAGA only case); and

3 • *Garcia v. The Pep Boys*, Orange County Superior Court Case No. 30-20014-
4 007205740-CU-OE-CJC (**33.33% fee awarded** on \$1,030,000 settlement of a PAGA only case).

5 Plaintiff's Counsel's application for attorneys' fees in light of the facts and circumstances
6 surrounding the case is well-within the range of reasonableness. In fact, historically, courts have
7 awarded fees as high as fifty percent (50%) of the settlement in complex actions. (*See In re*
8 *Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F. Supp. 494 [**awarding attorneys' fees in the**
9 **amount of 45%** of the \$7.3 million total settlement amount]; *Beech Cinema, Inc. v. Twentieth-*
10 *Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195 [awarding approximately **53% of the**
11 **settlement as attorneys' fees**].) California courts routinely approve attorneys' fees awards
12 "average[ing] around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th
13 43, 66 n.11 [lower court found the range of contingency fees in marketplace to be up to 40 percent
14 and determined such a percentage fee was appropriate].)

15 Based on the foregoing, awarding attorneys' fees based on a percentage of the settlement
16 amount is favored by California Courts when a fund established for the common benefit of other is
17 involved, such as here. (*See Laffitte, supra*, 1 Cal.5th at p. 503.) Here, Plaintiff's Counsel
18 represented Plaintiff (and the State of California) in this matter on a strictly contingency basis and,
19 as such, had to forego other financial opportunities to litigate other cases (contingency and hourly),
20 incurred the risk of non-recovery after investment of time, money, and resources, and have done so
21 since the inception of this case without payment or compensation. (*Connor Decl.* ¶ 56.) This is not
22 an easy burden for Plaintiff's Counsel and, if the best that could be hoped for is merely to be paid
23 the customary hourly rate, such would not sufficiently incentivize future similar private attorney
24 general/qui tam cases with contingency risks. (*Id.* at ¶ 57.) Given that the request for attorneys' fees
25 here falls well within the norms accepted in comparable California court cases, Plaintiff's request
26 for \$83,333 in attorneys' fees is fair and reasonable.

27 Significantly, *Laffitte* also held that trial courts have discretion to assess reasonableness of
28 fee awards with tools such as the lodestar cross-check, though they need not do so. (*Laffitte, supra*,

1 Cal.5th at p. 506.) This Court can and should award attorneys’ fees and costs based on the
percentage fee alone in light of the excellent results achieved and for the reasons stated.
Nevertheless, the lodestar “cross-check” here also supports the requested contingency-fee
percentage. (*Serrano v. Priest* (1975) 20 Cal.3d 25, 48.) Specifically, Plaintiff’s Counsel, with a
total lodestar of \$63,389.50, requires a multiplier of approximately **1.31** to yield the requested fees.
(Connor Decl. ¶¶ 58-64.)

The requested multiplier in this case is within even the modest multipliers that are approved
by California courts. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050-1051
[looking to multipliers awarded in comparable cases as evidence of reasonableness; affirming 3.65
multiplier].) Multipliers routinely range from 3 to 5, and it is not uncommon that multipliers of
between 5 and 10, or higher, are applied. (*See, e.g., Wilson v. Bank of Am. Natl. Trust & Savs. Assn.*
(Cal. Sup. Ct., Aug. 16, 1982) Case No. 643872 [multiplier of 10]; *Glendora Comm. Redev. Agency*
v. Demeter (1984) 155 Cal.App.3d 456, 465 [affirming multiplier of 12, and expressly rejecting
argument that fee was either exorbitant or unconscionable]; *Wershba v. Apple Computer, Inc.* (2001)
91 Cal.App.4th 224, 255 [noting that “[m]ultipliers can range from 2 to 4 or even higher”]; *Van*
Vranken v. Atlantic Richfield Co. (N.D. Cal. 1995) 901 F. Supp. 294, 298 [3-4 are in the “range [of]
common” multipliers for class actions]; *Laffitte, supra*, 1 Cal. 5th at pp. 487-88 [multiplier of 2.03
to 2.13]; *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 [affirming a 2.34 multiplier
without remand]; *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512
[applying a 2.52 multiplier]; *Chavez, supra*, 162 Cal.App.4th at p. 66 [applying a 2.5 multiplier];
Chau, et al v. CVS RX Services, Inc., Los Angeles County Superior Court No. BC349224, Order
Granting Final Approval of Class Action Settlement, Reasonable Attorneys’ Fees and Costs and
Service Payments to the Class Representatives [a 3.8 multiplier was applied based primarily on
contingent risk and the “excellent results [] obtained [] with relative efficiency”].) Recently, on
October 23, 2020, the California Court of Appeal issued its ruling in *Santana v. FCA US, LLC*, Case
No. G057244, G058020, affirming the trial court’s award of fees to plaintiff’s attorneys in a
contingency case utilizing a 2.0 multiplier explaining:

1 Under our precedents, the unadorned lodestar reflects the general local hourly rate
2 for a fee-bearing case; it does not include any compensation for contingent risk,
3 extraordinary skill, or any other factors a trial court may consider under *Serrano III*.
4 The adjustment to the lodestar figure, *e.g.*, to provide a fee enhancement reflecting
5 the risk that the attorney will not receive payment if the suit does not succeed,
6 constitutes earned compensation; unlike a windfall, it is neither unexpected nor
7 fortuitous. Rather, it is intended to approximate market-level compensation for such
8 services, which typically includes a premium for the risk of nonpayment or delay in
9 payment of attorney fees. *Id.* at 20 (citing *Ketchum v. Moss* (2001) 24 Cal.4th 1122,
10 1138).

