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

DEXTER GREEN, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

OSL RETAIL SERVICES CORP, a
Corporation; OSL RETAIL SERVICES
CALIFORNIA, LLC, a California Limited
Liability Company, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 34-2022-00316065

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

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

Hearing Date: March 14, 2025
Hearing Time: 9:00 a.m.
Reservation Number A-316065-001

Judge: Hon. Lauri A. Damrell
Dept.: 22

Action Filed: February 25, 2022
Trial Date: Not Set

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

2 YOU ARE HEREBY NOTIFIED THAT at 9:00 a.m. on March 14, 2025, or as soon thereafter
3 as the matter can be heard, in Department 22 of the above entitled Court before the Honorable Lauri
4 A. Damrell, Plaintiff Dexter Green (“Plaintiff”) will and hereby does move for an order approving the
5 settlement of the California Labor Code Private Attorneys General Act (“PAGA”) claim alleged
6 against Defendants OSL Retail Services Corporation and OSL Retail Services California LLC
7 (collectively “Defendants”) in accordance with Labor Code §2699(s)(2). The proposed settlement is
8 set forth in the accompanying PAGA Settlement Agreement (“Agreement”).

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

13 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
14 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative ruling may be
15 downloaded off the court's website. If the party does not have online access, they may call the
16 dedicated phone number for the department as referenced in the local telephone directory between the
17 hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling.
18 The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises
19 the department clerk no later than 4:00 p.m. on the court day preceding the hearing, and further advises
20 the clerk that such party has notified the other side of its intention to appear.

21 Respectfully submitted,

22 Dated: February 18, 2025

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

24 By: /s/ Kyle Nordrehaug
25 Kyle R. Nordrehaug

26 Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Dexter Green (“Plaintiff”) reached a settlement of the California Private Attorneys
4 General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this action against
5 Defendants OSL Retail Services Corporation and OSL Retail Services California LLC (“Defendants”)
6 (collectively, the “Parties”) which provides for a “Gross PAGA Settlement Amount” payment in the
7 amount of \$557,100.00. In accordance with California Labor Code §2699(s)(2), Plaintiff now asks
8 this Court to review and approve the settlement of Plaintiff’s PAGA claims.¹ This is only a settlement
9 of the PAGA claims for civil penalties and is not a class settlement and does not release the individual
10 wage claims, if any, of the affected employees other than the Plaintiff himself. Cal. Labor Code §
11 2699(k)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*,
12 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

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

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

22
23 **II. RELEVANT FACTS**

24 PAGA Counsel mailed the necessary correspondence to the LWDA on November 8, 2021, on
25 behalf of Plaintiff, requesting authorization from the LWDA to seek civil penalties as provided by
26

27 ¹ Labor Code Section 2699(s)(2) provides as follows: “The superior court shall review and approve
28 any settlement of any civil action pursuant to this part.” Because this action was filed before June
2024, the 75/25 allocation is based upon the older enactment of Section 2699.

1 PAGA for the wage and hour violations alleged in the PAGA Notice. (Declaration of Kyle
2 Nordrehaug, at ¶3). The 65-day notice period for the LWDA to notify of its intent to investigate
3 expired on January 12, 2022. On February 25, 2022, Plaintiff filed a Representative Action Complaint
4 in this Court against Defendants OSL Retail Services Corporation and OSL Retail Services California
5 LLC alleging a single cause of action for recovery of civil penalties for violation of the PAGA [Labor
6 Code §§ 2698, *et seq.*].

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

17 In the Operative Complaint, Plaintiff alleged that Defendants were liable for miscalculating
18 overtime and sick pay as a result of not including certain remunerations in the regular rate. Plaintiff
19 also alleged he was required to work off the clock and was unable to take rest breaks or legally
20 compliant meal breaks. . Plaintiff contended he was never paid a premium for missed rest breaks.
21 Plaintiffs alleged that meal period violations were evidenced in the records and had not been cured
22 with the payment of a premium wage. Plaintiff also alleged that Defendants required Plaintiff to use
23 and monitor his personal cell phone for work at all times, including before his shifts, during his shifts,
24 rest breaks, and meal periods, and after his shifts were over, including his days off. Plaintiff also
25 alleged that Defendants failed to provide cell phone reimbursements and suitable seating while
26 Plaintiff and the other PAGA Group members were manning Defendants' kiosk. (Declaration of Kyle
27 Nordrehaug, at ¶3).

