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

ROSALEE GARCIA, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

ELICA HEALTH CENTERS, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 34-2022-00316193-CU-OE-GDS

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

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

Hearing Date: February 7, 2025

Hearing Time: 9:00 a.m.

Reservation No. A-316193-002

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 February 7, 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 Rosalee Garcia (“Plaintiff”) will and hereby does move for an order approving
5 the settlement of the PAGA claim alleged against Defendant Elica Health Centers (collectively
6 “Defendant”) in accordance with Labor Code §2699(l). The proposed settlement is set forth in the
7 accompanying PAGA Settlement Agreement (“Agreement”).

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

12 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
13 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative ruling may be
14 downloaded off the court's website. If the party does not have online access, they may call the
15 dedicated phone number for the department as referenced in the local telephone directory between the
16 hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling.
17 If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no
18 hearing will be held.

19 Respectfully submitted,

20 Dated: January 13, 2025

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

22 By: /s/ Kyle Nordrehaug
23 Kyle R. Nordrehaug

24 Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Rosalee Garcia (“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 Defendant
5 Elica Health Centers (“Defendant”) (collectively, the “Parties”) which provides for a “Gross PAGA
6 Settlement Amount” payment in the amount of \$700,000.00. In accordance with California Labor
7 Code §2699(1), Plaintiff now asks this Court to review and approve the settlement of Plaintiff’s PAGA
8 claims.¹ This is a settlement of only the PAGA claims for civil penalties and is not a class settlement
9 and does not release the individual wage claims, if any, of the affected employees other than the
10 Plaintiff herself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381
11 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable
12 under PAGA).

13 The PAGA settlement is set forth in the accompanying PAGA Settlement Agreement
14 (“Agreement”) and the form used for Agreement is based on the Los Angeles Superior Court’s model
15 form. A true and correct copy of the Agreement which sets forth the terms for the settlement of the
16 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 LWDA received
18 notice of this Settlement, and this motion as set forth in the accompanying proof of service and in the
19 Declaration of Kyle Nordrehaug at ¶13.

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 California Labor and Workforce
25 Development Agency (“LWDA”) on December 9, 2021, on behalf of Plaintiff, requesting
26

27 ¹ Labor Code Section 2699(1)(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 authorization from the LWDA to seek civil penalties as provided by the Private Attorney General Act
2 of 2004 (“PAGA”) for the wage and hour violations alleged in the PAGA Notice. (Declaration of
3 Kyle Nordrehaug, at ¶3). The 65-day notice period for the LWDA to notify of its intent to investigate
4 expired on February 12, 2022. On March 2, 2022, Plaintiff filed a Representative Action Complaint
5 in this Court against Defendant Elica Health Centers (“Defendant”) alleging a single cause of action
6 for recovery of civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

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

16 Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendant is liable for
17 underpayment of wages as a result of rounding of the shifts start and end to time through early October
18 2021. Notably, a review of the time records showed even some meal periods were rounded. Plaintiff’s
19 expert determined that there was a net total of 115.2 hours underpaid due to rounding resulting in 17%
20 of the Aggrieved Employees being underpaid with 5.1% of pay periods having at least one shift
21 underpaid by rounding with at total of 3.4% of pay periods with net underpayments due to rounding.
22 Plaintiff also alleges that Defendant are liable for miscalculating overtime and sick pay as a result of
23 not including certain remunerations into the regular rate. For example, the annual Bonus was not fully
24 incorporated into the regular rate for the purpose of paying the correct overtime. Plaintiff’s expert
25 determined that 21.4% of Aggrieved Employees and 15.8% of pay periods had overtime and additional
26 remunerations earned or had weighted average rate issues. Plaintiff alleged there was also unpaid sick
27 pay due from not including the above remunerations in the regular rate and from weighted averages.
28 Plaintiff’s expert determined that 22.11% of Aggrieved Employees and 10% of pay periods had sick

