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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY LOS ANGELES**

12 DIANA LOPEZ, in her representative capacity,

13 Plaintiff,

14 vs.

15 WHITE MEMORIAL MEDICAL CENTER, a
16 business entity exact form unknown; and DOES
17 1 through 50, inclusive,

18 Defendants.

CASE NO.: 21STCV19484

[Assigned to Hon. Judge Curtis A. Kin, in
Department 72]

**PLAINTIFF DIANA LOPEZ'S NOTICE
OF UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Date: December 19, 2023
Time: 8:30 am
Dept: 72

Reservation ID: 253531346841

[Filed Concurrently with [Proposed] Order
Re Unopposed Motion for Approval of
PAGA, the Declaration of Nicole C. Burgos
Romero, Esq., and the Declaration of
Michael F. Baltaxe, Esq.]

Action Filed: May 24, 2021
Trial Date: None

1 **NOTICE OF MOTION**

2 PLEASE TAKE NOTICE that on December 19, 2023 at 8:30 a.m., or as soon thereafter as
3 the matter may be heard, in Department 72 of the above entitled court, located at 111 North Hill
4 Street, Los Angeles, California 90012, Plaintiff Diana Lopez ("Plaintiff or Lopez") will and hereby
5 does move this Court for an order approving the Settlement Agreement and Release of Claims (the
6 "Settlement") and entering the [Proposed] Order Granting Approval of PAGA Settlement and
7 Judgment.
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9 The Settlement under Labor Code Private Attorneys General Act of 2004, Labor Code §
10 2698 et seq. ("PAGA") is on behalf of Plaintiff and Individuals employed by Defendant in
11 California and who were classified as hourly, non-exempt employees any time from March 20,
12 2020, through October 17, 2022 (the "Settlement Period").
13

14 The Settlement reflects a fair, adequate, and reasonable compromise of all disputed PAGA
15 claims in view of Defendant's potential liability exposure compared to the risks of continued
16 litigation. In view of the foregoing, the Court should approve the Settlement and enter the
17 [Proposed] Order Granting Approval of PAGA Settlement and Judgment.

18 The Motion is based on this Notice of Motion and Unopposed Motion, the attached
19 Memorandum of Points and Authorities, the Declarations of Nicole Burgos Romero, Esq. and
20 Michael F. Baltaxe, Esq., all exhibits thereto, all papers and pleadings on file with the Court in this
21 action, all matters judicially noticeable, and on such oral and documentary evidence as may be
22 presented in connection with the hearing on the Motion.
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4 Dated: November 29, 2023

SOTTILE ■ BALTAKE

5 By /s/ Nicole C. Burgos Romero

6 **NICOLE C. BURGOS ROMERO, ESQ.**
7 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Diana Lopez ("Plaintiff" or "Lopez") submits this Memorandum of Points and
4 Authorities in support of her unopposed Motion for Approval of PAGA Settlement, which seeks to
5 approve the Settlement Agreement and Release of Claims (the "Settlement") with Defendant White
6 Memorial Medical Center ("Defendant" or "White Memorial"). Plaintiff brings this motion under
7 Labor Code section Lab. Code § 2699(1) of the PAGA for Court approval of the civil penalties
8 sought as part of the Settlement. The Motion and Settlement seek to dispose of this Action. The
9 Action is solely for civil penalties under the PAGA. The main claim in this case is that non-exempt
10 employees were not paid for "waiting time" while going through Covid clearance prior to starting
11 their shifts. There are also claims that case managers were not given meal and rest breaks.

12 This case settled for \$1,050,000. It settled close to trial with a summary judgment motion
13 pending.

14 Based on Plaintiffs and her counsels' investigation and evaluation, Plaintiff is of the
15 opinion that the Settlement represents a reasonable and adequate settlement of strongly disputed
16 claims and is in the best interests of all parties and will be fairly distributed between Plaintiff, the
17 State of California, and the Aggrieved Employees. Through this motion, therefore, Plaintiff
18 respectfully requests that this Court approve the Settlement and enter the [Proposed] Order
19 Granting Approval of PAGA Settlement and Judgment because the Settlement warrants approval
20 based on all indicia for fairness, reasonableness, and adequacy.

21 **II. FACTUAL BACKGROUND**

22 **A. Plaintiff's Relationship with Defendant**

23 Defendant hired Plaintiff on or around 2018. Plaintiff worked full time as a Care Manager
24 Coordinator at White Memorial Medical Center located at 1720 East Cesar E. Chavez Los Angeles,
25 California 90033.

