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17 and all similarly aggrieved employees

18 **SUPERIOR COURT OF CALIFORNIA**

19 **COUNTY OF MONTEREY**

20 BILLIE JO PHILLIPS, on behalf of herself  
21 and all similarly aggrieved employees,

22 Plaintiff,

23 v.

24 200 LIGHTHOUSE, LLC; and DOES 1  
25 through 50, inclusive,

26 Defendants.

Case No. 22CV001389

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION TO APPROVE SETTLEMENT  
AGREEMENT PURSUANT TO THE  
PRIVATE ATTORNEY GENERAL ACT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: November 15, 2024

Time: 8:30 a.m.

Dept.: 14

Complaint Filed: May 19, 2022

Trial Date: Not Set

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on November 15, 2024, at 8:30 a.m., or as soon  
3 thereafter as the matter may be heard, before the Honorable Carrie M. Panetta, judge  
4 presiding, in Department 14 of the above-referenced Court located at 1200 Aguajito Road,  
5 Monterey, California, Plaintiff Billie Jo Phillips ("Plaintiff") will and hereby moves this Court  
6 for the following relief with respect to the Joint Private Attorneys' General Act Settlement  
7 Agreement ("Settlement Agreement"), pursuant to the procedures set forth in Labor Code §  
8 2698, *et seq.*:

9 1. That the Court finds that the Agreement appears to be within the range of  
10 reasonableness of a settlement;

11 2. That the Court approve attorneys' fees to Plaintiff's counsel in the amount of  
12 \$25,599.38 (33.3% of the Gross Settlement Amount), and Plaintiff's counsel's litigation costs  
13 not to exceed \$4,000.00.

14 3. That the Court approve a service award to Plaintiff in the amount of \$2,500.00;  
15 and

16 4. That the Court appoint Phoenix Settlement Administrators as the Settlement  
17 Administrator and approve the administration costs in an amount not to exceed \$4,000.00.

18 This Motion will be based on this Notice, the Memorandum of Points and Authorities,  
19 the Declarations of B. James Fitzpatrick, Laura L. Franklin, Kristen Agnew, and Plaintiff, the  
20 records and file herein, and on such other evidence as may be presented at the hearing of the  
21 motion.

22 Dated: October 23, 2024

FITZPATRICK & SWANSTON

23  
24 By: 

25 B. James Fitzpatrick  
26 Alison L. Baker  
27 Attorneys for Plaintiff,  
28 BILLIE JO PHILLIPS, on behalf of  
herself and all similarly aggrieved  
employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698,  
4 *et seq.*, Plaintiff Billie Jo Phillips (“Plaintiff”) hereby moves the Court for an order approving  
5 the non-reversionary PAGA settlement as set forth in the concurrently filed Private Attorneys  
6 General Act Settlement Agreement (the “Settlement Agreement” or “Settlement”)<sup>1</sup>.

7 The Complaint in this case alleges that Defendant 200 Lighthouse, LLC (“Defendant”)  
8 (Defendant and Plaintiff together, the “Parties”) violated the PAGA based on Labor Code §§  
9 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 246,  
10 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2699(f) and (g), 2800, and  
11 2802.

12 As will be explained in further detail below, based on the California Supreme Court’s  
13 opinion in *Arias v. Superior Court* (2009) 46 Cal. 4th 969 and *Iskanian v. CLS Transportation*  
14 *Los Angeles, LLC* (2014) 59 Cal. 4th 348, Plaintiff can seek appropriate civil penalties as  
15 called for under the PAGA on behalf of the State of California and other similarly situated  
16 aggrieved employees, without seeking class certification or meeting the requirements of class  
17 certification (*i.e.*, numerosity, typicality, commonality, and adequacy). As such, while the  
18 PAGA settlement reached herein is on behalf of the State of California and other aggrieved  
19 employees, the usual two-step preliminary and final approval process is not required. Rather,  
20 as called for under Labor Code § 2699(l), all that is required is an approval by this Court of  
21 any settlement of the PAGA claims by the Parties. The Parties have reached such a PAGA  
22 settlement, and now seek this Court’s approval of their settlement which provides for the  
23 payment of civil PAGA penalties.

