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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

ZEBULON NEFF, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

OAKHURST INDUSTRIES, INC., a
California Corporation; and Does 1 through 50,
Inclusive,

Defendants.

Case No. **21STCV21110**

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

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

Hearing Date: October 24, 2022
Hearing Time: 9:30 a.m.
Reservation ID: 605525466076

Judge: Hon. Monica Bachner
Dept.: 71

Action Filed: June 4, 2021
Trial Date: Not Set

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

2 YOU ARE HEREBY NOTIFIED THAT at 9:30 a.m. on October 24, 2022, or as soon
3 thereafter as the matter can be heard, in Department 71 of the above entitled Court before the
4 Honorable Monica Bachner, Plaintiff Zebulon Neff (“Plaintiff”) will and hereby does move
5 for an order approving the settlement of the PAGA claim alleged against Defendant
6 Oakhurst Industries, Inc. (“Defendant”) in accordance with Labor Code §2699(l). The
7 proposed settlement is set forth in the accompanying PAGA Settlement Agreement
8 (“Settlement Agreement”).

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

13 Respectfully submitted,

14 Dated: October 3, 2022

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Zebulon Neff (“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 Oakhurst Industries, Inc. (“Defendant”) (collectively, the “Parties”)
6 which provides for a “Gross PAGA Settlement Amount” payment in the amount of
7 \$380,000.00. 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 himself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348,
12 381 (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 (“Settlement Agreement”). A true and correct copy of the Settlement Agreement which sets
16 forth the terms for the settlement of the PAGA claims is attached as Exhibit #1 to the
17 Declaration of Kyle Nordrehaug, filed herewith. Capitalized terms shall have the same
18 meaning as defined in the Settlement Agreement. The LWDA received notice of this
19 Settlement and this motion as set forth in the accompanying proof of service.

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

22
23 **II. RELEVANT FACTS**

24 PAGA Counsel mailed the necessary correspondence to the California Labor and
25 Workforce Development Agency (“LWDA”) on March 11, 2021 on behalf of Plaintiff
26 Zebulon Neff, requesting authorization from the LWDA to seek civil penalties as provided
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 by the Private Attorney General Act of 2004 (“PAGA”) for the wage and hour violations
2 alleged in the LWDA Notice. A true and correct copy of the LWDA Notice is attached as
3 Exhibit #5 to the Declaration of Kyle Nordrehaug, filed herewith. The 65-day notice period
4 for the LWDA to notify of its intent to investigate expired on May 15, 2021.

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

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

18 Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendant
19 required the Aggrieved Employees to submit to a COVID screening prior to clocking in for
20 their shifts but failed to pay the proper minimum wages for the time spent submitting to these
21 COVID symptom screenings. Plaintiff also alleged that Defendant’s rounding policy
22 systematically undercompensates the Aggrieved Employees. Moreover, Plaintiff alleged that
23 Defendant failed to provide Plaintiff and the Aggrieved Employees with 30 minute
24 uninterrupted meal breaks before the fifth hour worked due to chronic understaffing and
25 interruptions from supervisors requiring them to come back to work. Plaintiff alleged that
26 rest breaks were also interrupted on a regular basis and that Defendant required rest breaks to
27 be taken on the premises which restricted the freedom of the Aggrieved Employees to leave
28 the work premises if they chose to do so. Additionally, Plaintiff alleged that Defendant

1 failed to reimburse for cell phone expenses because employees were required to use their
2 personal cell phones for work-related matters such as scheduling issues. (Declaration of Kyle
3 Nordrehaug, at ¶3).

4 On April 26, 2022, the Parties engaged in an all-day mediation session before
5 Mediator Krivis, a respected and experienced mediator knowledgeable of both the wage and
6 hour laws and representative claims at issue in this action. Through arms-length negotiations
7 with the assistance of the mediator, the Parties reached an agreement to settle the PAGA
8 claims in this action which led to the signing of a Memorandum of Understanding
9 memorializing the settlement.²

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

17 18 **III. TERMS OF THE PAGA SETTLEMENT**

19 The PAGA settlement is subject to Court approval consistent with Labor Code
20 §2699(1)(2). (Settlement Agreement at §III ¶22(a)). The Settlement Agreement negotiated
21 by the Parties provides for a “Gross PAGA Settlement Amount” payment in the amount of
22 \$380,000 to resolve the Released PAGA Claims (hereinafter referred to as the “PAGA
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 §III ¶23(b)). The individual claims were not at
27 issue in this action and exist independent and apart from the PAGA claims at issue before the Court.
28 *See Kim v. Reins Int’l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does
not strip an aggrieved employee of standing, as the state’s authorized representative, to pursue
PAGA remedies” nor resolve the PAGA claims.).