26 **B. Plaintiff's Notice to the LDWA**

27 On September 24, 2020, Plaintiff sent notice to the Labor & Workforce Development Agency
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1 ("L WDA") alleging various Labor Code violations by Adventist Health System West seeking, on
2 behalf of the State of California, to represent current and former case managers of Adventist Health
3 in California for missed meal and rest periods. It is important to note, Plaintiff's Pay Statements
4 indicate Defendant interchangeably refers to both White Memorial and Adventist as Plaintiff's
5 legal employer. On November 1, 2020, Plaintiff sent an "Amended PAGA Letter" to the LWDA
6 alleging various Labor Code violations by Adventist Health and seeking, on behalf of the State of
7 California, to represent current and former case managers of Adventist Health for an additional
8 claim of uncompensated worktime. On January 5, 2021, Plaintiff sent a "Second Amended PAGA
9 Letter' to the LWDA, seeking to represent current and former nonexempt employees of Adventist
10 Health for uncompensated work time. And, on January 15, 2021, Plaintiff sent a "Third Amended
11 PAGA Letter" to the LWDA alleging that White Memorial had failed to pay all nonexempt
12 employees for waiting time, that is time spent undergoing pre-shift screenings for exposure to
13 COVID-19.

14 **C. Plaintiff Files the Instant Action**

15 On or around May 4, 2021, Plaintiff filed the instant lawsuit against White Memorial in
16 Los Angeles Superior Court, Case No. 21STCV19484 (the "PAGA Action") asserting claims on
17 behalf of the State of California and other Aggrieved Employees to recover civil penalties under
18 Labor Code section 2698 et seq. for (1) unpaid overtime in violation of California Labor Code §§
19 200 et seq., 510, 558, 1194; (2) final wages not timely paid in violation of California Labor Code §§
20 201, 202 and 203; (3) wages not timely paid during employment in violation of California Labor
21 Code §§ 204 and 210; and (4) inaccurate wage statements in violation of California Labor Code §§
22 226 and 226.3. Plaintiff also alleges additional claims on behalf of current and former case
23 managers for (1) unpaid meal period premiums in violation of California Labor Code §§ 226.7 and
24 512; and (2) unpaid rest period premiums in violation of California Labor Code §§ 226.7 and 512.

25 On July 15, 2021, Defendant filed its Answer in the PAGA action, denying Plaintiffs
26 allegations and asserting affirmative defenses.

1 **D. The Parties Engage in Voluntary Mediation**

2 On January 31, 2023, the Parties engaged in mediation with an experienced
3 Mediator in the subject matter, Mariam Zadeh, Esq., but were unable to reach a settlement that day.

4 **E. Defendant Files a Dispositive Motion**

5 On May 5, 2023, Defendant filed a motion for summary judgment or, in the
6 alternative, summary adjudication. On July 6, 2023, Plaintiff filed her opposition to Defendant's
7 motion.

8 **F. The Parties Enter into a Settlement and Plaintiff Moves for Settlement Approval**
9 **Before the Dispositive Motion is Heard**

10 Over the course of several months of negotiations and with the continued assistance of the
11 mediator, the Parties reached a settlement of the PAGA Action on behalf of the State of California
12 and all nonexempt employees, who were classified as hourly, employed by White Memorial from
13 March 16, 2020 March 20, 2020, through October 17, 2022 ("Aggrieved Employees").

14 Plaintiff and Defendant finalized the Settlement, Plaintiff now moves for approval of the
15 subject settlement.

16 **III. OVERVIEW OF THE SETTLEMENT**

17 **A. Aggrieved Employees**

18 Per the settlement agreement, the term aggrieved employees shall refer to individuals
19 employed by Defendant in California and who were classified as hourly, non-exempt employees
20 any time from March 20, 2020, through October 17, 2022.