1 Defendants deny all allegations in the Operative Complaint, deny any failure to comply with
2 the laws identified in the Operative Complaint, and deny any and all liability for the causes of action
3 alleged. Defendants maintained that they always complied with applicable wage and hour regulations.
4 Defendants also contend that their policies, documents, and expert analysis supported a conclusion
5 that the calculation of the regular rate and weighted averages accounted for all applicable remuneration
6 consistent with applicable law.

7 On May 23, 2024, the Parties engaged in an all-day mediation session before Mediator
8 Deborah Crandall Saxe, Esq., a respected and experienced mediator knowledgeable of both the wage
9 and hour laws and representative claims at issue in this action. Through arms-length negotiations with
10 the assistance of the mediator, the Parties reached an agreement to settle the PAGA claims in this
11 action which led to the signing of a Memorandum of Understanding memorializing the settlement.²
12 (Declaration of Kyle Nordrehaug, at ¶3).

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

19 20 **III. TERMS OF THE PAGA SETTLEMENT**

21 The PAGA settlement is subject to Court approval consistent with Labor Code §2699(s)(2).
22 (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a “Gross PAGA
23 Settlement Amount” payment in the amount of \$557,100.00 to resolve the Released PAGA Claims
24

25 ² In addition to the Gross PAGA Settlement Amount, Defendants have agreed to separately settle
26 Plaintiff’s individual claims pursuant to separate confidential Individual Settlement Agreement
27 (“Individual Settlement”) (Agreement at ¶ 2.2). The individual claims were not at issue in this action
28 and exist independent and apart from the PAGA claims at issue before the Court. *See Kim v. Reins*
Int’l Cal., Inc., 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does not strip an
Aggrieved Employee of standing, as the state’s authorized representative, to pursue PAGA remedies”
nor resolve the PAGA claims.).

1 (hereinafter referred to as the “PAGA Settlement”). From this PAGA Settlement of \$557,100.00, there
2 is a deduction of attorneys’ fees (“PAGA Counsel Fees Payment”) in the amount of \$185,700.00
3 (which is one-third of the PAGA Settlement), reimbursement of incurred costs (“PAGA Counsel
4 Litigation Expenses Payment”) in an amount not to exceed \$30,000.00, and the expense of settlement
5 administration (“Administration Expenses Payment”) not to exceed \$5,850.00. (Agreement at ¶¶
6 3.2.1-3.2.2).³ After these deductions, the amount remaining is the “PAGA Payment”, which is
7 estimated to be no less than \$335,550.00.

8 Of the PAGA Payment amount, seventy-five percent (75%) (no less than \$251,662.50) will be
9 paid to the LWDA and the remaining twenty-five percent (25%) (no less than \$83,887.50) will be paid
10 to the PAGA Group (Agreement at ¶ 3.2.3).⁴ The 25% payable to the PAGA Group results in an
11 average recovery of \$111.85 per individual and \$15.05 per pay period. This 75/25 allocation is
12 required by Labor Code §2699 (as it was in effect prior to June 2024) as explained by *ZB, N.A. v.*
13 *Superior Court*, 8 Cal.5th 175 (2019).

14 The Individual PAGA Payment for each PAGA Group member shall be based on the number
15 of pay periods each PAGA Group member worked during the PAGA Period as a PAGA Group
16 member, as a percentage of the total pay periods worked by all PAGA Group members from February
17 25, 2021 to May 23, 2024.⁵ The PAGA Period is the time period from February 25, 2021 to May 23,
18 2024. (Agreement at ¶ 1.24). For mediation, Defendants represented that there are approximately 750
19

20 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
21 Payment less than the amounts requested, the Administrator will allocate the remainder of these
22 amounts to the PAGA Payment. (Agreement at ¶ 3.2.1). To the extent the Administration Expenses
are less, or the Court approves payment less than \$5,850.00, the Administrator will allocate the
remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

23 ⁴ “PAGA Group” means all individuals who worked for Defendants, or either of them, as non-exempt
24 employees in California at any time during the PAGA Period. To be included in the PAGA Group,
25 individuals must have worked at least one day for Defendants (or either of them) in California during
26 the PAGA Period, as determined from Defendants’ payroll and employment records. For the
avoidance of doubt, individuals who were hired but never worked or received any wages are not part
of the PAGA Group. (Agreement at ¶¶ 1.4, 1.23).

