

1 JOSEPH R. BECERRA (State Bar No. 210709)

BECCERRA LAW FIRM

2 4014 Long Beach Blvd., Suite 300

Long Beach, California 90807

3 Telephone: (213) 542-8501

Facsimile: (213) 542-5556

4 jbecerra@jrbecerrallaw.com

5 TOREY JOSEPH FAVAROTE (State Bar No. 198521)

GLEASON & FAVAROTE, LLP

6 4014 Long Beach Blvd., Suite 300

Long Beach, California 90807

7 Telephone: (213) 452-0510

Facsimile: (213) 452-0514

8 tfavarote@gleasonfavarote.com

9 Attorneys for Plaintiff VERONICA GRAHAM

10 Private Attorneys General Action on behalf of
herself and all other aggrieved employees

11
12 **SUPERIOR COURT OF CALIFORNIA**

13 **COUNTY OF SAN BERNARDINO**

14
15 VERONICA GRAHAM, on behalf of herself and) Case No. CIVSB2110386
all other aggrieved employees,)

16 Plaintiff,)

17 v.)

18 SIEMENS HEALTHCARE DIAGNOSTICS,)
19 INC., a corporation of unknown origin; and)
20 DOES 1-10, inclusive,)

21 Defendants.)

**PLAINTIFF VERONICA GRAHAM'S
NOTICE OF MOTION AND MOTION
FOR APPROVAL OF PAGA
SETTLEMENT (CAL. LAB. CODE
§ 2699(L)(2)); MEMORANDUM IN
SUPPORT OF MOTION**

) Date: March 10, 2023

) Time: 10:00 a.m.

) Judge: Hon. David Cohn

) Dept.: S-26

) Action Filed: April 15, 2021

) Trial Date: February 14, 2023

22
23
24
25 ///

26 ///

27 ///

28 ///

1 **NOTICE OF MOTION**

2 To the Clerk of the Court, all parties and their attorneys of record, and the California Labor
3 and Workforce Development Agency (the "LWDA"):

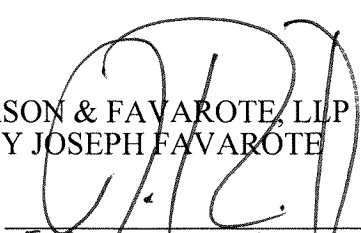
4 **PLEASE TAKE NOTICE** that on March 10, 2023, at 10:00 a.m., or as soon thereafter as
5 counsel may be heard, in Department S-26 of this Court, located at 247 W. Third Street, San
6 Bernardino, California 92415, plaintiff Veronica Graham ("Plaintiff") will and hereby does move,
7 pursuant to the California Labor Code Private Attorneys General Act ("PAGA"), Cal. Lab. Code
8 § 2699(l)(2), for approval of the PAGA settlement reached by the parties.

9 This motion is made on the grounds that the parties have reached a fair and reasonable
10 settlement of Plaintiff's PAGA claim, which will deliver substantial value to the California LWDA
11 and the aggrieved individuals with respect to whom Plaintiff brought her claim, and that the
12 settlement is deserving of approval by this Court. Pursuant to PAGA, Cal. Lab. Code § 2699(l)(2),
13 settlement of a PAGA claim requires notice to the LWDA of the settlement (which Plaintiff is
14 giving) as well as Court approval.

15 The motion is supported by this notice and the following memorandum in support of the
16 motion and declarations of Torey Joseph Favarote and Joseph R. Becerra, as well as all exhibits
17 attached thereto; the proposed order granting the motion; the Court's record of this action; all
18 matters of which the Court may take notice; and any and all oral argument and/or evidence as may
19 be offered at the time of the hearing on this matter.

20 Dated: February 14, 2023

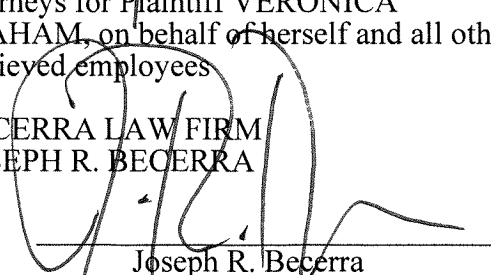
GLEASON & FAVAROTE, LLP
TOREY JOSEPH FAVAROTE

21 By: 

22 *For:* Torey Joseph Favarote
23 Attorneys for Plaintiff VERONICA
24 GRAHAM, on behalf of herself and all other
aggrieved employees

25 Dated: February 14, 2023

BECERRA LAW FIRM
JOSEPH R. BECERRA

26 By: 

27 Joseph R. Becerra
28 Attorneys for Plaintiff VERONICA
GRAHAM, on behalf of herself and all other
aggrieved employees

TABLE OF CONTENTS

I. INTRODUCTION	1
II. BACKGROUND AND PROCEDURAL HISTORY	3
A. Discovery And Investigation Of Facts	4
B. Motion Practice	5
C. Mediation	5
III. SETTLEMENT TERMS	6
A. Essential Terms Of The Settlement.....	6
B. Funding And Distribution Of The Settlement.....	7
C. Scope Of The Release	8
IV. THE COURT SHOULD APPROVE THE SETTLEMENT	8
A. Standards For Approval Of A PAGA Settlement	8
B. The Settlement Is Reasonable And Effectuates PAGA's Objectives	10
1. The Settlement Is Fair Adequate And Reasonable	10
C. The Scope Of The Release Is Appropriately Limited	12
D. No Notice To The Settlement Group Members Is Required.....	13
V. CONCLUSION	13