21 **B. Monetary Terms of the Settlement**

22 In consideration for the release of claims of Plaintiff and the Aggrieved Employees against
23 Defendant (described more fully below), Defendant agreed to pay \$1,050,000.00 toward the Gross
24 Settlement Amount which will be divided among (1) the PAGA penalties fund, (b) Plaintiff's
25 Approved Attorneys' Fees and Costs, (3) Plaintiff's Service Award and (d) Settlement
26 Administration Cost. To determine each Aggrieved Employee's payment from the PAGA
27 Penalties Fund, the Settlement Administrator will use one of the following formulas based on the
28 different claims alleged for the Aggrieved Employee populations:

1 The Maximum Settlement Amount will be divided as follows:

- 2 1. Up to Fifteen Thousand Nine Hundred and Fifty Dollars (\$15,950) in administration
3 costs to ILYM Group Inc. to administer the Settlement
- 4 2. Up to Twelve Thousand Dollars (\$12,000.00) in litigation costs to Sottile Baltaxe.
- 5 3. Up to Three Hundred Forty-Six Thousand Five Hundred Dollars (\$346,500.00) in
6 attorney's Fees to Sottile Baltaxe.
- 7 4. Up to Two Thousand Five Hundred Dollars (\$2,500.00) as a service award to Plaintiff.

8 The remaining portion after these deductions is estimated to be no less than. It will be
9 divided as follows:

- 10 1. Pursuant to California Labor Code section 2699(i), Seventy-Five Percent (75%) of the
11 PAGA Penalties Fund Will be paid to the LWDA.
- 12 2. The remaining Twenty-Five Percent (25%) of the PAGA Penalties Fund Will be paid to
13 all Aggrieved Employees according to the following formula:

14 i. Employees Other Than Care or Case Managers: Individual Aggrieved
15 Employee Settlement Payment= [twenty-five percent (25%) of PAGA
16 Penalties Fund] x ([Pay Periods Worked by Individual Aggrieved
17 Employee During the Settlement Period x (1,0 if the Individual
18 Aggrieved Employee was never a Care or Case Manager during the
19 Settlement Period]]);

20 or

21 ii. Care or Case Managers: Individual Aggrieved Employee Settlement
22 Payment= [twenty-five percent (25%) of PAGA Penalties Fund] x ([Pay
23 Periods Worked by Individual Aggrieved Employee During the
24 Settlement Period x (1.1 if the Individual Aggrieved Employee was a
25 Care or Case Manager during the Settlement Period]]).

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1 unclaimed property fund maintained by the Office of the Controller of the State of California.

2 **IV. ARGUMENT**

3 **A. Class Certification Is Not Required for a PAGA Settlement**

4 While this lawsuit is a representative action involving individuals who are not named
5 plaintiffs in the lawsuit, the Parties are not obligated to follow the class action procedural rules in
6 PAGA cases and therefore do not need to follow the class action procedures for obtaining approval
7 of this Settlement. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969.)

8 As this is a PAGA-only case, there is no issue of ascertainability. However, here, Plaintiff
9 maintains that the number of Aggrieved Employees is ascertainable because those employees may
10 be identified by reference to Defendant's records and Defendant has agreed to share the relevant
11 information, from its records to facilitate the process. Therefore, the number of Aggrieved
12 Employees is ascertainable.

13 **B. This Court Should approve the Settlement Because It Is a Fair Adequate and**
14 **Reasonable Compromise of Disputed Claims**

15 California courts favor settlement. See e.g., *Stambaugh v. Superior Court* (1976) 62
16 Cal.App.3d 231, 236. For the reasons discussed below, this Court should approve the PAGA
17 Settlement.

18 **1. The Settlement was reached at arms' length through experienced counsel with the**
19 **assistance of an experienced mediator with sufficient information to intelligently**
20 **negotiate a fair settlement in view of the claims asserted and risks of continued**
21 **litigation**

22 To be approved, a settlement must be "fair, reasonable and adequate to all concerned." (*Reed*
23 *v. United Teachers Los Angeles*, (2012) 208 Cal.App.4th 322,337). The Court's role in evaluating a
24 proposed settlement is limited to ensuring that the agreement taken as a whole is fair and is not the
25 product of fraud or collusion between the negotiating parties. (See *Hanlon v. Chrysler Corp.*, (9th
26 Cir. 1998) 150 F.3d 1011, 1026, 1027). To begin with, there is a presumption of fairness when the
27 settlement agreement was negotiated at arm's length by experienced counsel and based on
28 sufficient discovery and investigation to allow counsel and the court to act intelligently, which was
the case here. (See, e.g., *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116,130.; *Dunk*

