

1 Allen B. Felahy (SBN 190177)
afelahy@felahylaw.com

2 Farbod Nourian (SBN 306145)
fnourian@felahylaw.com

3 **FELAHY EMPLOYMENT LAWYERS**

500 North Brand Blvd., Suite 1160

4 Glendale, California 91203

Telephone: (323) 645-5197

5 Facsimile: (323) 645-5198

6 Attorneys for Plaintiff Theresa Suzanne Lopez,
individually and on behalf of all other Similarly Aggrieved Employees

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF STANISLAUS**

11 **THERESA SUZANNE LOPEZ**, an
individual; individually and on behalf of all
12 others similarly situated,
Plaintiffs;

13 v.

15 **CENTRAL VALLEY SPECIALTY**
HOSPITAL, INC., a California corporation;
16 and DOES 1 through 20, inclusive,
Defendant.

CASE NO. CV-20-001778

Consolidated with Case No. CV-21-002861

**PLAINTIFF THERESA SUZANNE
LOPEZ'S NOTICE OF MOTION AND
MOTION TO APPROVE PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF MOTION**

[Concurrently filed with Declaration of Allen
Felahy; Plaintiff's Request for Judicial Notice;
and [Proposed] Order]

Hearing

Date: May 2, 2025

Time: 8:30 a.m.

Dept.: 22

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

3 PLEASE TAKE NOTICE that on May 2, 2025, at 8:30 a.m., or as soon thereafter as the
4 matter may be heard, in Department 22 of the above-entitled Court, Honorable Stacy Speiller
5 presiding, Plaintiff Theresa Lopez (“Plaintiff”) will and hereby does move this Court for an order
6 approving a settlement pursuant to the Private Attorneys General Act of 2004, California Labor Code
7 § 2698 et seq. (“PAGA”). The proposed settlement is set forth in the accompanying Settlement
8 Agreement (“Settlement”, “Agreement” or “Settlement Agreement”). (See **Exhibit 1**: Settlement
9 Agreement, attached to Felahy Declaration ¶ 3.) This Settlement resolves this action in its entirety.

10 This Motion is based on this Notice, the accompanying Memorandum of Points and
11 Authorities, the concurrently filed Declaration of Allen Felahy, the pleadings and papers on file in
12 this action, any matter that the Court may judicially notice, and such other evidence and oral
13 argument as may be presented in connection with the hearing on this Motion. The Labor Workforce
14 Development Agency (“LWDA”) has been served with this Motion, its supporting documents, and
15 the Settlement Agreement as set forth in the accompanying proof of service. (See **Exhibit 2**: Proof
16 of Service to LWDA, attached to Felahy Declaration ¶ 4.)

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19
20 Dated: March 24, 2025

Respectfully Submitted,
FELAHY EMPLOYMENT LAWYERS

21 By: Allen Felahy
22 Allen Felahy
23 Farbod Nourian
24 Attorneys for Plaintiff Theresa Suzanne
25 Lopez, and on behalf of all other Similarly
26 Aggrieved Employees
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1 Payment for the PAGA Claim in the amount of \$525,000.00 ("Gross PAGA Settlement Amount") in
2 full settlement of the PAGA claim involving approximately 2,183 total Aggrieved Employees.¹ After
3 payment of Plaintiff's attorneys' fees of 35% of the settlement (\$183,750.00) and litigation costs
4 (\$25,000.00), as well as the administration expenses (\$20,000.00), approximately \$316,250.00 in
5 PAGA Penalties are to be paid from the Gross PAGA Settlement Amount – with 65% allocated to
6 the LWDA PAGA Payment and 35% allocated to the Individual PAGA Payments. (See Exhibit 1.)

7 The process for approving a PAGA settlement is very straight-forward: "The superior court
8 shall review and approve any settlement of any civil action filed pursuant to this part." (Labor Code
9 § 2699(s)(2).) Based on the California Supreme Court's holding in Arias v. Superior Court (2009) 46
10 Cal.4th 969, there is no requirement under PAGA for a Plaintiff to establish the requirements of class
11 certification (i.e. numerosity, typicality, commonality, and adequacy) nor is there the usual two-step
12 preliminary and final approval process as found in class actions. Rather, a PAGA-only settlement
13 merely requires a one-step review and approval process. Plaintiff submits that this Settlement merits
14 full approval because it fulfills the purpose of PAGA, has been negotiated extensively and at arm's-
15 length between the parties (and with the assistance of a skilled neutral), and is a fair and equitable
16 resolution of the PAGA claims. And, for these reasons and those discussed below, the Parties now
17 seek the Court's approval of the Settlement.

