

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (SBN #068687)
Kyle R. Nordrehaug (SBN #205975)
Aparajit Bhowmik (SBN #248066)
Nicholas J. De Blouw (SBN #280922)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858) 551-1223
Facsimile: (858) 551-1232

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

SHARRON HARVILLE and TERRELL
CLARK, individuals, on behalf of themselves
and on behalf of all persons similarly situated

Plaintiffs,

vs.

NORTH FV LLC, a Limited Liability Company;
FRC NORTH ONE PASEO LLC, a Limited
Liability Company; FRC NORTH (PARK
PLACE) LLC, a Limited Liability Company;
FRC NORTH THE POINT LLC, a Limited
Liability Company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2021-0000397-CU-OE-CTL

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

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

Hearing Date: August 11, 2023

Hearing Time: 10:30 a.m.

Judge: Hon. Carolyn Caietti

Dept.: C-70

Action Filed: January 5, 2021

Trial Date: None Set

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

3 YOU ARE HEREBY NOTIFIED THAT at 10:30 a.m. on August 11, 2023, or as soon
4 thereafter as the matter can be heard, in Department C-70 of the above entitled Court before
5 the Honorable Carolyn Caietti, Plaintiffs Sharron Harville and Terrell Clark (“Plaintiffs”)
6 will and hereby do move for an order approving the settlement of the PAGA claim alleged
7 against Defendants North FV LLC, FRC North One Paseo LLC, FRC North (Park Place)
8 LLC, FRC North The Point LLC and North Restaurants LLC (“Defendants”) in accordance
9 with Labor Code §2699(1). The proposed settlement is set forth in the accompanying Private
10 Attorneys’ General Act Settlement Agreement (“Agreement”).

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

15 Respectfully submitted,

16 Dated: July 20, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

18 By: /s/ Kyle Nordrehaug
19 Kyle Nordrehaug

20 *Attorney for Plaintiffs*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Sharron Harville and Terrell Clark (“Plaintiffs”) reached a settlement of the
4 California Private Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim
5 asserted in this action against Defendants North FV LLC, FRC North One Paseo LLC, FRC
6 North (Park Place) LLC, FRC North The Point LLC and North Restaurants LLC
7 (“Defendants”) (collectively, the “Parties”) which provides for a “Gross PAGA Settlement
8 Amount” payment in the amount of \$900,000.00. In accordance with California Labor Code
9 §2699(l), Plaintiffs now ask this Court to review and approve the settlement of Plaintiffs’
10 PAGA claims.¹ This is only a settlement of the PAGA claims for civil penalties, and is not a
11 class settlement and does not release the individual wage claims, if any, of the affected
12 employees other than the Plaintiffs themselves. Cal. Labor Code § 2699(g)(1); *Iskanian v.*
13 *CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175,
14 182 (2019) (unpaid wages are not recoverable under PAGA).

15 The PAGA settlement is set forth in the accompanying Private Attorneys’ General Act
16 Settlement Agreement (“Agreement”) and the form used for Agreement is the Los Angeles
17 Superior Court’s model form. A true and correct copy of the Agreement which sets forth the
18 terms for the settlement of the PAGA claims is attached as Exhibit #1 to the Declaration of
19 Kyle Nordrehaug, filed herewith. Capitalized terms shall have the same meaning as defined
20 in the Agreement. The LWDA received notice of this Settlement and this motion as set forth
21 in the accompanying proof of service.

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

24 **II. RELEVANT FACTS**

25 PAGA Counsel mailed the necessary correspondence to the California Labor and
26 Workforce Development Agency (“LWDA”) on May 7, 2020 on behalf of Plaintiff Sharron
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 Harville, requesting authorization from the LWDA to seek civil penalties as provided by the
2 Private Attorney General Act of 2004 (“PAGA”) for the wage and hour violations alleged in
3 the PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3). Plaintiff Harville sent an
4 Amended Notice to the LWDA on January 7, 2021 which amended Plaintiff Harville’s
5 original PAGA Notice and added an additional Plaintiff and Aggrieved Employee, Terrell
6 Clark.

7 On January 5, 2021, Plaintiffs commenced the PAGA Action by filing a class and
8 representative action Complaint that asserted various wage-and-hour claims, as well as
9 several individual employment law claims. On April 23, 2021, Plaintiffs requested dismissal
10 of all class claims and individual claims asserted in the Complaint, so that only a single
11 cause of action under PAGA remained. On April 26, 2021, the Court granted Plaintiffs’
12 request for dismissal of all class and individual claims without prejudice.