1 v. *Ford Motor Co.*, (1996) 48 Cal.App.4th 1794,1802). Furthermore, “In the context of a settlement
2 agreement, the test is not the maximum amount Plaintiffs might have obtained at trial on the
3 complaint, but rather whether the settlement is reasonable under all of the circumstances.”
4 (*Wershba v. Apple Computer, Inc.*, (2001) 91 Cal.App.4th 224, 250). A trial court has broad
5 powers to determine if the proposed settlement is fair under the circumstances of the case. (*Mallick*
6 v. *Superior Court*, (1979) 89 Cal.App.3d 434, 438). In exercising these powers, the overriding
7 concern is to ensure that a proposed settlement is "fair, adequate, and reasonable" and the factors to
8 consider include, but are not limited to:

9 [T]he strength of Plaintiffs' case, the risk, expense, complexity and likely duration
10 of further litigation, the risk of maintaining class action status through trial, the
11 amount offered in settlement, the extent of discovery completed and the stage of the
proceedings, the experience and views of counsel, the presence of a governmental
participant, and the reaction of the class members to the proposed settlement.

12 (*Dunk, supra*, 48 Cal.App.4th at 1801.) As noted above, since this is a PAGA case the risk of
13 maintaining class action status and reaction of class members to settlement are inapplicable. The
14 above factors require balancing, and are non-exhaustive. The risks and strengths as well as
15 discovery and investigation and maximum exposure are addressed above, and the experience of
Plaintiff’s counsel is included in the Declaration of Michael F. Baltaxe.

16 Regarding the discovery conducted, courts look to this information to aid in assessing
17 assessing whether the parties sufficiently developed the claims and their supporting factual bases
18 before reaching settlement. (*Kullar, supra*, 168 Cal.App.4th at 129-31). Information is sufficient
19 where it allows the parties and the court to form “an understanding of the amount in controversy
20 and the realistic range of outcomes of the litigation.” This requirement exists so that the parties can
21 provide the court with “a meaningful and substantiated explanation of the manner in which the
22 factual and legal issues have been evaluated.” (*Kullar, supra*, 168 Cal.App.4th at 132). As made
23 clear by this motion, Plaintiff’s counsel was provided with sufficient information through the
24 informal exchange and mediation to form a realistic range of outcomes and confirm for the Court
25 that the Settlement is reasonable. We also interviewed employees

26 In the PAGA context, the Court should keep in mind that “[u]nlike a class action seeking
27 damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private
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1 parties to recover civil penalties. The legislative history of PAGA makes little mention of the
2 approval requirement in §2699, subdivision (1). This was added as part of the amendments to the
3 Act in 2014. Instead, PAGA actions “...directly enforce *the state's* interest in penalizing and
4 deterring employers who violate California's labor laws.” *Iskanian v. CLS Transp. Los Angeles,*
5 *LLC* (2015) 59 Cal. 4th at 387.) As such, the focus is on the effect the penalties may have on the
6 defendant/employer rather than the LWDA or the aggrieved employees who will receive the
7 penalties, unlike in class actions where the focus is typically on the amount received by the class
8 compared to the reasonable range of potential outcomes (*Kullar, supra*, 168 Cal.App.4th at 130.)

9 The Settlement and its terms represent a reasonable and adequate settlement of highly
10 disputed claims, and are the product of good faith, and informed arms-length negotiations
11 between the Parties consistent with public policy and fully comply with applicable provisions of
12 law: The Parties conducted significant discovery of the facts and law in advance and after their
13 mediation session with Ms. Mariam Zadeh. Such discovery and investigations have included, inter
14 alia, the production and analysis of information pursuant to informal discovery as well as
15 depositions with Plaintiff and absent Aggrieved Employees.

16 *a. There were several risks involved with continuing litigation*

17 Although defendant never disputed that it did not pay for waiting time this case was
18 complicated by several technical and unique defenses More particularly, because this case was
19 governed by Wage order 5, the Defendant argued that rather than the California Labor Code
20 applying, federal law and the FLSA applies

21 That is because of the unique language of wage order 5. Unlike other Wage Orders, Wage
22 Order 5 contains a unique definition of “hours worked” and provides that “[w]ithin the health
23 care industry, the term ‘hours worked’ means the time during which an employee is suffered or
24 permitted to work for the employer, whether or not required to so, *as interpreted in accordance*
25 *with the provisions of the Fair Labor Standards Act.*” If the term “hours worked” was interpreted
26 according to the FLSA, then a whole set of different laws arguably applied. More specifically, the
27 FLSA brings into play the “portal to portal” act which basically exempts employers from liability
28 under the FLSA for claims based on “activities which are preliminary to or postliminary to” the