18 **II. SUMMARY OF ARGUMENT**

19 Although Plaintiff alleged numerous Labor Code violations, Defendant's liability (or lack
20 thereof) was predicated on the threshold issue of whether Defendant's Rest and Meal Break policies
21 and practices complied with California law, as well as an alleged miscalculation of the alleged regular
22 rate of pay for overtime calculations. (Felahy Decl. ¶ 5.) In an effort to investigate these allegations,
23 the Parties engaged in extensive discovery. (Id. at ¶ 11.) The mailing of the Belaire-West Notice was
24 completed by CPT Group, Inc. (the initial mailing occurred on March 14, 2024); and the Parties have
25 produced, reviewed and analyzed voluminous documents and/or data having a bearing on the Labor
26 Code violations at issue in the lawsuit. (Felahy Decl. ¶ 11.)

27 ¹ The Gross Settlement Payment for the PAGA Claim of \$525,000.00 is to be made by Defendant to the Claims
28 Administrator in twelve payments of \$43,750.00 per month beginning April 25, 2025, and paid monthly thereafter on or
before the twenty-fifth day of each month and completed by March 2026. (Exhibit 1: Settlement Agreement.)

1 After a thorough analysis of the discovery and information obtained from Defendant,²
2 Plaintiff's counsel determined that class certification of the alleged class claims was unlikely and did
3 not pursue nor obtain any class certification. (Felahy Decl. ¶ 12.) Specifically, Plaintiff's theories of
4 liability on the rest/meal break class claims would necessitate a fact-intensive, case-by-case,
5 employee-specific analysis that would be wholly unmanageable at trial on a class basis. However,
6 notwithstanding the foregoing, this manageability issue would be obviated in the PAGA context, as
7 the California Supreme Court in Estrada v. Royalty Carpet Mills, 15 Cal.5th 582 (2024) unanimously
8 held that PAGA claims cannot be dismissed based on manageability. Accordingly, Plaintiff
9 vigorously litigated the PAGA action. (Felahy Decl. ¶ 12.)

10 The Parties agreed to attend a full-day private mediation and retained the services of the
11 esteemed Michelle Reinglass, Esq. As part of this mediation, which initially took place on December
12 22, 2023, the Parties submitted briefs and documents to Ms. Reinglass detailing/supporting their
13 respective positions. Ms. Reinglass reviewed these submissions and provided all counsel with her
14 opinion regarding the strengths and weaknesses of the claims and defenses, and provided the Parties
15 her opinion regarding potential settlement values. (Felahy Decl. ¶ 13.) While a settlement did not
16 immediately arise out of these initial arm's-length negotiations, over the course of the ensuing year
17 the Parties continued to engage in the discovery process and investigation; and it was the exchange
18 of this information that enabled the Parties to conduct a more extensive analysis into the claims and
19 defenses. Thereafter, in December of 2024, the Parties re-engaged Ms. Reinglass in an effort to
20 continue settlement discussions. It was a result of these continued and exhaustive arm's-length
21 negotiations that a Settlement was reached by the Parties. (Felahy Decl. ¶ 14.)

22 **III. THE PAGA AND ITS REQUIREMENTS**

23 PAGA provides an enforcement method for California's Labor Code by enlisting individual
24 plaintiffs as private attorneys general to recover civil penalties for the state, with a share also going
25 to the individual plaintiffs and other employees. Prior to the enactment of PAGA, the recovery of
26 civil penalties for violations of certain Labor Code provisions were solely within the province of the
27

28 ² To date, the parties have propounded 35 sets of written discovery and Defendant has produced approximately 74,600
pages of records; and Plaintiff's counsel has thoroughly reviewed and analyzed these documents. (Felahy Decl. ¶ 11.)

1 California Department of Labor. (Arias at 980.) However, due to the lack of financing for California's
2 agencies, and the substantial number of Labor Code violations by California employers, the
3 California Legislature found that it was in the public interest to allow aggrieved employees to act as
4 “private attorneys general” to enforce and recover civil penalties on behalf of the State of California
5 for Labor Code violations committed by employers. (Id.) As the Legislature that adopted PAGA
6 observed, “the only meaningful deterrent to unlawful conduct is the vigorous assessment and
7 collection of civil penalties as provided in the Labor Code.” (Stats. 2003 ch. 906, § 1(b).) Therefore,
8 the Legislature determined that “it was therefore in the public interest to allow aggrieved employees,
9 acting as private attorneys general, to recover civil penalties for Labor Code violations, with the
10 understanding that labor law enforcement agencies were to retain primacy over private enforcement
11 efforts.” Penalties recovered under PAGA shall be distributed 65% to the Labor and Workforce
12 Development Agency and 35% to the aggrieved employees. (Labor Code § 2699(m).)