1 pay and additional remunerations earned or had weighted average rate issues. Plaintiff's expert
2 determined that 17.4% of employees and 3.5% of pay periods have meal premiums and any
3 remunerations earned. Moreover, Plaintiff alleged she was required to work off the clock for at least
4 one hour per workweek. For example, Plaintiff required Plaintiff to clock out for her meal period but
5 continue to work. Plaintiff alleges that he was unable to take rest breaks or legally compliant meal
6 breaks due to the needs of the employer. Plaintiff was never paid a premium for missed rest breaks.
7 Plaintiffs alleges that meal period violations are evidenced in the records and have not been cured with
8 the payment of a premium wage. The time punch records reflect a meal break violation rate assuming
9 waiver of 48.2% of all shifts. Defendant also required Plaintiff to use her personal cell phone for work
10 and for scheduling purposes. (Declaration of Kyle Nordrehaug, at ¶3). Defendant maintained that it
11 always complied with applicable wage and hour regulations. Specifically, Defendant argued that its
12 policies, documents, and expert analysis supported a conclusion that the calculation of the regular rate
13 and weighted averages accounted for all applicable remuneration consistent with applicable law.

14 On December 6, 2023, the Parties engaged in an all-day mediation session before Mediator
15 Deborah Lou Marlin, Esq., a respected and experienced mediator knowledgeable of both the wage and
16 hour laws and representative claims at issue in this action. Through arms-length negotiations with the
17 assistance of the mediator, the Parties reached an agreement to settle the PAGA claims in this action
18 which led to the signing of a Memorandum of Understanding memorializing the settlement.²
19 (Declaration of Kyle Nordrehaug, at ¶3).

20 The settlement was negotiated in light of all known facts and circumstances and the uncertainty
21 associated with litigation – including the risk of Plaintiff not being able to maintain representative
22 claims, the difficulty of proving Plaintiff's claims in a manageable trial, the merits of Defendant's
23 potential defenses, and the significant delay and potential appellate issues inherent to litigation – and
24

25 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
26 Plaintiff's individual claims pursuant to separate confidential Individual Settlement Agreement
27 ("Individual Settlement") (Settlement Agreement at ¶ 2.3). The individual claims were not at issue in
28 this action and exist independent and apart from the PAGA claims at issue before the Court. *See Kim v. Reins Int'l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the "[s]ettlement of individual claims does not strip an Aggrieved Employee of standing, as the state's authorized representative, to pursue PAGA remedies" nor resolve the PAGA claims.).

1 was reached after extensive arm's length negotiations, with the assistance of Mediator Marlin.
2 (Declaration of Kyle Nordrehaug, at ¶3).

3 4 **III. TERMS OF THE PAGA SETTLEMENT**

5 The PAGA settlement is subject to Court approval consistent with Labor Code §2699(1)(2).
6 (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a "Gross PAGA
7 Settlement Amount" payment in the amount of \$700,000 to resolve the Released PAGA Claims
8 (hereinafter referred to as the "PAGA Settlement"). From this PAGA Settlement of \$700,000, there
9 is a deduction of attorneys' fees ("PAGA Counsel Fees Payment") in the amount of \$233,333 (which
10 is one-third of the PAGA Settlement), reimbursement of incurred costs ("PAGA Counsel Litigation
11 Expenses Payment") in an amount not to exceed \$43,500, and the expense of settlement administration
12 ("Administration Expenses Payment") not to exceed \$8,100. (Agreement at ¶¶ 3.2.1-3.2.2).³ The
13 PAGA Counsel Fees Payment request shall be allocated ninety (90%) to Blumenthal Nordrehaug
14 Bhowmik De Blouw LLP and ten percent (10%) to The Sweeney Law Firm and has been approved
15 by Plaintiff. (Declaration of Kyle Nordrehaug, at ¶4). After these deductions, the amount remaining
16 is the "PAGA Payment", which is estimated to be no less than \$415,067.