1 performance of the principal activities that an employee is employed to perform. This would
2 operate as a complete defense to the waiting time claims

3 There were certainly contrary arguments which were made in opposition to summary
4 judgment. The law in this area is that "[A]ctivities performed either before or after the regular work
5 shift," the Supreme Court has noted, are compensable *"if those activities are an integral and*
6 *indispensable part of the principal activities."* Steiner v. Mitchell, 350 U.S. 247, 256, 76 S.Ct. 330,
7 (1956). There was a compelling argument that waiting time penalties were an integral and
8 indispensable part of the principal activities and there is case law supporting this argument.

9 In addition, there was another defense raised under the FLSA based on the "De Minimis
10 doctrine". This doctrine allows an employer not to pay for waiting time if the time was minimal.
11 many cases hold that waiting time of less than 10 minutes is not compensable. There were again
12 contrary arguments including the holding of the California Supreme court in *Troester v. Starbucks*
13 *Corp.*, 5 Cal. 5th 829, 848 (2018) which held that the De Minimis Doctrine does not apply to
14 claims for unpaid wages under Labor Code sections 510, 1194, and 1197, even those brought under
15 wage order 5. Nonetheless, this was a legal risk

16 These unique legal arguments also increased the risk of a lengthy appeal if there was a
17 Plaintiff's verdict. It seemed obvious to me that if Plaintiff prevailed at trial the defendant would
18 test these legal defenses on appeal. There was also some factual risk, especially if this was tried in
19 front of a jury. More specifically if the jury was persuaded by the defendant's De Minimis
20 argument. There were also manageability and proof issues. Plaintiff could not tell how many
21 people used the "mobile screening tool" once it was implemented versus waiting in line to answer
22 questions. In addition, the connectivity problems in using that tool would vary person to person and
23 day to day.

24 While some of the evidence gathered through Plaintiffs investigation supports the merits of
25 the claims asserted in this lawsuit, Plaintiff recognizes that continued litigation presents significant
26 risks that support a downward departure from her estimated civil penalties amount. In view of the
27 risks, the Settlement represents a fair, adequate, and reasonable compromise amount for these
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1 claims and is in the best interest of Plaintiff and the Aggrieved Employees, and thus, warrants
2 approval. This is all discussed in the attached Declaration of Michael F Baltaxe.

3 **2. The Settlement fairly, adequately, and reasonably compensates Aggrieved Employees**
4 **because each Aggrieved Employee will be paid based on the potential extent of his or**
5 **her injury compared to other Aggrieved Employees**

6 Each Aggrieved Employee will receive a portion of the non-wage civil penalties based on
7 the abovementioned formula depending on the number of pay periods Defendant employed them
8 for during the Settlement Period. Because this method compensates Aggrieved Employees based
9 on the extent of their potential injuries, in that Aggrieved Employees who worked for Defendant
longer would have been subject to more alleged violations, it is fair, adequate, and reasonable.

10 **3. The proposed awards of attorneys' fees and costs are fair, adequate, and reasonable**
11 **and should be approved**

12 The requested attorney's fees are reasonable and appropriate, and consistent with the
13 prevailing California practice of awarding attorneys' fees in the amount of one-third of the
14 common fund. (See, e.g., *Laffitte v. Robert Half Internat. Inc.*, (2014) 231 Cal. App. 4th 860, 878
15 ("trial court's use of a percentage of 33 1/3 percent of the common fund is consistent with []
16 awards in other class action lawsuits"); *Chavez v. Netflix, Inc.*, (2008) 162 Cal. App. 4th 43, 66
17 n.11. Here, Plaintiff seeks reasonable attorney's fees in the amount of one-third of the Gross
Settlement Amount. This was the agreed upon amount negotiated at arm's length.

18 *a. Plaintiff's Request for Attorney's Fees is Supported by the Common Fund Doctrine*

19 Plaintiff moves for an award of attorney's fees in the amount of \$346,500.000, which is
20 one-third of the Gross Settlement Amount. This request for attorneys' fees is supported by
21 California law under the common fund doctrine. The common fund doctrine is applicable where,
22 as here, attorneys have been instrumental in creating a settlement fund that benefits all class
23 members (or as this is a PAGA action, the State and Aggrieved Employees). (*Laffitte*, supra, 231
24 Cal. App. 4th at 878 (affirming the use of the common fund method for determining attorneys' fees
25 in class actions that result in monetary benefits in an employment class action); *Serrano v. Priest*,
26 (1977) 20 Cal. 3d 25, 35 (noting that federal and state courts have long recognized that when
27 attorneys create a common fund that benefits a class, there is an equitable right that the attorneys be
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1 compensated from that fund).)