13 Before filing a PAGA action, an aggrieved employee must first provide written notice to the
14 LWDA and the employer of the particular Labor Code violations the aggrieved employee alleges the
15 employer has violated. (Labor Code § 2699.3(a)(1).) This notice provides the LWDA with the
16 opportunity to investigate and prosecute the claim. (Labor Code §§ 2699.3(a)(2), 2699(h).) In this
17 case, Plaintiff provided the LWDA with the required notice letters advising it of the alleged Labor
18 Code violations, but the LWDA deferred the prosecution of these violations to Plaintiff and her
19 attorneys. (Felahy Decl. ¶ 6-9.) Accordingly, the Settlement and the common fund created by it for
20 the benefit of the State and Aggrieved Employees is solely the result of the work performed by
21 Plaintiff and her attorneys on this case. While any settlement of a PAGA action brought by an
22 aggrieved employee must be approved by the court (Labor Code § 2699(s)(2)), case law has
23 determined that approval of a PAGA settlements does not require the same process as a class action
24 settlement. Therefore, a PAGA settlement has a straightforward one-step approval process and, as
25 such, the Parties to this PAGA action seek this Court's approval of the Settlement.

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1 **IV. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES**

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

3 **A. Terms of the Settlement and Distribution and Allocation of PAGA Penalties.**

4 The Settlement Agreement encompasses “all PAGA claims asserted in the LWDA Complaint
5 and related civil complaint(s) filed by Plaintiff in her representative capacity.” (Settlement
6 Agreement (“SA”) at §2(B), attached as Ex. 1 to Felahy Decl. ¶ 3.) And, pursuant to the operative
7 FAPC, the PAGA Aggrieved Employees are defined as “all nonexempt employees who worked at
8 Central Valley Specialty Hospital, Inc. between the dates of January 2, 2019 and the date of approval
9 of the settlement.” (See Exhibit 7.) The Settlement provides that Defendant will pay a non-
10 reversionary settlement amount of \$525,000.00 (the “Gross PAGA Settlement Amount”), inclusive
11 of payments to the LWDA and Aggrieved Employees, attorneys' fees/costs, as well as third party
12 administrator (“Administrator”) costs. (Ex 1: SA § 2(B).) After payment of the attorneys' fees/costs
13 and administration costs, the remainder of approximately \$316,250.00 will form the PAGA Penalties
14 and, pursuant to Labor Code § 2699(m), 65% shall be paid to the LWDA, and the remaining 35%
15 being paid to the Aggrieved Employees. (Id.) The following reflects the estimated payments from
16 Gross PAGA Settlement Amount:

	Amount
17 Gross PAGA Settlement Amount	\$525,000.00
18 Attorneys' Fees	\$183,750.00
19 Litigation Costs	\$25,000.00
20 Administrator Costs	\$20,000.00
21 Net Settlement Amount (PAGA Penalties)	\$316,250.00
65% to the LWDA	\$205,562.50
35% to Aggrieved Employees	\$110,687.50
22 Balance	\$0

23 As such, the LWDA will receive approximately \$205,562.50 (65% of the PAGA Penalties) and the
24 approximately 2,183 Aggrieved Employees will receive approximately \$110,687.50 (35% of the
25 PAGA Penalties). The Administrator will calculate each Individual PAGA Payment by (a) dividing
26 the amount of the Aggrieved Employees' 35% share of PAGA Penalties by the total number of PAGA
27 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying
28 the result by each Aggrieved Employee's PAGA Period Pay Periods. (Ex 1: SA § 2(B).)

B. Payment and the Notice.

The Gross Settlement Payment for the PAGA Claim of \$525,000.00 is to be made by Defendant to the Claims Administrator in twelve payments of \$43,750.00 per month beginning April 25, 2025, and paid monthly thereafter on or before the twenty-fifth day of each month and completed by March 2026. (Ex. 1: SA §2(B.1).) The Administrator will disburse the entire Gross PAGA Settlement Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of payment. None of the Gross PAGA Settlement Amount will revert to Defendant. Payment to the Aggrieved Employees, the LWDA, and Plaintiff's counsel will be issued after (1) this Court approves the PAGA Settlement, (2) the Administrator receives the Aggrieved Employee data (which Defendant is required to produce within 30 calendar days of the final order), and (3) 10 days after Defendant makes the final payment of Gross PAGA Settlement Amount to the Administrator. (Ex. 1: SA § 2(B).)

