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13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF FRESNO**

16 LORENA VIDAL and VANESSA PENA-
17 LEON, individually, and on behalf of other
aggrieved employees pursuant to the
18 California Private Attorneys General Act,

19 Plaintiff,

20 v.

21 THE CALIFORNIA HOME FOR THE
22 AGED, INC., a California corporation, doing
23 business as CALIFORNIA ARMENIAN
HOME & THE VINEYARDS and THE
24 CALIFORNIA ARMENIAN HOME; and
DOES 1 through 100,

25 Defendants.

Case No.: 21CECG02976
Assigned for all purposes to the
Hon. Jeffrey Y. Hamilton, Jr., Dept. 503

**NOTICE OF MOTION AND PLAINTIFFS'
REVISED MOTION FOR APPROVAL OF
PAGA SETTLEMENT, AWARD OF
ATTORNEYS' FEES, ENHANCEMENT
AWARDS, AND REIMBURSEMENT OF
LITIGATION COSTS; MEMORANDUM
OF POINTS AND AUTHORITIES**

[DECLARATION OF JENNIFER L.
CONNOR, REVISED DECLARATIONS OF
JACOB N. WHITEHEAD AND LORENA
VIDAL, AND AMENDED PROPOSED
ORDER SUBMITTED CONCURRENTLY
HEREWITH]

PAGA Settlement Approval Hearing
Date: March 5, 2024
Time: 3:30 p.m.
Dept.: 503

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

2 **PLEASE TAKE NOTICE** that on March 5, 2024 at 3:30 p.m., or as soon thereafter as
3 the matter may be heard before the Honorable Jeffrey Y. Hamilton, Jr. in Department 503 of
4 the above-captioned court located at 1130 O Street, Fresno, California 93724, PAGA
5 Representative Plaintiffs Lorena Vidal and Vanessa Pena-Leon (“Plaintiffs”) will and do
6 hereby renew their request to this Court for an order approving the settlement between Plaintiffs
7 and Defendant The California Home for the Aged, Inc. (“Defendant”; together with Plaintiffs,
8 the “Parties”) of Plaintiffs’ representative claims for penalties pursuant to the Private Attorneys
9 General Act of 2004 (“PAGA”) (Lab. Code, §§ 2698, *et seq.*) on behalf of themselves and other
10 aggrieved employees.

11 On June 28, 2023, Plaintiffs filed their Motion for Approval of PAGA Settlement
12 (“Motion for PAGA Approval”) seeking Court approval of the Parties’ fully executed Joint
13 Stipulation of PAGA Settlement and Release (“Settlement” or “Settlement Agreement”), which
14 if approved, would entirely dispose of this matter. (*See* Lab. Code, § 2699, subd. (l).) The Court
15 issued its Minute Order on Plaintiffs’ Motion for PAGA Approval, however, denying it without
16 prejudice and requiring certain concerns be addressed for approval thereof. In response, the
17 Parties executed a short-form Amendment to Joint Stipulation of PAGA Settlement and Release
18 (“Amended Settlement Agreement”) dated October 2, 2023, Plaintiffs’ counsel further
19 requested information and declaratory evidence, and Plaintiffs now submit this Revised Motion
20 for Approval of PAGA Settlement (“Revised PAGA Motion”) for the Court’s consideration.

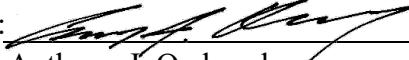
21 This Revised PAGA Motion is based on this Notice, the attached Memorandum of
22 Points and Authorities, the concurrently filed Declaration of Jennifer L. Connor, Revised
23 Declarations of Jacob N. Whitehead and Lorena Vidal, Appendix of Prior Submissions in
24 support thereof, and Amended Proposed Order, all papers and pleadings on file with the Court
25 in this action, all matters judicially noticeable, and on such oral and documentary evidence as
26 may be presented in connection with the hearing on this Revised PAGA Motion. Further, the
27 California Labor and Workforce Development Agency has also been served with a copy of this
28 Revised PAGA Motion, the Settlement Agreement and Amended Settlement Agreement, as

1 noted below and in the concurrently submitted supporting declarations. Plaintiffs thus renew
2 their request for Court approval of the PAGA settlement, along with an award of attorneys'
3 fees and reimbursement of litigation costs, enhancement awards to Plaintiffs, and settlement
4 administration fees.

5 Plaintiffs further respectfully request that the Court consider the attached Memorandum
6 of Points and Authorities, despite it exceeding the page limit for memoranda under California
7 Rules of Court, Rule 3.1113, subdivision (e), which is 20 pages in length.

8
9 Dated: December 10, 2023

COUNSELONE, PC

10 By: 

11 Anthony J. Orshansky

Jennifer L. Connor

12 **WHITEHEAD EMPLOYMENT LAW**

13 Jacob Whitehead

14 Attorneys for Plaintiffs
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3 Conte & Newberg, Newberg on Class Actions (3rd Ed. 1992) § 14.0326

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Lorena Vidal and Vanessa Pena-Leon, individually and on behalf of all other
4 similarly situated aggrieved employees (“Plaintiffs”), reached a settlement of the claims
5 asserted in this action pursuant to the Private Attorneys General Act of 2004, Labor Code
6 sections 2698, *et seq.* (“PAGA”) against Defendant The California Home for the Aged, Inc.,
7 doing business as The California Armenian Home (“Defendant” or “CA Home”; Plaintiffs and
8 Defendant are referred to herein together as the “Parties”). In accordance with Labor Code
9 section 2699, subdivision (l), Plaintiffs renew their request that this Court review and approve
10 the settlement of Plaintiffs’ PAGA claims, as authorized by the PAGA, on behalf of the
11 California Labor and Workforce Development Agency (“LWDA”) and hourly paid or non-
12 exempt individuals employed by Defendant for at least one day during the Relevant Period (*i.e.*,
13 August 27, 2020 through June 09, 2023) (hereafter, “PAGA Members” or “Aggrieved
14 Employees”).

15 By way of this Revised Motion for Approval of PAGA Settlement (“Revised PAGA
16 Motion”), Plaintiffs request approval of the Parties’ PAGA settlement, along with award of
17 attorneys’ fees, enhancement awards, and reimbursement of litigation costs.

18 After review of Plaintiffs’ initial Motion for Approval of PAGA Settlement, the Court
19 issued its August 29, 2023 Minute Order enumerating various issues to be addressed and
20 denying the motion without prejudice. Thereafter, the Parties entered into an Amendment to the
21 Settlement Agreement redefining the Relevant Period to close on June 9, 2023, along with
22 providing this supplemental information in response to the Court’s concerns. A true and correct
23 copy of the short-form Amendment to Joint Stipulation of PAGA Settlement and Release
24 (“Amended Settlement Agreement”) is attached as **Exhibit 1** to the Declaration of Jennifer L.
25 Connor (“Connor Decl.”), filed concurrently herewith. For ease of reference, the previously
26 submitted long-form Joint Stipulation of PAGA Settlement and Release (“Settlement
27 Agreement”) is attached as internal Exhibit 1 to the Declaration of Jacob N. Whitehead,
28 previously filed, which is attached to the Appendix of Prior Submissions in Support of Revised

1 Motion for PAGA Approval (“Appendix”) filed concurrently herewith as Exhibit B. The
2 LWDA is also simultaneously being served with a copy of this Revised Motion, the Amended
3 Settlement Agreement, and the Settlement Agreement. (Connor Decl. ¶ 32.)

4 **II. RESPONSE TO COURT’S MINUTE ORDER OF AUGUST 29, 2023**

5 In this newly added subpart, Plaintiffs separately set forth their responses to the various
6 issues identified in the Court’s Minute Order of August 29, 2023, along with reference to
7 supporting declarations and the Appendix of Prior Submissions filed herewith. Apart from the
8 contents of this section II, a vast majority of the Revised PAGA Motion remains unchanged
9 from its prior iteration. For ease of reference then, wherever corrective updates were warranted,
10 those changes are marked *infra* with a combination of italics and underlined language denoting
11 a revision. Capitalized terms in this Revised PAGA Motion shall have the same meaning as
12 defined in the Amended Settlement Agreement and Settlement Agreement.

13 **A. Re: Aggrieved Employees Count and Settlement Valuation**

14 In its Minute Order regarding Plaintiffs’ original PAGA Motion, the Court noted that,

15 *There is a discrepancy regarding the amount of aggrieved employees. While the*
16 *moving papers and the proposed settlement administrator’s costs estimate refer*
17 *to 728 aggrieved employees, the settlement agreement considered only 548*
18 *aggrieved employees. [citation omitted]. The difference is an approximate 33*
19 *percent increase from what the terms of the settlement contemplated. The*
20 *proposed \$240,000 therefore would have, in gross, per person, on average, paid*
\$437.96. Where there are 728 employees, that figure drops substantially, to
\$329.67. No argument or evidence was submitted to explain the discrepancy, or
why the \$329.67 figure would be fair and reasonable in spite of the negotiated
\$437.96.

21 In response, the Parties ask the Court to re-evaluate its Gross Settlement Amount fairness
22 analysis based on three factors: *first*, the Parties entered an Amendment to the original
23 Settlement Agreement to solidify the data points analyzed by the Court in its Minute Order,
24 (*see* Amended Settlement Agreement); *second*, the diminution in value between the 548
25 aggrieved employees and the 728 aggrieved employees is 11.43% when based on pay periods;
26 and *third*, this Court should consider the unique *Viking River Cruises*¹ context that posed a
27

28 ¹ *Viking River Cruises, Inc. v. Moriana* (June 15, 2022) 142 S.Ct. 1906.

