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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

ELIANA MEEK, on behalf of the State of
California, as a private attorney general,

Plaintiff,

v.

ALTAMED HEALTH SERVICES
CORPORATION, a California Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. **20STCV47464**

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

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

Hearing Date: May 24, 2022
Hearing Time: 8:30 a.m.
Reservation ID: 104943712503

Judge: Hon. Christopher K. Liu
Dept.: 76

Date Action Filed: December 11, 2020
Trial Date: Not Set

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

2 YOU ARE HEREBY NOTIFIED THAT at 8:30 a.m. on May 24, 2022, or as soon
3 thereafter as the matter can be heard, in Department 76 of the above entitled Court before the
4 Honorable Christopher K. Liu, Plaintiff Eliana Meek (“Plaintiff”) will and hereby does move
5 for an order approving the settlement of the PAGA claim alleged against Defendant Altamed
6 Health Services Corporation (“Defendant”) in accordance with Labor Code §2699(l). The
7 proposed settlement is set forth in the accompanying Settlement Agreement (“Settlement
8 Agreement”).

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

13 Respectfully submitted,

14 Dated: April 28, 2022

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

15 By: /s/ Kyle Nordrehaug
16 Kyle R. Nordrehaug

17 *Attorneys for Plaintiff*
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 **I. INTRODUCTION**

4 Plaintiff Eliana Meek (“Plaintiff”) reached a settlement of the California Private
5 Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this
6 action against Defendant Altamed Health Services Corporation (“Defendant”)(collectively,
7 the “Parties”) which provides for a “Gross PAGA Settlement Amount” payment in the
8 amount of \$1,570,000. In accordance with California Labor Code §2699(l), Plaintiff now
9 asks this Court to review and approve the settlement of Plaintiff’s PAGA claims.¹ This is
10 only a settlement of the PAGA claims for civil penalties, and is not a class settlement and
11 does not release the individual wage claims, if any, of the affected employees other than the
12 Plaintiff herself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th
13 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are
14 not recoverable under PAGA).

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

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

23 ///

24 ///

25 ///

26 ///

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 **II. RELEVANT FACTS**

2 PAGA Counsel mailed the necessary correspondence to the California Labor and
3 Workforce Development Agency (“LWDA”) on August 20, 2020 on behalf of Plaintiff
4 Eliana Meek, requesting authorization from the LWDA to seek civil penalties as provided by
5 the Private Attorney General Act of 2004 (“PAGA”) for the wage and hour violations
6 alleged in the LWDA Notice. (See Exhibit 1 to Complaint). The 65-day notice period for
7 the LWDA to notify of its intent to investigate expired on October 24, 2020.

8 On December 11, 2020, Plaintiff Meek filed the Representative Action Complaint in
9 the Superior Court of the State of California, County of Los Angeles alleging a single cause
10 of action against Defendant for recovery of civil penalties under PAGA.

11 The Parties thereafter agreed to mediate with Lou Marlin. Prior to the mediation, in
12 order to evaluate the potential value of the claims, the Parties engaged in significant efforts
13 to obtain the facts regarding the claims asserted, including the exchange of detailed statistical
14 data regarding shifts worked by Plaintiff and the Aggrieved Employees, the production of
15 hundreds of pages of documents, and the exchange of detailed briefing and analysis in
16 connection with the mediation. (Declaration of Kyle Nordrehaug, at ¶3).

17 Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendant
18 miscalculated the regular rate of pay and underpaid overtime wages and meal break
19 premiums as a result of not factoring various forms of non-discretionary bonus payments
20 into the regular rate. Additionally, Plaintiff alleged Defendant from time to time failed to
21 pay meal period premiums for late or missed lunches and failed to pay premium payments
22 for all missed rest periods. Plaintiff also alleged Defendant violated Labor Code Section 226
23 by failing to identify the correct rates of pay and number of hours worked, including for the
24 “Retro” item of pay. Moreover, Plaintiff alleged she was required to use her personal cell
25 phone for staffing and other work issues but Defendant failed to reimburse her for the use of
26 her cell phone for work-related issues. (Declaration of Kyle Nordrehaug, at ¶3).