TABLE OF AUTHORITIES

Page(s)

Federal Cases

<u>Baumann v. Chase Inv. Servs. Corp.</u> , 747 F.3d 1117 (9th Cir. 2014)	13
<u>Fleming v. Covidien, Inc.</u> , No. EDCV10-01487 RGK (OPx), 2011 WL 7563047 (C.D. Cal. Aug. 12, 2011)	12
<u>Hopson v. Hanesbrands, Inc.</u> , No. CV-08-0844 EDL, 2009 WL 928133 (N.D. Cal. April 3, 2009)	10
<u>Linney v. Cellular Alaska Partnership</u> , 151 F.3d 1234 (9th Cir. 1998)	12
<u>Ochoa-Hernandez v. Cjaders Foods, Inc.</u> , 2010 WL 1340777 (N.D. Cal. 2010)	9, 10
<u>Sakkab v. Luxottica Retail N. Am., Inc.</u> , 803 F.3d 425 (9th Cir. 2015)	8

State Cases

<u>Amaral v. Cintas Corp. No. 2</u> , 163 Cal. App. 4th 1157 (2008)	9
<u>Arias v. Super. Ct.</u> , 46 Cal. 4th 969 (2009)	8, 9, 13
<u>Batze v. Safeway, Inc.</u> , 10 Cal. App. 5th 440 (2017)	11
<u>Brown v. Ralphs Grocery Co.</u> , 197 Cal. App. 4th 489 (2011)	9
<u>Carrington v. Starbucks Corp.</u> , 30 Cal.App.5th 504 (2018)	11, 12
<u>Dunk v. Ford Motor Co.</u> , (1996) 48 Cal.App.4th 1794	9
<u>Ferra v. Loews Hollywood Hotel, LLC</u> , 11 Cal. 5th 858 (2021)	3
<u>Iskanian v. CLS Transportation Los Angeles LLC</u> , 59 Cal. 4th 348 (2014)	8
<u>Mallick v. Sup. Ct.</u> , 89 Cal. App. 3d 434 (1979)	9
<u>Neary v. Regents of Univ. of Cal.</u> , 3 Cal. 4th 273 (1992)	12
<u>People v. Pac. Land Research Co.</u> , 20 Cal. 3d 10 (1997)	9
<u>Ramirez v. Yosemite Water Co.</u> , 20 Cal. 4th 785 (1999)	11
<u>Wesson v. Staples the Off. Superstore, LLC</u> , 68 Cal. App. 5th 746 (2021), <u>reh'g denied</u>	11

1	<u>Williams v. Super. Ct.</u>	
	3 Cal. 5th 531 (2017)	9

2 State Statutes

3	Cal. Lab. Code § 2698.....	1
4	Cal. Lab. Code § 2699.....	8, 9
	Cal. Lab. Code § 2699(e)(2)	11
5	Cal. Lab. Code § 2699(i).....	6, 8
6	Cal. Lab. Code § 2699(L)(2)	1, 9

7 State Rules

8	California Rule of Court 3.769.....	9
---	-------------------------------------	---

9 Federal Regulations

10	29 CFR § 541.706	11
----	------------------------	----

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the California Labor Code Private Attorneys General Act (“PAGA”), Cal. Lab.
4 Code § 2698 *et seq.*, plaintiff Veronica Graham (“Plaintiff”) seeks approval of the \$575,000.00
5 PAGA settlement reached in this action (the “Settlement”) with defendant Siemens Healthcare
6 Diagnostics Inc. (“Defendant”). The Settlement resolves Plaintiff’s claims for civil penalties under
7 PAGA with respect to a maximum of 8,493 pay periods worked by approximately 178 aggrieved
8 employees. Approximately 28 of these aggrieved employees are current and former California
9 Account Executives, Account Managers, or similarly situated sales employees who worked for
10 Defendant as exempt employees at any time from June 28, 2019 through approximately December
11 11, 2022¹ (the “Misclassified Aggrieved Employees”) and approximately 150 current and former
12 individuals who were employed by Defendant as non-exempt employees in California at any time
13 from July 15, 2020 through approximately December 11, 2022 (the “Short Premium Aggrieved
14 Employees”) (collectively the Misclassified Aggrieved Employees and the Short Premium
15 Aggrieved Employees are the “Aggrieved Employees”). The relief provided for under the
16 Settlement is solely for settlement of the Aggrieved Employees’ claims for civil penalties under
17 PAGA.²

18 The Settlement provides for \$575,000.00, less the cost of settlement administration by
19 ILYM Group, Inc. (up to \$10,000.00), the proposed enhancement payment to the named Plaintiff
20 for bringing this matter on behalf of the LWDA (\$10,000.00), Plaintiff’s Counsels’ proposed
21 attorneys’ fees of 35% (\$201,250.00) and litigation costs (up to \$27,707.52) for a total of
22 \$326,042.48 to the LWDA and Aggrieved Employees. Pursuant to PAGA, 75% of the remainder
23 (\$244,531.86) will be distributed to the LWDA, and 25% of the remainder (\$81,510.62) will be
24

25 ¹ The Settlement covers the time period of June 28, 2019 until the date of final approval or
26 until it covers 8,493 pay periods, whichever is sooner (the “Release End Date”). On or about
December 11, 2022 is likely the cut off date, and Defendant has represented that it will have the
exact date by the hearing on this motion.