1 Settlement”).³ From this PAGA Settlement of \$380,000, there is a deduction of attorneys’
2 fees in the amount of \$126,666 (which is one-third of the PAGA Settlement), reimbursement
3 of incurred costs in an amount not to exceed \$15,000, and Settlement Administration Costs
4 not to exceed \$6,000. (Settlement Agreement at §III ¶22(b)-(c)).⁴ After these deductions, the
5 amount remaining is the “PAGA Payment”, which is estimated to be \$232,334.00.

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

10 The Individual PAGA Payment for each Aggrieved Employee shall be based on the
11 number of pay periods each Aggrieved Employee worked during the PAGA Period as a
12 percentage of the total pay periods worked by all Aggrieved Employees during the PAGA
13 Period. (*Id.*) The PAGA Period is the time period from June 4, 2020 to April 26, 2022.
14 (Settlement Agreement at I ¶10).

15 Defendant has represented to PAGA Counsel the number of Aggrieved Employees
16 and pay periods. Defendant represents that there are approximately 638 Aggrieved Employees
17 who collectively worked 31,551 pay periods during the PAGA Period. (Settlement Agreement at §
18 III ¶21).

20
21 ³ Within 15 days of the Effective Date of the Settlement the Defendant shall pay to the
22 Settlement Administrator \$190,000 as half of the Gross PAGA Settlement Amount and six months
23 thereafter Defendant shall pay the remaining half of the Gross PAGA Settlement Amount
24 (\$190,000). (Settlement Agreement at § III ¶20).

25 ⁴ In the event the Court approves less than One-Third of the Gross PAGA Settlement Amount in
26 Attorneys’ Fees or less than \$15,000 in Attorneys’ Expenses to PAGA Counsel, the unawarded
27 difference will be added to the PAGA Payment and not to PAGA Counsel or the Defendant, and will
28 not affect approval of the settlement. (Settlement Agreement at §III ¶22(b)). In the event the Court
approves less than \$6,000 to administer the settlement or if the actual cost to administer the
settlement is less than \$6,000, the difference will be added to the PAGA Payment. (*Id.* at ¶22(c).)

⁵ “Aggrieved Employees” means all individuals who were employed by Defendant in California and
classified as non-exempt employees during the PAGA Period. The PAGA Period is the time period
from June 4, 2020 to April 26, 2022. (Settlement Agreement at §I ¶¶ 2, 10).)

1 Upon entry of final judgment, the Released Parties shall be entitled to a release from
2 the State of California and the Aggrieved Employees only for all “Released PAGA Claims”,
3 which means all PAGA claims for civil penalties under California Labor Code §§ 2698 *et*
4 *seq.*, predicated on the California Labor Code claims that are asserted in the LWDA Notice
5 and operative complaint which includes, but is not limited to, PAGA claims for civil
6 penalties pursuant to Labor Code section 2699, *et seq.* for violations of Labor Code sections
7 §§ 201, 202, 203, 204, 226(a), 226.7, 226.8, 510, 512, 558, 1194, 1197, 1198, 2802 and
8 applicable Industrial Welfare Commission Wage Orders (the “Released PAGA
9 Claims”)(Settlement Agreement at §III ¶23(a)). The Released PAGA Claims does not
10 include underlying wage and hour claims, claims for wrongful termination, discrimination,
11 unemployment insurance, disability, and workers’ compensation, and claims outside of the
12 PAGA Period. The Released PAGA Claims do not include any claims that cannot be
13 released as a matter of law. (*Id.*) The Settlement Agreement expressly confirms that “In no
14 event shall the release of the Released PAGA Claims in this Settlement Agreement release
15 any individual claims of any individuals.” (*Id.*)

16 Within thirty (30) days after receipt of the Gross PAGA Settlement Amount from
17 Defendant, the Settlement Administrator will issue to each Aggrieved Employee a check for
18 their Individual PAGA Payment at their last known home address along with an explanatory
19 letter which will be mutually approved by the parties. (Settlement Agreement at §IV ¶30).
20 Checks will remain negotiable for one hundred eighty (180) days. (*Id.*) Subject to Court
21 approval, all checks not cashed within one hundred eighty (180) days of payment shall be
22 paid to the State Controller Fund in the name(s) of the absent Aggrieved Employees who
23 failed to cash the check, where the individuals may claim the funds. (*Id.*) The Individual
24 PAGA Payments are 100% penalties and shall be reported using IRS tax form 1099. (*Id.*).