2 “Because the common fund doctrine ‘rest[s] squarely on the principle of avoiding unjust
3 enrichment...attorney fees awarded under this doctrine are not assessed directly against the losing
4 party (fee shifting) but come out of the fund established by the litigation, so that the beneficiaries
5 of the litigation...bear this cost (fee spreading).’ (Lealao v. Beneficial Cal. Inc., (2000) 82 Cal.
6 App. 4th 19, 27.) The key advantage of the common-fund method is that it focuses on the total
7 benefit conferred by the settlement from the efforts of counsel. (Id. at 48.) Here, a large benefit to
8 the state, on whose behalf Plaintiff and counsel acted, and the Aggrieved Employees has been
9 conferred.

10 The common fund doctrine has been applied “consistently in California when an action
11 brought by one party creates a fund in which other persons are entitled to share.” (City and County
12 of San Francisco v. Sweet, (1995) 12 Cal. 4th 105, 110.). California is not alone in permitting
13 attorneys’ fees to be recovered as a percentage of the common fund. Nearly every Federal Circuit
14 Court of Appeals endorses the percentage-of-recovery method for determining an amount of
15 attorneys’ fees in common fund cases. Under the common fund method, attorneys’ fees are
16 “calculated on the basis of the total fund made available rather than the actual payments made to
17 the class.” (Lealao, supra, 82 Cal. App. 4th at 51).

18 California State and Federal Courts Routinely Award Attorneys ‘Fees in the Amount of
19 One-Third of the Common Fund. One-third of the common fund is also reasonable because it best
20 reflects the market rate for contingency fees. (See Lealao, supra, 82 Cal. App. 4th at 47 (“attorneys
21 providing the essential enforcement services must be provided incentives roughly comparable to
22 those negotiated in the private bargaining that takes place in the legal marketplace”). Because the
23 negotiated fee structure mimics the marketplace, it is reasonable and should be approved.

24 Lastly, courts have recognized that the negotiated fee is the best indication of the market
25 price for fees. In a common fund case, the object “is to give the lawyer what he would have gotten
26 in the way of a fee in an arm’s-length negotiation, had one been feasible.” (In re Cont’l Ill. Sec.
27 Litig., (7th Cir. 1992) 962 F.2d 566, 568.)

1 b. *The Factors Under California Law Supports Awarding the Negotiated Fees*

2 California courts consider the following factors when evaluating fee requests: (1) the results
3 achieved; (2) the novelty and difficulty of the questions involved and the skill displayed in
4 presenting them; (3) the response of the Class to the settlement, including a lack of objections to
5 the settlement terms, and particularly to the fee award; (4) counsel's experience, reputation, and
6 ability; (5) counsel's preclusion from other work; and (6) the contingent nature of the fee award.
7 (See *Ketchum v. Moses*, (2001) 24 Cal. 4th 1122, 1139

8 i. *The Requested Attorney's Fees Are Supported by the Results Achieved*

9 As a result of Plaintiff Counsel's efforts (after deduction for attorney's fees and costs,
10 administration costs and Named Plaintiff's Enhancement Award), the LWDA will receive a
11 significant amount. The Settlement represents a substantial recovery for wage-and-hour claims,
12 particularly for a case such as this as it is a PAGA only case instead of class and thus is limited to
13 the one year statute of limitations (instead of four years in a class action) and has unique risks for
14 PAGA actions including those related to the Court's discretion to reduce penalties and the unique
15 risks of this case discussed above. (See *Sandoval v. Nissho of Cal., Inc.*, (San Diego County Super.
16 Ct. Dec. 3, 2010) Case No. 37-2009-00091861 (average net recovery of approximately \$145).