24 As demonstrated below, the proposed settlement warrants the Court’s approval. The  
25 settlement was reached after the exchange of significant information including data pertaining  
26 to the alleged aggrieved employees and information regarding Defendant’s payroll practices,  
27

28 <sup>1</sup> The Settlement Agreement is attached to the Declaration of Laura L. Franklin (“Franklin Decl.”) as  
**Exhibit A.**

1 and after arms' length negotiations at mediation with a well-respected wage-and-hour  
2 mediator, Christopher Panetta, Esq., of Fenton & Keller. Pursuant to the terms of the Parties'  
3 proposed Settlement Agreement, Defendant will pay the total amount of Seventy-Six  
4 Thousand, Eight Hundred and Seventy-Five Dollars (\$76,875.00) (the "Gross Settlement  
5 Amount"). This amount encompasses a settlement of PAGA claims asserted in this lawsuit, a  
6 service award to Plaintiff in the amount of \$2,500.00, attorneys' fees to Plaintiff's counsel in  
7 the amount of \$25,599.38 (33.3% of the Gross Settlement Amount), Plaintiff's counsel's  
8 litigation costs not to exceed \$4,000.00 and settlement administration costs in an amount not to  
9 exceed \$4,000.00.

10 Based on the amounts above, the PAGA Fund will be at least \$40,775.63. (Declaration  
11 of Laura L. Franklin ("Franklin Decl.") ¶ 4.) Pursuant to the PAGA, this amount includes  
12 approximately \$30,581.72 to be distributed to the California Labor and Workforce  
13 Development Agency ("LWDA"), and approximately \$10,193.91 to be distributed to the  
14 "PAGA Settlement Members," defined as all current and former non-exempt employees of  
15 Defendant who worked in California at any time from March 15, 2021, through July 10, 2024  
16 (the "PAGA Period"). (*Id.*; Settlement Agreement at ¶ 8.) The proposed settlement,  
17 moreover, does not release any substantive claims of PAGA Settlement Members, merely their  
18 rights to bring PAGA claims predicated on the same violations of the Labor Code raised in this  
19 Action that accrued during the PAGA Period. (Settlement Agreement at ¶ 47.)

20 In light of the above, the proposed settlement constitutes an adequate, fair, and  
21 reasonable settlement on behalf of the State of California and PAGA Settlement Members and  
22 accomplishes the goals of PAGA.

## 23 **II. FACTUAL AND PROCEDURAL BACKGROUND**

### 24 **A. Summary of the Litigation and Settlement**

25 Plaintiff was formerly employed by Defendant as a Licensed Vocational Nurse (LVN)  
26 at Pacific Grove Healthcare Center, a skilled nursing facility in Pacific Grove, California.  
27 (Franklin Decl. ¶ 7.) Plaintiff seeks to resolve this PAGA action asserted on behalf of  
28 approximately 240 individuals who worked for Defendant as non-exempt employees during

1 the PAGA Period. ((Franklin Decl. ¶ 5; Settlement Agreement ¶ 28.)

2 On March 15, 2022, Plaintiff submitted her Notice of Labor Law Violations to the  
3 Labor and Workforce Development Agency and Defendant asserting claims for civil penalties  
4 pursuant to PAGA predicated on violations of Labor Code §§ 201, 201.3, 202, 203, 204, 207,  
5 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197,  
6 1197.1, 1198, 1199, 2699, 2800, 2802, and 2698. (Franklin Decl. ¶ 8.) On May 19, 2022,  
7 Plaintiff filed a Representative PAGA Complaint for Civil Penalties against Defendant on  
8 behalf of herself and all similarly aggrieved employees. On October 21, 2022, Defendant filed  
9 its Answer to the PAGA Complaint. (*Id.* at ¶ 9.)

10 On April 7, 2023, Defendant filed its Motion to Compel Arbitration and Stay  
11 Proceedings, pursuant to an arbitration agreement executed by the Parties February 19, 2021.  
12 (Franklin Decl. ¶ 10.) On May 26, 2023, the Court granted Defendant's motion to compel  
13 Plaintiff's individual claims to arbitration and stayed the representative PAGA claims and  
14 discovery. (*Ibid.*)

15 Plaintiff alleges that she and other employees suffered recurring Labor Code violations  
16 associated with missed and non-compliant meal and rest breaks, unpaid time spent undergoing  
17 mandatory pre-shift COVID screenings, the required use of their personal cell phones for work  
18 without reimbursement, and Defendants' failure to properly calculate overtime, meal/rest  
19 period premiums, and sick pay at the regular rate of pay. (Franklin Decl. ¶ 11.)

