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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SIERRA HEIDTBRINK, on behalf of the State
of California, as private attorney general,

Plaintiff,

v.

JEFFERSON HEALTHCARE, INC., a
Corporation; and DOES 1 through 50, Inclusive,

Defendants.

Case No. 37-2021-00029068-CU-OE-CTL

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

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

Hearing Date: February 10, 2023

Hearing Time: 9:00 a.m.

Judge: Hon. Joel R. Wohlfeil

Dept.: C-73

Action Filed: July 7, 2021

Trial Date: January 27, 2023

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

2 YOU ARE HEREBY NOTIFIED THAT at 9:00 a.m. on February 10, 2023, or as
3 soon thereafter as the matter can be heard, in Department C-73 of the above entitled Court
4 before the Honorable Joel R. Wohlfeil, Plaintiff Sierra Heidtbrink (“Plaintiff”) will and hereby
5 does move for an order approving the settlement of the PAGA claim alleged against
6 Defendant Jefferson Healthcare, Inc. (“Defendant”) in accordance with Labor Code
7 §2699(l). The proposed settlement is set forth in the accompanying PAGA Settlement
8 Agreement (“Agreement”).

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

13 Respectfully submitted,

14 Dated: January 11, 2023

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

16 By: /s/ Kyle Nordrehaug
17 Norman B. Blumenthal
18 Kyle R. Nordrehaug
19 Aparajit Bhowmik
20 *Attorneys for Plaintiff*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Sierra Heidtbrink (“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 Defendant Jefferson Healthcare, Inc. (“Defendant”) (collectively, the
6 “Parties”) which provides for a “Gross PAGA Settlement Amount” payment in the amount
7 of \$200,000.00. In accordance with California Labor Code §2699(l), Plaintiff now asks this
8 Court to review and approve the settlement of Plaintiff’s PAGA claims.¹ This is only a
9 settlement of the PAGA claims for civil penalties, and is not a class settlement and does not
10 release the individual wage claims, if any, of the affected employees other than the Plaintiff
11 herself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381
12 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not
13 recoverable under PAGA).

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

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

23 **II. RELEVANT FACTS**

24 PAGA Counsel mailed the necessary correspondence to the California Labor and
25 Workforce Development Agency (“LWDA”) on March 17, 2021 on behalf of Plaintiff Sierra
26 Heidtbrink, requesting authorization from the LWDA to seek civil penalties as provided by
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 the Private Attorney General Act of 2004 (“PAGA”) for the wage and hour violations
2 alleged in the PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3). The 65-day notice
3 period for the LWDA to notify of its intent to investigate expired on May 22, 2021.

4 On July 7, 2021, Plaintiff Heidtbrink filed a Representative Action Complaint in this
5 Court against Defendant Jefferson Healthcare, Inc. alleging a single cause of action for
6 recovery of civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

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

17 Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendant
18 failed to relieve employees of all duties and failed to authorize and permit meal breaks by
19 presenting an improper on-duty meal agreement to all non-exempt employees at hire.
20 Plaintiff contends that her and other Aggrieved Employees’ job duties are not the type that
21 justify an on-duty meal break, especially when working alongside other employees at the
22 same location. Plaintiff alleged that sufficient time routinely exists to provide Certified
23 Nursing Assistants and other non-exempt employees off-duty meal periods. According to
24 Plaintiff, Defendant has not, however, paid the Aggrieved Employees all premium hours
25 owed for missed meal or rest periods. Plaintiff alleged that Defendant’s use of the “on-duty”
26 meal period agreements prevented non-exempt employees from being relieved of all duties
27 to take the meal periods that Defendant should have provided and, as a result, employees
28 were made to continue to perform their job duties through the entirety of their on-duty meal

1 periods. Plaintiff also alleged that she and other Aggrieved Employees were called on their
2 personal cell phones for scheduling issues but that Defendant failed to reimburse employees
3 for the costs associated with the use of their cell phones for work-related issues. Further,
4 Plaintiff alleged that Defendant provided wage statements that were defective. For example,
5 Plaintiff contends the wage statements were defective because Defendant grouped wage
6 payments into one lump sum payment described as “Details Not Displayed” – wherein the
7 payment indicated the amount of the wage but failed to state the dates the wages were
8 earned, the hours that were compensated by the wage, or the hourly rates used to pay the
9 wage. Moreover, Plaintiff contends the wage statements were defective for the additional
10 reason that they failed to list the correct entity that employed Plaintiff and other Aggrieved
11 Employees (the pay stubs list “Magnolia Post Acute” as the employer when the true
12 employer is Jefferson Healthcare, Inc.). Further, Plaintiff alleged that Defendant failed to pay
13 minimum and overtime wages. For example, prior to clocking in for their work shift,
14 Plaintiff alleges non-exempt employees were required to spend time submitting to COVID
15 symptom screening checks in the form of a temperature check and answering a questionnaire
16 (Declaration of Kyle Nordrehaug, at ¶3).