13 Plaintiffs and Defendants agreed to mediate with David Rotman. Prior to the
14 mediation, the Parties conducted significant investigation and discovery of the facts and law.
15 Defendant produced hundreds of documents relating to its policies, practices, and procedures
16 regarding paying non-exempt employees for all hours worked, overtime, meal and rest
17 period policies, payroll and operations policies, and more. Plaintiffs were provided with
18 sufficient records and data to determine the number of Aggrieved Employees and the number
19 of pay periods in the PAGA Period. The Parties agree that the above-described investigation
20 and evaluation, as well as the information exchanged during the settlement negotiations, are
21 more than sufficient to assess the merits of the Parties’ positions and to compromise the
22 issues on a fair and equitable basis. (Declaration of Kyle Nordrehaug, at ¶3).

23 Plaintiffs’ theory of PAGA liability as argued at mediation alleged that Defendants
24 failed to pay employees for all hours worked. For example, Plaintiffs alleged that, prior to
25 clocking in for their work shifts, Aggrieved Employees were required to submit to a Covid-
26 19 screening and that Defendants failed to pay the Aggrieved Employees the proper
27 minimum wages for their time spent submitting to Covid-19 symptoms checks. Plaintiffs
28 also alleged that Defendants miscalculated the regular rate as to certain non-discretionary

1 incentive payments and underpaid overtime to the Aggrieved Employees as a result. This
2 also led to Plaintiffs being provided with inaccurate wage statements that failed to state
3 actual hours worked and included other inaccuracies. Plaintiffs also alleged that the
4 Aggrieved Employees' meal and rest breaks were not duty free in that they were required to
5 remain on call and available to respond to restaurant emergencies during breaks. Plaintiffs
6 alleged the Defendants should have paid meal and rest break penalty payments for these
7 violations but failed to do so. In addition, Plaintiffs alleged that the Aggrieved Employees
8 were contacted on their personal cell phones for issues such as scheduling but were not
9 reimbursed by the Defendants for the costs associated with the use of their personal cell
10 phones. (Declaration of Kyle Nordrehaug, at ¶3).

11 On May 31, 2022 and on November 18, 2022, the Parties engaged in all-day
12 mediation sessions before Mediator Rotman, a respected and experienced mediator
13 knowledgeable of both the wage and hour laws and representative claims at issue in this
14 action. Through arms-length negotiations with the assistance of the mediator, the Parties
15 reached an agreement to settle the PAGA claims in this action which led to the signing of a
16 Memorandum of Understanding memorializing the settlement.² (Declaration of Kyle
17 Nordrehaug, at ¶3).

18 The settlement was negotiated in light of all known facts and circumstances and the
19 uncertainty associated with litigation – including the risk of Plaintiffs not being able to
20 maintain representative claims, the difficulty of proving Plaintiffs' claims in a manageable
21 trial, the merits of Defendants' potential defenses, and the significant delay and potential
22 appellate issues inherent to litigation – and was reached after extensive arm's length
23

24 ² In addition to the Gross PAGA Settlement Amount, Defendants have agreed to separately settle
25 Plaintiffs' individual claims pursuant to separate confidential Individual Settlement Agreements
26 ("Individual Settlement"). The individual claims were not at issue in this action and exist
27 independent and apart from the PAGA claims at issue before the Court. *See Kim v. Reins Int'l Cal.,*
28 *Inc.*, 9 Cal. 5th 73, 80 (2020) (the "[s]ettlement of individual claims does not strip an aggrieved
employee of standing, as the state's authorized representative, to pursue PAGA remedies" nor
resolve the PAGA claims.).

1 negotiations, with the assistance of Mediator Rotman. (Declaration of Kyle Nordrehaug, at
2 ¶3).

3 4 **III. TERMS OF THE PAGA SETTLEMENT**

5 The PAGA settlement is subject to Court approval consistent with Labor Code
6 §2699(1)(2). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a
7 “Gross PAGA Settlement Amount” payment in the amount of \$900,000 to resolve the
8 Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this
9 PAGA Settlement of \$900,000, there is a deduction of attorneys’ fees (“PAGA Counsel Fees
10 Payment”) in the amount of \$299,997.00 (which is one-third of the PAGA Settlement),
11 reimbursement of incurred costs (“PAGA Counsel Litigation Expenses Payment”) in an
12 amount not to exceed \$22,000, and Settlement Administration Costs (“Administration
13 Expenses Payment”) not to exceed \$16,000. (Agreement at ¶¶ 3.2.1-3.2.2).³ After these
14 deductions, the amount remaining is the “PAGA Payment”, which is estimated to be no less
15 than \$562,003.