20 Specifically, with respect to the violations arising from meal and rest breaks, Plaintiff  
21 alleges that she and other employees were not relieved of all duties during meal and rest  
22 breaks, as they were required to keep their personal cell phones on and nearby during breaks  
23 and did not receive premium pay for all such on-duty breaks. (Franklin Decl. ¶ 12.)

24 Plaintiff further alleges that the premium pay actually paid by Defendant was often  
25 incorrectly paid at Plaintiff's base rate of pay rather than the regular rate of pay. (Franklin  
26 Decl. ¶ 13.) Consequently, during pay periods when Plaintiff's overtime hours are correctly  
27 paid at a blended overtime rate accounting for shift differentials and nondiscretionary bonus  
28 payments earned, meal period premiums are incorrectly paid at less than the regular rate.

1 (*Ibid.*) Likewise, paid sick leave hours are paid at employees' base hourly rate rather than the  
2 regular rate, resulting in unpaid wages when employees earn non-discretionary remuneration  
3 during the same pay period. (*Ibid.*)

4 Lastly, as a result of the claims above, Plaintiff asserts wage statement violations under  
5 the PAGA. Based on the above, Plaintiff alleges violations of Labor Code §§ 201-204, 223,  
6 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1. (*Id.* at ¶ 14.) The Parties subsequently  
7 agreed to participate in private mediation. In connection with mediation, the Parties engaged  
8 in informal discovery. Defendant produced to Plaintiff's counsel documents and data  
9 pertaining to Plaintiff and the PAGA Settlement Members during the PAGA period, including  
10 the total number of aggrieved employees and pay periods at issue, various spreadsheets  
11 encompassing daily time clock data ("Daily Punches Report") and payroll data for the  
12 aggrieved employees, Plaintiff's personnel file and wage statements, a sample of time and  
13 payroll records for employees in the PAGA group, as well as production of pertinent policies.  
14 (*Id.* at ¶ 15.) The data provided allowed Plaintiff's counsel to analyze liability and exposure  
15 in preparation for the mediation. (*Ibid.*)

16 On April 17, 2024, the Parties participated in private mediation with wage-and-hour  
17 mediator, Christopher Panetta, Esq., of Fenton & Keller (Franklin Decl. at ¶ 16.) The Parties  
18 spoke at length about the strengths and weaknesses of each side's claims and defenses. While  
19 the Parties did not reach a settlement at the mediation, the Parties continued extended  
20 settlement negotiations following the mediation, facilitated by the mediator, and ultimately  
21 reached the current settlement of Plaintiff's PAGA claims. (*Ibid.*) In resolution of Plaintiff's  
22 PAGA claims, the Parties entered into the Settlement Agreement, a true and correct copy of  
23 which is attached as **Exhibit A** to the Declaration of Laura L. Franklin.

### 24 **III. SUMMARY OF THE PROPOSED PAGA SETTLEMENT**

25 The material terms of the Settlement are described below and set forth in detail in the  
26 Settlement Agreement.

#### 27 **A. The PAGA Settlement Members**

28 The "PAGA Settlement Members" affected by this Settlement include "all individuals

1 who are or previously were employed by Defendant in California as hourly, non-exempt  
2 employees, at any time during the PAGA Period.” (Settlement Agreement at ¶ 9.) The PAGA  
3 Period is defined as any time from March 15, 2021, through July 10, 2024. (*Id.* at ¶ 8.)