27 ² Other than a PAGA claim, the Settlement does not resolve any individual Labor Code
28 wage-and-hour claims that could be brought by the Aggrieved Employees, with the exception of
Plaintiff, who has agreed to settle all of her individual claims and sign a general release with
Defendant. (Favarote Decl. ¶ 6.)

distributed to the Aggrieved Employees with 60% (\$48,906.37) going to the Misclassified Aggrieved Employees who have the higher violation rate of the two groups, and 40% (\$32,604.25) going to the Short Premium Aggrieved Employees. If the Court approves the Settlement and all amounts sought, the average Misclassified Aggrieved Employees' settlement share for solely PAGA penalties will be approximately \$1,746.67 ($\$48,906.37 \div 28$ Misclassified Aggrieved Employees = approximately \$1,746.67) and the average Short Premium Aggrieved Employees' settlement share for solely PAGA penalties will be approximately \$217.36 ($\$32,604.25 \div$ Appx. 150 Short Premium Aggrieved Employees = \$217.36).

Total Settlement Amount:	\$575,000.00
Minus Court-approved attorneys' fees (35%):	\$201,250.00
Minus Court-approved attorneys' costs:	\$27,707.52
Minus Court-approved enhancement award:	\$10,000.00
Minus Settlement administration cost:	\$10,000.00
Net Settlement Amount:	\$326,042.48
Minus LWDA's 75% Share:	\$244,531.86
Total Paid to Aggrieved Employees:	\$81,510.62
60% Misclassified Aggrieved Employees:	\$48,906.37
40% Short Premium Aggrieved Employees:	\$32,604.25

(Declaration of Torey Joseph Favarote ("Favarote Decl.") ¶ 4.)

Plaintiff's Counsel has performed significant work litigating and evaluating this case, including successfully opposing Defendant's motion for a protective order, preparing an opposition to Defendant's motion for summary judgment, motion to bifurcate, taking three Person Most Knowledgeable ("PMK") depositions, taking five depositions of Aggrieved Sales Employees, securing and reviewing more than 8,200 documents, and sending dozens of meet and confer communications. The case settled just a few months before trial. (Favarote Decl. ¶¶ 14-18.) Plaintiff's Counsel's hard work has paid off for the Aggrieved Employees securing a Settlement worth approximately \$67.70 per pay period in gross. (Favarote Decl. ¶ 2.)

The Settlement represents a positive outcome and a fair compromise of Plaintiff's PAGA claim in view of the uncertainties, expense, time, and risks of continued litigation, as well as the hotly contested issues of law and fact involved in this matter. For these reasons, and as demonstrated below, the Settlement warrants the Court's approval. (Favarote Decl. ¶ 5.)

II. BACKGROUND AND PROCEDURAL HISTORY

Defendant manufactures and sells medical equipment and laboratory machines and employs salespeople it classifies as outside sales exempt and hourly workers it classifies as non-exempt. When properly applied, the outside sales exemption relieves an employer of having to comply with nearly all provisions of Wage Order No. 4, including providing meal periods and rest breaks and paying overtime. Plaintiff's lawsuit challenged Defendant's classification of its salespeople during the Covid-19 pandemic, as many of these salespeople transitioned to spending more than half their time selling from their homes via video calls and telephone calls, rather than spending the majority of their time out in the field selling to customers, which is required by the outside sales exemption. Plaintiff's lawsuit also alleged that Defendant failed to provide its hourly employees with legally sufficient meal periods and rest breaks and that Defendant failed to pay all premiums at the regular rate of pay as required under Ferra v. Loews Hollywood Hotel, LLC, 11 Cal. 5th 858, 880 (2021).

On December 18, 2020, Plaintiff sent a PAGA notice letter to the LWDA and Defendant describing the Labor Code violations alleged in this action and Plaintiff's theories of liability. (Favarote Decl. ¶ 8.) The gravamen of Plaintiff's December 18, 2020, PAGA notice was that during the Covid-19 pandemic Defendant's sales employees (the Misclassified Aggrieved Employees) no longer fell under the outside sales exemption because they were no longer spending more than 50% of their time making in person sales. On April 14, 2021, Plaintiff provided a supplemental PAGA notice letter to the LWDA and Defendant adding claims for failure to reimburse the Misclassified Aggrieved Employees for their necessary business expenses such as Wifi. (Favarote Decl. ¶ 9.) The April 14, 2021, letter also included an additional theory asserting that Defendant failed to include all bonuses and commissions into the regular rate of pay for the purposes of overtime. (*Id.*) On April 15, 2021, Plaintiff filed her PAGA complaint alleging the facts and theories contained in her PAGA notice letters. (Favarote Decl. ¶ 10.)