17 On June 26, 2022, the Parties engaged in an all-day mediation session before
18 Mediator Knight, a respected and experienced mediator knowledgeable of both the wage and
19 hour laws and representative claims at issue in this action. Through arms-length negotiations
20 with the assistance of the mediator, the Parties reached an agreement to settle the PAGA
21 claims in this action which led to the signing of a Memorandum of Understanding
22 memorializing the settlement.² (Declaration of Kyle Nordrehaug, at ¶3).

23
24 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
25 Plaintiff’s individual claims pursuant to a separate confidential Individual Settlement Agreement
26 (“Individual Settlement”)(Settlement Agreement at ¶ 2.2). The individual claims were not at issue in
27 this action and exist independent and apart from the PAGA claims at issue before the Court. *See Kim*
28 *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 The settlement was negotiated in light of all known facts and circumstances and the
2 uncertainty associated with litigation – including the risk of Plaintiff not being able to
3 maintain representative claims, the difficulty of proving Plaintiff’s claims in a manageable
4 trial, the merits of Defendant’s potential defenses, and the significant delay and potential
5 appellate issues inherent to litigation – and was reached after extensive arm’s length
6 negotiations, with the assistance of Mediator Knight. (Declaration of Kyle Nordrehaug, at
7 ¶3).

8 9 **III. TERMS OF THE PAGA SETTLEMENT**

10 The PAGA settlement is subject to Court approval consistent with Labor Code
11 §2699(1)(2). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a
12 “Gross PAGA Settlement Amount” payment in the amount of \$200,000 to resolve the
13 Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this
14 PAGA Settlement of \$200,000, there is a deduction of attorneys’ fees (“PAGA Counsel Fees
15 Payment”) in the amount of \$66,666 (which is one-third of the PAGA Settlement),
16 reimbursement of incurred costs (“PAGA Counsel Litigation Expenses Payment”) in an
17 amount not to exceed \$10,000, and Settlement Administration Costs (“Administration
18 Expenses Payment”) not to exceed \$5,000. (Agreement at ¶¶ 3.2.1-3.2.2).³ After these
19 deductions, the amount remaining is the “PAGA Payment”, which is estimated to be no less
20 than \$118,334.

21 Of the PAGA Payment amount, seventy-five percent (75%)(no less than \$88,750.50)
22 will be paid to the LWDA and the remaining twenty-five percent (25%) (no less than
23 \$29,583.50) will be paid to the Aggrieved Employees (Agreement at ¶ 3.2.3)⁴ This 75/25

24
25 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
26 Payment less than the amounts requested, the Administrator will allocate the remainder of these
27 amounts to the PAGA Payment. (Settlement Agreement at ¶ 3.2.1). To the extent the Administration
28 Expenses are less or the Court approves payment less than \$5,000, the Administrator will allocate
the remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

⁴ “Aggrieved Employees” means all individuals who were employed by Defendant Jefferson
Healthcare, Inc. in California and classified as non-exempt employees during the PAGA Period. The

1 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8
2 Cal.5th 175 (2019).

3 The Individual PAGA Payment for each Aggrieved Employee shall be based on the
4 number of pay periods each Aggrieved Employee worked during the PAGA Period as an
5 Aggrieved Employee, as a percentage of the total pay periods worked by all Aggrieved
6 Employees during the PAGA Period.⁵ The PAGA Period is the time period from May 2,
7 2020 to July 26, 2022. (Agreement at ¶ 1.23).