4 Based upon Defendant’s records, Defendant represents that the number of PAGA  
5 Settlement Members during the PAGA Period is approximately 240 individuals. (Settlement  
6 Agreement at ¶ 28.) Defendant also represents that the total number of pay periods worked by  
7 PAGA Settlement Members during the PAGA Period is approximately 4,764. (*Ibid.*)

#### 8 **B. Settlement Sum and Allocation**

9 The Settlement Agreement requires Defendant to pay the Gross Settlement Amount of  
10 Seventy-Six Thousand, Eight Hundred and Seventy-Five Dollars (\$76,875.00). (Settlement  
11 Agreement at ¶¶ 5, 27.) The terms of the Settlement Agreement provide for an award of  
12 attorneys’ fees not to exceed \$25,599.38 (33.3% of the Gross Settlement Payment), and  
13 reimbursement of litigation costs of up to \$4,000.00 to Plaintiff’s counsel<sup>2</sup>; service award to  
14 Plaintiff in the amount of \$2,500.00 for serving as the PAGA representative; and settlement  
15 administration costs of up to \$4,000.00. (*Id.* at ¶¶ 13, 29, 34.)

16 The balance of the Gross Settlement Amount remaining after the deduction of the  
17 amounts above will be available for distribution to the LWDA and PAGA Settlement  
18 Members (the balance of the Gross Settlement Amount remaining after the above deductions  
19 shall be referred to as the “PAGA Fund”). (Settlement Agreement at ¶ 35; Franklin Decl. ¶  
20 17.) Pursuant to the PAGA, seventy-five percent (75%) of the PAGA Fund, or approximately  
21 \$30,581.72, will be distributed to the LWDA for PAGA penalties. (*Id.* at ¶ 36; Franklin Decl.  
22 ¶ 18.) The remaining twenty-five percent (25%) of the PAGA Fund, or approximately  
23 \$10,193.91 will be distributed to the PAGA Settlement Members. (*Ibid.*)

24 The portion of the PAGA Fund distributed to the PAGA Settlement Members will be  
25 distributed on a *pro rata* basis, based on the number of pay periods each PAGA Settlement  
26 Member worked as a non-exempt employee in California during the PAGA Period divided by  
27

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28 <sup>2</sup> As explained below, Plaintiff’s counsel seeks reimbursement of actual litigation costs in the amount of  
\$3,908.02.

1 the aggregate total number of pay periods worked by all PAGA Settlement Members as non-  
2 exempt employees in California during the PAGA Period. (Settlement Agreement at ¶ 39;  
3 Franklin Decl. ¶ 19.)

4 Defendant has represented that there are approximately 240 PAGA Settlement  
5 Members. (Settlement Agreement at ¶ 28; Franklin Decl. ¶ 20.) Based thereon, on a raw  
6 average, each PAGA Settlement Member may potentially recover approximately \$2.14 per  
7 pay period from the portion of the PAGA Fund attributable to the PAGA Settlement Members.  
8 (Franklin Decl. at ¶ 21.) The amount any particular PAGA Settlement Member will be  
9 entitled to recover will fluctuate depending on the number of pay periods he or she worked as  
10 a non-exempt employee in California during the PAGA Period. This is fair, as it directly  
11 allocates greater penalties to individual PAGA Settlement Members who have allegedly  
12 suffered greater harm.

13 As part of the Settlement Agreement, Defendant does not object to Plaintiff's  
14 counsel's request for attorneys' fees of 33.3% of the Gross Settlement Amount (\$25,599.38),  
15 plus reimbursement of litigation costs in an amount of Three Thousand Five Hundred Thirty-  
16 Three and 12/100 Cents (\$3,533.12), subject to the Court approving this Settlement.  
17 (Settlement Agreement at ¶ 29.) Any portion of the attorneys' fees and costs not approved by  
18 the Court will be added to the PAGA Fund. (*Id.*) Also, as part of the Settlement Agreement,  
19 Defendant does not object to Plaintiff's request for a Service Award of Two Thousand Five  
20 Hundred Dollars (\$2,500.00). (*Id.* at ¶ 13.)

21 Finally, the Settlement Agreement provides for the payment of the fees and expenses  
22 reasonably incurred by the Settlement Administrator. (Settlement Agreement at ¶ 32.) The  
23 Parties have agreed to retain Phoenix Settlement Administrators to administer the Settlement,  
24 with the administration costs estimated not to exceed \$3,500.00. (*Id.* at ¶ 34; Franklin Decl. ¶  
25 22.) Notably, this amount is less than the \$4,000.00 administration costs amount authorized  
26 by the Settlement Agreement. (*See* Settlement Agreement at ¶ 34.)