Should Defendant default on any of the monthly payments identified in the Settlement Agreement, and not pay those to the agreed account in a timely manner, then Plaintiff may claim a default and may provide written notice and a ten (10) calendar day opportunity to cure the default. Notice of default must be delivered in writing to Defendant's counsel. If Defendant does not timely cure the default within this cure period, then the Parties agree that the PAGA Settlement Payment shall be increased by \$600,000.00 and the monthly payment obligations identified in Paragraph 2(B) shall be accelerated and the PAGA Settlement Payment due in full. Upon default and the lapse of the cure period (without a cure), Plaintiff may move for entry of a judgment of settlement by ex parte application with the court consistent with the default provision and the Settlement Agreement. Defendant shall be given credit for any payments previously made pursuant to this Agreement in the court's judgment of settlement. (Ex. 1: SA § 5.) The Aggrieved Employees will have 180 days to cash their checks and, if for any reason a check is uncashed, the check will be voided and the funds issued to the California State Controller in the name of the Aggrieved Employee who may claim the funds at a later date. A Notice informing the Aggrieved Employees of the nature of the payment will be provided along with the settlement check.

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1 **C. The Release.**

2 The California Supreme Court has explained that a judgment in “a representative action
3 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ...
4 is binding not only on the named employee plaintiff but also on government agencies and any
5 aggrieved employee not a party to the proceeding.” (Arias, 46 Cal. 4th at 985-986.) Here, the
6 Settlement Agreement narrowly binds the Aggrieved Employees for civil penalty claims brought in
7 the Action, as noted in Section 7(B) of the Settlement Agreement:

8 “In exchange for the payment of the PAGA Settlement Payment, Plaintiff, individually and
9 as representative of the State of California and the aggrieved employees, knowingly and
voluntarily, generally releases and forever discharges Central Valley Specialty Hospital,
10 including any right to sue Defendant's directors, officers, shareholders, members, employees,
representatives, attorneys, insurers, and agents (hereafter "the Released Parties") to the fullest
11 extent permitted by law, of and from any and all claims arising under Labor Code section
2699 et. seq. for any and all Labor Code violations during the PAGA period and as set forth
12 in the LWDA Complaint and the PAGA civil complaint(s).”

13 As the release is narrowly related to the claims alleged, the Parties contend that the release is proper
14 and reasonable.

15 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND WARRANTS APPROVAL**

16 In 2016, PAGA was amended to require the Court to “review and approve any settlement of
17 any civil action filed pursuant to this part.” (Labor Code § 2699(s)(2).) The amendment also required
18 that the “proposed settlement shall be submitted to the agency at the same time that it is submitted to
19 the court.” (Labor Code § 2699(s)(3).) As such, the Settlement Agreement, this Motion and its
20 supporting documents, have been concurrently submitted to the LWDA in accordance with this
21 section. (Felahy Decl. ¶ 4, Ex. 2.)

22 **A. Evaluation of the PAGA Settlement.**

23 Although PAGA and its legislative history do not require a court to analyze a PAGA
24 settlement in comparison to the “value” of the claims, the penalties herein are reasonable when
25 considered in this context as well. Under PAGA, the standard calculation of civil penalties can be
26 described as \$100 for each aggrieved employee per pay period and \$200 for each aggrieved employee
27 per pay period if “[t]he court determines that the employer's conduct giving rise to the violation was
28 malicious, fraudulent, or oppressive.” (Labor Code § 2699(f).) Using these metrics and based on

1 Plaintiff's counsel's extrapolation of data and information provided prior to and after mediation,
2 Plaintiff estimates Defendant's potential penalty exposure could approach seven-figures. However,
3 this maximum theoretical figure does not consider the various risks of protracted litigation or the fact
4 that significant legal and factual grounds exist for defending this action. (Felahy Decl. ¶ 34.)

5 Indeed, Defendant maintains that the Court would heavily scrutinize the proof relative to any
6 "systemic problems" and require Plaintiff to prove that the aggrieved members were damaged by the
7 specific claims. PAGA claims are best presented for systemic issues such as noncompliant practices
8 or procedures, not individualized deviation from the established policy or procedure. Here,
9 Defendant contended that the PAGA claims (in addition to the class claims) raised highly
10 individualized issues that were not susceptible to common proof, which resulting arguments and
11 defenses would have made presentation and proof of these issues at trial challenging, expensive and
12 time consuming. A court may only award the penalties proven and so, for instance, proving a PAGA
13 claim based upon the (alleged) interruption of aggrieved employees' meal/rest breaks by doctors, or
14 their decision to perform their charting or work on their schedule "off the clock", may be difficult to
15 prove is a systemic problem. Thus, even if Plaintiff could establish that a systemic problem existed,
16 courts have wide latitude to reduce the civil penalties "based on the facts and circumstances of a
17 particular case" if the assessment of the maximum penalties "would result in an award that is unjust,
18 arbitrary and oppressive, or confiscatory." (Labor Code § 2699(e)(2).) Moreover, Defendant argued
19 that as a private hospital with limited financial resources that any settlement should be heavily
20 discounted and ultimately if a PAGA trial was required that penalties should be greatly discounted
21 by the court to avoid interference with Defendant's provision of health care, which is a matter of
22 considerable public interest and importance, especially in the rural areas and patient population
23 served by the Defendant. Thus, the Settlement is fair and reasonable.

