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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CRISTAL BOWMAN, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

DELTA DENTAL OF CALIFORNIA, a
California Non-Profit Corporation; and DOES
1-50, inclusive,

Defendant.

CASE NO. RG21108230

[Assigned for all purposes to the Hon.
Evelio Grillo, Dept. 21]

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR APPROVAL OF
PAGA SETTLEMENT**

[Filed concurrently with Declarations of
James R. Hawkins, Christina M. Lucio,
Cristal Bowman; and [Proposed] Final
Order and Judgment]

Date: April 11, 2023
Time: 10:00 a.m.
Dept.: 21

Complaint Filed: August 9, 2021

RES ID: 342423094653

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 11, 2023, at 10:00 a.m., in Department 21 of the Alameda Superior Court, located at the Administration Building, 1221 Oak Street, Oakland, California 92612, plaintiff Cristal Bowman will, and hereby does, move this Court for entry of an order and judgment approving the parties' PAGA settlement pursuant to Labor Code section 2699(a)(2). In connection, Plaintiff also requests that the Court grant leave for the filing of the

1 First Amended Complaint, attached as Exhibit B to Exhibit 1 to the Declaration of James
2 Hawkins.

3 The proposed settlement is set forth in the accompanying Private Attorneys General Act
4 (Labor Code §2698 et seq.) Settlement and Release Agreement (“Settlement”, “Agreement” or
5 “Settlement Agreement”), attached as Exhibit 1 to the Hawkins Declaration. This PAGA
6 Settlement resolves this entire action.

7 The motion will be based upon this notice, the attached Memorandum of Points and
8 Authorities, the Declarations of James R. Hawkins, Cristal Bowman, and all exhibits thereto,
9 the complete files and records of this case, and any other evidence or oral argument which may
10 be considered by the Court at the time of the hearing.

11 The Labor Workforce Development Agency has been served with this motion and the
12 Settlement Agreement as set forth in the accompanying proof of service.

13
14
15 DATED: March 15, 2023

JAMES HAWKINS APLC

16
17 By:



18 JAMES R. HAWKINS
19 CHRISTINA M. LUCIO
20 Attorneys for Plaintiff Cristal Bowman,
21 individually and on behalf of all others similarly
22 situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code
4 section 2699, *et seq.*, plaintiff Cristal Bowman (“Plaintiff”) seeks court approval of the settlement
5 of the PAGA claim set forth in the First Amended Complaint (filed concurrently herewith as
6 Exhibit B to the Settlement Agreement). In the Action, Plaintiff alleges that defendant Delta
7 Dental of California (“Defendant”) misclassified aggrieved employees resulting in various wage
8 and hour violations, including for (1) unpaid minimum and overtime wages; (2) failure to provide
9 meal periods; (3) failure to provide rest periods; (4) failure to timely pay wages owed upon
10 separation; (5) failure to provide rest periods; (6) failure to provide accurate lawful itemized wage
11 statements; and (7) unfair competition. Plaintiff filed this Action as a putative class action on
12 August 9, 2021. On October 15, 2021, Plaintiff filed a separate, representative action complaint
13 for penalties pursuant to PAGA under Case No. 21CV000378. On March 22, 2022, the two cases
14 were consolidated, with Case No. RG21108230 as the leading case number. In accordance with
15 the Settlement Agreement, the class claims in this Action will be dismissed, and only the PAGA
16 claims will be addressed by this Settlement. This action will resolve the PAGA claims of Plaintiff
17 and 18 other specifically identified California employees of Defendant whose roles, like
18 Plaintiff’s, were reclassified from exempt to non-exempt in April 2021. The Release period is for
19 the period from February 15, 2020 through the date of the Court’s approval order. (Settlement
20 Agreement (“Settlement”), III(C), III(BB).) Accordingly, the release has been narrowly tailored
21 to resolve only those PAGA claims set forth in the FAC for this limited group.

22 Under the Settlement, Defendant will pay \$320,000.00 to settle the PAGA claims for
23 these 19 employees. (Settlement, ¶ 9.5.2.) The PAGA penalties secured by the Settlement are
24 genuine and meaningful, and fulfill PAGA’s underlying purpose to benefit the public. As
25 detailed below, the Settlement was reached after extensive information exchange, and
26 investigation by the Parties, including a thorough review and analysis of Defendant’s wage and
27 hour policies and a sampling of the Allegedly Aggrieved Employees’ time and payroll records,
28 interviews, and a full-day mediation before Judge Ronald Sabraw (Ret.)—an experienced

mediator well-versed in wage and hour litigation. (Declaration of James R. Hawkins, ¶ 13.) The Settlement is also strongly supported by experienced counsel, who carefully considered the strength of the claims and Defendant's multiple defenses, as well as the expense, complexity, risks, and likely duration of continued litigation. (Hawkins Decl. ¶¶30-31.) The Settlement in the amount of \$320,000.00 is an excellent result given the conflicting evidence and multiple procedural and substantive defenses, which may substantially undercut the projected value of the claims and resultant damages, or potentially eliminate the claims altogether. In light of the Parties' support for the Settlement, and because it satisfies all the criteria for final settlement approval under California law and will provide significant monetary recovery to the State of California and the Allegedly Aggrieved Employees, the Court should approve the Settlement.