### 27 **C. Scope of the Released Claims**

28 In exchange for the payments described above, Plaintiff and the PAGA Settlement

Members will release the Released Parties from the following limited release:

[A]ll claims for civil penalties under the PAGA that were set forth, or could have been set forth based on the facts alleged in the Action, for penalties pursuant to PAGA for violation of Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, 2802, and 2698, that accrued during the PAGA Period.

(Settlement Agreement at ¶¶ 15, 47.)

The Settlement does not release Defendant from violations of any predicate statutes other than PAGA and will not affect a waiver of individual claims by PAGA Settlement Members against Defendant for any of the underlying Labor Code claims. (*See Ibid.*) The release is expressly limited to claims for civil penalties under the PAGA pertaining to the Labor Code violations raised in this lawsuit that accrued during the PAGA Period, thereby excluding all non-PAGA claims. (*Id.* at ¶ 47.)

#### **IV. THE PAGA SETTLEMENT IS REASONABLE AND SHOULD BE APPROVED**

##### **A. PAGA Overview**

Prior to the enactment of PAGA, many of the penalties provided against employers for violations of certain Labor Code provisions were solely within the province of the California Department of Labor to seek, enforce, and assess. (*Arias v. Superior Court, supra*, 46 Cal. 4th 969, 980.) However, due to the lack of financing to California's agencies and the potential number of Labor Code violations by California employers, the California Legislature found that it was in the public interest to allow aggrieved employees to act as private attorneys general and to enforce and recover penalties on behalf of other similarly situated aggrieved employees for Labor Code violations committed by their employers. (*Id.*) As such, PAGA was enacted to allow such enforcement and recovery by private individuals who have been aggrieved by their employers. Under the PAGA, 75% of any penalties recovered under PAGA by an aggrieved employee is to be paid to the state agency, the LWDA, and the remaining 25% is to be shared amongst the aggrieved employees. (Cal. Lab. Code § 2699, subd. (i).)

In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee must first provide written notice to the LWDA and the employer of the particular

1 Labor Code violation(s) alleged to have been violated by the employer. (*See* Cal. Labor Code  
2 § 2699.3, subd. (a)(1).) Once the LWDA notifies the aggrieved employee that it does not  
3 intend to investigate the alleged violations or the time for the LWDA to investigate the  
4 violations passes, the aggrieved employee is allowed to proceed in a civil action against the  
5 employer on behalf of all other similarly aggrieved employees. (*See* Cal. Labor Code §  
6 2699.3, subd. (a)(2)(A).)

7 In 2009, the California Supreme Court considered the issue of whether an aggrieved  
8 employee who brings a PAGA claim needs to meet class certification requirements. (*Arias*, 46  
9 Cal. 4th at p. 976.) After a substantial review of the legislative history of PAGA, the  
10 California Supreme Court held that an aggrieved employee’s representative action brought on  
11 behalf of other similarly aggrieved employees against an employer for PAGA violations do  
12 not need to meet the requirements for class certification. (*Id.* at pp. 975, 980-88.) As held by  
13 the California Supreme Court, a plaintiff bringing suit under PAGA does so as the proxy or  
14 agent of California’s labor law enforcement agencies. (*Id.* at p. 986.) Because an employee’s  
15 PAGA action functions as a substitute for an action brought by the government itself, a  
16 judgment in the PAGA action binds all those who would be bound by a judgment in an action  
17 brought by the government. (*Id.*)

18 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the  
19 Superior Court must “review and approve any settlement of any civil action filed pursuant to”  
20 PAGA. (Cal. Lab. Code § 2699, subd. (l)(2).) As the Parties to this current PAGA action  
21 have reached such an agreement, the Parties now seek this Court’s approval as to the  
22 settlement of the penalties amount.