1 highly realizable risk of rendering *all* representative PAGA claims obsolete. (Connor Decl. ¶
2 6.)

3 First, the Parties' Amended Settlement Agreement fixes the Settlement at those data
4 points previously submitted to the Court as of the date of filing of the PAGA Approval Motion.
5 Specifically, it clarifies that the "Relevant Period" for defining PAGA Members is August 27,
6 2020 through June 9, 2023. (*See* Amended Settlement Agreement at pp. 2-3 [amending
7 paragraphs 1.1, 1.9, and 1.10 of the original Joint Stipulation of PAGA Settlement and Release
8 in order to close the statutory period on June 9, 2023].) Such clarification avoids further
9 confusion that might be engendered by an open-ended timeframe with fluctuating aggrieved
10 employee counts. Based upon Defendant's representation, the count of PAGA Members during
11 the Relevant Period is approximately 728 aggrieved employees who worked approximately
12 20,400 pay periods. Specifically, Defendant reports, and PAGA Counsel understands, that
13 approximately 180 new hire employees were added to CAH subsequent to those 548 aggrieved
14 employees considered at mediation. (Connor Decl. ¶ 7.) Here, the estimated maximum recovery
15 amount for 20,400 pay periods is \$2,040,600 and, thus, the Gross Settlement Amount value is
16 approximately twelve percent (12%) of the estimated exposure—a percentage amount well
17 within the typical range of recovery in PAGA actions.² (Connor Decl. ¶ 8; *see also* section V.C,
18 *infra*, for further details.)

19 Second, the actual diminution in the Gross Settlement Amount value between 548
20 aggrieved employees and 728 aggrieved employees is *11.43%*. (Connor Decl. ¶ 9.) Although
21 pro rata is often used as a shorthand estimator, it is not appropriate here to calculate the
22 diminution caused by an influx of employees. That evaluation must be done on a pay period
23 basis, not pro rata, because that is how individual settlement payments will occur and because
24

25 ² *See, e.g.*, from as low as 0.2 percent (*Carrington v. Starbucks* (2018) 30 Cal.App.5th 504, 517
26 [\$150,000 awarded on a maximum of \$75 million]), to 13 percent (*Kaanaana v. Barrett Business*
27 *Services, Inc.* (2018) 29 Cal.App.5th 778, 788, 809 [reflecting 13 percent of the meal period
28 deprived]). Federal opinions likewise show a range of 1.1 percent up to 18 percent. (*See, e.g.*,
Leverage v. Traeger Pellet Grills, LLC (N.D.Cal. 2017) 2017 WL 2797811, at *7 [18 percent when
considering the full settlement, not just PAGA]; *McLeod v. Bank of Am., N.A.* (N.D.Cal. 2018) 2018
WL 5982863, at *2 [1.1 percent].)

1 the pay periods for the original 548 employees are dynamic and accruing. (*Ibid.*) At mediation
2 in May 2022, the original count of 548 aggrieved involved 11,160 pay periods for a twenty-one
3 month statutory PAGA period starting August 27, 2020. (Connor Decl. ¶ 10.) Because the
4 PAGA Relevant Period was not closed then, those 548 aggrieved employees continued to accrue
5 pay periods. The June 9, 2023 proverbial snapshot consisting of 728 aggrieved employees with
6 20,400 pay periods is significantly inclusive of pay periods attributable to and payable to those
7 original 548 aggrieved employees. Absent any additional PAGA Members, those original 548
8 aggrieved employees would be paid consideration for a total of 18,068 pay periods. (*Ibid.*) Thus,
9 the pay period balance of 2,332 constitutes those pay periods attributable to the additional 180
10 aggrieved employees. (*Ibid.*)

11 As a result, settlement dollars for 11.43% of the total pay periods (2,332 out of 20,400),
12 that would otherwise be paid to the 548 aggrieved employees, is diverted from the 548 in order
13 to pay the 180 additional aggrieved employees. The Gross Settlement Amount diminution in
14 value due to the additional PAGA Members is thus 11.43%, or \$27,432. (Connor Decl. ¶ 11.)
15 In reality, said diminution will not be effectuated on the Gross Settlement Amount, but rather
16 at the level of the Individual PAGA Member Payment (25% of the PAGA Members/LWDA
17 split) of the estimated Net Settlement Amount. Thus, an 11.43% reduction on the estimated
18 \$121,343.92 Net Settlement Amount equals \$3,467.40. (*Ibid.*)

19 Third, for the vast majority of the duration between mediation through filing of
20 Plaintiffs' Motion for Approval of PAGA Settlement this case was looming under the auspices
21 of *Viking River*. (Connor Decl. ¶ 12.) On May 20, 2022, the Settlement, in principle, was agreed
22 to by the Parties following their mutual acceptance of a mediator's proposal and based upon the
23 representation of approximately 548 PAGA Members. (*Ibid.*) But less than one month later, on
24 June 15, 2022, the United States Supreme Court issued the *Viking River* opinion and abrogated
25 the long-standing precedent of *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59
26 Cal.4th 348, 384. In *Viking River*, the U.S. Supreme Court stated:

27 [A]s we see it, PAGA provides no mechanism to enable a court to adjudicate
28 non-individual PAGA claims once an individual claim has been committed to a
separate proceeding. Under PAGA's standing requirement, a plaintiff can

1 maintain non-individual PAGA claims in an action only by virtue of also
2 maintaining an individual claim in that action. ***When an employee’s own dispute***
3 ***is pared away from a PAGA action, the employee is no different from a***
member of the general public, and PAGA does not allow such persons to
maintain suit.

4 (*Viking River, supra*, 142 S.Ct. at p. 1925 [internal citation omitted] [emphasis added].) In other
5 words, once the “individual” component of a PAGA claim is sent to arbitration, the U.S.
6 Supreme Court held that the PAGA claim on behalf of coworkers must be dismissed for lack of
7 standing.

8 Following *Viking River*, whenever arbitration agreements were implicated, employers
9 throughout California asked trial courts to split PAGA causes of action, compel the plaintiff
10 individual PAGA claim to arbitration, and dismiss representative/non-individual PAGA claims
11 with prejudice for lack of standing. Much to PAGA Counsel’s chagrin, several federal and state
12 courts were inclined to dismiss representative/non-individual PAGA claims based on *Viking*
13 *River*, and without awaiting the outcome of the California Supreme Court’s decision on standing
14 in *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104 (decision issued July 17, 2023)
15 (colloquially termed, “Full Alito”). (Connor Decl. ¶ 13.) Significantly, in the interim, certain
16 departments within this Fresno County Superior Court were likewise issuing “Full Alito”
17 decisions with the result that PAGA representative claims were dismissed.³ Here, when the
18 Supreme Court’s decision was issued, the Parties’ long-form Settlement Agreement was still in
19 negotiation. (Connor Decl. ¶ 14.)

20 Because named Plaintiffs signed arbitration agreements in this PAGA-only matter,
21 *Viking River* risked reducing the representative value of all aggrieved employee PAGA claims,
22 irrespective of the count, to zero. (Connor Decl. ¶ 15.) In light of the foregoing considerations,
23 along with the supporting declarations and previously submitted arguments detailed in section
24

25 _____
26 ³ See, e.g., *Ramos v. Agility Health, Inc.* (November 30, 2022) Fresno County Super. Ct. Case No.
27 22CECG00851 [dismissing representative PAGA claims after applying *Viking River*]; *Orosco v.*
28 *Aerotek, Inc.* (November 03, 2022) Fresno County Super. Ct. Case No. 21CECG03250 [same];
Smith v. Big 5 Sporting Goods, Inc. (February 9, 2023) Fresno County Super. Ct. Case No.
20CECG03682 [same]; *Sanchez v. Gardner Trucking, Inc.* (May 25, 2023) Fresno Super. Ct. Case
No. 19CECG03266 [same].

1 V, *infra*, Plaintiffs contend that there is sufficient evidence for this Court to find that the Gross
2 Settlement Amount is fair, adequate, and reasonable.

3 **B. Re: Evidentiary Support for Attorneys' Fees Request**

4 In that same Minute Order, the Court also observed as follows,

5 *The court further notes that counsel for Pena-Leon submits time records upon*
6 *which to assess the attorney's fees sought. Counsel for Vidal, however, submits*
7 *only a summary of hours worked, which does not aid the court in evaluating the*
8 *reasonableness of the fees sought, specifically as it may pertain to double-billed*
9 *events between the two firms. Moreover, counsel for Vidal seeks to assert a \$950*
10 *hourly rate. The reasonable hourly rate is that prevailing in the community for*
11 *similar work. (PCLM Group v. Drexler (2000) 22 Cal.4th 1085, 1095). Even*
12 *with the experience stated by counsel, the rate is excessive for Fresno County.*
Finally, while counsel for Pena-Leon discloses an agreement entered into for a
split of attorney's fees, counsel for Vidal is silent as to the issue. (See Cal. Rules
of Ct., rule 3.769(b).) The absence of disclosure further hinders the court's
ability to evaluate the fair representation of the clients. (E.g. Mark v. Spencer
(2008) 166 Cal.App.4th 212, 227-228.) The court will not approve the fees
sought without these issues addressed.