On July 15, 2021, Plaintiff sent a second supplemental PAGA notice letter to the LWDA and Defendant alleging that Defendant also failed to provide its hourly employees (the Short Premium Aggrieved Employees) with legally sufficient meal periods and rest breaks, and failed to pay meal period and rest break premiums at the employees' regular rate of pay under Loews

1 Hollywood Hotel, LLC. (Favarote Decl. ¶ 11.) On October 13, 2021, Plaintiff filed her first
2 amended complaint to include the facts and theories alleged in her April 14, 2021 and July 15,
3 2021 supplemental PAGA notice letters. (Favarote Decl. ¶ 12.) The clerk's office erroneously
4 returned Plaintiff's amended complaint and it was not until February 18, 2022, that the Court
5 ordered Plaintiff's amended complaint entered. (Favarote Decl. ¶ 13.)

6 **A. Discovery And Investigation Of Facts**

7 Plaintiff's Counsel have conducted significant investigation since the inception of this
8 action, as detailed in the Favarote and Becerra declarations. Plaintiff's Counsel took the deposition
9 of three of Defendant's persons most knowledgeable ("PMK") and took the depositions of five of
10 the Misclassified Aggrieved Employees. (Favarote Decl. ¶ 14.) Plaintiff's Counsel was also
11 prepared to take the depositions of six more Misclassified Aggrieved Employees and one more of
12 Defendant's corporate officers who communicated directly with the Misclassified Aggrieved
13 Employees regarding their time spent working during the Covid-19 pandemic. (Id.)

14 Plaintiff's Counsel's was required to perform a significant amount of work to obtain
15 discovery in this case, as Defendant would often refuse to cooperate or participate in the discovery
16 process which necessitated several IDCs with the Court. (Favarote Decl. ¶ 15.) Plaintiff's Counsel
17 had to engage in lengthy exchanges of meet and confer communications. (Id.) By the time of
18 settlement Plaintiff's Counsel had sent more than 15 detailed meet and confer letters and dozens of
19 follow-up meet and confer communications including lengthy emails and long meet and confer
20 calls. (Id.)

21 Plaintiff's Counsels' investigation also included reviewing all of Defendant's policies,
22 procedures and practices, applicable during the relevant time period; reviewing thousands of pages
23 of documents produced by Defendant in response to 63 document-production requests; and
24 reviewing Defendant's responses to 22 special interrogatories. (Favarote Decl. ¶ 16.) Despite
25 Defendant's stonewalling, Plaintiff's Counsel was successful in securing more than 8,200
26 documents from Defendant, including pay information, bonus plans, reimbursement policies, sales
27 vehicle milage logs, communications and training materials. (Id.) Plaintiff's Counsel also spent
28 significant time evaluating and performing in house analysis of these voluminous documents. (Id.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. Motion Practice

This litigation has been fraught with discovery issues, as Plaintiff was required to repeatedly involve the Court to address Defendant's refusal to cooperate in the discovery process. Plaintiff was required to schedule and prepare statements for Informal Discovery Conferences ("IDC") scheduled for both April 14, 2022 and November 7, 2022, as well as schedule at least two other IDCs. (Favarote Decl. ¶ 17.) On July 6, 2022, Plaintiff successfully defended against a motion for a protective order, further securing her appropriate discovery rights in this action. (Id.)

On October 26, 2022, Defendant brought a motion for summary judgment, which Plaintiff had to oppose, but was not heard due to the settlement. On October 28, 2022, Defendant also brought a motion to bifurcate, which Plaintiff also had to oppose, but was similarly not heard. (Favarote Decl. ¶ 18.)

C. Mediation

After significant discovery efforts, including significant written discovery, eight depositions, and bringing this litigation to a motion for summary judgment, the parties agreed to participate in a mediation to determine if a settlement could be reached and trial could be avoided. The mediation took place on November 28, 2022, before Tripper Ortman, a nationally respected wage and hour mediator. (Favarote Decl. ¶ 19.) During mediation, the parties debated the legal bases for their claims and defenses, their respective data analyses, their legal theories asserted in support and in opposition to summary judgment, and chances of prevailing at trial which was scheduled for February 14, 2023. (Id.) After a full-day session, the parties failed to reach any agreement. (Id.) Over the following week the parties continued to negotiate a settlement and on December 2, 2022, the parties came to an agreement in principle on a settlement. (Id.) Over the next few months, the parties worked out the long form settlement agreement now before the Court. (Id.)