23 **B. Class Action Settlement Standards Do Not Govern the Settlement Approval**  
24 **Process for PAGA Claims**

25 In class action cases, the purpose of the Court’s preliminary evaluation of the  
26 settlement is to determine whether it is within the “range of reasonableness,” and thus whether  
27 notice to the class of the terms and conditions of the settlement, and the scheduling of a formal  
28 fairness hearing, are worthwhile. (*See* Alba Conte & Herbert B. Newberg (4th ed. 2002 and

1 Supp. 2004) 4 *Newberg on Class Actions* § 11.25 *et seq.* and § 13.64 (“*Newberg*”).) The  
2 “judge must make a preliminary determination on the fairness, reasonableness, and adequacy  
3 of the settlement terms and must direct the preparation of notice of the certification, proposed  
4 settlement, and date of the final fairness hearing.” (*Manual for Complex Litigation, Fourth*  
5 (Fed. Jud. Ctr., 4th ed. 2004) § 21.632.) To make the preliminary fairness determination,  
6 courts may consider several relevant factors, including “the strength of the plaintiff’s case; the  
7 risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class  
8 action status through trial; the amount offered in settlement; the extent of discovery completed  
9 and the stage of the proceedings; [and] the experience and views of counsel....” (*See Hanlon*  
10 *v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.)

11 By contrast, court approval of PAGA settlements is governed by Section 2699(1) of the  
12 Labor Code, which provides, in relevant part: “The court shall review and approve any  
13 penalties sought as part of a proposed settlement agreement pursuant to this part.” The Parties  
14 are not obligated to “satisfy class action requirements,” including the standards for class action  
15 settlement approval. (*Arias*, 46 Cal. 4th at pp. 980-988 (affirming lower court’s holding that  
16 “plaintiff need not satisfy class action requirements” to assert a PAGA claim).)

17 Notably, unlike the class action settlement approval process, there is also no statutory  
18 mechanism for this Court to conduct a two-step settlement approval review. (Cal. Lab. Code §  
19 2699, subd. (1).) In addition, “[u]nnamed employees need not be given notice of the PAGA  
20 claim, nor do they have the ability to opt-out of the representative PAGA claim” or “contest a  
21 settlement, if any, reached between the parties.” (*Ochoa-Hernandez v. Cjaders Foods, Inc.*  
22 (N.D. Cal. 2010) 2010 WL 1340777, p. \*13.)

### 23 C. The Settlement is Reasonable and Effectuates PAGA’s Objectives

24 The Court’s focus in a PAGA case is not the amount that aggrieved employees will  
25 ultimately receive as a result of a settlement. Instead, “a trial court should evaluate a PAGA  
26 settlement to determine whether it is fair, reasonable, and adequate *in view of PAGA’s*  
27 *purposes to remediate present labor law violations, deter future ones, and to maximize*  
28 *enforcement of state labor laws.*” *See Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77

(2021) (emphasis added); *see also Kang v. Wells Fargo Bank, N.A.*, 2021 WL 5826230, at \*15 (N.D.Cal., 2021) (evaluating a PAGA settlement under the standard of whether the settlement terms “are fundamentally fair, reasonable, and adequate in view of PAGA's public policy goals”). Under PAGA, the penalties recovered are meant to supplement agency funding for purposes of education of employers and employees and enforcement of labor laws and rights. (See Cal. Lab. Code § 2699, subd. (i).) Here, the settlement provides monetary recovery for the aggrieved employees and the State and accomplishes PAGA’s primary objective to enforce the Labor Code, and thus the Settlement certainly effectuates PAGA’s purpose. (See *O’Connor v. Uber Techs, Inc.* (N.D. Cal. August 18, 2016) 2016 WL 4398271, at p. \*18 (noting that deterring noncompliance with the Labor Code is one of PAGA’s objectives).)

The Settlement is also consistent with the State’s public policy favoring resolution of disputes. “California law favors the settlement of disputes as our high court clarified in *Neary*[]. Settlement is efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best positioned to understand their interests and resolve a dispute in a mutually beneficial manner without court intervention into the settlement.” (*Consumer Advocacy Group, Inc. v. Kintetsu* (2006) 141 Cal. App. 4th 46, 62-63 (citing *Neary v. Regents of Univ. of Cal.* (1992) 3 Cal. 4th 273, 277- 278).)

#### **D. The Scope of the Release is Appropriately Limited**

The limited scope of the release supports approval of this PAGA settlement. If approved, the Settlement would release the Released Parties from PAGA claims predicated on the underlying violations of Labor Code §§ 201, 201.3, 202, 203, 204, 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2699, 2800, 2802, and 2698, that accrued during the PAGA Period, and nothing more. (Settlement Agreement at ¶¶ 15, 47.) The Settlement would *not* impact any other aggrieved employees’ ability to pursue PAGA claims predicated on other allegations aside from those raised in this lawsuit or any Labor Code claims not predicated on the PAGA.