Plaintiff also respectfully submits that in light of this excellent result, her requests for attorneys' fees in the amount of one-third of the Gross Settlement Amount (or \$106,666.66), reimbursement of costs and expenses in the amount of \$14,976.46 (up to \$15,000 allocated in Settlement), Enhancement Payment in the amount of \$5,000.00, also are reasonable and thus should be approved by the Court.

Accordingly, Plaintiff respectfully requests that the Court enter an order granting approval of the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Defendant is a California Non-profit Corporation which provides dental insurance in all 50 states, including California. Defendant employed Plaintiff and hundreds of other similarly situated individuals in analyst, billing, customer service, or claims positions in California during the relevant time period. Plaintiff was classified as a salaried, exempt employee for the majority of her employment. (Declaration of Cristal Bowman ("Bowman Decl.") ¶ 2.)

Plaintiff Bowman worked for Defendant as a Billing Analyst from approximately November 2019 through March, 2021 in Oakland, CA. Bowman Decl. ¶ 2. In April 2021, Defendant reclassified the Billing Analyst role as a non-exempt role and issued Plaintiff a

1 retroactive payment for estimated overtime worked and meal/rest premiums. (Id.; Hawkins Decl.
2 ¶ 26.)

3 **B. Procedural History**

4 On August 9, 2021, Plaintiff filed her Class Action complaint against Defendant in the
5 Superior Court of California, County of Alameda, Case No.: RG21108230 (the “Class Action”).
6 The Class Action complaint alleged causes of action for: (1) failure to pay wages owed, including
7 minimum and overtime wages; (2) failure to provide lawful meal periods; (3) failure to authorize
8 and permit rest periods; (4) failure to timely pay wages owed upon separation from employment;
9 (5) failure to reimburse necessary expenses; (6) failure to provide lawful itemized wage
10 statements; and (7) unfair competition. (Hawkins Decl. ¶ 4.). The Class Action was filed on
11 behalf of Plaintiff and a putative class of “all persons who are or were employed by the
12 Defendants as salaried, exempt employees in ‘analyst’ positions or in billing, customer service, or
13 claims, in California within four years prior to the filing of this action through resolution or trial
14 of the matter.” (Complaint, ¶ 49.) That same day, Plaintiff filed her letter with the Labor &
15 Workforce Development Agency (“LWDA”) alleging underlying violations of the California
16 Labor Code as a basis for her PAGA Complaint. (Hawkins Decl. ¶ 5)

17 On October 15, 2021, Plaintiff filed a complaint against Defendants alleging a single
18 cause of action for civil penalties under PAGA, Labor Code section 2698 *et seq.* Plaintiff based
19 this cause of action on underlying Labor Code violations, specifically: (1) failure to pay wages
20 owed, including minimum and overtime wages; (2) failure to provide lawful meal periods; (3)
21 failure to authorize and permit rest periods; (4) failure to timely pay wages owed upon separation
22 from employment; (5) failure to reimburse necessary expenses; and (6) failure to provide accurate
23 lawful itemized wage statements. Plaintiff brought her PAGA claim “as a representative action on
24 behalf of themselves and all other current and former aggrieved employees...”. (Hawkins Decl. ¶
25 7.)

26 Defendant answered both Complaints by generally denying all allegations and asserting
27 numerous affirmative defenses. (Id. ¶ 8.) The Class Action and PAGA Action have since been
28 consolidated. (Id. ¶ 9.)

1 **C. Discovery and Investigation**

2 Prior to reaching the Settlement, Plaintiff and her counsel conducted an extensive
3 investigation into the claims alleged and performed legal research. (Hawkins Decl. ¶ 11-14.) In
4 preparation for mediation, the Parties participated in a significant informal information and
5 document exchange. (Hawkins Decl. ¶ 13.) Plaintiff sent informal discovery requests to
6 Defendant seeking pertinent information during the relevant time period. (Id.). Defendant
7 produced thousands of lines of payroll and earning data for the members of the putative class as
8 defined by Plaintiff (which included information for the Allegedly Aggrieved Employees [PAGA
9 Group]); an anonymized class list including hire dates, termination dates, workweeks worked by
10 the individual, job title, department, and location, and whether the individual had previously
11 signed a release; Plaintiff's personnel file; Plaintiff's wage statements; job descriptions for the
12 putative class; and documents outlining Defendants' relevant policies and practices during the
13 relevant time period. (Id.) Defendant also provided pertinent documents related to its prior
14 reclassification of certain employees (including Plaintiff) from exempt to non-exempt. (Id.).
15 Defendant also provided data points for the Allegedly Aggrieved Employees, the number of
16 workweeks and pay periods at issue, and the number of purportedly aggrieved employees. (Id.)