13 In response, PAGA Counsel concurrently submits the Revised Declaration of Jacob N.
14 Whitehead ("Revised Whitehead Decl.") that addresses each of these points. Specifically, Mr.
15 Whitehead attaches an attorney/paralegal task time chart that provides a breakdown of litigation
16 activities, their corresponding hours, and listed for each associated attorney/paralegal. (See
17 Time and Task log sheet attached as **Exhibit A** to Revised Whitehead Decl. filed concurrently
18 herewith.)

19 Until their stipulated consolidation, the Whitehead Employment Law firm and
20 CounselOne, PC firm separately litigated Plaintiff Vidal's PAGA representative action and
21 Plaintiff Pena-Leon's PAGA representative action, respectively. In or around December 2021,
22 PAGA Counsel combined efforts to jointly prosecute this consolidated action together. Areas
23 of responsibility were divided between the two firms to avoid unnecessary duplication of work
24 and efforts. When the ability of experienced and skilled co-counsel was needed from both,
25 however, the firms worked together. Both firms coordinated to strategize the case and have
26 been actively involved in analysis and evaluation of the claims, litigation, and the settlement
27 approval process. (See Revised Whitehead Decl. ¶ 13; Connor Decl. ¶ 18.)

1 In terms of hourly rates, the Whitehead Employment Law firm discounted their normal
2 hourly billing rates to align with those hourly rates used to calculate lodestar by attorneys in
3 similar PAGA representative actions that have been approved in this Fresno County Superior
4 Court. Thus, as pertains to the Whitehead Employment Law firm's billing rates, a twenty-five
5 percent (25%) discount was applied to all attorney hours and paralegal hours. (See Revised
6 Whitehead Decl. ¶¶ 9-10.) The lodestar calculation on the Whitehead Employment Law firm's
7 re-adjusted hourly rates is \$53,681.00. (*Id.* at ¶ 10.) When added together with the reported 99.2
8 hours worked by CounselOne, PC and its applicable rates yielding \$74,755 respective lodestar,
9 then the **total aggregated lodestar for both firms equals \$128,436** of litigation activity. (See
10 Revised Whitehead Decl. ¶ 12; Connor Decl. ¶ 20.) Thus, even at these reduced rates, the result
11 is still an aggregate lodestar with a negative multiplier for the \$80,000 requested in attorneys'
12 fees.⁴

13 Finally, as previously stated in the Declaration of Anthony J. Orshansky in support of
14 the PAGA Approval Motion, the Whitehead Employment Law firm likewise discloses that
15 PAGA Counsel have agreed to split any attorneys' fees award 50-50, such that, if an award of
16 \$80,000 is approved by the Court herein, \$40,000 would be paid to CounselOne, PC and
17 Whitehead Employment Law, each respectively, as agreed upon by counsel. (See Revised
18 Whitehead Decl. ¶ 14; Connor Decl. ¶ 22.)

19 Given the further evidentiary support and considering that, even at discounted billing
20 rates PAGA Counsel still has an aggregate lodestar with a negative multiplier, Plaintiffs ask
21 that the Court approve the requested attorneys' fees in the total amount of \$80,000 and out-of-
22 pocket litigation costs in the updated total amount of \$10,844.59.

23 ///

24
25 ⁴ Moreover, neither firm is seeking reimbursement for any time spent after the Court's August 29,
26 2023 Minute Order or otherwise in submitting this Revised PAGA Approval Motion. (See Revised
27 Whitehead Decl. ¶ 10; Connor Decl. ¶ 21.) The only requested increase is for further litigation
28 expenses incurred in the aggregate from the prior request of \$10,656.08 to an updated aggregate of
\$10,844.59. (See Revised Whitehead Decl. ¶ 11, for Whitehead Employment Law costs totaling
\$5,364.40 [small upward adjustment of \$125.79]; Connor Decl. ¶ 21, for CounselOne, PC costs
totaling \$5,480.19 [small upward adjustment of \$62.72].)

1 **C. Re: Plaintiffs' Enhancement Award Requests**

2 Lastly, in the Minute Order, the Court also prompted:

3 *Plaintiffs additionally seek enhancement awards in the amount of \$10,000.00*
4 *each. Vidal states having participated in the litigation for approximately 12*
5 *hours and submits no other factors for consideration. In other words, Vidal*
6 *seeks approval of compensation at a rate of \$833.33 per hour. Pena-Leon also*
7 *submits only on time contributed, of approximately 30 hours. While still high,*
8 *Pena-Leon seeks approval of compensation at a far more reasonable rate of*
9 *\$333.33. Based on the information submitted by each of the Plaintiffs, the court*
10 *will not approve an enhancement award of \$10,000.00.*

11 Here, PAGA Counsel proposes that, in addition to the factors outlined in Plaintiffs' declarations
12 in support of the Revised Motion for PAGA Approval, the Court consider the value of the
13 general release. Plaintiff Vidal and Plaintiff Pena-Leon each agreed to a general release under
14 Civil Code section 1542 that vastly exceeds the scope of the release by PAGA Group Members.
15 (See Settlement Agreement ¶ 4.7.)

16 Specifically, Plaintiffs release claims beyond PAGA that arise from or are related to
17 Plaintiffs' employment by Defendant or the Action, including, but not limited to:

18 (1) all Released Claims, (2) the Action and any claims arising out of or related
19 to the Action, (3) any claims under federal, state or local law for or relating to
20 wages, benefits, compensation, vacation or other paid time off, and claims for
21 liquidated damages, penalties, or costs and fees associated therewith, including
22 under the California Labor Code including PAGA or applicable wage order(s),
23 (4) wrongful termination, discrimination, harassment, and/or retaliation,
24 including under the California Fair Employment and Housing Act, Title VII of
25 the Civil Rights Act of 1964, the Family Medical Leave Act, the California
26 Family Rights Act, the Americans with Disabilities Act, the Equal Pay Act, the
27 California Labor Code, the California Government Code, (5) any act, omission,
28 or occurrence or claim arising out of or related to the Action or Plaintiffs'
 employment or termination thereof with Defendants taking place on or before
 the date of this Agreement, and (6) and any other form of relief or remedy of
 any kind, nature, or description whatsoever, whether premised on statute,
 contract, tort, or other theory of liability under state, federal, or local law.

 (Settlement Agreement ¶ 4.7.) PAGA Counsel urges that release of Plaintiffs' underlying wage
 and hour claims (that could have been brought even if in arbitration) is worth at least fifty
 percent (50%) of the negotiated enhancement request; *to wit*, \$5,000 per named Plaintiff. (See
 Connor Decl. ¶¶ 24-26; Revised Whitehead Decl. ¶¶ 16-17.) Based on the other considerations
 detailed in their respective declarations, including the hours of service by Plaintiffs, PAGA
 Counsel urges that the Court award an enhancement over and above the general release

1 valuation for the additional time spent, risks undertaken, and initiative expended in bringing
2 this PAGA lawsuit in a representative capacity. (*See, e.g.*, Revised Declaration of Lorena Vidal
3 (“Revised Vidal Decl.”) ¶¶ 1-10, along with previously submitted Declarations of Lorena Vidal
4 (“Vidal Decl.”) and Vanessa Pena-Leon (“Pena-Leon Decl.”), attached respectively as Exhibits
5 D and E to Appendix.)

6 Notwithstanding the diverging hours of service declared by Plaintiffs, given this
7 stipulated Consolidated Action was the subject of a global settlement, PAGA Counsel continues
8 to request that Plaintiffs receive enhancement awards in equal amounts. Such avoids
9 engendering enmity and recognizes that both Plaintiffs contribution was vital. (Connor Decl. ¶
10 27.) Further, PAGA Counsel and Plaintiffs ask that, if the Court is inclined to disapprove the
11 Revised PAGA Approval Motion based on the enhancement award sought as to Plaintiff Pena-
12 Leon, that the Court issue a reduction that it deems fair instead. Plaintiffs prefer at least \$7,500
13 but do not desire to jeopardize or delay the recovery to PAGA Group Members. (Connor Decl.
14 ¶ 28; Revised Whitehead Decl. ¶ 19; Revised Vidal Decl. ¶ 8.) Here, the general release and
15 traditional incentive award theories are offered in tandem, as well as in the alternative, with the
16 goal of affording the Court ample discretion to fashion fair, reasonable, and adequate
17 enhancement awards to compensate Plaintiffs.

18 Based on the foregoing reasons tailored to the Court’s comments in the August 29, 2023
19 Minute Order, along with those arguments addressing the other relevant factors set forth below,
20 Plaintiffs respectfully request that the Court grant approval of the PAGA Settlement and enter
21 the Amended Proposed Order submitted concurrently herewith.

22 **III. RELEVANT FACTS**

23 On August 9, 2021, Plaintiff Lorena Vidal (“Vidal”), who worked as an hourly non-
24 exempt employee for Defendant in the State of California, filed an action in the San Joaquin
25 County Superior Court on behalf of herself and allegedly aggrieved employees employed by
26 The California Home for the Aged, Inc., doing business as California Armenian Home (*Lorena*
27 *Vidal v. The California Home for the Aged, Inc.*, Case No. 21CECG02976, the “Vidal Action”)
28 alleging seven causes of action against Defendant for: (1) failure to pay wages (Lab. Code, §§

200, 218, 218.5 & 1194); (2) failure to pay overtime wages (Lab. Code, §§ 218, 510 & 1194); (3) failure to provide complete and accurate wage statements (Lab. Code, §§ 226 & 1174); (4) failure to timely pay wages and failure to timely pay wages due upon separation or termination (Lab. Code, §§ 201-204); (5) failure to provide meal and rest breaks (Lab. Code, §§ 226.7, 512, and 1198); (6) failure to pay minimum wage (Lab. Code, §§ 1194, 1197, 1197.1); and (7) failure to reimburse work expenses (Lab. Code, §§ 2800, 2802) during the Relevant Period. (Whitehead Decl. ¶ 9.)⁵ Subsequently, the matter was transferred to the Superior Court for the State of California, County of Fresno. (*Id.* at ¶ 10.)