17 ii. *Counsel Prosecuted This Case on a Contingency basis and Should be*
18 *Compensated for the Risk of Non-Payment*

19 Counsel prosecuted this case on a contingency basis and should be compensated for the risk
20 of non-payment, losing, or having the case appealed. The potential of losing in this case was higher
21 than most due to the unique FLSA law which arguably gave the Defendant a complete defense. In
22 addition, plaintiff's counsel who work on a contingency must wait for payment and support a law
23 firm in the meantime. Providing attorneys who represent clients under contingent-fee agreements a
24 larger fee than the market-value of their services helps to assure adequate representation for
25 plaintiffs unable to afford accomplished attorney hourly rates. (*Graham v. DaimlerChrysler Corp.*,
26 (2004) 34 Cal. 4th 553, 580."). In *Ketchum*, the California Supreme Court instructed courts to
27 adjust fee compensation to ensure that the fees account for contingency risk:

28 A lawyer who both bears the risk of not being paid and provides legal services is not

1 receiving the fair market value of his work if he is paid only for the second of these
2 functions. If he is paid no more, competent counsel will be reluctant to accept fee award
3 cases.

(*Ketchum, supra*, 24 Cal. 4th at 1132-33.)

4 iii. The Requested Attorney's Fees Are Supported by the Complexity of the
5 Litigation and the Risk Assumed by Counsel

6 This was a complex case due to the potential Federal law defenses. Defendants filed a
7 motion for summary judgment based on these issues and plaintiff filed an opposition. This
8 increased the risk of non-payment. It also virtually guaranteed an appeal by the losing party. In
9 addition, the short, although disputed waiting time made this case less appealing than many.

10 For the foregoing reasons, the amount of the negotiated fee here—amounting to one-third
11 of the overall settlement value—is reasonable. It is also broadly consistent with the lodestar in
12 combination with a reasonable multiplier for contingent risk and success.

13 iv. The Requested Attorney's Fees Are Supported by Counsel's
14 Experience, Reputation, and Skill

15 The “skill and experience of the attorneys and nature of work performed” are also evaluated
16 under California law in connection with a fee motion. *Northwest Energetic Services, LLC v. Cal.*
17 *Franchise Tax Bd.*, 159 Cal. App. 4th 841, 880 (2008). Plaintiff is represented by experienced
18 class action/PAGA counsel who regularly litigate wage and hour class actions and PAGA cases.

19 v. Counsel Devoted Significant Time and Resources Litigating This Case
20 and Negotiating the Relief for the Class

21 As detailed in the accompanying Motion for Approval of PAGA Settlement, as well as in the
22 Declaration of Michael F. Baltaxe, Plaintiff's Counsel thoroughly investigated and researched the
23 claims and their theories of liability, their defenses, and the different body of law before the
24 Settlement. The comprehensive investigation included the exchange of discovery and meetings
25 with Plaintiff and speaking with other witnesses. Further, and continuing its due diligence,
26 Plaintiff's Counsel (1) determined Plaintiff's suitability as a PAGA representative; (2) engaged in
27 the discovery process; (3) obtained and analyzed some of Defendant's wage-and-hour policies and
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procedures; (4) researched the latest case law bearing on the theories of liability; (5) analyzed the value of Plaintiff's claims; (6) drafted the mediation brief; (7) participated in a mediation(8) opposed a motion for summary judgment (9) negotiated the terms of the Settlement; (10) finalized the Settlement Agreement and Release of All Claims; and (11) drafted approval papers and this Motion.

For the aforementioned reasons, this Court should approve the requested attorney's fees.
Plaintiff's lodestar:

Total lodestar per timekeeper:

• Michael Baltaxe	140 x 900	\$126,000
• Nicole Burgos Romero	58.8 x 300	\$17,640
• Payam Aframian	5 x \$450	\$2250
• Tom Still	24.7 x \$100	\$ 2470

Plaintiff's counsel should be awarded the full one third agreed upon contingency. Plaintiffs counsel should not be penalized for getting an excellent result while handling the matter in a very efficient manner. In addition, due to the FLSA issues, this case was riskier than most. Alternatively, due to the excellent work and result Plaintiff's counsel should be awarded a multiplier of at least 2.0

4. Plaintiff's service award should be approved

Courts routinely approve enhancement awards to compensate named Plaintiffs for the services they provide and the risks they incur during class and representative litigation. (e.g., *Bell v. Farmers Ins. Exchange*, (2004) 115 Cal.App.4th 715, 726). Plaintiff requests a Named Plaintiff's Enhancement Award of only \$2,500 which is definitionally reasonable. This request is also reasonable because Plaintiff provided counsel with substantial factual information including contact information for Aggrieved Employees and had numerous communications with counsel to discuss the case. (Baltaxe Decl. ¶¶ 4-10)

5. The settlement administration costs should be approved

The proposed Settlement Administration Costs are reasonable considering the number of

1 employees and effort necessary. The costs are detailed in the declaration of Michael F. Baltaxe
2 filed concurrently with this Motion.