16 Of the PAGA Payment amount, seventy-five percent (75%) (no less than
17 \$421,502.25) will be paid to the LWDA and the remaining twenty-five percent (25%) (no
18 less than \$140,500.75) will be paid to the Aggrieved Employees (Agreement at ¶ 3.2.4)⁴
19 This 75/25 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior*
20 *Court*, 8 Cal.5th 175 (2019).

21 The Individual PAGA Payment for each Aggrieved Employee shall be based on the
22 number of pay periods each Aggrieved Employee worked during the PAGA Period as an
23 Aggrieved Employee, as a percentage of the total pay periods worked by all Aggrieved
24

25 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
26 Payment less than the amounts requested, the Administrator will allocate the remainder of these
27 amounts to the PAGA Payment. (Settlement Agreement at ¶ 3.2.1). To the extent the Administration
28 Expenses are less or the Court approves payment less than \$16,000, the Administrator will allocate
the remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

⁴ “Aggrieved Employees” means all current and former non-exempt employees who worked for
Defendants in California during the PAGA Period. (Settlement Agreement at ¶¶ 1.2).

1 Employees during the PAGA Period.⁵ The PAGA Period is the time period from November
2 1, 2019 to February 21, 2023. (Agreement at ¶¶ 1.23).

3 For mediation, Defendants represented that there are approximately 2,200 Aggrieved
4 Employees who collectively worked approximately 62,000 pay periods during the PAGA
5 Period. (Agreement at ¶ 4.1). Defendants will provide a declaration as required by the
6 Agreement confirming the accuracy of the above figures. (Declaration of Kyle Nordrehaug,
7 at ¶4)

8 Upon entry of final judgment, the Released Parties shall be entitled to a release from
9 the State of California and the Aggrieved Employees only for any “Released PAGA Claims”,
10 which means all claims for PAGA penalties that were alleged, or reasonably could have been
11 alleged, based on the facts stated in the Operative Complaint and Plaintiffs’ Second
12 Amended LWDA Notice that occurred during the PAGA Period, which includes all claims
13 for civil penalties under PAGA for the following violations: failure to provide meal periods;
14 failure to authorize and permit rest periods; failure to provide premium payments at the
15 correct regular rate of compensation for non-compliant meal and rest periods; failure to pay
16 minimum wages; failure to pay overtime and doubletime wages; failure to include bonuses in
17 the regular rate of compensation; failure to provide split shift pay; failure to provide
18 reporting time pay; failure to provide suitable seating; failure to preserve all employee
19 payroll records; failure to provide accurate itemized wage statements; failure to reimburse
20 for necessary business expenses; failure to timely pay wages during employment; and failure
21 to timely pay wages upon termination, during the PAGA Period. This includes violations
22 under California Labor Code sections 201-204, 210, 221, 222.5, 226, 226.3, 226.7, 351, 510,
23 512, 558, 1174, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198 and 2802, as well as California
24 Code of Regulations, Title 8, section 11040 subdivisions 5(A)-(B) and 14. (the “Released
25 PAGA Claims”) (Agreement at ¶ 5.2).

26 ⁵ See Settlement Agreement at ¶ 3.2.4.1 (“The Administrator will calculate each Individual PAGA
27 Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Payment by
28 the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay
Periods.”)

1 The Released PAGA Claims does not include all other claims, including claims for
2 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
3 unemployment insurance, disability, social security, workers' compensation, and California
4 class claims, and PAGA claims outside of the PAGA Period. The Released PAGA Claims
5 do not include any claims that cannot be released as a matter of law. In no event shall the
6 release of the Released PAGA Claims release any individual claims of any individual.

7 Within fourteen (14) days after Defendant funds the Gross PAGA Settlement
8 Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA
9 PAGA Payment, the Administration Expenses Payment and the PAGA Counsel Expenses
10 Payment. (Agreement at ¶ 4.4).⁶ Checks will remain negotiable for one hundred eighty (180)
11 days. (*Id.* at ¶ 4.4.1) For any Aggrieved Employee whose Individual PAGA Payment check
12 is uncashed and cancelled after the void date, the Administrator shall transmit the funds
13 represented by such checks to the California Controller's Unclaimed Property Fund in the
14 name of the aggrieved employee who failed to cash their check. (*Id.* at ¶ 4.4.3).