///

///

///

///

1 **III. SETTLEMENT TERMS**

2 **A. Essential Terms Of The Settlement**

3 Defendant will pay \$575,000.00 (the “Total Settlement Amount”) in settlement of the
4 action on a PAGA representative basis for approximately 178 aggrieved employees. (Settlement,
5 §§ 3.a.) The Total Settlement Amount will cover: (i) the payment to the LWDA for its share of
6 civil penalties pursuant to PAGA, Cal. Lab. Code § 2699(i); (ii) the Settlement Shares to the
7 Aggrieved Employees; (iii) Plaintiff’s proposed enhancement award (requested to be \$10,000.00);
8 (iv) Plaintiff’s Counsels’ proposed reasonable fees (requested to be 35%, or \$201,250.00) and
9 litigation costs (\$27,707.52); and (v) the cost of settlement administration (estimated to be
10 \$10,000.00). (Settlement, §§ 3.a and b.) After deduction for Plaintiff’s enhancement award,
11 Plaintiff’s Counsels’ attorneys’ fees and expenses, and the settlement administration costs, the
12 resulting Net Settlement Amount will be paid 75% to the LWDA and 25% to the Aggrieved
13 Employees, pursuant to Labor Code section 2699(i). (Settlement, §§ 3.c.) The Net Settlement
14 Amount will then be divided between the Misclassified Aggrieved Employees (60%, \$48,906.37)
15 and Short Premium Aggrieved Employees (40%, \$32,604.25). (Settlement, §§ 4.c.)

16 100% of the Settlement Shares will be reported using IRS Form 1099s, since all funds are
17 for the settlement of a claim for civil penalties. (Settlement, §§ 4.c.) Each Aggrieved Employee’s
18 Settlement Share will be calculated based on the ratio of his or her pay periods to all of his/her
19 Settlement group members’ pay periods. (Settlement, §§ 4.c.a-b.) Defendant represents that there
20 are approximately 28 Misclassified Aggrieved Employees and 150 Short Premium Aggrieved
21 Employees who worked the maximum number of pay periods (8,493) covered by the Settlement.
22 (Favarote Decl. ¶¶ 2-3.) Based on that number, if the Court approves the Settlement and awards
23 the amounts sought for attorneys’ fees and costs, Plaintiff’s enhancement award, and settlement
24 administration cost, the average Misclassified Aggrieved Employee’s settlement share will be
25 approximately \$1,746.67 and the average Short Premium Aggrieved Employee’s share will be
26 approximately \$217.36. (Favarote Decl. ¶ 4.)

27 ///

28 ///

1 **B. Funding And Distribution Of The Settlement**

2 Within 20 days after the effective date, as that term is defined in the Settlement, Defendant
3 will fund the Settlement and provide the Settlement Administrator with a list of the Aggrieved
4 Employees as well as their full names, last known address, full social security number and the
5 information necessary to determine the Settlement allocation to each Aggrieved Employee,
6 including without limitation, the designation of whether each Aggrieved Employee is Misclassified
7 Aggrieved Employee or a Short Premium Aggrieved Employee with the total number of pay
8 periods worked by each Aggrieved Employee during their respective Settlement period.
9 (Settlement, §§ 7.a.) Upon receipt of this information, the Settlement Administrator shall: (i) run
10 the names of all Aggrieved Employees through the National Change of Address (“NCOA”)
11 database to determine any updated addresses for the Aggrieved Employees; and (ii) update the
12 addresses of any Aggrieved Employees for whom an updated address was found through the
13 NCOA search. (Settlement, §§ 7.b.)

14 Within 30 days after receiving the Settlement funding and Aggrieved Employees’
15 information, the Settlement Administrator shall mail the Settlement Packet (comprised of a
16 Settlement notice letter and the individual settlement amount to the respective PAGA Member) to
17 each Aggrieved Employee at his or her last known address or at the updated address found through
18 the NCOA search and retain proof of mailing. (Settlement, §§ 7.c.) Any Settlement Packets
19 returned to the Settlement Administrator as undelivered shall be re-mailed to the forwarding
20 address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall
21 make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address
22 within five (5) business days of receiving the returned Settlement Packet. (Settlement, §§ 7.d.) If
23 an updated mailing address is identified, the Settlement Administrator shall resend the Settlement
24 Packet to the Aggrieved Employee promptly, and in any event within three (3) business days of
25 obtaining the updated address. (Id.)

26 Any Settlement checks not cashed by the Aggrieved Employees within 180 days will be
27 deposited with the California Controller’s Unclaimed Property Fund in the respective Aggrieved
28 Employee’s name for future retrieval, and no funds will revert to Defendant. (Settlement, §§ 7.e.)

1 **C. Scope Of The Release**

2 The Aggrieved Employees are not waiving any claims except the PAGA claim that is the
3 subject of this action. The Aggrieved Employees, aside from Plaintiff, are not waiving any of their
4 underlying Labor Code claims.

5 **IV. THE COURT SHOULD APPROVE THE SETTLEMENT**

6 **A. Standards For Approval Of A PAGA Settlement**

7 A PAGA claim is a form of a *qui tam* action. See Iskanian v. CLS Transportation Los
8 Angeles LLC, 59 Cal. 4th 348, 382 (2014). When enacting PAGA in 2003, the California
9 Legislature declared that adequate financing of enforcement is necessary to achieve maximum
10 compliance with state labor laws, that staffing levels for labor law enforcement agencies in
11 California had declined and were unlikely to keep pace with the future growth of the labor market,
12 and that it was therefore in the public interest to allow aggrieved employees, acting as private
13 attorneys general, to recover civil penalties for Labor Code violations, with the understanding that
14 the State was to retain primacy over private enforcement efforts. See Arias v. Super. Ct., 46 Cal.
15 4th 969, 986-987 (2009). A plaintiff suing under PAGA does so as the proxy or agent of the State
16 and represents the same legal right and interest as the State—namely, recovery of civil penalties
17 that otherwise would have been assessed and collected by the LWDA. See id.; Cal. Lab. Code,
18 § 2699; Iskanian, 59 Cal.4th at 388 (“[A] PAGA litigant’s status as ‘the proxy or agent’ of the state
19 is not merely semantic; it reflects a PAGA litigant’s substantive role in enforcing our labor laws on
20 behalf of state law enforcement agencies.”) (internal citations omitted).