Plaintiff Vanessa Pena-Leon (“Pena-Leon”) later filed a PAGA representative action against Defendant on August 27, 2021 in Fresno County Superior Court (*Pena-Leon v. The California Home for the Aged, Inc., et al.*, Case No. 21CECG0256 (the “Pena-Leon Action”). (Whitehead Decl. ¶ 11.)

On November 5, 2021, Defendant notified the Plaintiffs that their two actions were related. The Parties stipulated to consolidate the *Vidal* and *Pena-Leon* Actions. The two actions were consolidated on January 13, 2022. (Whitehead Decl. ¶ 12.) This now-consolidated action (the “Action” or “Lawsuit”) is currently pending in the Fresno County Superior Court as Case No. 21CECG02976. Defendant denied and continues to deny all claims and contentions alleged by the Plaintiffs in the Lawsuit.⁶ (Whitehead Decl. ¶ 19.) The Parties met and conferred in this Action, and agreed to attend private mediation in an attempt to resolve the litigation, and have engaged in substantial informal discovery. (*Id.* at ¶ 14)

Counsel for Plaintiffs have thoroughly investigated the facts relating to allegations made in the Lawsuit, and thoroughly researched the legal principles and strategies applicable to the claims asserted against Defendant. (Whitehead Decl. ¶ 13.) In preparation for mediation,

⁵ The previously submitted Declaration of Jacob N. Whitehead is attached as Exhibit B to the Appendix filed concurrently herewith.

⁶ Nonetheless, Defendant has concluded that further litigation would be protracted and expensive, and would also divert management and employee time. Defendant has taken into account the uncertainty and risks inherent in litigation, especially in multi-party cases, therefore, has concluded that it is desirable that the Lawsuit be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement. Defendant states that it is entering into the Settlement to eliminate the burden and expense of further litigation. (Settlement Agreement §§ 2.7, 2.13.)

1 Defendant produced payroll records for a sample of Aggrieved Employees and the personnel
2 files for the named Plaintiffs, including employee handbooks, timekeeping policies, payroll
3 records, meal and rest break policies, and purported arbitration agreements, along with
4 providing the total number of Aggrieved Employees during the PAGA period, and counts of
5 former employees, pay periods, and average hourly pay rate, all of which Plaintiffs' counsel
6 reviewed and analyzed in advance of mediation and during the negotiation process. (*Id.* at ¶
7 15.) Plaintiffs' counsel also interviewed other Aggrieved Employees. (*Ibid.*) Thus, Plaintiffs'
8 damages calculations were based on review and analysis of the information and documents
9 produced by Defendant, as well as the testimonial and documentary evidence provided by the
10 Plaintiffs and other Aggrieved Employees. (*Ibid.*)

11 The Parties participated in full-day mediation session with Jill R. Sperber, an
12 experienced neutral and well-respected mediator who is very knowledgeable regarding PAGA
13 claims, and reached an agreement on the essential terms of a settlement with respect to this
14 Lawsuit. (Whitehead Decl. ¶ 16.) The Parties' agreement was subsequently set forth in a written
15 Memorandum of Understanding that was accepted by both Parties, the terms of which are now
16 memorialized in complete and final form in the Settlement Agreement. (*Ibid.*) At all times, the
17 Parties' negotiations were adversarial, non-collusive, in good faith, and at arm's length. (*Ibid.*)

18 **IV. TERMS OF THE PAGA SETTLEMENT**

19 The PAGA settlement is subject to Court approval pursuant to Labor Code section 2699,
20 subdivision (1)(2). (Settlement Agreement §3.3.) The following is a summary of the principal
21 terms of the Settlement Agreement.

22 **A. Aggrieved Employees and Terms of the Settlement**

23 As noted above, Aggrieved Employees (also known as PAGA Members), are defined as
24 all hourly-paid or non-exempt individuals employed by Defendant for at least one day between
25 August 27, 2020 and June 09, 2023. (*Amended Settlement Agreement at p. 2, amending*
26 *Settlement Agreement §1.9.*) Defendant has represented that there are approximately 728
27 employees who are PAGA Members, and who have collectively worked 20,400 pay periods
28 during the Relevant Period.

1 The Settlement Agreement negotiated by the Parties provides for a *non-reversionary*
2 ***Gross Fund Value (“GFV”) payment in the amount of Two Hundred and Forty Thousand***
3 ***Dollars (\$240,000.00)*** to resolve the PAGA claims (also referred to as the “PAGA Settlement
4 Amount”). (Settlement Agreement § 4.1.) Payments to the LWDA and PAGA Members,
5 attorneys’ fees and litigation costs to Plaintiffs’ counsel, and enhancement award payments to
6 Plaintiffs, as well as settlement administration fees, will be made from the PAGA Settlement
7 Amount. (*Id.* at §§ 4.1-4.5.) Specifically, Plaintiffs’ counsel request an award of attorneys’ fees
8 not to exceed 33% (or \$80,000) of the GFV, plus reimbursement of actual litigation expenses
9 in the amount of \$10,844,59. (*Id.* at § 4.3.) Subject to the comments in section II.C, supra, and
10 newly submitted declarations, Plaintiffs also request enhancements awards of \$10,000 to each
11 Plaintiff (for a total amount of \$20,000) in recognition of their significant time expended, and
12 services performed, on behalf of PAGA Members and the State of California in pursuing the
13 Action, for the significant responsibility undertaken by serving as Representative Plaintiffs, and
14 in exchange for an individual general release of claims by each of them. (Settlement Agreement
15 §§ 4.3, 4.6.) Finally, any expenses incurred by the third-party Claims/Settlement Administrator⁷
16 (with an estimated bid by CPT Group, Inc. of \$8,000) will also be paid from the GFV. After
17 these deductions, the amount remaining, referred to as the “Net Settlement Amount,” is
18 estimated to be \$121,343.92. (Whitehead Decl. ¶ 18.)⁸

19 Of the Net Settlement Amount, seventy-five percent (75%) will be paid to the LWDA,
20 and the remaining twenty-five percent (25%) will be paid to the Aggrieved Employees/PAGA
21 Members (“Individual PAGA Member Payment”). (Settlement Agreement §§ 1.22 and 4.2.)
22 These allocations are proper under Labor Code section 2699, as explained by *ZB, N.A. v.*
23 *Superior Court* (2019) 8 Cal.5th 175.

24
25 ⁷ Consistent with the vernacular of the Settlement Agreement, the third-party settlement
26 administrator is referred to herein as the “Claims Administrator,” but given this the Settlement only
settles PAGA claims, there is no actual “claims” process.

27 ⁸ The actual total is now \$121,532.43 due to a slight upward adjustment of \$188.51 derived from
28 updated costs. (See Revised Whitehead Decl. ¶ 11, for Whitehead Employment Law costs totaling
\$5,364.40 [small upward adjustment of \$125.79]; Connor Decl. ¶ 21, for CounselOne, PC costs
totaling \$5,480.19 [small upward adjustment of \$62.72].)

1 The Individual PAGA Member Payment to each PAGA Member shall be based on the
2 number of pay periods each PAGA Member worked during the Relevant Period in California,
3 as a percentage of the total pay periods worked by all PAGA Members during the Relevant
4 Period in California. (Settlement Agreement §§ 4.2, 4.4.) Individual PAGA Member Payments
5 to PAGA Members shall be deemed 100% penalties and interest. (*Id.* at § 4.4.) As noted above,
6 the Relevant Period is defined as August 27, 2020 *through June 09, 2023*. (*See Amended*
7 *Settlement Agreement at p. 2, amending Settlement Agreement §1.10.*)

8 **B. The Releases by PAGA Members and Representative Plaintiffs**

9 Upon entry of judgment, the Released Parties⁹ shall be released from the PAGA
10 Released Claims by PAGA Members. Pursuant to the Settlement Agreement, all PAGA
11 Members will be deemed to have, and by operation of the Court’s Order granting approval, will
12 have expressly waived and relinquished, to the fullest extent permitted by law, all penalties
13 under the PAGA during the Relevant Period, for the following violations: (1) failure to pay
14 wages (Lab. Code, §§ 200, 218, 218.5 & 1194); (2) failure to pay overtime wages (Lab. Code,
15 §§ 218, 510 & 1194); (3) failure to provide complete and accurate wage statements (Lab. Code,
16 §§ 226 & 1174); (4) failure to timely pay wages and failure to timely pay wages due upon
17 separation or termination (Lab. Code, §§ 201-204); (5) failure to provide meal and rest breaks
18 (Lab. Code, §§ 226.7, 512, and 1198); (6) failure to pay minimum wage (Lab. Code, §§ 1194,
19 1197, 1197.1); and (7) failure to reimburse work expenses (Lab. Code, §§ 2800, 2802)
20 (collectively, the “PAGA Released Claims”). With the exception of Plaintiffs, the Settlement
21 does not impact PAGA Members’ ability to assert claims, other than PAGA claims, arising
22 from alleged violations of the Labor Code during the Relevant Period. (Settlement Agreement
23 § 4.6).