17 Of the PAGA Payment amount, seventy-five percent (75%) (no less than \$311,300.25) will be
18 paid to the LWDA and the remaining twenty-five percent (25%) (no less than \$103,766.75) will be
19 paid to the Aggrieved Employees (Agreement at ¶ 3.2.3).⁴ The 25% payable to the Aggrieved
20 Employees results in an average recovery of \$121.79 per individual and \$3.90 per pay period. This
21 75/25 allocation is required by Labor Code §2699 (as it was in effect prior to June 2024) as explained
22 by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

23
24 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
25 Payment less than the amounts requested, the Administrator will allocate the remainder of these
26 amounts to the PAGA Payment. (Settlement Agreement at ¶ 3.2.1). To the extent the Administration
27 Expenses are less, or the Court approves payment less than \$8,100, the Administrator will allocate the
28 remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

⁴ "Aggrieved Employees" means all individuals who are or were employed by Defendant Elica Health
Centers in California and classified as a non-exempt employee at any time during the period December
9, 2020 through December 31, 2023 ("PAGA Pay Period"). (Settlement Agreement at ¶¶ 1.5, 1.23).

1 The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of
2 pay periods each Aggrieved Employee worked during the PAGA Period as an Aggrieved Employees,
3 as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period.⁵
4 The PAGA Period is the time period from December 9, 2020 through December 31, 2023. (Agreement
5 at ¶ 1.24). For mediation, Defendant represented that there are approximately 852 Aggrieved
6 Employees who collectively worked approximately 26,591 pay periods during the PAGA Period.
7 (Agreement at ¶ 4.1).

8 Effective on the date when Defendant fully funds the entire Gross PAGA Settlement Amount,
9 the Released Parties shall be entitled to a release from all members of the Aggrieved Employees of
10 the “Released PAGA Claims”, which means all claims for PAGA penalties that were alleged, or
11 reasonably could have been alleged, based on the facts stated in the Operative Complaint, and the
12 PAGA Notice submitted by Plaintiff to the LWDA, which occurred during the PAGA Period. The
13 Released PAGA Claims expressly excludes all other claims, including Plaintiff’s Individual
14 Settlement Payment which is subject to a separate confidential agreement, claims for vested benefits,
15 wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance,
16 disability, social security, workers’ compensation, and California class claims, and Plaintiff’s
17 individual claims that are subject to separate releases, and PAGA claims outside of the PAGA period.⁶
18 (Agreement at ¶5.2).

21 ⁵ See Settlement Agreement at ¶ 3.2.3 (“The Administrator will calculate each Individual PAGA
22 Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Payment by
23 the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA
24 Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods.”)

25 ⁶ A second plaintiff, Plaintiff Nokalai Supnet, is also included in the PAGA Settlement Agreement
26 and has a separate Individual Settlement Agreement based on plaintiff Supnet’s individual claims.
27 On November 14, 2022, plaintiff Supnet filed a Class Action Complaint against Defendant alleging
28 that Defendant: (1) Failed to provide required meal periods in violation of California Labor Code §§
226.7 & 512 and the applicable IWC Wage Order; (2) Failed to provide required rest periods in
violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (3) Failed
to pay timely wages during employment; (4) Failed to pay overtime wages in violation of California
Labor Code § 510, et seq.; (5) Failed to provide wages due to discharged for quitting employees; (6)
Failed to maintain required records; (7) Failed to provide accurate itemized wage statements in
violation of California Labor Code § 226; and (8) Violated California Business and Professions
Code § 17200 et seq. ("Supnet Class Action"). Plaintiff Supnet is an Aggrieved Employee, but did

1 Within fourteen (14) days after Defendant funds the Gross PAGA Settlement Amount, the
2 Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the
3 Administration Expenses Payment and the PAGA Counsel Fees Payment and PAGA Counsel
4 Expenses Payment. (Agreement at ¶ 4.4).⁷ Checks will remain negotiable for one hundred eighty
5 (180) days. (*Id.* at ¶ 4.4.1) For any Individual PAGA Payment check that is uncashed and cancelled
6 after the void date, the Administrator shall transmit the funds represented by such checks to the State
7 Controller Unclaimed Property Fund in the name of the individual who failed to deposit their check,
8 subject to Court approval. (*Id.* at ¶ 4.4.3).

