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

DESHAWN CARTER, on behalf of the State of
California, as private attorney general,

Plaintiff,

v.

AUTISM OUTREACH SOUTHERN
CALIFORNIA LLC, a California Limited
Liability Company; MEBE LOS ANGELES,
LLC, a California Limited Liability Company;
MEBE SAN FRANCISCO BAY, LLC, a
California Limited Liability Company; and
DOES 1 through 50, Inclusive,

Defendants.

Case No. 37-2021-00011213-CU-OE-CTL

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

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

Hearing Date: October 28, 2022
Hearing Time: 9:00 a.m.
[Hearing set by Order dated 9/14/22]

Judge: Hon. Joel R. Wohlfeil
Dept.: 73

Action Filed: March 12, 2021

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT at 9:00 a.m. on October 28, 2022, or as soon thereafter as the matter can be heard, in Department 73 of the above entitled Court before the Honorable Joel R. Wohlfeil, Plaintiff DeShawn Carter (“Plaintiff”) will and hereby does move for an order approving the settlement of the PAGA claim alleged against Defendants Autism Outreach Southern California LLC, Mebe Los Angeles, LLC, and Mebe San Francisco Bay, LLC (“Defendants”) in accordance with Labor Code §2699(1). The proposed settlement is set forth in the accompanying PAGA Settlement Agreement (“Settlement Agreement”).

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

Respectfully submitted,

Dated: October 6, 2022

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

By: /s/ Kyle Nordrehaug
Norman B. Blumenthal
Kyle R. Nordrehaug
Aparajit Bhowmik

Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff DeShawn Carter (“Plaintiff”) reached a settlement of the California Private
4 Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this
5 action against Defendants Autism Outreach Southern California LLC, LLC, Mebe Los
6 Angeles, LLC, and Mebe San Francisco Bay, LLC (“Defendants”) (collectively, the
7 “Parties”) which provides for a “Gross PAGA Settlement Amount” payment in the amount
8 of \$405,000.00. In accordance with California Labor Code §2699(l), Plaintiff now asks this
9 Court to review and approve the settlement of Plaintiff’s PAGA claims.¹ This is only a
10 settlement of the PAGA claims for civil penalties, and is not a class settlement and does not
11 release the individual wage claims, if any, of the affected employees other than the Plaintiff
12 himself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348,
13 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not
14 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 **II. RELEVANT FACTS**

25 PAGA Counsel mailed the necessary correspondence to the California Labor and
26 Workforce Development Agency (“LWDA”) on September 24, 2020 on behalf of Plaintiff
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 DeShawn Carter, requesting authorization from the LWDA to seek civil penalties as
2 provided by the Private Attorney General Act of 2004 (“PAGA”) for the wage and hour
3 violations alleged in the LWDA Notice. The 65-day notice period for the LWDA to notify
4 of its intent to investigate expired on November 29, 2020.

5 On March 12, 2021, Plaintiff Carter filed a Representative Action Complaint in this
6 Court against Defendants Autism Outreach Southern California LLC, Mebe Los Angeles,
7 LLC, and Mebe San Francisco Bay, LLC alleging a single cause of action for recovery of
8 civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*]

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

19 Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendants
20 routinely failed to provide compliant meal and rest breaks to the Aggrieved Employees. For
21 example, Plaintiff alleged that the Aggrieved Employees would clock out and continue to
22 work during meal periods. Also, Plaintiff alleged that Aggrieved Employees were not
23 afforded an actual rest period due to the high work volume. Plaintiff alleges that this resulted
24 in not only meal and rest break violations but also in unpaid minimum and overtime wages.
25 Moreover, Plaintiff’s expert confirmed that not a single meal or rest period premium
26 payment was paid to Plaintiff or any of the other alleged Aggrieved Employees during the
27 PAGA Period. Additionally, Plaintiff alleged that Defendants provided inaccurate wage
28 statements which did not identify the correct name of the employer and did not identify the