24 ///

25
26 ⁹ The “Released Parties” are defined as: Defendant The California Home for the Aged, Inc., and its
27 past, present and future subsidiaries, parents, affiliated and related companies, divisions, successors,
28 predecessors or assigns, and their past, present, and future officers, directors, shareholders, partners,
agents, owners, insurers, employee, advisors, accountants, representatives, trustees, heirs, executors,
administrators, predecessors, successors or assigns. (Settlement Agreement § 1.29.)

Under the terms of the Settlement, Plaintiffs will each receive a PAGA Representative Enhancement Award, to be paid in recognition of their respective time and service to PAGA Members and the State of California in pursuing the litigation and fulfilling their obligations as Representative Plaintiffs, and in exchange for their individual general releases including a Civil Code section 1542 waiver (in addition to the release of the PAGA Released Claims). Subject to the comments in section II.C, supra, and newly submitted declarations, Plaintiffs request an amount of \$10,000 each (*i.e.*, \$20,000 in the aggregate). (Settlement Agreement §§ 4.3, 4.6-4.7; *see also* Vidal Decl., *passim*; Pena-Leon Decl., *passim*.)

C. Settlement Payments and Notice

No later than thirty (30) calendar days following the Effective Date, Defendant shall transfer the PAGA Settlement Amount to the Claims Administrator. (Settlement Agreement § 5.1.) Moreover, notice of the Settlement shall be provided to the Aggrieved Employees in the following manner, as set forth in the Settlement Agreement: Defendant will provide a list containing the contact information, including the last known addresses, of PAGA Members to the Claims Administrator (in a secure manner and on a confidential basis) within thirty (30) calendar days after the Effective Date. (*Ibid.*) Within thirty (30) calendar days after receipt of the PAGA Settlement Amount from Defendant, the Claims Administrator will issue and send to each PAGA Member a check for his or her Individual PAGA Member Payment at his or her last known address, along with an explanatory letter providing notice of the Settlement and its terms and information regarding the payment enclosed therewith (*e.g.*, Notice of Settlement of PAGA Representative Action (“PAGA Payment Letter”)). A true and correct copy of the proposed [*Amended*] PAGA Payment Letter is attached as **Exhibit 3 to the Connor Decl.** Checks will remain negotiable for a period of 120 days, after the expiration of which, any uncashed checks will be redistributed to the State of California’s Unclaimed Property Fund. (Settlement Agreement § 4.17.)

Any Individual PAGA Member Payment checks returned as undeliverable on or before the check cashing deadline will be promptly sent via First Class U.S. Mail to any forwarding address affixed thereto. (Settlement Agreement § 5.2.) In the event an Individual PAGA

1 Member Payment check is returned to the Claims Administrator as undeliverable without a
2 forwarding address, the Claims Administrator will conduct a skip-trace and re-mail the returned
3 check to any address located as a result thereof. (*Ibid.*) The expense of such investigation/search
4 shall be included in the Claims/Settlement Administration Costs. (*Ibid.*) If a PAGA Member
5 contacts the Claims Administrator (or any party’s counsel) with a new address within thirty
6 (30) days of the date that checks are initially mailed to the PAGA Members, the Individual
7 PAGA Member Payment check for that PAGA Member will be reissued and mailed to the new
8 address no later than five (5) days after receipt of the new address for that PAGA Member.
9 (*Ibid.*) Any such reissued check will indicate on its face that it is void if not negotiated within
10 sixty (60) days of its issuance. (*Ibid.*) Finally, in the event any interest is earned on any portion
11 of the monies allocated to PAGA Members, Plaintiffs’ counsel, the Representative Plaintiffs,
12 and/or the Claims Administrator, such interest will be paid to the State Bar of California, Legal
13 Services Trust Fund Program, as a donation to the legal aid programs funded by the State Bar
14 of California. (*Id.* at § 5.3.)

15 **V. THE PAGA SETTLEMENT SHOULD BE APPROVED**

16 Labor Code section 2699, subdivision (l), requires that the Court “shall review and
17 approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed
18 settlement shall be submitted to the agency at the same time that it is submitted to the court.”
19 As such, and as noted above, simultaneously with this Revised PAGA Approval Motion’s filing,
20 the Amended Settlement Agreement, and Settlement Agreement are being submitted to the
21 LWDA, along with a copy of this Motion. (See Connor Decl. ¶ 32.)

22 The statute does not explain what exactly the trial court should consider when reviewing
23 a proposed PAGA settlement. However, the Court of Appeal in *Moniz v. Adecco USA, Inc.*
24 (2021) 72 Cal.App.5th 56, provided some guidance. The Court explained that “many federal
25 district courts have applied the ‘fair, reasonable, and adequate’ standard from class action cases
26 to evaluate PAGA settlements.” (*Id.* at pp. 75-76.) Specifically, the Court stated:

27 Despite the fact that “a representative action under PAGA is not a class
28 action”, and is instead a “type of qui tam action”, a standard requiring the trial
court to determine independently whether a PAGA settlement is fair and

1 reasonable is appropriate. Class actions and PAGA representative actions have
2 many differences, with one salient difference being that certain due process
3 protections afforded to unnamed class members are not part of PAGA litigation
4 because aggrieved employees do not own personal claims for PAGA civil
penalties. Nonetheless, the trial court must “review and approve” a PAGA
settlement, and the Supreme Court has in dictum referred to this review as a
“safeguard[.]”

5 (*Id.* at pp. 76-77 [internal citations omitted].) Thus, the *Moniz* Court held that the trial court
6 should review PAGA settlements to determine whether they are fair, adequate, and reasonable.
7 (*Ibid.*) Moreover, “because many of the factors used to evaluate class action settlements bear
8 on a settlement’s fairness,” some useful criteria include: the strength of the plaintiff’s case; the
9 risk, the stage of the proceeding, the complexity and likely duration of further litigation; and
10 the settlement amount. (*Id.* at p. 77.) Based on application of such criteria to the matter *sub*
11 *judice*, which embodies all of the key features, the Parties now respectfully ask the Court to
12 review and approve the proposed Settlement.

13 **A. The Relative Strength of the PAGA Claims and the Realistic Range of**
14 **Outcomes in the Litigation Strongly Favor Approval of the Settlement**

15 Here, the relative strength of the PAGA claims brought by Plaintiffs weigh in favor of
16 the Court finding that the Settlement is fair, adequate, and reasonable, since there are significant
17 risk factors that Plaintiffs would face if they did not settle this matter.

18 As a threshold matter, this PAGA litigation presents itself amidst the challenging context
19 of the United States Supreme Court’s June 15, 2022 decision in *Viking River Cruises, Inc. v.*
20 *Moriana* (2022) 142 S.Ct. 1906, which poses significant risks. Post-*Viking River*, the landscape
21 of PAGA litigation statewide has been significantly altered, and the ramifications will take
22 months, if not years, to be fully realized in California trial and appellate courts. (*See, e.g.,*
23 *Adolph v. Uber Technologies, Inc.* (Cal. Ct. App., Apr. 11, 2022) 2022 WL 1073583, review
24 granted (July 20, 2022));¹⁰ *see also Jarobe v. Hanlees Auto Group* (2020) 53 Cal.App.5th 539

25
26 ¹⁰ The issue to be briefed and argued in *Adolph, supra*, is limited to the following: “Whether an
27 aggrieved employee who has been compelled to arbitrate claims under the Private Attorneys General
28 Act (PAGA) that are ‘premised on Labor Code violations actually sustained by’ the aggrieved
employee [citation] maintains statutory standing to pursue ‘PAGA claims arising out of events
involving other employees’ [citation] in court or in any other forum the parties agree is suitable.”

1 [recognizing courts are vested with discretion to stay inarbitrable claims pending arbitration].)
2 Although Plaintiffs’ counsel anticipate an employee-favorable ruling from the California
3 Supreme Court in *Uber Technologies*, an adverse ruling could be fatal to PAGA Members
4 obtaining any recovery on a representative basis. This Settlement obviates those risks and
5 delays.

6 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove
7 each of the underlying Labor Code violations. (*See Cardenas v. McLane Foodservice, Inc.*,
8 (C.D.Cal. 2011) 2011 U.S.Dist.LEXIS 13126, at *10 [“Given the statutory language [of
9 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
10 suffered a violation of the Labor Code by the defendant.”]; Whitehead Decl. ¶ 26.) In other
11 words, Plaintiffs would need to prove that each Aggrieved Employee suffered a violation for
12 each period the employee worked in relation to meal or rest period violations, off-the-clock
13 work, failure to pay minimum or overtime wages, failure to provide accurate itemized wage
14 statements, failure to maintain accurate payroll records, failure to pay wages when due, and
15 failure to reimburse for required expenses. (*Ibid.*)

16 Defendant denied and continues to deny all the claims and contentions alleged by the
17 Representative Plaintiffs in the Lawsuit. (Whitehead Decl. ¶ 19.) Defendant also maintained,
18 and continues to maintain, that it had legally compliant employment policies and practices
19 throughout the time period at issue. (*Ibid.*) Even assuming, *arguendo*, that such Labor Code
20 violations occurred, which Defendant denies, Defendant contends that said violations would
21 only be considered “initial violations” and thus heightened “subsequent violation” penalties are
22 not warranted where the violations were not intentional. (*See* Lab. Code, § 2699, subd. (f)(2);
23 *see also Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1208-09 [“Until the
24 employer has been notified that it is violating a Labor Code provision [...], the employer cannot
25 be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject
26 to penalties.”].)