9 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
10 Agreement and this motion to the LWDA concurrently with the filing of the instant motion for
11 settlement approval as set forth in the accompanying proof of service in compliance with Labor Code
12 section 2699(1). In addition, Plaintiff shall submit to the LWDA a copy of the Court’s judgment and
13 order approving the Agreement within ten (10) days after entry of judgment or order.

14 15 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

16 The claim before this Court is solely the representative claim under PAGA on behalf of the
17 State of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this
18 PAGA claim in its entirety after investigation and an arm’s length mediation session. (Declaration of
19 Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and finally resolve the Released PAGA
20 Claims asserted by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA
21 claims for civil penalties and is not a class settlement and does not release the individual claims, if
22 any, of the Aggrieved Employees, other than any claims under PAGA. This settlement does not release
23 any claim that is not a PAGA claim.⁸ PAGA Counsel Fees equal to one-third of the Gross PAGA

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25 _____
26 not send notice to the LWDA or pursue a PAGA claim. The Supnet Class Action will be dismissed
27 without prejudice promptly after Court approval of this Settlement. (Agreement at ¶ 6.4).

28 ⁷ Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement
of the Individual PAGA Payments. (*Id.*).

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

1 Settlement amount (\$233,333), and PAGA Counsel Litigation Expenses in an amount not to exceed
2 \$43,500 will also be paid to PAGA Counsel as part of the settlement in accordance with California
3 Labor Code § 2699(g)(1), as set forth in the Agreement.⁹ Lastly, payment to the Administrator in an
4 amount not to exceed \$8,100 to perform the administrative duties to distribute the settlement money
5 shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)
6

7 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF**
8 **THE PAGA CLAIM**

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

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

15 The Parties believe that the PAGA Settlement amount is fair and reasonable and therefore
16 "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount of \$700,000 is more
17 than other PAGA settlements as it constitutes approximately \$26 per pay period. (Declaration of
18 Nordrehaug, at ¶6.)

19 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
20 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of statutory
21 PAGA civil penalties was potentially \$2,659,100 based on 26,591 pay periods applicable to the
22 Aggrieved Employees during the PAGA Period.¹⁰ As a result, the Gross PAGA Settlement Amount is
23
24

25 ⁹ As set forth in the accompanying Declaration of Kyle Nordrehaug at ¶9 and Declaration of Brandon
26 Sweeney at ¶4, PAGA Counsel incurred costs in the current amount of \$36,848.37, which is less than
27 the cost allocation in the Settlement Agreement. See Declaration of Nordrehaug at ¶ 9 and Declaration
28 of Brandon Sweeney at ¶4.

¹⁰ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The
valuation of \$16,627,600 is the civil penalty amount without stacking. If stacking is permitted, then
the valuation increases with each additional penalty added to each pay period. Plaintiff, however, is

1 equivalent to this potential maximum recovery. (Declaration of Nordrehaug, at ¶6.) Importantly,
2 however, these calculations were performed at the maximum statutory rate for the penalties, when in
3 fact, it is likely that any penalties awarded would be at a lower rate. California Labor Code Section
4 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if based on the
5 facts and circumstances to do otherwise would result in an award that is “unjust, arbitrary and
6 oppressive or confiscatory.”

7 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed
8 a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at
9 trial, any PAGA penalties awarded could be significantly less than Plaintiff’s calculation even where
10 Plaintiff prevailed on the PAGA claim. If the amount of \$5 per pay period from *Carrington v.*
11 *Starbucks* is used, the potential recovery of civil penalties would be only \$132,955, which is far less
12 than this settlement provides. (Declaration of Nordrehaug, at ¶6.)

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

22 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of
23 the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
24 LEXIS 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot
25 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
26 Code by the defendant.”). Here, Plaintiff would need to prove that each Aggrieved Employee suffered

27 _____
28 not aware of any PAGA award which permitted stacking and in the cases cited herein, only one penalty
per pay period was assessed.