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

1 compliance with Labor Code section 2699(1).⁶ In addition, Plaintiff shall submit to the
2 LWDA a copy of the Court's judgment and order approving the Settlement Agreement
3 within ten (10) days after entry of judgment or order.
4

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

6 The claim before this court is the representative claim under PAGA on behalf of the
7 State of California for civil penalties pursuant to the PAGA. The parties have agreed to
8 settle this PAGA claim in its entirety after investigation and an arm's length mediation
9 session. (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and
10 finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the State of
11 California. This is only a settlement of the PAGA claims for civil penalties, and is not a
12 class settlement and does not release the individual claims, if any, of the Aggrieved
13 Employees. This settlement does not release any claim that is not a PAGA claim.⁷ Attorneys'
14 fees equal to one-third of the Gross PAGA Settlement amount (\$126,666.00) and litigation
15 expenses in an amount not to exceed \$15,000.00 will also be paid to PAGA Counsel as part
16 of the settlement in accordance with California Labor Code § 2699(g)(1), as set forth in the
17 Settlement Agreement.⁸ Lastly, payment to the Settlement Administrator in an amount not
18 to exceed \$6,000 to perform the administrative duties to distribute the settlement money shall
19 also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)
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21 ///
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24 ⁶ A true and correct copy of the proof of service verifying that copies of the Settlement Agreement
25 and this Motion were provided by Plaintiff to the LWDA is attached as Exhibit #7 to the Declaration
of Kyle Nordrehaug, filed herewith.

26 ⁷ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: "Nonparty employees are bound
by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

27 ⁸ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
28 in the current amount of \$12,392.14, which is less than the cost allocation in the Settlement
Agreement. See Declaration of Nordrehaug at ¶ 9.

1 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
2 **SETTLEMENT OF THE PAGA CLAIM**

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

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

9 The Parties believe that the PAGA Settlement amount is fair and reasonable and
10 therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency
11 has released data on PAGA settlement amounts. After removing the outliers at the low and
12 high end, the average, total settlement amount of PAGA claims is approximately \$10,000.
13 Here, the Gross PAGA Settlement Amount of \$380,000 is significantly more and constitutes
14 approximately \$12 per pay period. (Declaration of Nordrehaug, at ¶6.)

15 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
16 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
17 statutory PAGA civil penalties was potentially \$3,155,100 based on 31,551 pay periods
18 applicable to the Aggrieved Employees during the PAGA Period.⁹ (Declaration of
19 Nordrehaug, at ¶6.) Importantly, however, these calculations were performed at the
20 maximum statutory rate for the penalties, when in fact, it is likely that any penalties awarded
21 would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to
22 award a lesser amount than the maximum civil penalty if based on the facts and
23 circumstances to do otherwise would result in an award that is "unjust, arbitrary and
24 oppressive or confiscatory."

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 \$3,155,100 is the civil penalty amount without stacking. If stacking is permitted,
28 then the valuation increases with each additional penalty added to each pay period. Plaintiff,
however, is not aware of any PAGA award which permitted stacking and in the cases cited herein,
only one penalty per pay period was assessed.

1 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
2 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay
3 period. Therefore, at trial, any PAGA penalties awarded could be significantly less than
4 Plaintiff's calculation even where Plaintiff prevailed on the PAGA claim. If the amount of \$5
5 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties
6 would be only \$157,755, which is less than what this settlement provides.

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

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

25 Defendant maintains that Plaintiff and the Aggrieved Employees were properly
26 compensated, and that they did not violate the Labor Code. Accordingly, Defendant disputes
27 and denies Plaintiff's allegations and claims asserted in the complaint which are resolved by
28 the Settlement Agreement. Defendant asserted additional defenses to the PAGA claim, not

1 only as to liability but also as to the amount of the penalties. Defendant could argue that no
2 penalties prior to the PAGA notification should be awarded because the violations were not
3 intentional, and at least one Court has so ruled. These defenses present a risk to the PAGA
4 claims and the potential that some or all of the PAGA penalties sought may not be awarded.
5 (Declaration of Nordrehaug, at ¶7.)