8 For mediation, Defendant represented that there are approximately 240 Aggrieved
9 Employees who collectively worked approximately 6,121 pay periods during the PAGA
10 Period. (Agreement at ¶ 4.1). Defendant will provide a declaration as required by the
11 Agreement confirming the accuracy of the above figures. (Declaration of Kyle Nordrehaug,
12 at ¶4)

13 Upon entry of final judgment, the Released Parties shall be entitled to a release from
14 the State of California and the Aggrieved Employees only for any “Released PAGA Claims”,
15 which means all PAGA claims for civil penalties under California Labor Code §§ 2698 *et*
16 *seq.*, predicated on the California Labor Code violations that are asserted in the PAGA
17 Notice and Operative Complaint (or PAGA Claims that could have been asserted based on
18 the facts alleged in the operative PAGA Notice and Operative Complaint) which are for civil
19 penalties pursuant to Labor Code section 2699, *et seq.* for violations of Labor Code sections
20 §§ 201, 202, 203, 204, 210, 226(a), 226.7, 226.8, 510, 512, 558, 1194, 1197, 1197.1, 1198,
21 2802 and applicable Industrial Welfare Commission Wage Orders including California Code
22 of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B)(the “Released PAGA
23 Claims”)(Agreement at ¶ 5.2). The Released PAGA Claims does not include underlying
24

25 PAGA Period is the period from May 2, 2020 to July 26, 2022. (Settlement Agreement at ¶¶ 1.4,
26 1.23).

27 ⁵ See Settlement Agreement at ¶ 3.2.3 (“The Administrator will calculate each Individual PAGA
28 Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Payment by
the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay
Periods.”)

1 Labor Code claims, claims for wrongful termination, discrimination, unemployment
2 insurance, disability, and workers' compensation, and claims outside of the PAGA Period.
3 (*Id.*) The Released PAGA Claims do not include any claims that cannot be released as a
4 matter of law. (*Id.*) The Agreement expressly confirms that **"In no event shall the release of**
5 **the Released PAGA Claims in this Settlement Agreement release any individual claims**
6 **of any Aggrieved Employees, other than their individual PAGA claims, as**
7 **contemplated by *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. ____."** (*Id.*)

8 Within thirty (30) days after Defendant funds the Gross PAGA Settlement Amount,
9 the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA
10 Payment, the Administration Expenses Payment and the PAGA Counsel Expenses Payment.
11 (Agreement at ¶ 4.4).⁶ Checks will remain negotiable for one hundred eighty (180) days. (*Id.*
12 at ¶ 4.4.1) For any Aggrieved Employee whose Individual PAGA Payment check is
13 uncashed and cancelled after the void date, the Administrator shall transmit the funds
14 represented by such checks to the *cy pres* charity Community Law Project (*Id.* at ¶ 4.4.3).

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

21 22 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

23 The claim before this Court is solely the representative claim under PAGA on behalf
24 of the State of California for civil penalties pursuant to the PAGA. The parties have agreed
25 to settle this PAGA claim in its entirety after investigation and an arm's length mediation
26 session. (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and
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28 ⁶ Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement
of the Individual PAGA Payments. (*Id.*).

1 finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the State of
2 California. This is only a settlement of the PAGA claims for civil penalties, and is not a
3 class settlement and does not release the individual claims, if any, of the Aggrieved
4 Employees, other than any claims under PAGA. This settlement does not release any claim
5 that is not a PAGA claim.⁷ PAGA Counsel Fees equal to one-third of the Gross PAGA
6 Settlement amount (\$66,666.00) and PAGA Counsel Litigation Expenses in an amount not to
7 exceed \$10,000.00 will also be paid to PAGA Counsel as part of the settlement in
8 accordance with California Labor Code § 2699(g)(1), as set forth in the Agreement.⁸ Lastly,
9 payment to the Administrator in an amount not to exceed \$5,000 to perform the
10 administrative duties to distribute the settlement money shall also be paid. (Declaration of
11 Kyle Nordrehaug, at ¶¶ 4-5.)

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

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

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

21 The Parties believe that the PAGA Settlement amount is fair and reasonable and
22 therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency
23 has released data on PAGA settlement amounts. After removing the outliers at the low and
24 high end, the average, total settlement amount of PAGA claims is approximately \$10,000.
25 Here, the Gross PAGA Settlement Amount of \$200,000 is significantly more than other

26 ⁷ 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 ⁸ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
in the current amount of \$8,374.21, which is less than the cost allocation in the Settlement
Agreement. See Declaration of Nordrehaug at ¶ 9.