1 correct number of total hours worked. Plaintiff also alleged that Defendants required the
2 Aggrieved Employees to use their personal cell phones for work-related issues (eg. to receive
3 shift instructions or job site information) without being reimbursed for such costs.
4 (Declaration of Kyle Nordrehaug, at ¶3). On April 21, 2022, the Parties engaged in an all-
5 day mediation session before Mediator Marlin, a respected and experienced mediator
6 knowledgeable of both the wage and hour laws and representative claims at issue in this
7 action. Through arms-length negotiations with the assistance of the mediator, the Parties
8 reached an agreement to settle the PAGA claims in this action which led to the signing of a
9 Memorandum of Understanding memorializing the settlement.²

10 The settlement was negotiated in light of all known facts and circumstances and the
11 uncertainty associated with litigation – including the risk of Plaintiff not being able to
12 maintain representative claims, the difficulty of proving Plaintiff’s claims in a manageable
13 trial, the merits of Defendants’ potential defenses, and the significant delay and potential
14 appellate issues inherent to litigation – and was reached after extensive arm’s length
15 negotiations, with the assistance of Mediator Marlin. (Declaration of Kyle Nordrehaug, at
16 ¶3).

18 **III. TERMS OF THE PAGA SETTLEMENT**

19 The PAGA settlement is subject to Court approval consistent with Labor Code
20 §2699(1)(2). (Settlement Agreement at §III ¶22(a)) . The Settlement Agreement negotiated
21 by the Parties provides for a “Gross PAGA Settlement Amount” payment in the amount of
22 \$405,000 to resolve the Released PAGA Claims (hereinafter referred to as the “PAGA
23 Settlement”). From this PAGA Settlement of \$405,000, there is a deduction of attorneys’

24 ² In addition to the Gross PAGA Settlement Amount, Defendants have agreed to separately settle
25 Plaintiff’s individual claims pursuant to a separate confidential Individual Settlement Agreement
26 (“Individual Settlement”)(Settlement Agreement at §III ¶23(b)). The individual claims were not at
27 issue in this action and exist independent and apart from the PAGA claims at issue before the Court.
28 *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.).

1 fees in the amount of \$135,000 (which is one-third of the PAGA Settlement), reimbursement
2 of incurred costs in an amount not to exceed \$12,000, and Settlement Administration Costs
3 not to exceed \$12,000. (Settlement Agreement at §III ¶22 (b)-(c)).³ After these deductions,
4 the amount remaining is the “PAGA Payment”, which is estimated to be no less than
5 \$246,000.

6 Of the PAGA Payment amount, seventy-five percent (75%) will be paid to the LWDA
7 and the remaining twenty-five percent (25%) will be paid to the Aggrieved Employees
8 (Settlement Agreement at III ¶22(a)(1)).⁴ This 75/25 allocation is required by Labor Code
9 §2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

10 The Individual PAGA Payment for each Aggrieved Employee shall be based on the
11 number of pay periods each Aggrieved Employee worked during the PAGA Period as an
12 Aggrieved Employee, as a percentage of the total pay periods worked by all Aggrieved
13 Employees during the PAGA Period. (*Id.*) The PAGA Period is the time period from
14 January 6, 2020 to August 1, 2022. (Settlement Agreement at I ¶10).

15 For mediation, Defendants represented that there are approximately 750 Aggrieved
16 Employees who collectively worked approximately 12,000 pay periods during the PAGA
17 Period. (Settlement Agreement at § III ¶21). The Defendants then provided a declaration as
18 required by the Agreement which provides that the final figures are 875 Aggrieved
19 Employees who worked 13,770 pay periods. (Declaration of Kyle Nordrehaug, at ¶4)

20 Upon entry of final judgment, the Released Parties shall be entitled to a release from
21 the State of California and the Aggrieved Employees only for any “Released PAGA Claims”,
22 which means all PAGA claims for civil penalties under California Labor Code §§ 2698 *et*

23 ³ In the event the Court approves less than One-Third of the Gross PAGA Settlement Amount in
24 Attorneys’ Fees or less than \$12,000 in Attorneys’ Expenses to PAGA Counsel, the unawarded
25 difference will be added to the PAGA Payment and not to PAGA Counsel or the Defendants.
26 (Settlement Agreement at §III ¶22(b)). In the event the Court approves less than \$12,000 to
27 administer the settlement or if the actual cost to administer the settlement is less than \$12,000, the
28 difference will be added to the PAGA Payment. (*Id.* at ¶22(c)).