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

14 PAGA Counsel have significant experience litigating wage and hour claims including
15 claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than
16 similar settlements that courts have approved. (Declaration of Nordrehaug, at ¶9.) The
17 PAGA Settlement, along with the other terms of the proposed settlement, were negotiated by
18 experienced counsel at arm's length with the assistance of a private mediator, Jeff Krivis.
19 (Declaration of Nordrehaug, at ¶7.)

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

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

28 Although PAGA requires that a court approve the proposed PAGA settlement, Labor

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

7
8 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

9 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the
10 amount of \$126,666 representing one-third of the \$380,000 Gross PAGA Settlement
11 Amount. PAGA does not have any requirements for reviewing attorneys' fees, and
12 Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a
13 matter of contract for a contingent representation. Nevertheless, should this Court review the
14 requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

15 First, the requested fees are justified by the result achieved. PAGA Counsel
16 negotiated a recovery of \$380,000.00, and this result justifies the requested fees equal to one
17 third of this recovery. This percentage is within the standard contingent recovery percentage
18 of one-third, and this percentage is what was expressly approved by the Supreme Court in
19 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.*,
20 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that ““fee awards in class actions
21 average around one-third of the recovery”” regardless of ““whether the percentage method or
22 the lodestar method is used.”” (quoting *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11
23 (2008))).

24 Second, the fee award is justified by the work performed and contributions to the
25 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award
26 represents PAGA Counsel's current lodestar of \$86,296.25 with a reasonable multiplier of
27
28

1 less than 1.5, with significant additional work to be performed such that the multiplier will
2 ultimately be less than 1.2.¹⁰

3 Generally, the Ninth Circuit and California Courts award positive multipliers between
4 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation
5 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award
6 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
7 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
8 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
9 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa*
10 *Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which
11 was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D.
12 Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v.*
13 *Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6,
14 2013) (approving fee award that represented a multiplier of 2.76 as falling within the
15 "majority" range for risk multipliers).

16 Third, consideration of the enhancement factors justify the enhancement of the
17 lodestar. Courts multiply the lodestar by a factor to account for the risk of non-payment,
18 delay in payment, the quality of work, and the novelty and difficulty of the issues involved.
19 See *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in
20 cases that meet these criteria is an abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157,
21 1166 (9th Cir. 2016).

22 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation
23 expenses in the total amount of \$12,392.14 which is less than the \$15,000 allocation for costs
24 in the Settlement Agreement, so the difference of \$2,607.86 will be added to the PAGA
25 Payment amount. These expenses are documented in the accompanying Declaration of
26 Nordrehaug at ¶9.

27
28 ¹⁰True and correct copies of PAGA Counsel's billing records are attached as Exhibits #2 and 3 to the Declaration of Kyle Nordrehaug, filed herewith.

1 **VII. CONCLUSION**

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

5
6 Dated: October 3, 2022

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

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8
9 By: /s/ Kyle Nordrehaug
10 Norman B. Blumenthal
11 Kyle R. Nordrehaug
12 Attorneys for Plaintiff
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Make a Reservation

ZEBULON NEFF vs OAKHURST INDUSTRIES, INC., A CALIFORNIA CORPORATION

Case Number: 21STCV21110 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2021-06-04 Location: Stanley Mosk Courthouse - Department 71

Reservation

Case Name: ZEBULON NEFF vs OAKHURST INDUSTRIES, INC., A CALIFORNIA CORPORATION	Case Number: 21STCV21110
Type: Motion for Order (Approving PAGA Settlement)	Status: RESERVED
Filing Party: Zebulon Neff (Plaintiff)	Location: Stanley Mosk Courthouse - Department 71
Date/Time: 10/24/2022 9:30 AM	Number of Motions: 1
Reservation ID: 605525466076	Confirmation Code: CR-HKOSUWYOOKOZPELKU

Fees

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

Payment

Amount: \$61.65	Type: MasterCard
Account Number: XXXX1292	Authorization: 37100J

 [Print Receipt](#)[+ Reserve Another Hearing](#)