27 On October 8, 2021, the Parties engaged in an all-day mediation session before
28 Mediator Marlin, a respected and experienced mediator knowledgeable of both the wage and

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

11 12 **III. TERMS OF THE PAGA SETTLEMENT**

13 The PAGA settlement is subject to Court approval consistent with Labor Code
14 §2699(1)(2)(Settlement Agreement at §III(4)(a).) The Settlement Agreement negotiated by
15 the Parties provides for a “Gross PAGA Settlement Amount” payment in the amount of
16 \$1,570,000 to resolve the PAGA Released Claims (hereinafter referred to as the “PAGA
17 Settlement”). From this PAGA Settlement of \$1,570,000, there is a deduction of attorneys’
18 fees in the amount of \$523,334.00 (which is one-third of the PAGA Settlement),
19 reimbursement of incurred costs in an amount not to exceed \$15,000, and Settlement
20 Administration Costs not to exceed \$15,000. (Settlement Agreement at §III(4)(b)-(c).)³

21
22
23 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
24 Plaintiff’s individual claims pursuant to a separate confidential Individual Settlement Agreement
25 (“Individual Settlement”)(Settlement Agreement at §III(5)(b).) The individual claims were not at
26 issue in this action and exist independent and apart from the PAGA claims at issue before the Court.
See *Kim v. Reins Int’l Cal., 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.).

27 ³ In the event that Court approval is required and a payment of less than One-Third of the Gross
28 PAGA Settlement Amount in Attorneys’ Fees or less than \$15,000 in Attorneys’ Expenses to PAGA
Counsel, the unawarded difference will be added to the PAGA Payment and not to PAGA Counsel
or the Defendant. (Settlement Agreement at III(4)(b).) In the event the Court approves less than

1 After these deductions, the amount remaining is the “PAGA Payment”, which is estimated to
2 be \$1,016,666.

3 Of the PAGA Payment amount, seventy-five percent (75%) will be paid to the LWDA
4 and the remaining twenty-five percent (25%) will be paid to the Aggrieved Employees
5 (Settlement Agreement at III(4)(a)(1).)⁴ This 75/25 allocation is required by Labor Code
6 §2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

7 The Individual PAGA Payment for each Aggrieved Employee shall be based on the
8 number of pay periods each Aggrieved Employee worked during the PAGA Period as a
9 percentage of the total pay periods worked by all Aggrieved Employees during the PAGA
10 Period. (*Id.*) The PAGA Period is the time period from August 20, 2019 to January 18,
11 2022. (Settlement Agreement at § I(10).)

12 Defendant has represented to PAGA Counsel the number of pay periods and
13 Aggrieved Employees. Defendant represents that there are approximately 3,105 Aggrieved
14 Employees who worked approximately 134,462 pay periods during the PAGA Period.
15 (Settlement Agreement at § III(3).)

16 Upon entry of final judgment, the Released Parties shall be entitled to a release from
17 the State of California and the Aggrieved Employees only for any “PAGA Released Claims”,
18 which means the claims for civil penalties under California Labor Code §§ 2698 *et seq.*,
19 predicated on the California Labor Code violations that are asserted in the LWDA Notice
20 and operative complaint in this action which are for civil penalties pursuant to Labor Code
21 section 2699, *et seq.* for violations alleged in or based on the facts asserted in the operative
22 complaint, including Labor Code sections §§ 201, 202, 203, 204, 210, 226(a), 226.7, 226.8,
23 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
24 § 11040, subdivision 5(A)-(B), and applicable Industrial Welfare Commission Wage Orders

25
26 \$15,000 to administer the settlement or if the actual cost to administer the settlement is less than
\$15,000, the difference will be added to the PAGA Payment. (*Id.* at III(4)(c)).

27 ⁴ “Aggrieved Employees” means all individuals who were employed by Defendant in California and
28 classified as non-exempt employees during the PAGA Period. The PAGA Period is time period from
August 20, 2019 to January 18, 2022. (Settlement Agreement at § I (2),(10)).

