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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SACRAMENTO**

14
15 MELISSA DUFFELL, on behalf of the State of
16 California, as a private attorney general,

17 Plaintiff,

18 v.

19 WAG HOTELS, INC., a Corporation; and DOES
20 1 through 50, Inclusive,

21 Defendants.

Case No. **34-2021-00304566**

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

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

Hearing Date: August 12, 2022

Hearing Time: 9:00 a.m.

Reservation No. 2656546

Judge: Hon. Lauri A. Damrell

Dept.: 28

Action Filed: July 19, 2021

Trial Date: Not Set

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

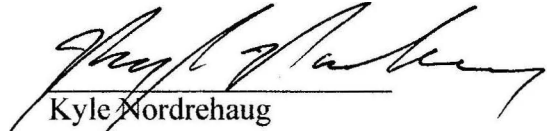
2 YOU ARE HEREBY NOTIFIED THAT at 9:00 a.m. on August 12, 2022, or as soon
3 thereafter as the matter can be heard, in Department 54 of the above entitled Court before the
4 Honorable Lauri A. Damrell, Plaintiff Melissa Duffell ("Plaintiff") will and hereby does
5 move for an order approving the settlement of the PAGA claim alleged against Defendant
6 Wag Hotels, Inc. ("Defendant") in accordance with Labor Code §2699(l). The proposed
7 settlement is set forth in the accompanying Settlement Agreement ("Settlement
8 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: July 18, 2022

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

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16 
17 Kyle Nordrehaug

18 *Attorneys for Plaintiff*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Melissa Duffell (“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 Wag Hotels, Inc. (“Defendant”) (collectively, the “Parties”) which
6 provides for a “Gross PAGA Settlement Amount” payment in the amount of \$730,000.00.
7 In accordance with California Labor Code §2699(l), Plaintiff now asks this Court to review
8 and approve the settlement of Plaintiff’s PAGA claims.¹ This is only a settlement of the
9 PAGA claims for civil penalties, and is not a class settlement and does not release the
10 individual wage claims, if any, of the affected employees other than the Plaintiff herself.
11 Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014);
12 *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable
13 under PAGA).

14 The PAGA settlement is set forth in the accompanying 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 **II. RELEVANT FACTS**

23 PAGA Counsel mailed the necessary correspondence to the California Labor and
24 Workforce Development Agency (“LWDA”) on April 29, 2021 on behalf of Plaintiff
25 Melissa Duffell, requesting authorization from the LWDA to seek civil penalties as provided
26 by the Private Attorney General Act of 2004 (“PAGA”) for the wage and hour violations
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 alleged in the LWDA Notice. A true and correct copy of the LWDA Notice is attached as
2 Exhibit #4 to the Declaration of Kyle Nordrehaug, filed herewith. The 65-day notice period
3 for the LWDA to notify of its intent to investigate expired on July 4, 2021.

4 On July 19, 2021, Plaintiff Duffell filed a Representative Action Complaint against
5 Defendant Wag Hotels, Inc. in this Court alleging a single cause of action for recovery of
6 civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

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

17 Plaintiff's theory of PAGA liability as argued at mediation alleged that Defendant
18 required the Aggrieved Employees to submit to a COVID screening prior to clocking in for
19 their shifts but failed to pay the proper minimum wages for the time spent submitting to these
20 COVID symptom screenings. Additional unpaid off-the-clock work alleged by Plaintiff rests
21 on Plaintiff's allegations that Defendant required that Aggrieved Employees send out
22 informative shift notes after each shift. Plaintiff also alleged that Defendant required the
23 Aggrieved Employees to sign On Duty Meal Period Agreements despite the lack of any facts
24 suggesting that the nature of the work done by the Aggrieved Employees prevented them
25 from being relieved of all duties during their meal breaks. Moreover, Plaintiff alleges that
26 Defendant violated the Aggrieved Employees' rest break rights by requiring rest breaks to be
27 taken in the "closest break areas" as opposed to allowing each employee to choose where
28 they wanted to spend their break time. Additionally, Plaintiff alleges that Defendant's wage

1 statements were faulty because they failed to state the total number of hours worked and also
2 that Defendant failed to reimburse for cell phone expenses because employees were required
3 to use their personal cell phones for work-related matters such as scheduling issues.
4 (Declaration of Kyle Nordrehaug, at ¶3). Defendant denies Plaintiff’s allegations and argues
5 that it complied with the California Labor Code at all times.

6 On April 20, 2022, the Parties engaged in an all-day mediation session before
7 Mediator Ortman, a respected and experienced mediator knowledgeable of both the wage
8 and hour laws and representative claims at issue in this action. Through arms-length
9 negotiations with the assistance of the mediator, the Parties reached an agreement to settle
10 the PAGA claims in this action which led to the signing of a Memorandum of Understanding
11 memorializing the settlement.²

12 The settlement was negotiated in light of all known facts and circumstances and the
13 uncertainty associated with litigation – including the risk of Plaintiff not being able to
14 maintain representative claims, the difficulty of proving Plaintiff’s claims in a manageable
15 trial, the merits of Defendant’s potential defenses, and the significant delay and potential
16 appellate issues inherent to litigation – and was reached after extensive arm’s length
17 negotiations, with the assistance of Mediator Ortman. (Declaration of Kyle Nordrehaug, at
18 ¶3).