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

1 PAGA Group members who collectively worked approximately 5,571 pay periods during the PAGA
2 Period. (Agreement at ¶ 4.1).

3 Effective on the date when Defendants fully fund the entire Gross PAGA Settlement Amount,
4 the Released Parties shall be entitled to a release from all members of the PAGA Group of the
5 “Released PAGA Claims,” which means any representative PAGA claim on behalf of the LWDA
6 and/or any individual PAGA claim that was alleged in the Operative Complaint and/or the PAGA
7 Notice, or that could have been alleged in the Operative Complaint and/or the LWDA Notice, based
8 upon or arising out of the facts and/or claims alleged in the Operative Complaint or in the PAGA
9 Notice from the beginning of time up to and including the end of the PAGA Period (collectively the
10 “Released PAGA Claims”). (Agreement at ¶5.2).

11 Within fourteen (14) calendar days after Defendants funds the Gross PAGA Settlement
12 Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA
13 Payment, the Administration Expenses Payment, and the PAGA Counsel Fees Payment and PAGA
14 Counsel Expenses Payment. (Agreement at ¶ 4.4).⁶ Checks will remain negotiable for one hundred
15 eighty (180) calendar days after the date of mailing. (*Id.* at ¶ 4.4.1) For any Individual PAGA Payment
16 check that is uncashed and cancelled after the void date, the Administrator shall transmit the funds
17 represented by such checks to the California State Controller’s Unclaimed Property Fund in the name
18 of the individual who failed to cash/deposit their check, subject to Court approval. (*Id.* at ¶ 4.4.3).

19 Pursuant to California Labor Code section 2699(s)(2), Plaintiff is providing a copy of the
20 Agreement and this motion to the LWDA concurrently with the filing of the instant motion for
21 settlement approval as set forth in the accompanying proof of service in compliance with Labor Code
22 section 2699(s)(2). In addition, pursuant to California Labor Code section 2699(s)(3), Plaintiff shall
23 submit to the LWDA a copy of the Court’s judgment and order approving the Agreement within ten
24 (10) days after entry of judgment or order.

25 ///

26 ///

27 _____
28 ⁶ Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement
of the Individual PAGA Payments. (*Id.*).

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

2 The claim before this Court is solely the representative claim under PAGA on behalf of the
3 State of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this
4 PAGA claim in its entirety after investigation and an arm’s length mediation session. (Declaration of
5 Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and finally resolve the Released PAGA
6 Claims asserted by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA
7 claims for civil penalties and is not a class settlement and does not release the individual claims, if
8 any, of the PAGA Group members, other than any claims under PAGA. This settlement does not
9 release any claim that is not a PAGA claim.⁷ PAGA Counsel Fees equal to one-third of the Gross
10 PAGA Settlement amount (\$185,700.00), and PAGA Counsel Litigation Expenses in an amount not
11 to exceed \$30,000.00 will also be paid to PAGA Counsel as part of the settlement in accordance with
12 California Labor Code § 2699(k)(1), as set forth in the Agreement.⁸ Lastly, payment to the
13 Administrator in an amount not to exceed \$5,850.00 to perform the administrative duties to distribute
14 the settlement money shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)
15

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

18 Labor Code § 2699 (s)(2) requires that the Court “shall review and approve any settlement of
19 any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
20 agency at the same time that it is submitted to the court.” Consequently, the parties respectfully ask
21 the Court to review and approve the settlement of the PAGA claims and the PAGA Payment to be
22 paid as part of the proposed settlement.
23
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25

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

28 ⁸ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
in the current amount of \$163,841.25, which is less than the cost allocation in the Settlement
Agreement. See Declaration of Nordrehaug at ¶ 9.

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

2 The Parties believe that the PAGA Settlement amount is fair and reasonable and therefore
3 "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount of \$557,100.00 is more
4 than other PAGA settlements as it constitutes approximately \$100.00 per pay period. (Declaration of
5 Nordrehaug, at ¶6.)