1 (the “PAGA Released Claims”). (Settlement Agreement at §III(5)(a).) The PAGA release
2 shall bind only Aggrieved Employees and the State of California and expressly excludes
3 underlying wage and hour claims, claims for wrongful termination, discrimination,
4 unemployment insurance, disability, worker’s compensation, and claims outside of the
5 PAGA Period. (*Id.*) The Settlement Agreement expressly confirms that “In no event shall the
6 release of the Released PAGA Claims in this Settlement Agreement release any individual
7 claims of any individuals, with the exception of Plaintiff Eliana Meek who will be releasing
8 all individual claims under a separate release” (*Id.*).

9 Within fifteen (15) days after receipt of the Gross PAGA Settlement Amount from
10 Defendant, the Settlement Administrator will issue to each Aggrieved Employee a check for
11 their Individual PAGA Payment at their last known home address along with an explanatory
12 letter which will be mutually approved by the parties. (Settlement Agreement at §IV(3)).
13 Checks will remain negotiable for one hundred eighty (180) days. (*Id.*) Subject to Court
14 approval, all checks not cashed within one hundred eighty (180) days of payment shall be
15 paid to the State Controller fund in the name of the absent aggrieved employee who failed to
16 cash the check, where the individual may claim the funds.

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

23 24 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

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

1 resolve the PAGA Released Claims asserted by Plaintiff on behalf of the State of California.
2 This is only a settlement of the PAGA claims for civil penalties, and is not a class settlement
3 and does not release the individual claims, if any, of the Aggrieved Employees. This
4 settlement does not release any claim that is not a PAGA claim.⁵ Attorneys' fees equal to
5 one-third of the Gross PAGA Settlement amount (\$523,334.00) and litigation expenses in an
6 amount not to exceed \$15,000 will also be paid to PAGA Counsel as part of the settlement in
7 accordance with California Labor Code § 2699(g)(1) as set forth in the Settlement
8 Agreement.⁶ Lastly, payment to the Settlement Administrator in an amount not to exceed
9 \$15,000 to perform the administrative duties to distribute the settlement money shall also be
10 paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)

11
12 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
13 **SETTLEMENT OF THE PAGA CLAIM**

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

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

20 The Parties believe that the PAGA Settlement amount is fair and reasonable and
21 therefore "shall" be reviewed and approved. The Labor and Workforce Development
22 Agency has released data on PAGA settlement amounts. After removing the outliers at the
23 low and high end, the average, total settlement amount of PAGA claims is approximately
24 \$10,000. Here, the Gross PAGA Settlement Amount of \$1,570,000 is significantly more and
25 constitutes approximately \$12 per pay period. (Declaration of Nordrehaug, at ¶6.)

26 ⁵ 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 ⁶ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
in the current amount of \$10,281.31, which is less than the cost allocation in the Settlement
Agreement. See Declaration of Nordrehaug at ¶ 9.

1 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
2 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
3 statutory PAGA civil penalties was potentially \$13,446,200 based on 134,462 pay periods.⁷
4 (Declaration of Nordrehaug, at ¶6.) Importantly, however, these calculations were
5 performed at the maximum statutory rate for the penalties, when in fact, it is likely that any
6 penalties awarded would be at a lower rate. California Labor Code Section 2699(e)(1)
7 permits a Court to award a lesser amount than the maximum civil penalty if based on the
8 facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary
9 and oppressive or confiscatory."

10 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
11 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay
12 period. Therefore, at trial, any PAGA penalties awarded could be significantly less than
13 Plaintiff's calculation even where Plaintiff prevailed on the PAGA claim. If the amount of \$5
14 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties
15 would be only \$672,310, which is less than this settlement provides.

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

25
26 ⁷ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.
27 The valuation of \$ 13,446,200 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. 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 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove
2 each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*,
3 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of
4 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
5 suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to
6 prove that each Aggrieved Employee suffered a violation for each period the employee
7 worked in relation to meal or rest period violations, failure to pay minimum or overtime
8 wages, failure to provide accurate itemized wage statements, and failure to reimburse for
9 business expenses.