27 An important feature of the PAGA is that the Court retains discretion to lower penalties,
28 based on the facts and circumstances of the particular case, if not doing so would otherwise

1 result in an award that is “unjust, arbitrary and oppressive, or confiscatory.” (*See* Lab. Code, §
2 2699, subd. (e)(2); *see also* *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
3 Cal.App.4th 1112, 1136 [holding that a court may reduce the amount of PAGA penalties
4 awarded to an employee based upon discretionary factors].) Under the PAGA, Courts have
5 considerable discretion to reduce the penalty award. In *Fleming v. Covidien* (C.D.Cal. 2011)
6 2011 U.S.Dist.LEXIS 154590, a federal court reduced PAGA penalties from \$2,800,000 to
7 \$500,000, a reduction of 82.2%, because the court found maximum penalties “unjust,” finding
8 the employees had suffered no injuries. Some trial courts have actually awarded no civil
9 penalties, even when Labor Code violations were established. (*See Makabi v. Gedalia* (Mar. 2,
10 2016, No. B261005) [2016 Cal. App. Unpub. LEXIS 1489, at *5-7] [no PAGA penalties were
11 awarded by the Los Angeles County Superior Court]; *In re Taco Bell Wage & Hour Actions*
12 (E.D.Cal. Apr. 6, 2016) 2016 U.S.Dist.LEXIS 48557, at *40-43 [PAGA penalties denied after
13 trial].) By contrast, under the Settlement Agreement, the amount made available as PAGA
14 Settlement Amount is a sum certain of \$240,000. The amount is a significant penalty, yet is not
15 confiscatory, nor is it, per the terms of the PAGA statute, “unjust, arbitrary, or oppressive.”
16 (Lab. Code, § 2699, subd. (e)(2).)

17 Finally, Defendant denied, and continues to deny, that Plaintiffs’ Lawsuit is appropriate
18 for representative treatment for any purpose other than settlement. (Whitehead Decl. ¶ 20.)
19 Although wage-and-hour actions are amenable to resolution as to a group of employees,
20 Defendant contended that some courts have also found that, for various reasons, the issues
21 raised by Plaintiffs are individual issues, and/or are unmanageable, and thus not suitable for
22 adjudication as to a group of employees. (*Ibid.*) Defendant contended that courts have required,
23 and that due process requires, that the adjudication of PAGA claims meet a “manageability”
24 requirement. (*See, e.g., Liu v. Merrill Lynch & Co.* (C.D.Cal. Nov. 10, 2014, No. CV-14-0425-
25 PA) 2014 WL 5904904, at *3-4 [Court dismissed the PAGA claim because a multitude of
26 individualized assessments would be necessary, making the PAGA claim unmanageable];
27 Whitehead Decl. ¶ 20.) Specifically, Defendant argued that numerous individualized inquiries
28 would be needed to determine liability on Plaintiffs’ claims, including: (1) whether aggrieved

1 employees worked off-the-clock with knowledge of a supervisor or Defendant; (2) whether each
2 individual took a particular meal period or rest break on a particular occasion; (3) whether the
3 meal period was waived; and (4) where the individual skipped the meal or rest period, **why** it
4 was skipped for each of the allegedly Aggrieved Employees. (Whitehead Decl. ¶ 20.) Defendant
5 argued that the litigation would be unmanageable, given that the allegations encompass
6 hundreds of individuals with varying job positions across multiple departments.

7 While Plaintiffs disagree with Defendant's contentions and maintain that their PAGA
8 claims have merit, in reaching the settlement, Plaintiffs and their counsel took into account the
9 strengths and weaknesses of each side's position and uncertainty as to how the case would
10 progress as litigation continued, and the outcome of a potential trial and/or appeals. (Whitehead
11 Decl. ¶ 21.) Defendant's defenses present risks to the PAGA claims and the potential that some
12 or all of the PAGA penalties sought may not be awarded. (*Ibid.*) Thus, the Settlement reached
13 here is reasonable in light of significant risk and uncertainties associated with the PAGA claims
14 in this case.

15 **B. The Risk, Expense, and Complexity of Further Litigation Balances Strongly in**
16 **Favor of Approval of the Settlement**

17 Here, the expense, complexity, and likely duration of future litigation were, to some
18 extent, unknown. However, what is certain in this case is that to adequately establish the
19 foundational violations that would support a substantial penalty award, investment of
20 tremendous time and expense would be required. To adequately establish that aggrieved
21 employees experienced the alleged violations, and at what frequency, most of the aggrieved
22 employees would need to be interviewed in a systematic fashion and their testimony cataloged
23 in a sufficiently meaningful way, so as to permit the submission of summary evidence at trial
24 (*i.e.*, such as planning and implementing an illustrative survey). *First*, the burdensome nature
25 of such a process would be expensive and time-consuming. *Second*, the interviews and factual
26 investigation already undertaken by Plaintiffs' counsel confirmed substantial risk that the Court
27 would either substantially reduce any penalty ultimately awarded, *or* conclude that the conduct
28 was insufficient to support a penalty award. *Third*, it would be essentially impossible to

1 formulate an objectively reliable means of summarizing testimonial experiences, other than by
2 an extraordinarily detailed survey. And formulating such a survey would have been important,
3 since frequency of violations would need to be established before any penalties could be
4 recovered. (Whitehead Decl. ¶ 22.) Alternatively, direct testimony would have been required
5 from as many of the 728 Aggrieved Employees as could be obtained, which would be, at best,
6 extremely difficult. (*Ibid.*) The evidence collected to date lead Plaintiffs to conclude that, to the
7 extent violations occurred, a fact which Defendant disputes, the violations were not systematic
8 and not uniform across all of Defendant's employees who worked during the relevant period.
9 (*Ibid.*)

10 **C. The PAGA Settlement Amount is Fair, Adequate, and Reasonable.**

11 The Parties believe that the PAGA Settlement Amount is fair, adequate, and reasonable
12 and therefore should be approved. "In determining whether the proposed settlement falls within
13 the range of reasonableness, perhaps the most important factor to consider is plaintiffs'
14 expected recovery balanced against the value of the settlement offer." (*Cotter v. Lyft, Inc.*
15 (N.D.Cal. 2016) 176 F.Supp.3d 930, 935 [internal quotation omitted].) Here, the relative
16 strength of the PAGA claims brought by Plaintiffs weigh in favor of the Court finding that the
17 settlement is fair, adequate, and reasonable, since there are significant risk factors that Plaintiffs
18 would face if they did not settle this matter.

19 Most significantly, the ultimate decision as to the amount of penalties is always up to
20 the discretion of the Court. Labor Code section 2699, subdivision (e)(2), states: "[i]n any action
21 by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a)
22 or (f), a court may award a lesser amount than the maximum civil penalty amount specified by
23 this part if, based on the facts and circumstances of the particular case, to do otherwise would
24 result in an award that is unjust, arbitrary and oppressive, or confiscatory." Subdivision (a)
25 states:

26 Notwithstanding any other provision of law, any provision of this code that
27 provides for a civil penalty to be assessed and collected by the Labor and
28 Workforce Development Agency or any of its departments, divisions,
commissions, boards, agencies, or employees, for a violation of this code, may,
as an alternative, be recovered through a civil action brought by an aggrieved

1 employee on behalf of himself or herself and other current or former employees
2 pursuant to the procedures specified in Section 2699.3.

3 (Lab. Code, § 2699, subd. (a).) Subdivision (f) specifies the penalties in instances where the
4 underlying statute does not specify any civil penalty. In other words, where the facts and
5 circumstances of the case demonstrate that an unreduced award would be “unjust, arbitrary and
6 oppressive, or confiscatory,” the court may reduce the award to ameliorate such. (See Lab.
7 Code, § 2699, subd. (e)(2).)

8 In *Cotter*, the court found a significant reduction of the PAGA claim would be
9 appropriate because “[t]his does not appear to be a case where a company has deliberately
10 sought to evade the law.” (*Cotter, supra*, 176 F.Supp.3d at p. 941.) Here, Defendant can state a
11 strong case that, as the Court concluded in *Cotter*, its efforts to devise compliant operational
12 policies do not indicate an organization that has deliberately sought to evade the law. This is a
13 very significant risk factor. Defendant also disputes that Plaintiffs could find a coherent method
14 for proving liability for the 728 employees working in different departments and/or job
15 positions in Defendant’s nursing and residential care facility. Establishing violations for
16 purposes of the PAGA would be difficult in this matter. After analyzing the claims in this
17 matter, Plaintiffs have concluded that the value of this Settlement is fair, adequate, and
18 reasonable. (Whitehead Decl. ¶ 23; Declaration of Anthony J. Orshansky (“Orshansky Decl.”),
19 filed concurrently herewith, at ¶¶ 14, 21.)¹¹

20 Using the most straightforward formulation by applying the “catch-all” \$100 penalty
21 specified in Labor Code section 2699, subdivision (f)(2), to each pay period per employee for
22 all of the estimated 20,400 pay periods, the maximum plausible exposure is \$2,040,600. The
23 PAGA Settlement Amount of \$240,000 is about 12% of that estimated exposure value. Thus,
24 based on this method of calculation, this PAGA Settlement Amount compares favorably to the
25 estimated amount of PAGA penalties. When considering the serious risks discussed herein—
26 especially *Viking River Cruises* and its progeny—and the Court’s inherent power to adjust

27
28 ¹¹ The previously submitted Declaration of Anthony J. Orshansky is attached as Exhibit C to the
Appendix filed concurrently herewith.