17 **D. Settlement Negotiations**

18 On August 2, 2022, the Parties participated in a private mediation with Judge Ronald M.
19 Sabraw (Ret.). (Hawkins Decl., ¶ 15.) The Parties were unable to reach a resolution at the
20 mediation, but continued discussions with the mediator. (Id.) The Parties identified a group of 19
21 individuals (the "Allegedly Aggrieved Employees"), including Bowman, who were reclassified
22 from exempt to non-exempt in April 2021. (Id.). After subsequent negotiations and discussions,
23 Judge Sabraw issued a mediator's proposal to (a) settle the Action on behalf of the Allegedly
24 Aggrieved Employees, (b) voluntarily dismiss without prejudice the Action with respect to any
25 employees who fit Plaintiff's definition of "aggrieved employees" as defined in her operative
26 Complaint or PAGA Notice to the LWDA but who are not "Allegedly Aggrieved Employees"
27 and (c) to voluntarily dismiss the Class Action with prejudice as to Plaintiff's individual claims,
28 but without prejudice as to claims of putative class members. (Id., ¶ 16; Ex. 1, Settlement

1 Agreement, p. 7, Section IV.). The Parties ultimately accepted the Mediator’s Proposal and
2 Plaintiff has concurrently submitted a request for dismissal of the Class Action and an
3 amendment to the PAGA Complaint to redefine the group of aggrieved employees to the group of
4 Allegedly Aggrieved Employees. (Id.)

5 The Parties subsequently entered into the Settlement Agreement and Release of PAGA
6 Claims (“Settlement Agreement”) which they now request the Court approve. (Id. at ¶ 17, Exh.
7 1.) Separate and apart from the Class Action and PAGA Action, Plaintiff also raised certain
8 individual wrongful termination and harassment claims, and the Parties executed an individual
9 confidential settlement agreement between Plaintiff and Defendants in exchange for Plaintiff’s
10 general release. (Hawkins Decl. ¶ 18.)

11 On March 15, 2023, Plaintiff submitted a copy of the Settlement Agreement to the Labor
12 and Workforce Development Agency. (Id. at ¶ 19.)

13 **III. SUMMARY OF SETTLEMENT**

14 **A. The Allegedly Aggrieved Employees**

15 The Allegedly Aggrieved Employees are specifically identified in the Settlement
16 Agreement to encompass Plaintiff and 18 other California employees of Defendant who were
17 reclassified from exempt to non-exempt in April 2021. (Settlement, ¶ III. C.). The Settlement
18 releases PAGA claims for this group arising at any time during the period February 15, 2020
19 through the date of approval. (“PAGA Period”). (Settlement, ¶¶ III(C), III(BB).)

20 **B. Settlement Terms**

21 Under the Settlement, the PAGA claims of all Allegedly Aggrieved Employees shall be
22 settled for the Gross Settlement Amount of \$320,000, which is inclusive of all Individual PAGA
23 Payments to Allegedly Aggrieved Employees, third-party settlement administration costs,
24 Plaintiff’s attorneys’ fees and costs, Plaintiff’s Enhancement Payment, and PAGA Penalties
25 (Settlement, III.Q.)

26 The Gross Settlement Amount shall be allocated as follows:

27 1. PAGA Settlement Amount. The PAGA Penalties are the amount remaining after
28 Plaintiff’s Attorneys’ Fees and Litigation Expenses, the costs of Settlement Administration, and

1 Plaintiff's Enhancement Payment (all as approved by the Court) have been deducted from the
2 Gross Settlement Amount. (Settlement, ¶ 8.5.). Seventy-five percent of the PAGA Settlement
3 Amount, estimated \$141,267.66, will be paid to the LWDA and 25% of the PAGA Settlement
4 Amount, estimated \$47,089.22, will be allocated among the 19 Allegedly Aggrieved Employees.
5 (Settlement, ¶ 8.5).

6 2. Individual PAGA Payments: The payments to the Allegedly Aggrieved
7 Employees will be calculated on a *pro rata* basis based on the number of pay periods during the
8 PAGA Period in which an Allegedly Aggrieved Individual was classified as an exempt employee
9 and worked at least one shift ("Covered Pay Periods"), relative to the total number of Covered
10 Pay Periods worked by all Allegedly Aggrieved Employees during the PAGA Period.
11 (Settlement, ¶ 8.5.3, III.R., Notice of PAGA Settlement and Release of Claims (the "Notice")
12 ¶II.).

13 Individual PAGA Payment checks shall remain valid and negotiable for 180 days from the
14 date of their original mailing. If an Individual PAGA Payment check remains uncashed after 180
15 days from original mailing, the Settlement Administrator shall distribute the value of the
16 uncashed check to Legal Aid at Work. In such event, such Allegedly Aggrieved Employees shall
17 nevertheless remain bound by the Settlement. (Settlement, ¶ 9.5.4.)