10 Defendant maintains that Plaintiff and the Aggrieved Employees were properly
11 compensated, and that they did not violate the Labor Code. Accordingly, Defendant disputes
12 and denies Plaintiff's allegations and claims asserted in the complaint which are resolved by
13 the Settlement Agreement. Defendant asserted additional defenses to the PAGA claim, not
14 only as to liability but also as to the amount of the penalties. Defendant could argue that no
15 penalties prior to the PAGA notification should be awarded because the violations were not
16 intentional, and at least one Court has so ruled. These defenses present a risk to the PAGA
17 claim and the potential that some or all of the PAGA penalties sought may not be awarded.
18 (Declaration of Nordrehaug, at ¶7.)

19 Given Defendant's potential defenses to the violations at issue, the risks and costs of
20 continued litigation, Plaintiff and her attorneys believe that the PAGA Settlement is fair and
21 reasonable. (Declaration of Nordrehaug, at ¶7.) Defendant has similarly concluded that it is
22 desirable that the action is settled in the manner and upon the terms and conditions set forth
23 in the Settlement Agreement in order to avoid further expense, inconvenience and distraction
24 of further legal proceedings, as well as the uncertainty of litigation. Defendant has
25 determined that it is desirable and beneficial to put to rest the claims in the action and
26 Defendant agrees that the PAGA Settlement is fair, reasonable, and adequate.

27 PAGA Counsel have significant experience litigating wage and hour claims including
28 claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than

1 similar settlements that courts have approved. (Declaration of Nordrehaug, at ¶9.) The
2 PAGA Settlement, along with the other terms of the proposed settlement, were negotiated by
3 experienced counsel at arm's length with the assistance of a private mediator, Louis Marlin.
4 (Declaration of Nordrehaug, at ¶7.)

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

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

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

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

22 PAGA Counsel seeks approval of attorneys' fees from the PAGA settlement in the
23 amount of \$523,334.00 representing one-third of the \$1,570,000 Gross PAGA Settlement
24 Amount. PAGA does not have any requirements for reviewing attorneys' fees, and
25 Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a
26 matter of contract for a contingent representation. Nevertheless, should this Court review the
27 requested attorneys' fees, it is clear that the requested fees and costs are reasonable. Pursuant
28

1 to the referring retainer agreement, Blumenthal Nordrehaug Bhowmik De Blouw will pay
2 25% the attorneys' fees to the referring attorney, Shane Phayakapong of Shane Law, P.C.

3 First, the requested fees are justified by the result achieved. PAGA Counsel
4 negotiated a recovery of \$1,570,000, and this result justifies the requested fees equal to one
5 third of this recovery. This percentage is within the standard contingent recovery percentage
6 of one-third, and this percentage is what was expressly approved by the Supreme Court in
7 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.,*
8 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that ““fee awards in class actions
9 average around one-third of the recovery”” regardless of ““whether the percentage method or
10 the lodestar method is used.”” (quoting *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11
11 (2008)).

12 Second, the fee award is justified by the work performed and contributions to the
13 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award
14 represents PAGA Counsel's current lodestar of \$175,252.50 with a reasonable multiplier of
15 3, with significant additional work to be performed such that the multiplier will ultimately be
16 about 2.5.

17 Generally, the Ninth Circuit and California Courts award positive multipliers between
18 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation
19 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award
20 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
21 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
22 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
23 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa*
24 *Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which
25 was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D.
26 Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v.*
27 *Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6,
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1 2013) (approving fee award that represented a multiplier of 2.76 as falling within the
2 "majority" range for risk multipliers).

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

9 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation
10 expenses in the total amount of \$10,281.31, which is less than the \$15,000 allocation for
11 costs in the Settlement Agreement, so the difference of \$4,838.69 will be added to the PAGA
12 Payment amount. These expenses are documented in the accompanying Declaration of
13 Nordrehaug at ¶9.

14 15 **VII. CONCLUSION**

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

19
20 Dated: April 28, 2022

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

22 By: /s/ Kyle Nordrehaug
23 Kyle R. Nordrehaug

24 Attorneys for Plaintiff
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