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

21 22 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

23 The claim before this Court is solely the representative claim under PAGA on behalf
24 of the State of California for civil penalties pursuant to the PAGA. The parties have agreed
25 to settle this PAGA claim in its entirety after investigation and an arm's length mediation
26 session. (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and
27

28 ⁶ Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement
of the Individual PAGA Payments. (*Id.*).

1 finally resolve the Released PAGA Claims asserted by Plaintiffs on behalf of the State of
2 California. This is only a settlement of the PAGA claims for civil penalties, and is not a
3 class settlement and does not release the individual claims, if any, of the Aggrieved
4 Employees, other than any claims under PAGA. This settlement does not release any claim
5 that is not a PAGA claim.⁷ PAGA Counsel Fees equal to one-third of the Gross PAGA
6 Settlement amount (\$299,997.00) and PAGA Counsel Litigation Expenses in an amount not
7 to exceed \$22,000.00 will also be paid to PAGA Counsel as part of the settlement in
8 accordance with California Labor Code § 2699(g)(1), as set forth in the Agreement.⁸ Lastly,
9 payment to the Administrator in an amount not to exceed \$16,000 to perform the
10 administrative duties to distribute the settlement money shall also be paid. (Declaration of
11 Kyle Nordrehaug, at ¶¶ 4-5.)

12
13 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
14 **SETTLEMENT OF THE PAGA CLAIM**

15 Labor Code § 2699(l) requires that the Court “shall review and approve any
16 settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement
17 shall be submitted to the agency at the same time that it is submitted to the court.”
18 Consequently, the parties respectfully ask the Court to review and approve the settlement of
19 the PAGA claims and the PAGA Payment to be paid as part of the proposed settlement.

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

21 The Parties believe that the PAGA Settlement amount is fair and reasonable and
22 therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency
23 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.
25 Here, the Gross PAGA Settlement Amount of \$900,000 is significantly more than other

26 ⁷ 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 ⁸ As set forth in the supporting Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs in
the current amount of \$20,972.51, which is less than the cost allocation in the Settlement Agreement.
See Declaration of Nordrehaug at ¶ 9.

1 PAGA settlements and constitutes approximately \$15 per pay period. (Declaration of
2 Nordrehaug, at ¶6.)

3 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
4 penalties. With the assistance of an expert, Plaintiffs calculated that the maximum amount of
5 statutory PAGA civil penalties was potentially \$6,200,000 based on 62,000 pay periods
6 applicable to the Aggrieved Employees during the PAGA Period.⁹ (Declaration of
7 Nordrehaug, at ¶6.) Importantly, however, these calculations were performed at the
8 maximum statutory rate for the penalties, when in fact, it is likely that any penalties awarded
9 would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to
10 award a lesser amount than the maximum civil penalty if based on the facts and
11 circumstances to do otherwise would result in an award that is "unjust, arbitrary and
12 oppressive or confiscatory."

13 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
14 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay
15 period. Therefore, at trial, any PAGA penalties awarded could be significantly less than
16 Plaintiffs' calculation even where Plaintiffs prevailed on the PAGA claim. If the amount of
17 \$5 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil
18 penalties would be only \$310,000, which is far less than this settlement provides.

19 Under PAGA, Courts have considerable discretion to reduce the penalty award. In
20 *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court
21 reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the
22 court found maximum penalties "unjust" because the employees had suffered no injuries.
23 Some trial courts have actually awarded no civil penalties, even when Labor Code violations
24 are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of
25

26 ⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.
27 The valuation of \$6,200,000 is the civil penalty amount without stacking. If stacking is permitted,
28 then the valuation increases with each additional penalty added to each pay period. Plaintiffs,
however, are not aware of any PAGA award which permitted stacking and in the cases cited herein,
only one penalty per pay period was assessed.