18 3. Plaintiff's Enhancement Award. Subject to Court approval, Plaintiff Bowman
19 shall be paid an enhancement award not to exceed Five Thousand Dollars (\$5,000.00), for her
20 time and effort in bringing and presenting the actions. (Settlement, ¶ III(N), 8.4.)

21 4. PAGA Counsel Attorneys' Fees. Subject to Court approval, PAGA Counsel shall
22 be entitled to receive an award of reasonable attorneys' fees in an amount not to exceed 33 1/3%
23 of the Gross Settlement Amount, which amounts to \$106,666.66. Settlement, ¶ 8.2.

24 5. PAGA Counsel Litigation Expenses. Subject to Court approval, PAGA Counsel
25 shall be entitled to receive reimbursement for costs not to exceed \$15,000. Settlement, ¶ 8.2.

26 6. Settlement Administration Costs. The Settlement Administration fees and
27 expenses, which are estimated not to exceed \$5,000.00 shall be paid from the Gross Settlement
28 Amount. (Settlement, ¶ 8.3.)

1 **C. The PAGA Release**

2 Upon the Effective Date, all Allegedly Aggrieved Employees shall be deemed to have
3 released the Released Parties of any and all PAGA Released Claims that arose during the PAGA
4 Period. The “PAGA Released Claims” include all claims for civil penalties under PAGA during
5 the PAGA Period for the Allegedly Aggrieved Employees based on or reasonably related to the
6 factual allegations in the First Amended PAGA Complaint (to be approved by the Court),
7 including but not limited to alleged violations of Labor Code sections 201, 202, 203, 204, 210,
8 226, 226.3, 226.7, 510, 516, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, 2802,
9 applicable Wage orders, and any other civil penalties that could have been sought by the Labor
10 Commissioner or through PAGA for violations reasonably arising out of the facts, policies,
11 practices, occurrences, or acts alleged in the First Amended PAGA Complaint or Plaintiff’s
12 PAGA Notice to the LWDA or that derive from the alleged misclassification of the Allegedly
13 Aggrieved Employees as exempt employees. The PAGA Released Claims are released solely for
14 the Allegedly Aggrieved Employees. (Settlement, ¶ III.CC.) The Period of Release is from
15 February 15, 2020 through the date on which the Court issue an Approval Order. (Id. ¶ III. BB.)

16 The “Released Parties” are Defendant and its past and present parents, subsidiaries,
17 affiliates, predecessors, successors, assigns, and its present and former officers, agents,
18 shareholders, fiduciaries, plan administrators, employees, attorneys, insurers, and representatives,
19 in their individual and corporate capacities. (Settlement, ¶ III. FF.).

20 **D. Settlement Administration**

21 Within 30 calendar days (or, if that date falls on a weekend or holiday, the next business
22 day thereafter) after the date of approval of the Settlement by the Court, Defendant shall provide
23 the Settlement Administrator with the Allegedly Aggrieved Individual Data including each
24 Allegedly Aggrieved Employees’ (1) name, (2) social security number, (3) last known residential
25 address, (4) last known telephone number, and (5) number of Covered Pay Periods worked during
26 the PAGA Period. (Settlement, ¶ 9.4.) Upon receipt of the Allegedly Aggrieved Individual Data,
27 the Settlement Administrator shall utilize Reasonable Address Verification Measures which may
28 include running mailing addresses provided through the National Change of Address database

1 and using Updated Addresses for each Allegedly Aggrieved Individual when mailing Individual
2 PAGA Payments. No later than thirty (30) calendar days after the Effective Date, Defendant shall
3 transfer to the Settlement Administrator the Gross Settlement Amount of \$320,000. (Settlement
4 ¶9.5.2). Within 30 calendar days of receiving the Gross Settlement Amount from Defendant, the
5 Settlement Administrator shall (1) pay from the Gross Settlement Amount the Settlement
6 Administration Costs, as approved by the Court, (2) pay from the Gross Settlement Amount to
7 PAGA Counsel the Attorneys' Fees and Litigation Expenses, as approved by the Court, (3) pay
8 from the Gross Settlement Amount to Plaintiff the Enhancement Payment, as approved by the
9 Court, (4) pay from the Gross Settlement Amount the PAGA Penalties to the LWDA and
10 Individual PAGA Payments, which will be accompanied by a short explanatory letter.
11 (Settlement, ¶ 9.5.)

12 Any Individual PAGA Payment checks returned to the Settlement Administrator as non-
13 deliverable shall be re-mailed to the forwarding address affixed thereto. If no forwarding address
14 is provided, the Settlement Administrator shall promptly utilize Reasonable Address Verification
15 Measures to attempt to determine the correct address using a skip-trace, or other search using the
16 name, address, or Social Security number of the PAGA Settlement Member involved and will
17 then perform a single re-mailing using an Updated Address, if available. The Settlement
18 Administrator shall attempt no more than one re-mailing. (Settlement, ¶ 9.5.)