24 Notwithstanding the foregoing, Plaintiff obtained an impactful settlement that represents a
25 great result when considering the risks and uncertainties associated with the PAGA claims. The
26 Settlement commits Defendant to pay a Gross PAGA Settlement Amount of \$525,000.00, of which
27 \$316,250.00 will be paid as PAGA penalties (after deducting fees/costs and other expenses). This
28 accomplishes PAGA's objectives while not being unjust, arbitrary and oppressive, or confiscatory.

1 **B. Plaintiff's Separate Individual Settlement is Proper.**

2 Plaintiff has also resolved her individual claims with Defendant by way of settlement. (Ex. 1:
3 SA § 2(A).) This is specifically permitted under PAGA, as confirmed by the California Supreme
4 Court. (ZB, N.A. v. Superior Court (2019) 8 Cal.5th 175, 187 [“Pursuing civil penalties does not
5 prevent an employee from separately or concurrently pursuing unpaid wages and other remedies
6 already available to her”].) Notably, the California Labor Code specifically permits a plaintiff to
7 separately resolve claims for individual damages from PAGA claims on behalf of aggrieved
8 employees. (See Labor Code § 2699(k)(1) – “Nothing in this part shall operate to limit an employee's
9 right to pursue or recover *other remedies available under state or federal law, either separately or*
10 *concurrently with an action taken under this part*”). (Emphasis added.) The rule permitting
11 employees to pursue separate individual claims while maintaining a PAGA claim aligns perfectly
12 with the general understanding that PAGA claims (which seek civil penalties on behalf of Aggrieved
13 Employees) are distinct from individual claims for unpaid wages and statutory penalties. For this
14 reason, it is perfectly acceptable for a PAGA plaintiff to resolve the PAGA case and then separately
15 settle individual claims, as this has been accepted and approved by courts throughout California.

16 Therefore, the approach taken here (i.e. reaching a PAGA settlement and negotiating a
17 separate individual settlement for Plaintiff's wrongful termination/retaliation claims in the amount
18 of \$75,000) is entirely appropriate as confirmed by the California Supreme Court, which clearly held
19 that “[p]ursuing civil penalties does not prevent an employee from separately or concurrently
20 pursuing unpaid wages and other remedies already available to her.” (ZB, N.A., 8 Cal.5th at 187.)
21 Because Plaintiff is permitted to resolve her individual claims, separate and distinct from the PAGA
22 claims, Plaintiff respectfully submits that this Court should approve the Settlement Agreement.

23 **VI. THE REQUESTS FOR ATTORNEYS' FEES AND LITIGATION COSTS ARE FAIR**
24 **AND REASONABLE.**

25 For their efforts and risks they undertook in obtaining a common fund settlement that benefits
26 the LWDA and Aggrieved Employees, the Parties allocated \$183,750.00 to Plaintiff's counsel for
27 reasonable attorneys' fees (35% of the Gross PAGA Settlement Amount). Additionally, the Parties
28 agreed to reimburse Plaintiff's Counsel for litigation costs in the amount of \$25,000. These fees and

1 costs are warranted under the law and within the range commonly awarded in similar cases.

2 **A. Plaintiff's Counsel are Entitled to Recover Attorneys' Fees.**

3 Under the Common Fund Doctrine, PAGA provides that any employee who prevails in any
4 PAGA action shall be entitled to an award of reasonable attorney's fees and costs, including any filing
5 fee paid. (Labor Code § 2699(k)(1).) As discussed below, in a qui tam action, reasonable attorney's
6 fees and costs are typically awarded under the common fund doctrine where, as here, the litigation
7 creates a common fund of money in a specific amount for the benefit of others. As the name of the
8 PAGA statute makes clear ("Labor Code Private Attorney General Act"), a PAGA action is a qui
9 tam action because the statute allows the employee plaintiff, acting as the proxy of the state's labor
10 law enforcement agency, to sue her employer for Labor Code violations and recover civil penalties
11 that otherwise would have been assessed and collected by the LWDA. Indeed, the majority of the
12 civil penalties recovered in a PAGA action are paid to the state, with a smaller portion paid to the
13 aggrieved employees (e.g., 65% paid to the state; 35% paid to the aggrieved employees).