1 PAGA settlements and constitutes approximately \$33 per pay period. (Declaration of
2 Nordrehaug, at ¶6.)

3 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
4 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
5 statutory PAGA civil penalties was potentially \$612,100 based on 6,121 pay periods
6 applicable to the Aggrieved Employees during the PAGA Period.⁹ (Declaration of
7 Nordrehaug, at ¶6.) Importantly, however, these calculations were performed at the
8 maximum statutory rate for the penalties, when in fact, it is likely that any penalties awarded
9 would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to
10 award a lesser amount than the maximum civil penalty if based on the facts and
11 circumstances to do otherwise would result in an award that is "unjust, arbitrary and
12 oppressive or confiscatory."

13 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
14 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay
15 period. Therefore, at trial, any PAGA penalties awarded could be significantly less than
16 Plaintiff's calculation even where Plaintiff prevailed on the PAGA claim. If the amount of \$5
17 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties
18 would be only \$30,605, which is far less than this settlement provides.

19 Under PAGA, Courts have considerable discretion to reduce the penalty award. In
20 *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court
21 reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the
22 court found maximum penalties "unjust" because the employees had suffered no injuries.
23 Some trial courts have actually awarded no civil penalties, even when Labor Code violations
24 are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of
25

26 ⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.
27 The valuation of \$612,100 is the civil penalty amount without stacking. If stacking is permitted, then
28 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 App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior
2 Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.
3 LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

4 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove
5 each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*,
6 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of
7 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
8 suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to
9 prove that each Aggrieved Employee suffered a violation for each period the employee
10 worked in relation to meal or rest period violations, failure to pay minimum wages, failure to
11 pay overtime wages, failure to provide accurate itemized wage statements, failure to pay
12 wages when due and failure to reimburse employees for required expenses.

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

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

3 PAGA Counsel have significant experience litigating wage and hour claims including
4 claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than
5 similar settlements that courts have approved. (Declaration of Nordrehaug, at ¶¶ 7, 10.) The
6 PAGA Settlement, along with the other terms of the proposed settlement, were negotiated by
7 experienced counsel at arm's length with the assistance of a private mediator, Kelly Knight.
8 (Declaration of Nordrehaug, at ¶7.)

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

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

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

24 25 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

26 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the
27 amount of \$66,666 representing one-third of the \$200,000 Gross PAGA Settlement Amount.
28 PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position

1 is that the payment of attorneys' fees and costs in this settlement is a matter of contract for a
2 contingent representation. Nevertheless, should this Court review the requested attorneys'
3 fees, it is clear that the requested fees and costs are reasonable.

4 First, the requested fees are justified by the result achieved. PAGA Counsel
5 negotiated a recovery of \$200,000.00, and this result justifies the requested fees equal to one
6 third of this recovery. This percentage is within the standard contingent recovery percentage
7 of one-third, and this percentage is what was expressly approved by the Supreme Court in
8 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.*,
9 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that ““fee awards in class actions
10 average around one-third of the recovery”” regardless of ““whether the percentage method or
11 the lodestar method is used.”” (quoting *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11
12 (2008))).

13 Second, the fee award is justified by the work performed and contributions to the
14 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award
15 represents PAGA Counsel’s current lodestar of \$91,207, which means the requested award is
16 significantly less than the lodestar incurred by PAGA Counsel.

17 Generally, the Ninth Circuit and California Courts award positive multipliers between
18 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation
19 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award
20 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
21 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
22 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
23 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa*
24 *Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which
25 was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D.
26 Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v.*
27 *Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6,
28 2013) (approving fee award that represented a multiplier of 2.76 as falling within the

1 "majority" range for risk multipliers). Here, where the fee award is less than the lodestar,
2 representing a negative multiplier, there can be no dispute that the fee award is reasonable.¹⁰

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

9 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation
10 expenses in the total amount of \$8,374.21 which is less than the \$10,000 allocation for costs
11 in the Agreement, so the difference of \$8,374.21 will be added to the PAGA Payment
12 amount. These expenses are documented in the accompanying Declaration of Nordrehaug at
13 ¶9.

14 15 **VII. CONCLUSION**

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

19
20 Dated: January 11, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

21
22 By: /s/ Kyle Nordrehaug
23 Kyle Nordrehaug
24 Attorney for Plaintiff

25
26
27 _____
28 ¹⁰ "The lodestar amount is presumptively the reasonable fee amount." *Topete v. Ramos Furniture*,
2018 U.S. Dist. LEXIS 142033 (E.D. Cal. 2018), citing *Van Gerwen v. Guarantee Mut. Life Co.*,
214 F. 3d 1041, 1045 (9th Cir. 2000).