19 **IV. THE COURT SHOULD GRANT APPROVAL OF THE PAGA SETTLEMENT**

20 **A. The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful** 21 **and Fulfill PAGA's Underlying Purpose to Benefit the Public**

22 Because a settlement of PAGA claims compromises a claim that could otherwise be
23 brought by the state, PAGA provides that "court[s] shall review and approve any settlement of
24 any civil action filed pursuant to [PAGA]." *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal.
25 Aug. 25, 2017) No. 16-CV-04708-LHK, 2017 WL 3670794, at *2. The Court of Appeal in
26 *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), recently defined the standard of review
27 for PAGA settlements, finding that the trial court must consider whether the settlement is "fair,
28 reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations,

1 deter future ones, and to maximize enforcement of state labor laws.” *Id.* at 77; see also *O’Connor*
2 *v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F. Supp. 3d 1110, 1133 adopting guidance from
3 the LWDA providing that “when a PAGA claim is settled, the relief provided for under the
4 PAGA [must] be genuine and meaningful, consistent with the underlying purpose of the statute to
5 benefit the public”).

6 The court’s role in reviewing PAGA settlements differs from its gatekeeping function in
7 the class action context. In class actions, courts have a fiduciary duty to protect the interests of
8 absent class members, whose individual claims will be discharged. *Kullar v. Foot Locker Retail,*
9 *Inc.* (2008) 168 Cal.App.4th 116, 129. In this role, courts conduct an “independent assessment of
10 the adequacy of the settlement terms,” which requires them to have sufficient data and
11 information about the amount in controversy and the realistic range of outcomes. *Id.* at 132.
12 Courts consider a variety of factors in conducting this analysis, including whether the settlement
13 is negotiated at an arm’s length, whether there is sufficient discovery and information to permit
14 parties and the court to act intelligently, whether the attorneys have experience with the type of
15 issues, and whether the number of objectors is small. *Dunk v. Ford Motor Co.* (1996) 48
16 Cal.App.4th 1794, 1800-1801.

17 But a PAGA representative action is “not akin to a class action;” it “is a species of *qui*
18 *tam* action.” *Flores*, 253 F.Supp.3d at 1076. When reviewing a PAGA-only settlement, courts do
19 not consider the value of individuals’ claims for damages because a PAGA settlement does not
20 release those claims. *Kim v. Reins Int’l California, Inc.*, 9 Cal.5th 73, 87 (2020) (PAGA claims
21 have no individual component); *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 188 (noting that
22 PAGA penalties do not seek damages that are compensatory in nature). “The state’s interest in
23 such an action is to enforce its laws, not to recover damages on behalf of a particular individual.”
24 *Huff v. Securitas Sec. Servs., USA, Inc.*, 23 Cal.App.5th 745, 760. Instead of focusing on fair
25 recovery for individual claims, the goal of PAGA enforcement is to achieve “maximum
26 compliance with state labor laws.” *Id.* at 756; see also *Iskanian v. CLS Transp. Los Angeles, LLC*
27 (2014) 59 Cal.4th 348, 383 (noting that the goal of PAGA is to impose civil penalties for Labor
28 Code violations “significant enough to deter violations”); *McKenzie v. Federal Exp. Corp.*, 765

1 F.Supp.2d 1222, 1233 (C.D. Cal. 2011) (“Unlike a class action seeking damages... for injured
2 employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the
3 government that otherwise may not have been assessed and collected by overburdened state
4 enforcement agencies.”).

5 Here, the Settlement is fair, reasonable, and adequate in view of PAGA’s purposes to
6 remediate present labor law violations, deter future ones, and to maximize enforcement of state
7 labor laws. (Hawkins Decl. ¶ 23, 31.). Here, Plaintiff alleges Defendant committed a number of
8 Labor Code violations during the PAGA Period as a result of its misclassification of the
9 Allegedly Aggrieved Employees, including a failure to (1) pay all earned wages, including
10 minimum and overtime wages; (2) failure to provide meal periods; (3) failure to authorize and
11 permit rest periods; (4) failure to timely pay wages owed upon separation; (5) failure to reimburse
12 necessary expenses; (6) failure to provide accurate lawful itemized wage statements; (7) failure to
13 keep accurate payroll and timekeeping records. (Hawkins Decl., ¶ 25, see Ex. B to Ex. 1, FAC.)