21 Fundamentally, “a PAGA action is a statutory action in which the penalties available are
22 measured by the number of Labor Code violations committed by the employer.” Sakkab v.
23 Luxottica Retail N. Am., Inc., 803 F.3d 425, 435 (9th Cir. 2015). Under the general provisions of
24 the PAGA scheme, 75% of the civil penalties recovered goes to the State, while the remaining 25%
25 goes to the alleged aggrieved employees. Cal. Lab. Code § 2699(i). Although PAGA penalties are
26 mandatory and must be awarded by a court if a violation is found, the court “may award a lesser
27 amount than the maximum civil penalty amount specified by this part if, based on the facts and
28 circumstances of the particular case, to do otherwise would result in an award that is unjust,

1 arbitrary and oppressive, or confiscatory.” (*Id.*), 2699(e)(2); see also *Amaral v. Cintas Corp.* No. 2,
2 163 Cal. App. 4th 1157, 1213 (2008).

3 Court approval of a PAGA settlement is governed by Labor Code section 2699(l)(2), which
4 provides, in relevant part: “The superior court shall review and approve any settlement of any civil
5 action filed pursuant to this part.” Unlike parties to a class action settlement, parties to a PAGA
6 settlement are not obligated to “satisfy class action requirements,” including the standards for class
7 action settlement approval. *Arias*, 46 Cal. 4th at 980-988 (affirming lower court’s holding that
8 “plaintiff need not satisfy class action requirements” to assert PAGA claim). Also, unlike a court
9 reviewing a class settlement, a court reviewing a PAGA settlement should not consider whether the
10 settlement provides “compensation” to private parties, since the action is not one for damages. *See*
11 (*Id.* at 986) (holding that action to recover civil penalties “is fundamentally a law enforcement
12 action designed to protect the public and *not* to benefit private parties”) (citing *People v. Pac. Land*
13 *Research Co.*, 20 Cal. 3d 10, 17 (1997)) (emphasis supplied); see also *Brown v. Ralphs Grocery*
14 *Co.*, 197 Cal. App. 4th 489, 499 (2011) (explaining that restitution is not the goal of PAGA;
15 instead, it is law enforcement action designed to protect the public). An additional aspect of a
16 PAGA settlement that makes it different from a class settlement is that allegedly aggrieved
17 employees under PAGA are not parties to the action and are not clients of the plaintiff’s counsel;
18 therefore, “[u]nnamed employees need not be given notice of the PAGA claim, nor do they have
19 the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez v. Cjaders Foods, Inc.*,
20 2010 WL 1340777 at *5 (N.D. Cal. 2010); see *Williams v. Super. Ct.*, 3 Cal. 5th 531, 546-547
21 (2017) (explaining civil penalties recovered on State’s behalf are intended to “remediate present
22 violations and deter future ones,” *not* to redress employees’ injuries). Thus, the approval process
23 of a PAGA settlement is distinct from that in a class action settlement; there is no need for the
24 Court to employ the “two-step approval process” required under California Rule of Court 3.769.

25 In deciding whether to approve a PAGA settlement, a trial court has broad powers to
26 determine if the settlement is fair under the circumstances of the case. *Mallick v. Sup. Ct.*, 89 Cal.
27 App. 3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a
28 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th

1 1794, 1800, as modified (Sept. 30, 1996) (internal quotations omitted). Ultimately, where the
2 settlement is negotiated in good faith and “there is no indication that [the] amount was the result of
3 self-interest at the expense of other” aggrieved employees, the settlement is generally considered
4 reasonable. Hopson v. Hanesbrands, Inc., No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D.
5 Cal. April 3, 2009).

6 **B. The Settlement Is Reasonable And Effectuates PAGA’s Objectives**

7 **1. The Settlement Is Fair Adequate And Reasonable**

8 The Settlement has achieved the Legislature’s goals of deterring alleged future violations
9 and recovering penalties for the State and has done so without burdening the State’s enforcement
10 agencies. When reviewing a PAGA settlement, the Court must take into account the fact that
11 settlement of a PAGA claim—like any settlement—involves a “compromise” that stops short of
12 rendering findings of liability and damages. Ochoa-Hernandez, 2010 WL 1340777 at *4. There
13 are considerable risks involved in this litigation, even before considering the risk of trial, which
14 was scheduled for February 14, 2023. There are legal questions regarding whether a federal
15 emergency exemption applies and whether the Covid-19 pandemic constitutes such an emergency
16 covered by that exemption if it does apply. These are novel defenses which have not been litigated
17 for outside salespeople and have little to no relevant caselaw to draw on for authority. Defendant
18 has also belatedly raised manageability concerns. While Plaintiff believes that her theory of
19 liability is meritorious, there is uncertainty on how the Court would rule on these issues. Finally,
20 there is a question of whether the Court would reduce any penalties due to the Covid-19 pandemic
21 and how those uncertain times created unique once in a lifetime challenge for businesses and
22 employees. In light of these risks, Plaintiff believes that the Settlement represents a more than
23 reasonable compromise and recovery for the State.