1 penalties downward to reflect an employer that sought to be in compliance with wage and hour
2 laws even if mistakes were sometimes made, the compromise figure is reasonable.

3 The LWDA has released data on PAGA settlement amounts. The settlement secured by
4 Plaintiffs here is greater than other PAGA penalty awards approved by California state courts,
5 which often range between \$7,500 and \$15,000 for PAGA claims impacting hundreds or
6 thousands of individuals, resulting in much lower PAGA penalty payments on a per capita basis.
7 (*See, e.g., Penaloza v. PPG Industries Inc.* (Super. Ct. L.A. County, May 20, 2013, No.
8 BC471369) 2013 WL 2917624, at *2 [approving PAGA penalties of \$5,000.00 to class of 667
9 members]; *Cabrera v. Advantage Sale & Marketing, LLC* (Super. Ct. L.A. County, March 12,
10 2013, No. BC485259) 2013 WL 1182822 [approving PAGA penalties of \$10,000.00 for class
11 of approximately 3,000 members].)

12 For example, in *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, the Court of
13 Appeal affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay
14 period. Therefore, at trial in the instant matter, any PAGA penalties awarded could be
15 significantly less than Plaintiffs' calculation, even *if* Plaintiffs prevailed on the PAGA claim. If
16 the amount of \$5 per pay period from *Carrington* is used, the potential recovery of civil
17 penalties would be only \$74,130 which is less than this settlement provides. The result achieved
18 in this case, and the monetary recovery provided by this settlement, are well within the range
19 of an acceptable settlement under the circumstances, especially when compared to the
20 settlement of PAGA claims in other cases.¹² (Whitehead Decl. ¶ 28.)

21
22 ¹² *See, e.g., DCH Auto Wage and Hour Cases*, Los Angeles Superior Court, Case No. JCCP433
23 (May 2017) (approving the amount of \$15,000 out of \$4 million toward settlement of PAGA claims);
24 *Garcia v. Gordon Trucking, Inc.* (E.D.Cal. Oct. 31, 2012) 2012 WL 5364575, at *3 (approving the
25 amount of \$10,000 out of \$3.7 million toward settlement of PAGA claims); *Schiller v. David's*
26 *Bridal, Inc.* (E.D.Cal. June 11, 2012, No. 1:10-cv-00616-AWI-SKO) 2012 WL 2117001, at *14
27 (approving the amount of \$10,000 out of \$518,245 toward settlement of PAGA claims); *Chu v. Wells*
28 *Fargo Investments, LLC* (N.D.Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving the amount
of \$10,000 out of \$6.9 million toward settlement of PAGA claims); *Franco v. Ruiz Food Products,*
Inc. (E.D.Cal. Nov. 27, 2012) 2012 WL 5941801, at *14 (approving the amount of \$10,000 out of
\$2.5 million toward settlement of PAGA claims); *Nordstrom Com. Cases* (2010) 186 Cal.App.4th
576 (finding no abuse of discretion by the trial court in approving a settlement that allocates \$0
toward the settlement of PAGA claims that were at issue in the lawsuit). Here, the value obtained
for settlement of the PAGA claims is significant, and it will be distributed in accordance with and in
fulfillment of the objectives of the PAGA statute.

1 **D. The Presence of a Government Participant**

2 As set forth above, 75% of the penalty is paid to the LWDA. In connection therewith,
3 Labor Code section 2699.3, subdivision (b)(4), permits the LWDA to comment on the penalties.
4 This provides an independent check on collusive settlements. The LWDA has been provided
5 with a copy of this Revised Motion, the Amended Settlement Agreement, and the Settlement
6 Agreement, thereby providing notice. (*Connor Decl.* ¶ 32.) The decision of the LWDA to accept
7 the PAGA Settlement and not oppose this Motion should be given considerable weight. This is
8 not a situation where the Court needs to be concerned about the rights of absent employees, as
9 with a class action settlement, given this PAGA-only settlement does not release the individual
10 claims of absent employees and that the LWDA is a sophisticated government entity which is
11 highly capable of protecting its own interests.

12 **E. PAGA Settlement Counsel are Experienced and Negotiated Aggressively**

13 The Court may also consider that negotiations between the Parties were conducted at
14 arm's length and in an adversarial manner, despite a mutual desire to resolve the case.
15 (*Whitehead Decl.* ¶ 16.) The Court may also consider the opinion of all counsel that the
16 settlement arrived at is fair, reasonable and in the best interests of the aggrieved employees.
17 Plaintiffs' counsel are experienced with employment class actions and representative actions,
18 as set forth more fully in the concurrently filed Declarations of Jacob N. Whitehead and
19 Anthony J. Orshansky.

20 **F. The Parties' Substantial Investigation and Exchange of Data Favor Approval**

21 In evaluating the Parties' basis for valuing a settlement, "formal discovery is not a
22 necessary ticket to the bargaining table." (*Linney v. Cellular Alaska Partnership* (9th Cir.
23 1998) 151 F.3d 1234, 1239.) Here, the substantial exchange of data was sufficient to enable
24 Plaintiffs' counsel to evaluate the strength and value of the claim for purposes of settlement.
25 (*Whitehead Decl.* ¶ 15.) As discussed above, Plaintiffs' counsel interviewed other Aggrieved
26 Employees; reviewed personnel files, timekeeping policies, meal and rest break policies,
27 payroll records, employee handbooks, and purported arbitration agreements; performed
28 qualitative and quantitative analyses of Defendant-produced data, including the number of

1 Aggrieved Employees during the PAGA period, and counts of former employees, pay periods,
2 and average hourly pay rates; and analyzed time and pay records to assess exposure and risk.
3 (*Ibid.*) Based on Plaintiffs' counsel's experience litigating wage and hour claims, such
4 investigation was sufficient to determine the potential value of the PAGA claims, and to
5 evaluate the strength of these claims for purposes of settlement. (*Ibid.*)

6 **G. These Relevant Factors Weigh in Favor of the PAGA Settlement**

7 In summary, while Plaintiffs believe that the claims asserted in the Lawsuit have merit
8 and that the evidence developed to date is supportive, they recognize and acknowledge the
9 expense and length of the continued proceedings necessary to prosecute the case against
10 Defendant through trial and appeals. Plaintiffs' counsel have also taken into account the
11 uncertain outcome and risk of any litigation, especially in complex actions such as this one, as
12 well as the difficulties and delays inherent in such litigation. Plaintiffs and Plaintiffs' counsel
13 are together mindful of the inherent problems, including the risk of not being able to maintain
14 representative claims, the difficulty of proving Plaintiffs' claims in a manageable trial, and the
15 possible merits of Defendant's alleged defenses. Since the terms set forth in the Settlement
16 Agreement confer substantial monetary benefits in the face of genuine risks to any recovery at
17 all, and after considered, careful evaluation, Plaintiffs' counsel have determined that the
18 Settlement is in the best interests of the Representative Plaintiffs, the State of California, and
19 the PAGA Members.

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

21 Plaintiffs' counsel seek approval of attorneys' fees in the amount of \$80,000, which
22 represents one-third (or 33.3%) of the \$240,000 PAGA Settlement Amount. The Court-
23 approved attorneys' fees award will be split between Plaintiffs' counsel CounselOne and
24 Whitehead Employment Law by shares of 50% and 50%, respectively, as agreed upon by
25 counsel and Plaintiffs.

26 Pursuant to Labor Code section 2699, subdivision (g)(1), the prevailing party in a PAGA
27 action is entitled to reasonable attorneys' fees and costs. Though Plaintiffs are not claiming that
28

1 they are prevailing parties, the settlement of a PAGA action must consider the fees that have
2 been incurred as an element of the liability analysis and ultimate settlement.

3 First, the requested fees are justified as a percentage of the settlement amount, given
4 that recovery akin to a common fund for the benefit of others was achieved. Plaintiffs' counsel
5 negotiated a recovery of \$240,000, and this result justifies the requested fees which are equal
6 to one-third of this recovery. This percentage is reasonably comparable to the general, standard
7 contingent recovery percentage of 33.3% in similar cases, as was expressly approved by the
8 Supreme Court in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 504. Here, Plaintiffs'
9 counsel represented Plaintiffs (and the State of California) on a strictly contingency basis and,
10 as such, had to forego other financial opportunities such as litigating other cases (contingency
11 and hourly), and incurred the risk of non-recovery after investment of time, money, and
12 resources, while having proceeded with Plaintiffs' representation since the inception of this
13 case without payment or compensation. (Whitehead Decl. ¶¶ 33-37.)