Because an aggrieved employee’s PAGA action is a substitute for an action brought by the government, “judgment in [a PAGA] action is binding not only on the named employee

1 plaintiff but also on government agencies and any aggrieved employee not a party to the  
2 proceeding.” (*Arias*, 46 Cal. 4th at p. 986.) However, “the nonparty employees, because they  
3 were not given notice of the action or afforded any opportunity to be heard, would not be  
4 bound by the judgment as to remedies other than civil penalties.” (*Id.* at p. 987; *see also*, Cal.  
5 Lab. Code § 2699(g)(1) (non-party aggrieved employees retain all rights “to pursue or recover  
6 other remedies available under state or federal law, either separately or concurrently with an  
7 action taken under this part”).)

8 Here, as described above, the PAGA Settlement Members will be subject to only a  
9 limited release strictly confined to the civil penalties under the PAGA based on the facts and  
10 Labor Code violations alleged in the Action. (Settlement Agreement at ¶¶ 15, 47.) The  
11 release is therefore appropriately tailored, and the settlement should be approved.

12 **E. The Settlement is Fair and Reasonable as it Recognizes the Inherent Risk of**  
13 **Litigation**

14 Although Plaintiff is reasonably confident that she would prevail at trial, proceeding in  
15 litigation entails significant risk on the underlying merits of Plaintiff’s theory, in addition to  
16 the still-developing law under PAGA. (Franklin Decl. ¶ 23.)

17 **1. Plaintiff’s Claims are Contested.**

18 Plaintiff asserts that her representative PAGA claims are based on the allegations that  
19 Defendant (a) failed to pay all minimum, regular, and overtime wages, and meal period  
20 premiums owed in violation of Labor Code §§ 201-204, 226.7, 510, 558, 1194, 1197, and  
21 1197.1; (b) failed to pay employees meal period premium wages at the correct regular rate of  
22 pay that included all non-discretionary remuneration, in violation of Labor Code §§ 201-203,  
23 226.7, and 512; (c) failed to pay employees rest period premium wages at the correct regular  
24 rate of pay that included all nondiscretionary remuneration, in violation of Labor Code §§ 201-  
25 203 and 226.7; (d) failed to pay employees sick pay at the correct regular rate of pay, in  
26 violation of Labor Code §§ 201-204 and 246; (e) failed to reimburse work-related expenses in  
27 violation of Labor Code § 2802; and (f) failed to provide accurate itemized wage statements in  
28 violation of Labor Code § 226. (Franklin Decl. ¶ 24.)

1 Defendant has denied violations of any applicable laws and denied liability for any  
2 claims asserted in the Action. In this regard, Defendant asserts that it maintained lawful  
3 policies and practices in place. Defendant argued that it appropriately paid the premium  
4 payments for missed meal periods and denies that employees are unable to take off-the-clock  
5 rest periods of at least 10 minutes. Plaintiff acknowledges that Defendant produced a “Meal  
6 and Rest Period Policy and Acknowledgment” (“Meal & Rest Policy”) signed by Plaintiff  
7 February 19, 2021, which generally provides for Labor Code-compliant meal and rest breaks  
8 for non-exempt employees. The Meal & Rest Policy further states:

9 If any supervisor, manager, or any other person tells you to work  
10 off-the-clock, not to take a meal or rest period as required, or you  
11 believe you were not provided the opportunity to take them, then  
12 you must immediately notify your Supervisor, Management  
13 Representative, or your CPEhr Representative to correct your time  
14 and/or complete a Missed Meal/Rest Period Notification Form.

15 (Franklin Decl. ¶ 25.)

16 Defendant also disputes that any employees were required to use their personal cell  
17 phones for work without reimbursement and further denies that employees were required to  
18 remain on-call during breaks. Defendant maintains that it provides company-owned radios for  
19 nurses to use during their shifts, and that they were not required to keep the radios on their  
20 person during any breaks, with rare exceptions for on-call night nurses who were appropriately  
21 compensated. (Franklin Decl. ¶ 26.)