6 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
7 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of statutory
8 PAGA civil penalties was potentially \$557,100.00 based on 5,471 pay periods applicable to the PAGA
9 Group members during the PAGA Period.⁹ As a result, the Gross PAGA Settlement Amount is
10 equivalent to this potential maximum recovery. (Declaration of Nordrehaug, at ¶6.) Importantly,
11 however, these calculations were performed at the maximum statutory rate for the penalties, when in
12 fact, it is likely that any penalties awarded would be at a lower rate. California Labor Code Section
13 2699(e)(2) permits a Court to award a lesser amount than the maximum civil penalty if based on the
14 facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary and
15 oppressive or confiscatory."

16 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed
17 a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at
18 trial, any PAGA penalties awarded could be significantly less than Plaintiff's calculation even where
19 Plaintiff prevailed on the PAGA claim. If the amount of \$5 per pay period from *Carrington v.*
20 *Starbucks* is used, the potential recovery of civil penalties would be only \$27,855.00, which is far less
21 than this settlement provides. (Declaration of Nordrehaug, at ¶6.)

22 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
23 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
24 from \$2,800,000.00 to \$500,000.00, a reduction of 82.2%, because the court found maximum penalties
25

26 ⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The
27 valuation of \$557,100.00 is the civil penalty amount without stacking. If stacking is permitted, then
28 the valuation increases with each additional penalty added to each pay period. Plaintiff, however, is
not aware of any PAGA award which permitted stacking and in the cases cited herein, only one penalty
per pay period was assessed.

1 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
2 civil penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal.
3 App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by
4 the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour*
5 *Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after
6 trial).

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

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

24 Given Defendants' potential defenses to the violations at issue, the risks and costs of continued
25 litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and reasonable.
26 (Declaration of Nordrehaug, at ¶7.) Defendants have similarly concluded that it is desirable that the
27 action is settled in the manner and upon the terms and conditions set forth in the Agreement in order
28 to avoid further expense, inconvenience, and distraction of further legal proceedings, as well as the

1 uncertainty of litigation. Defendants have determined that it is desirable and beneficial to put to rest
2 the claims in this action and Defendants agree that the PAGA Settlement is fair, reasonable, and
3 adequate.

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

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

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

18 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
19 2699(s)(2) does not require that a court approve any other elements of the proposed settlement.
20 Because there are no class allegations for which Plaintiff seeks approval, the approval provisions
21 applicable to class settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court
22 only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless,
23 as explained herein, the settlement terms for attorneys' fees and costs are reasonable.

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

26 PAGA Counsel seeks approval of attorneys' fees from the PAGA settlement in the amount of
27 \$185,700.00 representing one-third of the \$557,100.00 Gross PAGA Settlement Amount. PAGA does
28 not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of

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

4 First, the requested fees are justified by the result achieved. PAGA Counsel negotiated a
5 recovery of \$557,100.00, and this result justifies the requested fees equal to one third of this recovery.
6 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
7 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
8 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021)
9 (recognizing that “fee awards in class actions average around one-third of the recovery” regardless
10 of “whether the percentage method or the lodestar method is used.” (*quoting Chavez v. Netflix, Inc.*,
11 162 Cal.App.4th 43, 66, fn. 11 (2008))).

12 Second, the fee award is justified by the work performed and contributions to the case. As
13 detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award represents PAGA
14 Counsel's current lodestar of \$163,841.25 with a reasonable multiplier of less than 1.1, with significant
15 additional work to be performed such that the multiplier will ultimately be even less.¹⁰

16 Generally, the Ninth Circuit and California Courts award positive multipliers between 2 to 4
17 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining
18 good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier
19 between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting
20 reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple*
21 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or
22 higher); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding
23 one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL
24 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of
25 lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal.
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28 ¹⁰ A true and correct copy of PAGA Counsel's billing records are attached as Exhibit #2 to the
Declaration of Kyle Nordrehaug, filed herewith.

1 Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority"
2 range for risk multipliers).

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

8 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses in the
9 total amount of \$23,105.79 which is less than the \$30,000.00 allocation for costs in the Agreement, so
10 the difference of \$6,894.21 will be added to the PAGA Payment amount. These expenses are
11 documented in the accompanying Declaration of Nordrehaug at ¶9.
12

13 VII. CONCLUSION

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

16 Dated: February 18, 2025

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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18 By: /s/ Kyle Nordrehaug
19 Kyle Nordrehaug
20 Attorney for Plaintiff
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