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5
6 Dated: November 29, 2023

SOTTILE ■ BALTAXE

7 By /s/ Nicole C. Burgos Romero

8 **NICOLE C. BURGOS ROMERO, ESQ.**
9 Attorneys for Plaintiff
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Make a Reservation

DIANA LOPEZ, IN HER REPRESENTATIVE CAPACITY vs WHITE MEMORIAL MEDICAL CENTER, A BUSINESS ENTITY EXACT FORM UNKNOWN, et al.

Case Number: 21STCV19484 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2021-05-24 Location: Stanley Mosk Courthouse - Department 72

Reservation

Case Name:

DIANA LOPEZ, IN HER REPRESENTATIVE CAPACITY
vs WHITE MEMORIAL MEDICAL CENTER, A BUSINESS
ENTITY EXACT FORM UNKNOWN, et al.

Case Number:

21STCV19484

Type:

Motion for Order (Motion for Approval of PAGA
Settlement)

Status:

RESERVED

Filing Party:

Diana Lopez, in her representative capacity (Plaintiff)

Location:

Stanley Mosk Courthouse - Department 72

Date/Time:

12/19/2023 8:30 AM

Number of Motions:

1

Reservation ID:

253531346841

Confirmation Code:

CR-BJOXUZ8CTYFY3MT8F

Fees

Description	Fee	Qty	Amount
Motion for Order (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:

\$61.65

Type:

MasterCard

Account Number:

XXXX4809

Authorization:

11874G

Payment Date:

1969-12-31



 Print Receipt

 Reserve Another Hearing

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 years of age and not a party to the within action. My business address is 28632 Roadside Drive,
5 Suite 100, Agoura Hills, CA 91301.

6 On November 29, 2023, I served, in the manner indicated below, the foregoing document
7 described as **PLAINTIFF DIANA LOPEZ'S NOTICE OF UNOPPOSED MOTION AND MOTION FOR**
8 **APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**
9 **THEREOF** on the interested parties in this action by placing true copies thereof enclosed in a sealed
envelope, at Agoura Hills, California, addressed as follows (or as stated on the attached Proof of
Service Mailing List):

10 **SEE ATTACHED SERVICE LIST**

- 11 ☐ **(BY MAIL)** I caused such envelopes with postage thereon fully prepaid to be placed in the
12 United States mail at Agoura Hills, California. I am "readily familiar" with the firm's
13 practice of collection and processing correspondence for mailing. Under that practice, it
14 would be deposited with the U.S. Postal Service on that same day in the ordinary course of
business. I am aware that on motion of the party served, service is presumed invalid if
postal cancellation date or postage meter is more than one (1) day after date of deposit for
mailing in affidavit (C.C.P. § 1013(a)).
- 15 ☒ **(BY ELECTRONIC MAIL)** The document listed above was transmitted via electronic
16 mail to the e-mail addresses set forth above, or as stated on the attached Proof of Service
Mailing List. The transmission was reported as complete and without error (C.C.P. §
1010.6(a)(2)).
- 17 ☐ **(BY OVERNIGHT COURIER):** I caused the above-referenced document to be delivered
18 to FEDERAL EXPRESS for delivery to the addresses on the attached service list.
- 19 ☐ **(BY PERSONAL SERVICE)** I caused such envelopes to be delivered by hand to the
offices of the addressees (C.C.P. § 1011(a)(b)).

20 * * * * *

- 21 ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that
22 the foregoing is true and correct.
- 23 ☐ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this
Court, at whose direction the service was made.

24 EXECUTED on November 29, 2023, at Agoura Hills, California.

25
26 /s/ Nicole C. Burgos Romero
27 Nicole C. Burgos Romero

SERVICE LIST

Sheryl L. Skibbe, Esq. Ashely D. Stein, Esq. VEDDER PRICE (CA) LLP 1925 Century Park East, Suite 1900 Los Angeles, California 99067 Telephone: (424) 204-7700 Facsimile: (424) 204-7702 sskibbe@vedderprice.com astein@vedderprice.com dpippo@vedderprice.com	Attorneys for Defendant WHITE MEMORIAL MEDICAL CENTER
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