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

20 The PAGA settlement is subject to Court approval consistent with Labor Code
21 §2699(1)(2). (Settlement Agreement at §III ¶22(a).) The Settlement Agreement negotiated
22 by the Parties provides for a “Gross PAGA Settlement Amount” payment in the amount of
23 \$730,000 to resolve the Released PAGA Claims (hereinafter referred to as the “PAGA
24

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

Settlement”). From this PAGA Settlement of \$730,000, there is a deduction of attorneys’ fees in the amount of \$243,333 (which is one-third of the PAGA Settlement), reimbursement of incurred costs in an amount not to exceed \$20,000, and Settlement Administration Costs not to exceed \$15,000. (Settlement Agreement at §III ¶22(b)-(c).)³ After these deductions, the amount remaining is the “PAGA Payment”, which is estimated to be \$451,667.00.

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

The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of pay periods each Aggrieved Employee worked during the PAGA Period as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period. (*Id.*) The PAGA Period is the time period from July 19, 2020 to July 6, 2022. (Settlement Agreement at I ¶10).

Defendant has verified in a declaration to PAGA Counsel the number of pay periods. (Settlement Agreement at § III ¶21). Defendant’s declaration represents that there are approximately 15,694 pay periods during the PAGA Period.

Upon entry of final judgment, the Released Parties shall be entitled to a release from the State of California and the Aggrieved Employees only for all “Released PAGA Claims”, which means “all PAGA claims for civil penalties under California Labor Code §§ 2698 *et seq.*, predicated on the California Labor Code claims that are asserted in the LWDA Notice and operative complaint which includes PAGA claims for civil penalties pursuant to Labor

³ In the event the Court approves less than One-Third of the Gross PAGA Settlement Amount in Attorneys’ Fees or less than \$20,000 in Attorneys’ Expenses to PAGA Counsel, the unawarded difference will be added to the PAGA Payment and not to PAGA Counsel or the Defendant. (Settlement Agreement at §III ¶22(b)). In the event the Court approves less than \$15,000 to administer the settlement or if the actual cost to administer the settlement is less than \$15,000, the difference will be added to the PAGA Payment. (*Id.* at ¶22(c).)

⁴ “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 July 19, 2020 to July 6, 2022. (Settlement Agreement at §I ¶¶ 2, 10).)

1 Code section 2699, *et seq.* for violations of Labor Code sections §§ 201, 202, 203, 204,
2 226(a), 226.7, 226.8, 510, 512, 558, 1194, 1197, 1198, 2802 and applicable Industrial
3 Welfare Commission Wage Orders (the “Released PAGA Claims”).” (Settlement
4 Agreement at §III ¶23(a).) The Released PAGA Claims do not include underlying wage and
5 hour claims, claims for wrongful termination, discrimination, unemployment insurance,
6 disability, and workers’ compensation, and claims outside of the PAGA Period. The
7 Released PAGA Claims do not include any claims that cannot be released as a matter of law.
8 (*Id.*) The Settlement Agreement expressly confirms that “In no event shall the release of the
9 Released PAGA Claims in this Settlement Agreement release any individual claims of the
10 Aggrieved Employees aside from Plaintiff who has entered into a Confidential Individual
11 Settlement Agreement.” (*Id.*)

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

21 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of
22 the Settlement Agreement and this motion to the LWDA concurrently with the filing of the
23 instant motion for settlement approval as set forth in the accompanying proof of service in
24 compliance with Labor Code section 2699(1).⁵ In addition, Plaintiff shall submit the Court’s
25 judgment and order approving the Settlement Agreement to the LWDA after entry of the
26 order and judgment.

27 ⁵ A true and correct copy of the proof of service verifying that copies of the Settlement Agreement
28 and this Motion were provided by Plaintiff to the LWDA is attached as Exhibit #5 to the Declaration
of Kyle Nordrehaug, filed herewith.