1 a violation for each period the employee worked in relation to meal or rest period violations, failure
2 to pay minimum wages, failure to pay overtime and sick pay wages, failure to provide accurate
3 itemized wage statements, failure to reimburse employees for required expenses, and failure to pay
4 wages when due.

5 Defendant maintains that Plaintiff and the Aggrieved Employees were properly compensated,
6 and that it did not violate the Labor Code. Accordingly, Defendant disputes and denies Plaintiff's
7 allegations and claims asserted in both the PAGA Notice and the Operative Complaint, which are
8 resolved by the Agreement. Defendant asserted additional defenses to the PAGA claim, not only as
9 to liability but also as to the amount of the penalties. Defendant could argue that no penalties prior to
10 the PAGA notification should be awarded because the violations were not intentional, and at least one
11 Court has so ruled. These defenses present a risk to the PAGA claims and the potential that some or
12 all of the PAGA penalties sought may not be awarded. (Declaration of Nordrehaug, at ¶7.)

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

20 PAGA Counsel have significant experience litigating wage and hour claims including claims
21 for PAGA penalties, and the PAGA Settlement here is similar to or greater than similar settlements
22 that courts have approved. (Declaration of Nordrehaug, at ¶¶ 7, 10.) The PAGA Settlement, along
23 with the other terms of the proposed settlement, were negotiated by experienced counsel at arm's
24 length with the assistance of a private mediator, Lou Marlin, Esq. (Declaration of Nordrehaug, at ¶7.)

25 As set forth in the accompanying proof of service, the LWDA has been provided notice of this
26 motion and the PAGA settlement. The decision of the LWDA to accept the PAGA Settlement and
27 not oppose the motion should be given considerable weight. This is not a situation where the Court
28 needs to be concerned about the rights of absent employees as in a class settlement, as this PAGA-

1 only settlement does not release the individual claims of absent employees other than PAGA claims,
2 and the LWDA is a sophisticated government entity that is more than able to look out for its own
3 rights.

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

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

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

12 PAGA Counsel seeks approval of attorneys' fees from the PAGA settlement in the amount of
13 \$233,333 representing one-third of the \$700,000 Gross PAGA Settlement Amount. PAGA does not
14 have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of
15 attorneys' fees and costs in this settlement is a matter of contract for contingent representation.
16 Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees
17 and costs are reasonable.

18 First, the requested fees are justified by the result achieved. PAGA Counsel negotiated a
19 recovery of \$700,000, and this result justifies the requested fees equal to one third of this recovery.
20 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
21 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
22 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021)
23 (recognizing that “fee awards in class actions average around one-third of the recovery” regardless
24 of “whether the percentage method or the lodestar method is used.” (*quoting Chavez v. Netflix, Inc.*,
25 162 Cal.App.4th 43, 66, fn. 11 (2008))).

26 Second, the fee award is justified by the work performed and contributions to the case. As
27 detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8 [lodestar of \$242,986.25] and
28 Declaration of Brandon Sweeney at ¶12 [lodestar of \$56,325], the fee award is less than PAGA

1 Counsel's current combined lodestar of \$299,311.25, representing a "negative multiplier", with
2 significant additional work to be performed.¹¹

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

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

20 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses in the
21 total amount of \$36,948.95 which is less than the \$43,500 allocation for costs in the Agreement, so
22 the difference of \$6,551.05 will be added to the PAGA Payment amount. These expenses are
23 documented in the accompanying Declaration of Nordrehaug at ¶9 [expenses of \$33,751.05] and
24 Declaration of Brandon Sweeney at ¶4 [expenses of \$3,197.90].

27 ¹¹ A true and correct copy of PAGA Counsel's billing records are attached as Exhibit #2 to the
28 Declaration of Kyle Nordrehaug and to Declaration of Brandon Sweeney, ¶¶ 4 and 12, filed
herewith.

1 **VII. CONCLUSION**

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

4 Dated: January 13, 2025

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

5
6 By: /s/ Kyle Nordrehaug
7 Kyle Nordrehaug
8 Attorney for Plaintiff
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