24 Here, the Settlement was reached after sufficient investigation and formal discovery,
25 including 3 PMK depositions, 5 Aggrieved Employee depositions, Plaintiff’s deposition, 28
26 interrogatories, 63 requests for production, more than 8,200 documents produced in discovery, and
27 months of negotiation. It is understood that there are approximately 178 Aggrieved Employees in
28 total who have worked a maximum of 8,493 pay periods during the PAGA liability periods of July

1 15, 2020 and June 28, 2019 through approximately December 11, 2022.

2 The sample data provided for mediation makes it clear that: 1) the total violation rate in this
3 case is not 100% for either group of Aggrieved Employees, 2) that meal period and rest break
4 violations in this matter are arguably low, and 3) that many of the Misclassified Aggrieved
5 Employees were reimbursed for their business expenses. Assuming violation rates present in the
6 sample records, Plaintiff's Counsel believes that assuming a complete victory on all issues and
7 with no reduction in PAGA penalties, the maximum liability in this matter is approximately
8 \$1,117,427.50³. However, Defendant has asserted that non-exempt work performed because of
9 emergency conditions does not eliminate the outside sales exemption. See 29 CFR § 541.706. and
10 Batze v. Safeway, Inc., 10 Cal. App. 5th 440, 481-82 (2017) (holding non-exempt work performed
11 during a worker's strike did not remove the *executive* exemption). Defendant has also asserted that
12 all of the Misclassified Aggrieved Employees who did not spend more than 50% of their time in
13 the field were diverting from their employer's realistic expectations under Ramirez v. Yosemite
14 Water Co., 20 Cal. 4th 785, 802 (1999) and that the adjudication of the entire action would be
15 unmanageable under Wesson v. Staples the Off. Superstore, LLC, 68 Cal. App. 5th 746, 773
16 (2021), reh'g denied (Sept. 27, 2021), review denied (Dec. 22, 2021).

17 Defendants also contend that Plaintiff's PAGA penalties calculation is erroneous and that
18 only the initial-penalty rate, not the subsequent-penalty rate, should apply; that the correct rate for
19 the alleged overtime, wage-statement and meal-period violations is \$50 per pay period; that
20 penalties may not be stacked; and that pursuant to California Labor Code section 2699(e)(2), even
21 if liability were found, penalties properly would be substantially reduced. Carrington v. Starbucks
22 Corp., 30 Cal.App.5th 504, 520 (2018) (Approving a deduction of PAGA penalties to \$5.00 per
23 pay period.)

24 In light of the foregoing considerations, the Settlement is fair and reasonable and avoids the
25 risks of proceeding through trial, which was only three months away at the time of the mediation.
26 The Settlement for \$575,000.00 represents approximately 76.7% of the realistic value of this case,
27

28 ³ A detailed breakdown of this calculation, as well as a Kullar analysis of the claims, is
included in the Favarote Declaration. (Favarote Decl. ¶¶ 20-24.)

1 and 51.5% of the estimated maximum, well within the realm of reasonableness. (Favarote Decl.
2 ¶ 22.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery
3 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
4 disapproved.” Linney v. Cellular Alaska Partnership, 151 F.3d 1234, 1242 (9th Cir. 1998) (internal
5 quotations omitted); see also Carrington v. Starbucks Corp., 30 Cal. App. 5th 504, 528 (2018)
6 (awarding only 0.21% of maximum recoverable PAGA penalties); Fleming v. Covidien, Inc., No.
7 EDCV10-01487 RGK (OPx), 2011 WL 7563047, *4 (C.D. Cal. Aug. 12, 2011) (awarding only
8 18% of maximum recoverable PAGA penalties).

9 Plaintiff acknowledges that there is substantial uncertainty and risk should she proceed
10 through trial, and that even in the event that she prevailed, the Court still maintains discretion to
11 reduce any penalties awarded. This is especially true for this case where a Court might be
12 sympathetic to Defendant and might interpret their response in the face of the Covid-19 pandemic
13 as deserving of less punishment than in other situations. Therefore, approval is appropriate since
14 the Settlement will provide tangible, monetary relief to the State and the Aggrieved Employees.

15 The Settlement is also consistent with the State’s public policy favoring the resolution of
16 disputes. California law favors the settlement of disputes because settlement is efficient; it reduces
17 costs, saves resources, and minimizes court congestion. The parties are best positioned to
18 understand their interests and resolve a dispute in a mutually beneficial manner without court
19 intervention into the settlement. Neary v. Regents of Univ. of Cal., 3 Cal. 4th 273, 277-278 (1992).