1 App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior
2 Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.
3 LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

4 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove
5 each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*,
6 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of
7 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
8 suffered a violation of the Labor Code by the defendant."). Here, Plaintiffs would need to
9 prove that each Aggrieved Employee suffered a violation for each period the employee
10 worked in relation to meal or rest period violations, failure to provide premium payments at
11 the correct regular rate of compensation for non-compliant meal and rest periods, failure to
12 pay minimum wages, failure to pay overtime and doubletime wages, failure to include
13 bonuses in the regular rate of compensation, failure to provide split shift pay, failure to
14 provide reporting time pay, failure to provide suitable seating, failure to preserve all
15 employee payroll records, failure to provide accurate itemized wage statements, failure to
16 reimburse for necessary business expenses, failure to timely pay wages during employment,
17 and failure to timely pay wages upon termination

18 Defendants maintain that Plaintiffs and the Aggrieved Employees were properly
19 compensated, and that they did not violate the Labor Code. Accordingly, Defendants dispute
20 and deny Plaintiffs' allegations and claims asserted in both the PAGA Notices and the
21 Operative Complaint, which are resolved by the Agreement. Defendants asserted additional
22 defenses to the PAGA claim, not only as to liability but also as to the amount of the
23 penalties. Defendants could argue that no penalties prior to the PAGA notification should be
24 awarded because the violations were not intentional, and at least one Court has so ruled.
25 These defenses present a risk to the PAGA claims and the potential that some or all of the
26 PAGA penalties sought may not be awarded. (Declaration of Nordrehaug, at ¶7.)

27 Given Defendants' potential defenses to the violations at issue, the risks and costs of
28 continued litigation, Plaintiffs and their attorneys believe that the PAGA Settlement is fair

1 and reasonable. (Declaration of Nordrehaug, at ¶7.) Defendants have similarly concluded
2 that it is desirable that the action is settled in the manner and upon the terms and conditions
3 set forth in the Agreement in order to avoid further expense, inconvenience and distraction of
4 further legal proceedings, as well as the uncertainty of litigation. Defendants have
5 determined that it is desirable and beneficial to put to rest the claims in this action and
6 Defendants agrees that the PAGA Settlement is fair, reasonable, and adequate.

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

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

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

21 Although PAGA requires that a court approve the proposed PAGA settlement, Labor
22 Code § 2699(1) does not require that a court approve any other elements of the proposed
23 settlement. Because there are no class allegations for which Plaintiffs seek approval, the
24 approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not
25 apply. Accordingly, the Court only needs to approve the settlement of the civil penalties
26 sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for
27 attorneys' fees and costs are reasonable.

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

2 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the
3 amount of \$299,997 representing one-third of the \$900,000 Gross PAGA Settlement
4 Amount. PAGA does not have any requirements for reviewing attorneys' fees, and
5 Plaintiffs' position is that the payment of attorneys' fees and costs in this settlement is a
6 matter of contract for a contingent representation. Nevertheless, should this Court review the
7 requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

8 First, the requested fees are justified by the result achieved. PAGA Counsel
9 negotiated a recovery of \$900,000.00, and this result justifies the requested fees equal to one
10 third of this recovery. This percentage is within the standard contingent recovery percentage
11 of one-third, and this percentage is what was expressly approved by the Supreme Court in
12 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.,*
13 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that ““fee awards in class actions
14 average around one-third of the recovery”” regardless of ““whether the percentage method or
15 the lodestar method is used.”” (*quoting Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11
16 (2008))).

17 Second, the fee award is justified by the work performed and contributions to the
18 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award
19 represents PAGA Counsel's current lodestar of \$199,550.75 with a reasonable multiplier of
20 1.5, with significant additional work to be performed such that the multiplier will ultimately
21 be less.

22 Generally, the Ninth Circuit and California Courts award positive multipliers between
23 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation
24 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award
25 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
26 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
27 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
28 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa*

1 *Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which
2 was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D.
3 Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v.*
4 *Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6,
5 2013) (approving fee award that represented a multiplier of 2.76 as falling within the
6 "majority" range for risk multipliers).

7 Third, consideration of the enhancement factors justify the enhancement of the
8 lodestar. Courts multiply the lodestar by a factor to account for the risk of non-payment,
9 delay in payment, the quality of work, and the novelty and difficulty of the issues involved.
10 See *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in
11 cases that meet these criteria is an abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157,
12 1166 (9th Cir. 2016).

13 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation
14 expenses in the total amount of \$20,972.51 which is less than the \$22,000 allocation for costs
15 in the Agreement, so the difference of \$1,027.49 will be added to the PAGA Payment
16 amount. These expenses are documented in the accompanying Declaration of Nordrehaug at
17 ¶9.

19 **VII. CONCLUSION**

20 Based on the foregoing, Plaintiffs respectfully request this Court approve the PAGA
21 settlement as set forth in the Agreement and enter the proposed order and judgment
22 submitted herewith.

24 Dated: July 20, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

26 By: /s/ Kyle Nordrehaug

27 Kyle Nordrehaug
28 *Attorney for Plaintiffs*