⁴ “Aggrieved Employees” means all individuals who were employed by any Defendant in California
and classified as non-exempt employees during the PAGA Period. The PAGA Period is the time
period January 6, 2020 to August 1, 2022. (Settlement Agreement at §I ¶¶2, 10).

1 *seq.*, predicated on the California Labor Code violations that are asserted in the LWDA
2 Notice and operative complaint (or PAGA Claims that could have been asserted based on the
3 facts alleged in the operative LWDA Notice and operative complaint) which are for civil
4 penalties pursuant to Labor Code section 2699, *et seq.* for violations of Labor Code sections
5 §§ 201, 202, 203, 204, 210, 226(a), 226.7, 226.8, 510, 512, 558, 1194, 1197, 1197.1, 1198,
6 2802 and applicable Industrial Welfare Commission Wage Orders during the PAGA Period
7 (the “Released PAGA Claims”)(Settlement Agreement at §III ¶23 (a)). The Released PAGA
8 Claims does not include underlying Labor Code claims, claims for wrongful termination,
9 discrimination, unemployment insurance, disability, and workers’ compensation, and claims
10 outside of the PAGA Period. (*Id.*) The Released PAGA Claims do not include any claims
11 that cannot be released as a matter of law. (*Id.*) The Settlement Agreement expressly
12 confirms that **“In no event shall the release of the Released PAGA Claims in this**
13 **Settlement Agreement release any individual claims of any individuals.”** (*Id.*)

14 Within thirty (30) days after receipt of the Gross PAGA Settlement Amount from
15 Defendants, the Settlement Administrator will issue payment to the LWDA and to each
16 Aggrieved Employee a check for their Individual PAGA Payment at their last known home
17 address along with an explanatory letter which will be mutually approved by the parties.
18 (Settlement Agreement at §IV ¶30). Checks will remain negotiable for one hundred eighty
19 (180) days. (*Id.*) Subject to Court approval, all checks not cashed within one hundred eighty
20 (180) days of payment shall be paid to the Children’s Advocacy Institute: Child Welfare
21 Scholarship and Journalism Awards in the name(s) of the absent Aggrieved Employees. (*Id.*)
22 The Individual PAGA Payments are 100% penalties and shall be reported using IRS tax form
23 1099. (*Id.*).

24 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of
25 the Settlement Agreement and this motion to the LWDA concurrently with the filing of the
26 instant motion for settlement approval as set forth in the accompanying proof of service in
27 compliance with Labor Code section 2699(1). In addition, Plaintiff shall submit to the
28

1 LWDA a copy of the Court's judgment and order approving the Settlement Agreement
2 within ten (10) days after entry of judgment or order.
3

4 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

5 The claim before this court is the representative claim under PAGA on behalf of the
6 State of California for civil penalties pursuant to the PAGA. The parties have agreed to
7 settle this PAGA claim in its entirety after investigation and an arm's length mediation
8 session. (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and
9 finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the State of
10 California. 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 claims, if any, of the Aggrieved
12 Employees. This settlement does not release any claim that is not a PAGA claim.⁵ Attorneys'
13 fees equal to one-third of the Gross PAGA Settlement amount (\$135,000.00) and litigation
14 expenses in an amount not to exceed \$12,000.00 will also be paid to PAGA Counsel as part
15 of the settlement in accordance with California Labor Code § 2699(g)(1), as set forth in the
16 Settlement Agreement.⁶ Lastly, payment to the Settlement Administrator in an amount not
17 to exceed \$12,000 to perform the administrative duties to distribute the settlement money
18 shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)
19

20 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE** 21 **SETTLEMENT OF THE PAGA CLAIM**

22 Labor Code § 2699(l) requires that the Court "shall review and approve any
23 settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement
24 shall be submitted to the agency at the same time that it is submitted to the court."
25

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 \$10,738.66, which is less than the cost allocation in the Settlement
Agreement. See Declaration of Nordrehaug at ¶ 9.