20 The Settlement was reached following arm’s length bargaining with experienced wage-and-
21 hour attorneys. The Settlement was reached at the end of a process that was neither fraudulent nor
22 collusive. To the contrary, counsel for the parties advanced their respective positions throughout
23 the Settlement negotiations.

24 **C. The Scope Of The Release Is Appropriately Limited**

25 As it relates to the Aggrieved Employees, the Settlement only resolves the PAGA
26 representative claim for the Labor Code violations alleged in this action. The Aggrieved
27 Employees are not releasing any non-PAGA claims or any individual claims that may be alleged
28 under the Labor Code. Only the Plaintiff is releasing her non-PAGA related claims pursuant to a

1 general release of all claims, as part of an agreement to resolve all further issues. (Settlement,
2 §§ 2.)

3 **D. No Notice To The Settlement Group Members Is Required**

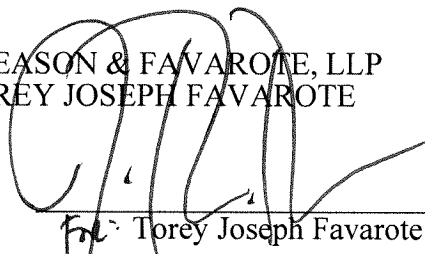
4 The Court need not order the parties to disseminate notice of the Settlement to other
5 allegedly aggrieved employees. Arias v. Superior Court, 46 Cal.4th 969, 977 (2009); see also
6 Baumann v. Chase Inv. Servs. Corp., 747 F.3d 1117, 1122 (9th Cir. 2014) (noting that PAGA has
7 no notice requirement for unnamed allegedly aggrieved employees, nor may such employees opt
8 out of PAGA action). Accordingly, no notice of this Settlement is required to the Aggrieved
9 Employees. A notice letter will be included with the Aggrieved Employees' Settlement Shares.

10 **V. CONCLUSION**

11 For all of the foregoing reasons, the Plaintiff respectfully requests that this Court grant her
12 Motion for Approval of this PAGA Settlement.

13 Dated: February 14, 2023

GLEASON & FAVAROTE, LLP
TOREY JOSEPH FAVAROTE

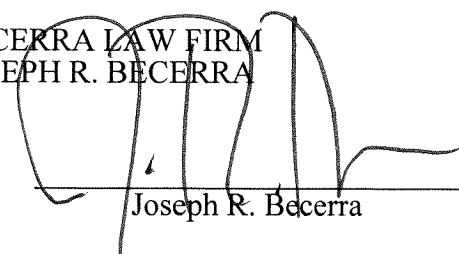
14
15 By: 

Torey Joseph Favarote

Attorneys for Plaintiff VERONICA
GRAHAM, on behalf of herself and all other
aggrieved employees

16
17
18 Dated: February 14, 2023

BECERRA LAW FIRM
JOSEPH R. BECERRA

19
20
21 By: 

Joseph R. Becerra

Attorneys for Plaintiff VERONICA
GRAHAM, on behalf of herself and all other
aggrieved employees

PROOF OF SERVICE

I, Thomas Steinhart, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Gleason & Favarote, LLP, 4014 Long Beach Blvd., Suite 300, Long Beach, CA 90807.

On February 15, 2023, I served a copy(ies) of the following document(s):

**PLAINTIFF VERONICA GRAHAM'S NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT (CAL. LAB. CODE § 2699(L)(2));
MEMORANDUM IN SUPPORT OF MOTION**

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Attorney	Party(ies) Served	Method of Service
Elizabeth Staggs-Wilson Emily Atherton Jacob Lahana LITTLER MENDELSON, P.C. 633 W. 5th Street, 63rd Floor Los Angeles, CA 90071 Tel: (213) 443-4300 Fax: (213) 443-4299 estaggs-wilson@littler.com EAtherton@littler.com JLahana@littler.com	Counsel for Defendant SIEMENS HEALTHCARE DIAGNOSTICS INC.	By Hand

☐ [BY MAIL] I placed the sealed envelope(s) for collection and mailing by following the ordinary business practice of Gleason & Favarote, LLP, Long Beach, California. I am readily familiar with Gleason & Favarote, LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence with postage fully prepaid is deposited with the United States Postal Service the same day as it is placed for collection.

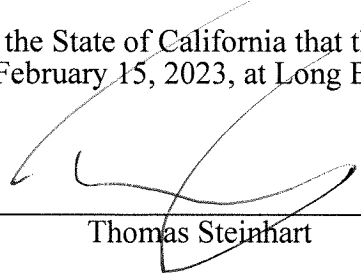
☐ [BY OVERNIGHT COURIER] I caused the sealed envelope(s) to be delivered by a commercial courier service for overnight delivery to the offices of the addressee(s).

☒ [BY HAND] I directed the sealed envelope(s) to the party(ies) so designated on the service list to be delivered by Ace Attorney Service, Inc. this date.

☐ [BY FACSIMILE TRANSMISSION] I caused said document to be sent by facsimile transmission to the fax number indicated for the party(ies) listed above.

☐ [BY ELECTRONIC TRANSMISSION] I caused said document to be sent by electronic transmission to the e-mail address indicated for the party(ies) listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration was executed on February 15, 2023, at Long Beach, California.



Thomas Steinhart