14 Moreover, the attorneys' fees award requested is also consistent with what courts have
15 awarded in other PAGA representative actions. There follows a sampling of PAGA actions and
16 PAGA/class action cases where attorneys' fees were awarded on a common fund basis ranging
17 between 33.33% and 40%:

- 18 • *Banda v. Verizon California, Inc.*, Los Angeles County Superior Court Case No.
19 BC434587 (**35% fee awarded** on \$15,000,000 settlement of mixed PAGA/class claims);
- 20 • *Padilla v. Staffmark Investment, Inc.*, San Bernardino County Superior Court Case No.
21 CIVDS1408641 (**33.33% fee awarded** on \$2,000,000 settlement of PAGA-only
22 claims);
- 23 • *Birch v. Office Depot*, United States District Court for the Southern District of California
24 Case No. 06-cv-1690-DMS (**40% fee awarded** on \$16,000,000 settlement of mixed
25 PAGA/class claims);
- 26 • *Zelada v. Majestic Terminal Services*, San Bernardino County Superior Court Case No.
27 CIVDS1916968 (**38% fee awarded** on \$1,800,000 settlement of PAGA-only claims);
28 and

- *Garcia v. The Pep Boys*, Orange County Superior Court Case No. 30-2014-00720574-CU-OE-CXC (**33.33% fee awarded** on \$1,030,000 settlement of PAGA-only claims).

According to a leading treatise on class actions, “[n]o general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.” (3 Conte & Newberg, *Newberg on Class Actions* (3rd Ed. 1992) § 14.03.) Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with *thirty to forty percent commonly awarded in cases where the settlement is relatively small*. (*Ibid.*; see also *Van Vranken v. Atlantic Richfield Company* (N.D.Cal. 1995) 901 F.Supp. 294 [stating that most cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].) While this is not a class action, again, California courts routinely approve attorneys’ fees awards “average[ing] around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn. 11 [lower court found the range of contingency fees in marketplace to be up to 40 percent and determined such a percentage fee was appropriate].) Plaintiffs’ counsel’s application for attorneys’ fees in light of the facts and circumstances surrounding the case is well within the range of reasonableness.

Second, the attorneys’ fees award requested is justified by the lodestar cross-check method. Significantly, *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar cross-check, though they need not do so. (*Laffitte, supra*, 1 Cal.5th at p. 506.) This Court can and should award attorneys’ fees and costs based on the percentage fee alone in light of the excellent results achieved and for the reasons stated. Nevertheless, the lodestar “cross-check” here also supports the requested contingency-fee percentage. (*Serrano v. Priest* (1975) 20 Cal.3d 25, 48; see *Whitehead Decl.* ¶ 35 [attesting to 110.5 hours worked by Whitehead Employment Law] and **Exhibit 3** [Attorney Time and Expenses/Costs Breakdown]; *Orshansky Decl.* ¶ 17 [attesting to 99.2 hours worked

1 by CounselOne, PC] and **Exhibit A** [Attorney Time Breakdown]; *see also, Revised Whitehead*
2 *Decl. ¶¶ 9-12 and Time and Task log sheet attached as Exhibit A thereto.*)¹³

3 *Subject to the comments in section II.B, supra, and newly submitted declarations*, adding
4 together the sums of the 110.5 hours at the *readjusted and discounted* hourly rates spent by
5 attorneys at Whitehead Employment Law and the 99.2 hours at the indicated hourly rates spent
6 by attorneys at CounselOne, PC results in a revised **\$128,436 aggregated lodestar** for the work
7 performed by Plaintiffs' counsel. (*See Connor Decl. ¶ 20; Revised Whitehead Decl. ¶¶ 11-12.*)
8 When cross-checked with the requested attorneys' fees of \$80,000, however, the result is a
9 ***negative multiplier***. (*See Connor Decl. ¶ 21; Revised Whitehead Decl. ¶ 12.*) Accordingly, the
10 lodestar cross-check affirms that the fee award requested does in fact fall within the range of
11 reasonableness.

12 Finally, Plaintiffs' counsel also seeks reimbursement of actual out-of-pocket litigation
13 costs incurred, in the *revised aggregate amount of \$10,844.59*. *Specifically, updated litigation*
14 *costs* incurred and requested by Whitehead Employment Law total \$5,364.40. (*See Revised*
15 *Whitehead Decl. ¶ 11 and Exhibit B [Expense Spreadsheet], for Whitehead Employment Law*
16 *costs totaling \$5,364.40 [small upward adjustment of \$125.79]*). *Likewise, updated litigation*
17 *costs incurred and requested by CounselOne, PC total \$5,480.19*. (*See Connor Decl. ¶ 21 and*
18 *Exhibit 2 [Expense Spreadsheet], for CounselOne, PC costs totaling \$5,480.19 [small upward*
19 *adjustment of \$62.72]*.) The litigation costs incurred by Plaintiffs' counsel in this matter
20 benefited Plaintiffs, the LWDA, and PAGA Members, were of the type routinely billed by
21 attorneys in such litigation, and were reasonably and necessarily incurred. Given that the
22 \$10,844.59 in actual litigation costs are reasonable and uncontested, they should be approved.

23 **VII. THE ENHANCEMENT AWARDS TO PLAINTIFFS ARE REASONABLE**

24 As part of the settlement, the Parties seek Enhancement Awards to be paid to the
25 Representative Plaintiffs in recognition of their respective time and service to PAGA Members
26

27 ¹³ Plaintiffs' counsel will also expend future attorney time in attending the hearing on this Motion,
28 overseeing the notice and administration process, and addressing questions from PAGA Members,
among other tasks. (Orshansky Decl. ¶ 17.)

1 and the State of California in pursuing this Action and in fulfilling their obligations as lead
2 Aggrieved Employees, and in exchange for their general release of claims against Defendant.
3 Subject to the comments in section II.C, supra, and newly submitted declarations, Plaintiffs
4 also request enhancements awards in an amount of \$10,000 to each of them (for a total amount
5 of \$20,000). (Settlement Agreement §§ 1.19, 4.3, 4.6.) The Parties acknowledge that Plaintiffs
6 took significant risks in bringing this litigation and actively supporting its prosecution.
7 (Whitehead Decl. ¶ 38.) Numerous other state courts have previously approved service awards
8 and/or individual settlement payments to PAGA representatives in amounts that demonstrate
9 the reasonableness of Plaintiffs' request. (See, e.g., *Garrett v. Bank of America* (Oct. 28, 2016)
10 Alameda County Superior Court Case No. RG13699027 [awarding three PAGA plaintiffs
11 \$25,000 each as service awards]; *Brewer v. Connell Chevrolet*, Orange County Superior Court
12 Case No. 30-2016-00852123 [approving a PAGA representative awarded as an individual
13 settlement payment of \$15,000]; *Jones v. J.C. Penny Corp.*, Los Angeles County Superior Court
14 Case No. BC451823 [awarding PAGA representative a service award of \$10,000]; and *Garcia*
15 *v. Macy's West Stores*, San Bernardino County Superior Court Case No. CIVDS1516007
16 [approving a PAGA settlement and service award of \$10,000].)

17 Here, in addition to executing a general release and facing reputational risks, Plaintiffs
18 spent a significant amount of time assisting Plaintiffs' counsel with the prosecution of this
19 action. As previously described, Plaintiffs' execution of a Civil Code section 1542 release that
20 vastly exceeds the scope of the release by PAGA Group Members (see Settlement Agreement ¶
21 4.7), is worth at least some monetary allocation of the requested award. (See Connor Decl. ¶
22 24-26 [proposing valuation of at least \$5,000]; Revised Whitehead Decl. ¶¶ 16-17; Revised
23 Vidal Decl. ¶ 7.) Moreover, Plaintiffs actively participated in the litigation on behalf of PAGA
24 aggrieved employee by, among other things, performing the following tasks: (1) regularly
25 speaking with their attorneys; (2) providing relevant legal and factual information; (3)
26 evaluating and producing relevant documents; (4) identifying potential witnesses; (5)
27 discussing discovery and penalties issues; (6) participating in and being available during the
28 mediation process; (7) reviewing, discussing, evaluating the terms of and signing the Settlement

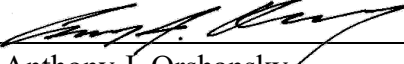
1 Agreement; and (8) regularly requesting updates on the status of the case. (*See Revised Vidal*
2 *Decl. ¶¶ 4-10; Vidal Decl. ¶ 5; Pena-Leon Decl. ¶ 8; Whitehead Decl. ¶ 39; Orshansky Decl. ¶*
3 *24; Connor Decl., passim; Revised Whitehead Decl., passim.*) Plaintiffs will not “benefit
4 financially” from this Settlement in any meaningful sense, yet they have obtained a substantial
5 payment for the State of California and for other PAGA Members. (Vidal Decl. ¶ 6; Pena-Leon
6 Decl. ¶ 11; Whitehead Decl. ¶ 39; Orshansky Decl. ¶ 25; *see also Revised Vidal Decl. ¶¶ 8-10;*
7 *Connor Decl. ¶¶ 27-29; Revised Whitehead Decl. ¶¶ 18-19.*) Thus, the Enhancement Award
8 to each Plaintiff is justified, reasonable, and should be approved.

9 **VIII. CONCLUSION**

10 Based on the foregoing, Plaintiffs respectfully request this Court approve the PAGA
11 settlement as set forth in the *Amended Settlement Agreement and* Settlement Agreement and
12 enter the *Amended* Proposed Order and Judgment submitted concurrently herewith.

13
14 Dated: December 10, 2023

COUNSELONE, PC

15
16 By: 

Anthony J. Orshansky

Jennifer L. Connor

17
18 **WHITEHEAD EMPLOYMENT LAW**

Jacob Whitehead

19
20 Attorneys for Plaintiffs