1 Consequently, the parties respectfully ask the Court to review and approve the settlement of
2 the PAGA claims and the PAGA Payment to be paid as part of the proposed settlement.

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

4 The Parties believe that the PAGA Settlement amount is fair and reasonable and
5 therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency
6 has released data on PAGA settlement amounts. After removing the outliers at the low and
7 high end, the average, total settlement amount of PAGA claims is approximately \$10,000.
8 Here, the Gross PAGA Settlement Amount of \$405,000 is significantly more than other
9 PAGA settlements and constitutes approximately \$34 per pay period. (Declaration of
10 Nordrehaug, at ¶6.)

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

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

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 \$1,200,000 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. 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 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties
2 would be only \$60,000.00, which is less than this settlement provides.

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

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

21 Defendants maintain that Plaintiff and the Aggrieved Employees were properly
22 compensated, and that they did not violate the Labor Code. Accordingly, Defendants dispute
23 and deny Plaintiff's allegations and claims asserted in the complaint which are resolved by
24 the Settlement Agreement. Defendants asserted additional defenses to the PAGA claim, not
25 only as to liability but also as to the amount of the penalties. Defendants could argue that no
26 penalties prior to the PAGA notification should be awarded because the violations were not
27 intentional, and at least one Court has so ruled. These defenses present a risk to the PAGA
28

1 claims and the potential that some or all of the PAGA penalties sought may not be awarded.
2 (Declaration of Nordrehaug, at ¶7.)

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

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

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

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

25 Although PAGA requires that a court approve the proposed PAGA settlement, Labor
26 Code § 2699(1) does not require that a court approve any other elements of the proposed
27 settlement. Because there are no class allegations for which Plaintiff seeks approval, the
28 approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not

1 apply. Accordingly, the Court only needs to approve the settlement of the civil penalties
2 sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for
3 attorneys' fees and costs are reasonable.

4 5 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

6 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the
7 amount of \$135,000 representing one-third of the \$405,000 Gross PAGA Settlement
8 Amount. PAGA does not have any requirements for reviewing attorneys' fees, and
9 Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a
10 matter of contract for a contingent representation. Nevertheless, should this Court review the
11 requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

12 First, the requested fees are justified by the result achieved. PAGA Counsel
13 negotiated a recovery of \$405,000.00, and this result justifies the requested fees equal to one
14 third of this recovery. This percentage is within the standard contingent recovery percentage
15 of one-third, and this percentage is what was expressly approved by the Supreme Court in
16 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.,*
17 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that ““fee awards in class actions
18 average around one-third of the recovery”” regardless of ““whether the percentage method or
19 the lodestar method is used.”” (quoting *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11
20 (2008))).

21 Second, the fee award is justified by the work performed and contributions to the
22 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award
23 represents PAGA Counsel's current lodestar of \$104,450.25 with a reasonable multiplier of
24 less than 1.3, with significant additional work to be performed such that the multiplier will
25 ultimately be less than 1.1.

26 Generally, the Ninth Circuit and California Courts award positive multipliers between
27 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation
28 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award

1 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
2 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
3 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
4 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa*
5 *Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which
6 was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D.
7 Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v.*
8 *Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6,
9 2013) (approving fee award that represented a multiplier of 2.76 as falling within the
10 "majority" range for risk multipliers).

11 Third, consideration of the enhancement factors justify the enhancement of the
12 lodestar. Courts multiply the lodestar by a factor to account for the risk of non-payment,
13 delay in payment, the quality of work, and the novelty and difficulty of the issues involved.
14 See *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in
15 cases that meet these criteria is an abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157,
16 1166 (9th Cir. 2016).

17 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation
18 expenses in the total amount of \$10,738.66 which is less than the \$12,000 allocation for costs
19 in the Settlement Agreement, so the difference of \$1,261.34 will be added to the PAGA
20 Payment amount. These expenses are documented in the accompanying Declaration of
21 Nordrehaug at ¶9.

22 **VII. CONCLUSION**

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

26 Dated: October 6, 2022

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

27 By: /s/ Kyle Nordrehaug

28 Kyle Nordrehaug
Attorney for Plaintiff