14 Where a common fund is created in a qui tam action by the successful litigation of a plaintiff
15 and her attorneys, the plaintiff's attorneys are entitled to recover their fees from the common fund.
16 (Bank of America v. Cory (1985) 164 Cal.App.3d 66, 89-91.) In Bank of America, the Court of
17 Appeal affirmed the trial court's fee award to the taxpayers' counsel under the common fund doctrine:

18 "Those benefiting from the recovery of the fund, in this case some depositors and eventually
19 the People of the State of California, must bear their share of the cost of litigation. Fees for
20 taxpayers' attorneys will be deducted from the judgment, and each claimant's share reduced
21 proportionately. To the extent the judgment relies upon section 1021.5 for recovery of
22 attorney fees, it must be modified to confine the award of fees to the common fund theory."
(Id. at 91.)

23 Here, the Settlement created a common fund for the benefit of the employees and the State of
24 California. Thus, these beneficiaries must bear their share of the costs and attorney's fees, which fees
25 and costs must be deducted from the settlement amount under the common fund theory. (Id.)
26 Moreover, such fees are deducted as a percentage of the settlement amount. (Boeing Co. v. Van
27 Gemert (1980) 444 U.S. 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir.
28 1990) 904 F.2d 1301, 1311; Staton v. Boeing Co. (9th Cir. 2003) 327 F.3d 938, 967.) The California
Supreme Court has upheld the use of the common fund theory of recovery for attorney's fees in

1 Laffitte v. Robert Half Int'l Inc. (2016) 1 Cal.5th 480, 506. This ruling is consistent with prior court
2 rulings recognizing that “when a number of persons are entitled in common to a specific fund, and
3 an action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that
4 fund, such ... plaintiffs may be awarded attorneys' fees out of the fund.” (Serrano III v. Priest (1977)
5 20 Cal.3d 25, 34; Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478 (“[A] lawyer who recovers a
6 common fund... is entitled to reasonable attorneys' fees from the fund as a whole”); Mills v. Electric
7 Auto-Lite Co. (1970) 396 U.S. 375, 393-394 (discussing the acceptance of awarding attorneys' fees
8 and expenses from a settlement where “litigation has conferred a substantial benefit on the members
9 of an ascertainable class”); see also Lealao v. Beneficial California (2000) 82 Cal.App.4th 19, 26.)

10 Accordingly, the common fund doctrine allows a court to award attorneys' fees based upon a
11 percentage of the total fund that is created for the satisfaction of beneficiaries' claims when the fund
12 consists of a “certain or easily calculable sum of money.” (Dunk v. Ford Motor Co. (1996) 48
13 Cal.App.4th 1794, 1809; Jutkowitz v. Bourns, Inc. (1981) 118 Cal.App.3d 102, 128 (application of
14 the percentage of the fund recovery depended on “[t]he critical point” that “a fund was created from
15 which attorneys' fees could be paid”). California law has long upheld, and continues to uphold, the
16 percentage of the recovery method for awarding attorneys' fees where a fund is established. (See e.g.,
17 Serrano III, supra, 20 Cal.3d at 34; Bell v. Farmers Insurance Exchange (2004) 115 Cal.App.4th 715,
18 726; Sanders v. City of Los Angeles (1970) 3 Cal.3d 252, 261, 263 (affirming award of attorneys'
19 fee based on percentage of recovery); see also Wershba v. Apple Computer, Inc. (2001) 91
20 Cal.App.4th 224, 254 (“courts recognize two methods for calculating attorney fees in class actions:
21 the lodestar/multiplier method and the percentage of recovery”).)

22 Based on the foregoing, awarding attorneys' fees of 35% of the Gross PAGA Settlement
23 Amount is fair and warranted in light of the PAGA settlement that was reached on behalf of the State
24 of California and Aggrieved Employees. Accordingly, awarding fees on this basis in this amount is
25 reasonable and appropriate.

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1 **B. The Percentage Fee of the Gross PAGA Settlement Amount is Fair and**
2 **Reasonable, and Less than Counsel's Lodestar.**

3 An award of fees from the gross settlement amount under the common fund doctrine prevents
4 unjust enrichment of those who benefit from the common fund created through the successful efforts
5 of Plaintiff's counsel and furthers the important goal of attracting competent counsel to handle
6 representative actions enforcing minimum labor standards. (Laffitte, 1 Cal.5th at 503.) In affirming
7 the use of the common fund doctrine in California, the California Supreme Court summarized the
8 benefits of the percentage method of recovery stating: "The recognized advantages of the percentage
9 method-including relative ease of calculation, alignment of incentives between counsel and the class,
10 a better approximation of market conditions in a contingency case, and the encouragement it provides
11 counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [citations]
12 convince us the percentage method is a valuable tool that should not be denied our trial courts." (Id.)

13 Among the factors considered in determining whether the requested fee percentage is
14 reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of
15 plaintiff's counsel and the quality of work performed by plaintiff's counsel; (4) the contingent nature
16 of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar cases.
17 (Vizcaino v. Microsoft Corp. (9th Cir. 2002) 290 F.3d 1043, 1048-50.) All these factors support an
18 award here of 35% of the common fund.