14 The Settlement of \$320,000.00 penalizes Defendant for the alleged violations of
15 California’s labor laws in an amount that is significant enough to deter violations and provide
16 genuine and meaningful relief—approximately \$188,356.88 to the State and the Allegedly
17 Aggrieved Employees—thus fulfilling the underlying purpose of PAGA to benefit the public.
18 See *Jordan v. NCI Grp., Inc.*, No. EDCV161701JVSSPX, 2018 WL 1409590, at *3 (C.D. Cal.
19 Jan. 5, 2018) (“The proposed settlement imposes a substantial penalty payment of \$150,000, paid
20 in exchange for a release of only those claims pled in the notice to the LWDA and the Complaint.
21 This penalty has a substantial deterrent effect on NCI and other California employers.
22 Furthermore, the proposed settlement encourages compliance with the specific requirements of
23 the Labor Code, which has the effect of protecting workers from unlawful employment practices
24 and working conditions.”); *Echavez v. Abercrombie & Fitch Co.*, No. CV 11-09754-GAF, 2017
25 WL 3669607, at *3 (C.D. Cal. Mar. 23, 2017) (finding that “[t]he primary purpose of PAGA, i.e.,
26 the empowerment of aggrieved employees to act as private attorneys general to collect civil
27 penalties from their employers for Labor Code violations, [was] served by the proposed PAGA
28 penalty in the parties’ settlement agreement,” where \$340,000 of \$700,000 settlement was

1 allocated to PAGA penalties which were divided 75% to the LWDA and 25% to an estimated
2 10,000 aggrieved employees).

3 **B. The Settlement Is Reasonable Given the Risks of Further Litigation**

4 In assessing whether the amount in civil penalties is genuine and meaningful, the Court
5 may balance the amount in penalties with the risks of further litigation. Here, Plaintiff obtained a
6 meaningful amount in civil penalties despite facing significant challenges had the litigation
7 continued. Defendant represented that, at the time of mediation, there were approximately 2300
8 pay periods during the PAGA Period. (Hawkins Decl. ¶ 26.). Based on the information and data
9 presented, Plaintiff understood that the Allegedly Aggrieved Employees were re-classified in
10 April 2021. (Hawkins Decl. ¶ 26.). Plaintiff sent her initial PAGA notice to the LWDA on or
11 about August 9, 2021. Plaintiff argued that as a function of the tolling provisions in Emergency
12 Rule 9 (due to the Covid-19 pandemic), the relevant PAGA period extended 1 year and 6 months
13 from the filing with the LWDA to February 2020. (Id.)

14 While Plaintiff is confident in the merits of the case and her arguments regarding the
15 relevant time period and the misclassification claims, a legitimate controversy exists regarding the
16 factual allegations, the evidentiary basis, and the underlying claims. (Id. at ¶ 29.) At all times,
17 Defendant denied the factual and legal basis for Plaintiff's claims, and maintained that it acted
18 lawfully at all times. (Id.) Defendant also argued that the Allegedly Aggrieved Employees had
19 entered into release agreements wherein they released their claims, and Defendant argued that the
20 release vitiated any standing or claim that the Allegedly Aggrieved Employees might claim to
21 have. Plaintiff also took into account the fact that continued litigation would be expensive,
22 involving a trial and possible appeals, and would substantially delay and reduce any recovery to
23 the state and the Allegedly Aggrieved Employees. Plaintiff also considered potential issues of
24 manageability and the significant risk that Defendant may prevail on a motion for summary
25 judgment on the underlying claims. In addition, Plaintiff recognized the significant risk that the
26 Court would exercise its discretion under PAGA to drastically reduce the maximum civil
27 penalties available by statute. (Id.)
28

1 Thus, when the risks of litigation, the burdens of proof necessary to establish liability, and
2 the probability of appeal of a favorable judgment are considered, it is clear that the settlement
3 amount of \$320,000.00 is reasonable and in the best interest of the state and the public. (Id. at ¶
4 29-30.) Plaintiff objectively and knowledgeably balanced the strengths and weaknesses of their
5 claims against the risk of continued litigation and was able to determine a realistic range of
6 settlement recovery for PAGA penalties. (Id.) The Settlement therefore accomplishes PAGA's
7 objectives by imposing sufficient civil penalties "to punish and deter" Defendant from future
8 alleged Labor Code violations, while also ensuring that the penalties are not "unjust, arbitrary and
9 oppressive, or confiscatory." Lab. Code § 2699(e)(2); *Iskanian*, 59 Cal. 4th at 384. Indeed,
10 Plaintiff respectfully submits that this PAGA-only settlement which on average provides in
11 excess of \$2,400 to each of the Allegedly Aggrieved Employees is objectively reasonable and an
12 excellent result. (Hawkins Decl. ¶ 31.)

13 **V. PAGA COUNSEL'S REQUESTED FEES AND COSTS ARE REASONABLE**

14 The Settlement provides for attorneys' fees to PAGA Counsel in an amount not to exceed
15 one-third of the Gross Settlement Amount, which amounts to \$106,666.66, plus reasonable and
16 actual litigation expenses in the amount of \$14,976.46 (the Agreement provides costs not to
17 exceed \$15,000). Settlement, ¶ 8.2. PAGA Counsel is entitled to reasonable attorneys' fees
18 pursuant to Labor Code § 2699(g)(1). The requested fees are reasonable as a percentage of the
19 Gross Settlement Amount.