11 The *Santana* court concluded a multiplier was appropriate to account for the contingency factor.
12 Accordingly, the lodestar cross-check affirms that the fee award requested does in fact fall within
13 the range of reasonableness. (Connor Decl. ¶¶ 63-64.)

14 The Settlement Agreement authorized Plaintiff's Counsel to recover actual litigation costs
15 of up to \$15,000. (Settlement Agreement ¶¶ 4, 34(a).) In actuality, Plaintiff's Counsel have incurred
16 an aggregated \$8,725.07 in litigation costs. (Connor Decl. ¶ 65) This amount does not include costs
17 to incurred in connection with filing and serving approval papers and appearing at the PAGA
18 approval hearing estimated at \$250.00, thus, Plaintiff's Counsel are seeking a rounded \$8,975.00.
19 (*Ibid.*) These expenses include: (1) Court filing, service and messenger fees; (2) LWDA filing fees;
20 (3) mediation fees; (4) expert fees; and (4) postage. (Connor Decl. ¶ 65.) The expenses incurred by
21 Plaintiff's Counsel in this matter benefited Plaintiff, the LWDA, and Aggrieved Employees, and are
22 of the type routinely billed by attorneys in such litigation. (*Id.* at ¶ 67.) Given that the \$8,975.00 in
23 litigation costs are reasonable and uncontested, they should be approved.

24 **VIII. THE SETTLEMENT PAYMENT TO PLAINTIFF IS REASONABLE**

25 As part of the settlement, the Parties seek a PAGA Representative Enhancement Award to
26 be paid to Plaintiff in recognition of her time and service to Aggrieved Employees and the State of
27 California in pursuing this action, and in fulfilling her obligations as the lead Aggrieved Employee,
28 in the amount of \$6,500. (Settlement Agreement ¶¶ 17, 34(b); Connor Decl. ¶ 68.) The Parties
acknowledge that Plaintiff took significant risks in bringing this litigation and actively supported its
prosecution. (Connor Decl. ¶ 69.) Numerous other state courts have previously approved service
awards and/or individual settlement payments to PAGA representatives in amounts that demonstrate
the reasonableness of Plaintiff's request. (*See, e.g. Garrett v. Bank of America* (Oct. 28, 2016)

1 Alameda County Superior Court Case No. RG13699027 [awarding three PAGA plaintiffs
2 \$25,000.00 each as service awards]; *Brewer v. Connell Chevrolet*, Orange County Superior Court
3 Case No. 30-2016-00852123 [approving a PAGA representative awarded as an individual
4 settlement payment of \$15,000.00]; *Jones v. J.C. Penny Corp.*, Los Angeles Superior Court Case
5 No. BC451823 [awarding PAGA representative a service award of \$10,000.00]; and *Garcia v.*
6 *Macy's West Stores*, San Bernardino Superior Court Case No. CIVDS1516007 [approving a PAGA
7 settlement and service award of \$10,000.00].) (Connor Decl. ¶ 69.)

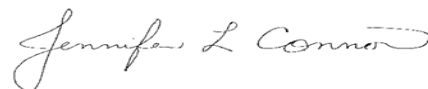
8 Here, Plaintiff spent a significant amount of time helping Plaintiff's Counsel with the
9 prosecution of this Action and performing the following tasks: (1) regularly speaking with her
10 attorneys; (2) providing relevant legal and factual information; (3) evaluating and producing relevant
11 documents; (4) identifying potential witnesses; (5) discussing discovery, damages, and penalties
12 issues; (6) participating and being available during the mediation process; (7) reviewing, discussing,
13 evaluating the terms of and signing the Settlement Agreement; and (8) regularly requesting updates
14 on the status of the case. (*See* Declaration of Amanda Bailey ("Bailey Decl."), ¶¶ 6-9, filed
15 concurrently herewith; Connor Decl. ¶ 70.) Plaintiff will not 'benefit financially' from this
16 settlement in any meaningful sense, yet she has obtained a substantial payment for the State of
17 California and for other Aggrieved Employees. (Bailey Decl. ¶¶ 10-11; Connor Decl. ¶ 71.) Thus,
18 the PAGA Representative Enhancement Award in the amount of \$6,500 is modest, reasonable, and
19 should be approved. (Bailey Decl., *in passim*; Connor Decl. ¶ 71.)

20 **IX. CONCLUSION**

21 For the foregoing reasons, Plaintiff requests that the Court approve the PAGA settlement of
22 this matter.

23 Dated: December 01, 2021

Respectfully submitted,
COUNSELONE, PC



26 By: _____

Jennifer L. Connor
Attorneys for Plaintiff and Aggrieved
Employees