19 First, Plaintiff's counsel achieved a good PAGA settlement in a case that involved highly
20 contested issues. Second, Plaintiff and her counsel faced significant risks going forward with the
21 litigation. As discussed above, Defendant raised various defenses and as such, Plaintiff faced
22 significant risk and difficult issues going forward with this litigation, and it would have taken
23 significant time to realize any recovery in this action. (Felahy Decl. ¶ 34.) Third, Plaintiff's counsel
24 are experienced representative action litigators. (Id. at ¶ 22-25.) This experience and expertise,
25 combined with the high quality of work performed in this case by Plaintiff's counsel, resulted in the
26 settlement achieved in this case. Fourth, as discussed above and as set forth in the Declaration of
27 Plaintiff's counsel Allen Felahy, the request for attorney's fees falls well within the norms accepted
28 by state and federal courts in California in comparable wage and hour actions actually handled by

1 Plaintiff's counsel. (Id. at ¶ 25-28.) Accordingly, a fee award here in the amount of 35% of the Gross
2 PAGA Settlement Amount is fair and reasonable.

3 **C. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award.**

4 Despite recognized limitations of the so-called lodestar method, some California and courts
5 acknowledge the utility of a lodestar "cross-check." (Lealao, 82 Cal.App.4th at 46-47.) Under the
6 "lodestar multiplier" method of cross-checking the reasonableness of attorneys' fees in class actions,
7 the court ascertains counsel's total "lodestar" amount by multiplying the number of hours reasonably
8 expended by each attorney or legal staff member by their hourly rates, and then enhances or reduces
9 this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty or difficulty
10 of the case, its contingent nature, and the degree of success achieved. (PLCM Group, Inc. v. Drexler
11 (2000) 22 Cal.4th 1084, 1095-96; Press v. Lucky Stores, Inc. (1983) 34 Cal.3d 311, 322; Lealao, 82
12 Cal.App.4th at 43 (court has discretion to use a multiplier to ensure that the "fee awarded is within
13 the range of fees freely negotiated in the legal marketplace in comparable litigation").

14 As set forth in the declaration of Plaintiff's counsel Allen Felahy submitted herewith, the
15 actual lodestar is \$268,040.00. This results in a large negative multiplier, which clearly demonstrates
16 that the requested fee is justified, reasonable and appropriate. The total lodestar is summarized in the
17 declaration of Plaintiff's counsel. (Felahy Decl. at ¶ 30.) Thus, this lodestar cross-check, reflecting
18 a negative multiplier, supports a fee award of \$183,750.00 (35% of the common fund), especially
19 where both the hours and requested rates are eminently reasonable.

20 First, it is well established that Plaintiff's counsel (Felahy Employment Lawyers) is entitled
21 to be compensated for "all hours reasonably expended" (Hensley v. Eckerhart (1983) 461 U.S. 424,
22 431) and here, Plaintiff's counsel reasonably expended 417 hours prosecuting these complex and
23 nuanced claims on behalf of the State and Aggrieved Employees, as reflected in Mr. Felahy's
24 Declaration at ¶ 30. (See Blackwell v. Foley (N.D. Cal. 2010) 724 F.Supp.2d 1068, 1081 ["An
25 attorney's sworn testimony that, in fact, [he] took the time claimed ... is evidence of considerable
26 weight on the issue of the time required"]; see also Moreno v. City of Sacramento (9th Cir. 2008)
27 534 F.3d 1106, 1112 [the Court "should defer to the winning lawyer's professional judgment as to
28 how much time he was required to spend on the case"].) Second, Plaintiff counsel's requested rates

1 are reasonable and supports a fee award equal to 35% of the common fund because it is comparable
2 to those of other attorneys with equal or similar experience. (Felahy Decl. at ¶ 25-28.) For example,
3 the requested rates are reasonable under the Laffey Matrix (www.laffeymatrix.com) and as
4 determined by numerous courts throughout the State of California.³ (Felahy Decl ¶ 25-28.) Moreover,
5 the reasonableness of these rates is reinforced by the fact that Plaintiff's Counsel have substantial
6 experience in wage-and-hour class and PAGA actions. (Felahy Decl ¶ 22-25.)

7 Thus, not only are Plaintiff Counsel's rates reasonable and typical, but the requested attorneys'
8 fees are far below the actual lodestar, which confirms the fee request is fair and reasonable.