20 **A. PAGA Counsel Is Entitled to Attorneys' Fees and Costs under PAGA**

21 Plaintiff is entitled to attorneys' fees under Labor Code section 2699(g)(1), which provides
22 that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable
23 attorney's fees and costs." Lab. Code § 2699(g)(1); see also *Gouskos v. Aptos Village Garage,*
24 *Inc.* (2001) 94 Cal.App.4th 754, 765 (holding that attorneys' fees to prevailing party are
25 mandatory when the statute uses the word "shall"). It is undisputed that Plaintiff is the prevailing
26 party. See *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal. App. 4th 140, 153 ("[P]laintiffs
27 may be considered 'prevailing parties' for attorney's fee purposes if they succeed on any
28 significant issue in the litigation that achieves some of the benefit the parties sought in bringing

1 suit.”) (internal citation omitted). Accordingly, Plaintiff is entitled to recover attorneys’ fees and
2 costs.

3 **B. PAGA Counsel’s Requested Attorneys’ Fees Are Reasonable under the**
4 **Common Fund Method**

5 The request for attorneys’ fees as a percentage of the Gross Settlement Amount is
6 supported by the “common fund theory,” where “one who expends attorneys’ fees in winning a
7 suit which creates a fund from which others derive benefits, may require those passive
8 beneficiaries to bear a fair share of the litigation costs.” *Serrano v. Priest* (1977) 20 Cal.3d 25,
9 35.

10 The purpose of the common fund approach is to “spread litigation costs proportionally
11 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.”
12 *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. Thus, the common fund
13 doctrine has been applied “consistently in California when an action brought by one party creates
14 a fund in which other persons are entitled to share.” *City and County of San Francisco v. Sweet*
15 (1995) 12 Cal.4th 105, 110; *see Quinn v. State of California* (1975) 15 Cal.3d 162, 167 (“[O]ne
16 who expends attorneys’ fees in winning a suit which creates a fund from which others derive
17 benefits may require those passive beneficiaries to bear a fair share of the litigation costs.”).

18 A number of other courts have recognized the advantages of awarding fees as a
19 percentage of the common fund over the alternative lodestar approach, which usually involves
20 wading through voluminous and often indecipherable time records. *See, e.g., In re Activision*
21 *Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375. The percentage approach is
22 preferable to the lodestar method because: (1) it provides predictability to counsel; (2) encourages
23 efficient resolution of the litigation by providing an Service for early, yet reasonable, settlement;
24 and (3) reduces the demands on judicial records. *Id.* at 1378-79; *see also Lealao v. Beneficial*
25 *Cal., Inc.* (2000) 82 Cal.App.4th 19, 28 (discussing findings of task force commissioned by the
26 Third Circuit, which “concluded that the lodestar approach (1) increases the workload of an
27 already overtaxed judicial system, (2) is insufficiently objective and produces results that are far
28 from homogenous, (3) creates a sense of mathematical precision that is unwarranted in terms of

1 the realities of the practice of law, (4) is subject to manipulation by judges who prefer to calibrate
2 fees in terms of percentages of the settlement fund or the amounts recovered by the Claimants or
3 of an overall dollar amount, (5) encourages lawyers to expend excessive hours, and engage in
4 duplicative and unjustified work, (6) creates a disservice for the early settlement of cases, (7)
5 deprives trial courts of flexibility to reward or deter lawyers so that desirable objectives, such as
6 early settlement, will be fostered, (8) works to the particular disadvantage of the public interest
7 bar, and (9) results in confusion and lack of predictability.”).

8 The percentage of attorneys’ fees set forth in the Settlement Agreement—33.33% of the
9 Gross Settlement Amount—is reasonable. Historically, courts have awarded percentage fees in
10 the range of 20% to 50% in common fund cases. Newberg on Class Actions, 4th Ed. 2002, § 14:
11 6. Newberg notes that achievement of a substantial recovery with modest hours expended should
12 not be penalized, but should be rewarded for considerations of time saved by superior services
13 performed. *Id.* Furthermore, California and federal courts have long recognized that a
14 percentage of recovery for attorneys’ fees is properly awarded on the basis of the total value.
15 *Boeing v. Van Gemert* (1980) 444 U.S. 472, 480-481; *see also In re Consumer Privacy Cases*,
16 175 Cal.App.4th at 558 n.13 (“Empirical studies show that, regardless whether the percentage
17 method or the lodestar method is used, fee awards in class actions average around **one-third** of
18 the recovery.”) (emphasis added).