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

2 The claim before this court is the representative claim under PAGA on behalf of the
3 State of California for civil penalties pursuant to the PAGA. The parties have agreed to
4 settle this PAGA claim in its entirety after investigation and an arm's length mediation
5 session. (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and
6 finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the State of
7 California. This is only a settlement of the PAGA claims for civil penalties, and is not a
8 class settlement and does not release the individual claims, if any, of the Aggrieved
9 Employees, except for Plaintiff who has entered into a separate individual settlement. This
10 settlement does not release any claim that is not a PAGA claim.⁶ Attorneys' fees equal to
11 one-third of the Gross PAGA Settlement amount (\$243,333.00) and litigation expenses in an
12 amount not to exceed \$20,000.00 will also be paid to PAGA Counsel as part of the
13 settlement in accordance with California Labor Code § 2699(g)(1), as set forth in the
14 Settlement Agreement.⁷ Lastly, payment to the Settlement Administrator in an amount not
15 to exceed \$15,000 to perform the administrative duties to distribute the settlement money
16 shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)

17 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
18 **SETTLEMENT OF THE PAGA CLAIM**

19 Labor Code § 2699(l) requires that the Court "shall review and approve any
20 settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement
21 shall be submitted to the agency at the same time that it is submitted to the court."
22 Consequently, the parties respectfully ask the Court to review and approve the settlement of
23 the PAGA claims and the PAGA Payment to be paid as part of the proposed settlement.
24
25

26 ⁶ 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 ⁷ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
28 in the current amount of \$13,369.95, which is less than the cost allocation in the Settlement
Agreement. See Declaration of Nordrehaug at ¶ 9.

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

2 The Parties believe that the PAGA Settlement amount is fair and reasonable and
3 therefore "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount of
4 \$730,000 is significantly more than many other PAGA settlements and constitutes
5 approximately \$46 per pay period. (Declaration of Nordrehaug, at ¶6.)

6 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
7 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
8 statutory PAGA civil penalties was potentially \$1,569,400 based on 15,694 pay periods
9 applicable to the Aggrieved Employees during the PAGA Period.⁸ (Declaration of
10 Nordrehaug, at ¶6.) Importantly, however, these calculations were performed at the
11 maximum statutory rate for the penalties, when in fact, it is likely that any penalties awarded
12 would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to
13 award a lesser amount than the maximum civil penalty if based on the facts and
14 circumstances to do otherwise would result in an award that is "unjust, arbitrary and
15 oppressive or confiscatory."

16 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
17 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay
18 period. Therefore, at trial, any PAGA penalties awarded could be significantly less than
19 Plaintiff's calculation even where Plaintiff prevailed on the PAGA claim. If the amount of \$5
20 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties
21 would be only \$80,215, which is far less than what this settlement provides.

22 Under PAGA, Courts have considerable discretion to reduce the penalty award. In
23 *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court
24 reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the
25

26 ⁸ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.
27 The valuation of \$1,569,400 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 court found maximum penalties "unjust" because the employees had suffered no injuries.
2 Some trial courts have actually awarded no civil penalties, even when Labor Code violations
3 are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of
4 App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior
5 Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.
6 LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

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

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

25 Given Defendant's potential defenses to the violations at issue, the risks and costs of
26 continued litigation, Plaintiff and her attorneys believe that the PAGA Settlement is fair and
27 reasonable. (Declaration of Nordrehaug, at ¶7.) Defendant has similarly concluded that it is
28 desirable that the action is settled in the manner and upon the terms and conditions set forth

1 in the Settlement Agreement in order to avoid further expense, inconvenience and distraction
2 of further legal proceedings, as well as the uncertainty of litigation. Defendant has
3 determined that it is desirable and beneficial to put to rest the claims in this action and
4 Defendant agrees that the PAGA Settlement is fair, reasonable, and adequate.

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

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

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

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

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

2 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the
3 amount of \$243,333 representing one-third of the \$730,000 Gross PAGA Settlement
4 Amount. PAGA does not have any requirements for reviewing attorneys' fees, and
5 Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a
6 matter of contract for a contingent representation. Nevertheless, should this Court review the
7 requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

8 First, the requested fees are justified by the result achieved. PAGA Counsel
9 negotiated a recovery of \$730,000.00, and this result justifies the requested fees equal to one
10 third of this recovery. This percentage is within the standard contingent recovery percentage
11 of one-third, and this percentage is what was expressly approved by the Supreme Court in
12 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.,*
13 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that ““fee awards in class actions
14 average around one-third of the recovery”” regardless of ““whether the percentage method or
15 the lodestar method is used.”” (*quoting Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11
16 (2008)).

17 Second, the fee award is justified by the work performed and contributions to the
18 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award
19 represents PAGA Counsel's current lodestar of \$126,392.25 with a reasonable multiplier of
20 1.9, with significant additional work to be performed such that the multiplier will ultimately
21 be less than 1.7.⁹

22 Generally, the Ninth Circuit and California Courts award positive multipliers between
23 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation
24 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award
25 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
26 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
27

28 ⁹ True and correct copies of PAGA Counsel's billing records are attached as Exhibit #2 to the Declaration of Kyle Nordrehaug, filed herewith.

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

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

15 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation
16 expenses in the total amount of \$13,369.95 which is less than the \$20,000 allocation for costs
17 in the Settlement Agreement, so the difference of \$6,630.05 will be added to the PAGA
18 Payment amount. These expenses are documented in the accompanying Declaration of
19 Nordrehaug at ¶9.

20 21 **VII. CONCLUSION**

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

25 Dated: July 18, 2022

**BLLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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27 
28 Kyle Nordrehaug