9 **D. The Requested Litigation Costs are Fair and Reasonable.**

10 Plaintiff's counsel requests reimbursement of their actual out-of-pocket expenses incurred to
11 prosecute this action. These expenses were incidental and necessary to the effective representation
12 of the employees. (Harris v. Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.) Plaintiff's counsel are
13 permitted to recover their litigation costs and expenses under the common fund doctrine. (Serrano III
14 at 35 (common fund doctrine permits recovery of fees and costs from the fund); Rider v. County of
15 San Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund “[o]f
16 necessity, and for precisely the same reasons discussed above with respect to the recovery of
17 attorneys' fees by ... [Plaintiffs'] attorneys”). Furthermore, Plaintiff's counsel is entitled to recover
18 “those out-of-pocket expenses that would normally be charged to a fee-paying client.” (Harris at 19.)
19 Here, the Settlement authorizes Plaintiff's counsel to recover litigation costs up to \$25,000. (Ex. 1:
20 SA at § 2(B).) To date, Plaintiff counsel's actual out-of-pocket expenses total approximately
21 \$25,278.53. (Felahy Decl. ¶ 32.)

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24 ³ On January 16, 2025, in the matter of *Kariavandan Raju v. County of Los Angeles*, Los Angeles Superior Court Case
25 No. BC615598, Judge Virginia Keeny determined the following hourly rates for attorneys at Felahy Employment
26 Lawyers to be reasonable in a Labor Code action: Mr. Felahy (Partner) \$750 per hour, Mr. Sniezek (Sr. Attorney) \$595.00
27 per hour, and Mr. Nourian (Sr. Attorney) \$475.00 per hour. (See Plaintiff's Request for Judicial Notice (“**RJN**”), **Exhibit**
28 **1** – Court Order on Plaintiff Kariavandan Raju's Motion for Attorney Fees, LASC BC615598, dated January 16, 2025.)
Additionally, on January 6, 2025, in the matter of *Tenny vs. Dignity Health*, Kern County Superior Court Case No. BCV-
18-102316, Judge Thomas S. Clark determined that those same hourly rates for attorneys at Felahy Employment Lawyers
were reasonable in that wage and hour class action/PAGA matter – i.e. Mr. Felahy (Partner) \$750 per hour, Mr. Sniezek
(Sr. Attorney) \$595.00 per hour, and Mr. Nourian (Sr. Attorney) \$475.00 per hour. (See, **RJN Exhibit 2** – Order Granting
Final Approval in Kern County Superior Court Case No. BCV-18-102316, dated January 6, 2025.)

1 **VII. SUBMISSION TO THE LWDA**

2 As set forth in the Felahy Declaration at ¶ 4, the Settlement Agreement, this Motion and all
3 of its supporting documents have been submitted to the LWDA in accordance with Labor Code §
4 2699(s). The proof of service of this electronic submission is attached as Exhibit 2 to the Felahy
5 Declaration.

6 **VIII. THE SETTLEMENT ADMINISTRATOR**

7 The Parties seek to have CPT Group, Inc. (“CPT”) appointed to serve as the Settlement
8 Administrator and be responsible for processing the settlement payments and providing notice to the
9 Aggrieved Employees. CPT has provided an all-in bid to administer the Settlement for \$20,000 (i.e.
10 not to exceed), which is the amount that will be paid from the Gross PAGA Settlement Amount.
11 (Exhibit 10: CPT Administrative Costs Bid, attached to Felahy Decl. ¶ 36.)

12 **IX. REQUEST FOR DISMISSAL OF CLASS CLAIMS PURSUANT TO CRC 3.770.**

13 As stated, after a thorough analysis of the discovery and information obtained from
14 Defendant, Plaintiff’s counsel determined that class certification of the alleged class claims was/is
15 very unlikely and as such, has not pursued nor obtained class certification. (Felahy Decl. ¶ 37.)
16 Specifically, Plaintiff’s theories of liability on the rest/meal break class claims would necessitate a
17 fact-intensive, case-by-case, employee-specific analysis that would be wholly unmanageable at trial
18 on a class basis. It is for this reason that pursuant to CRC 3.770, Plaintiff requests dismissal (without
19 prejudice) of the class action claims of the putative class members contained in Plaintiff’s Class
20 Action Complaint, Case Number CV-21-002861. (Felahy Decl. ¶ 37.) Neither Plaintiff nor Plaintiff’s
21 counsel are receiving any consideration for requesting dismissal of the class action allegations against
22 Defendant contained in Plaintiff’s Class Action Complaint, Case Number CV-21-002861. (Felahy
23 Decl. ¶ 37.)

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1 X. CONCLUSION

2 For the foregoing reasons, Plaintiff requests, and Defendant does not oppose, the Court's
3 approval of the Settlement under the PAGA.
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6 Dated: March 24, 2025

Respectfully Submitted,
FELAHY EMPLOYMENT LAWYERS

7
8 By: Allen Felahy
9 Allen Felahy
10 Farbod Nourian
11 Attorneys for Plaintiff Theresa Suzanne
12 Lopez, and on behalf of all other Similarly
13 Aggrieved Employees
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