19 The Court should also consider that PAGA Counsel’s efforts have resulted in substantial
20 benefits to the State of California and the Allegedly Aggrieved Employees, in the form of a
21 significant, non-reversionary settlement fund established to compensate the State and the
22 Allegedly Aggrieved Employees and to punish Defendant for the alleged PAGA violations.
23 Without the efforts of PAGA Counsel over the last two years, the claims alleged in the complaint
24 would likely have gone without remedy. While it is typically not necessary to substantiate the fee
25 award with a lodestar in this PAGA action, it should be noted that PAGA Counsel has invested
26 over 241 hours in the litigation of this matter, and PAGA Counsel’s lodestar is approximately
27 \$167,500—substantially in excess of the fee award. (Hawkins Decl. ¶ 50.)
28

1 **C. Plaintiffs' Counsel's Costs Are Reasonable**

2 PAGA Counsel is entitled to reimbursement of its litigation costs under PAGA. See Lab.
3 Code § 2699(g)(l) (“Any employee who prevails in any action shall be entitled to an award of
4 reasonable attorney’s fees and costs.”). The Stipulation provides for reimbursement of costs not
5 to exceed \$15,000.00. Stipulation ¶ 23(a). Plaintiffs’ Counsel has incurred or will incur actual
6 costs in the amount of \$14,976.46. Hawkins Decl. ¶ 51, Exh. 3. These costs were reasonably
7 incurred in prosecuting this Action on behalf of the Allegedly Aggrieved Employees and should
8 be approved by the Court. *Id.* Accordingly, PAGA Counsel respectfully requests the Court
9 approve costs in the amount of \$14,976.46.

10 **VI. THE REQUESTED GENERAL RELEASE FEE AND AWARD TO PLAINTIFF IS**
11 **REASONABLE**

12 Both the State of California and the Allegedly Aggrieved Employees are beneficiaries of
13 a settlement that would not have been made possible but for the effort and commitment of
14 Plaintiff. The Settlement provides that Plaintiff Bowman shall be paid an Enhancement Award
15 not to exceed \$5,000.00, in recognition of her effort in bringing and presenting the Action.
16 (Settlement, ¶ III.N., 8.4.) The requested payment is intended to recognize Plaintiff’s effort in
17 bringing the Action, serving as private attorney general under PAGA, providing counsel with
18 pertinent documents and information to prosecute this action, assisting counsel with the
19 investigation, litigation, and settlement, regularly conferring with counsel on the status of the
20 case, attending mediation, and reviewing the proposed settlement to ensure that its terms are
21 fair and achieve PAGA’s objectives. (Hawkins Decl. ¶ 52.)

22 The amount of the requested award is reasonable. See *Blanchard v. BJ's Restaurants,*
23 *Inc.*, Orange County Superior Court Case No. 30-2014-00761961-CU-OE-CX (Sept. 26, 2016)
24 (approving \$10,000 service award); *Bui v. Vitamin Shoppe Industries Inc.*, Los Angeles County
25 Superior Court Case No. BC518486 (Aug. 31, 2016) (approving \$10,000 service award); *Jesus*
26 *Miranda v. HomeDeliveryLink, Inc.*, San Bernardino County Superior Court Case No. CIV
27 DS1505393 (Aug. 9, 2016) (approving \$10,000 service award); *Mohamad Najjar v. Calop*
28 *Business Systems, Inc. d/b/a Ca/op Aeroground Service*, Los Angeles County Superior Court

Case No. BC582290 (April 5, 2016) (approving \$10,000 service award); *Sheldon v. AHMC Monterey Park Hospital LP*, Los Angeles County Superior Court Case No. BC440282 (March 2, 2016) (approving \$10,000 service award). Significantly, the general release fee and award collectively represents less than 2% of the Gross Settlement Amount.

During the time since the Action was filed, Plaintiff has actively participated in the action and in making decisions in this case, including in connection with the settlement. Bowman Decl. ¶ 8. Plaintiff Bowman devoted approximately 45-50 hours of her time to the case. Bowman Decl. ¶ 20. Plaintiff also faced the real risk that future employers may not hire her because she lent her name as representative in this case, and she could have been liable for Defendant's litigation costs if the case went to trial and she lost. Id. at ¶ 12.

Accordingly, Plaintiff respectfully requests that the Court approve the Enhancement Payment in the amount of \$5,000.00.

VII. CONCLUSION

Based on the foregoing argument and authority, Plaintiff respectfully request that the Court grant approval of the Settlement.

DATED: March 15, 2023

Respectfully submitted,

JAMES HAWKINS APLC

By:



JAMES R. HAWKINS

CHRISTINA M. LUCIO

Attorneys for Plaintiff CRISTAL BOWMAN,
individually and on behalf of all other aggrieved
employees



Superior Court of Alameda County Public Portal

Court Reservation Receipt

Reservation			
Reservation ID: 342423094653		Status: RESERVED	
Reservation Type: Motion re: (Approval of Joint Stipulation for PAGA Settlement)		Number of Motions: 1	
Case Number: RG21108230		Case Title: Bowman VS Delta Dental of Californiaia	
Filing Party: Cristal Bowman, individually and on behalf of all others similarly situated (Plaintiff)		Location: Rene C. Davidson Courthouse - Department 21	
Date/Time: April 11th 2023, 10:00AM		Confirmation Code: CR-HOFWFNQPRRMWPOUI4	

Fees			
Description	Fee	Qty	Amount
Motion re: (name extension)	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment	
Amount: \$1.00	Type: Visa
Account Number: XXXX6358	Authorization: 04511D

Payment Date:
2023-03-14

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