22 With respect to sick pay, Defendant contends that it appropriately pays sick pay under  
23 its paid time off policy and that any alleged miscalculations relating to shift differentials or  
24 bonuses could only apply to a small percentage of the PAGA Settlement Members.  
25 Furthermore, with respect to the off-the-clock claims arising from pre-shift COVID  
26 screenings, Defendant denies that any employees were subjected to off-the-clock screenings  
27 during the PAGA Period. (Franklin Decl. ¶ 27.)

28 Defendant also argues that the Court has discretion under PAGA to reduce the  
maximum allowable PAGA penalties, or to decide not to award PAGA penalties at all. Should  
Defendant have prevailed on its arguments or defenses above, the State of California and  
aggrieved employees would have been left with minimal or zero recovery. (Franklin Decl. ¶

28.)

## 2. Recovery of Penalties After Trial

Based on the data provided by Defendant, Plaintiff calculated Defendant's potential maximum exposure under the PAGA to be approximately \$476,400 (4,764 pay periods x \$100 penalty). (Franklin Decl. ¶ 29.) This assumes complete victory at trial and that the Court would award the maximum penalty of \$100 per pay period, which is far from certain as discussed above. Further, while PAGA provides for a heightened penalty for a "subsequent violation," courts are hesitant to award the heightened penalty absent a showing of a prior violation. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008); *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc.* 2009 WL 2448430 at \*9 (S.D. Cal. Aug. 10, 2009) ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"); *see also Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir. 2021) (holding no subsequent penalty unless prior citation or court ruling).

Even assuming Plaintiff were to ultimately prevail on the merits of the PAGA claims, the Court still has discretion to reduce any PAGA penalties. Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties where "if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Indeed, as shown in the Court of Appeal's decision in *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 517, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. Upon review, the Court of Appeal found such a reduction to be proper. (*Id.* at p. 539; *see O'Connor*, 2016 WL 4398271, at p. \*17 (noting that even if PAGA penalties amounted to \$1 billion, such award "could well be reduced, as a court may reduce the penalty when to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory").)

Here, Plaintiff maintains that there does not exist any reason for reducing PAGA

1 penalties. However, Plaintiff is aware that Defendant could make a compelling argument to  
2 the contrary, particularly given its facially compliant policies. Defendant may also point to the  
3 recent enactment of comprehensive amendments to PAGA with the July 1, 2024 signing of  
4 Senate Bill 92 and Assembly Bill 2288, which provide employers with new opportunities to  
5 substantially reduce or even eliminate PAGA penalties. While these reforms do not apply to  
6 cases such as this one where the civil action was filed or the PAGA notice was submitted to  
7 the LWDA prior to June 19, 2024 (Lab. Code, § 2699(v)(2)), Plaintiff acknowledges that this  
8 recent overhaul of PAGA may be considered by the Court when exercising its discretion to  
9 determine appropriate PAGA penalties in this action. (Franklin Decl. ¶ 30.)

10 The Court's assessment of the proposed Settlement must take into account that any  
11 penalties awarded may be subject to substantial reduction. When this is considered, in  
12 conjunction with the history of PAGA case law and settlements, the recent PAGA reform, and  
13 the fact that Plaintiff may recover nothing, the proposed settlement is patently reasonable.  
14 Settlement for a reduced value allows for the distribution of penalties in an amount which  
15 accounts for the risk of continued litigation, and Defendant's likely arguments that higher  
16 penalties would have been confiscatory. It also sufficiently deters Defendant from engaging in  
17 similar conduct in the future, which is one of the primary goals of PAGA.

18 The proposed settlement for \$76,875.00 far exceeds PAGA settlements that courts  
19 have approved in other cases, when considered as a percentage of the overall settlement value  
20 of the case. Here, the proposed settlement amounts to approximately *sixteen percent (16%)* of  
21 the total possible liability in this matter, which exceeds other PAGA settlements approved by  
22 courts. (Franklin Decl. ¶ 31; *see, e.g., Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009)  
23 2009 WL 928133, \*9 (approving total PAGA allocation that was 0.49% of \$408,420.32 gross  
24 settlement; *Moore v. PetSmart, Inc.* (N.D. Cal. Aug. 4, 2015) 2015 WL 5439000, \*8  
25 (approving total PAGA allocation that was 0.5% of \$10,000,000 gross settlement); *Lusby v.*  
26 *Gamestop Inc.* (N.D. Cal. 2013) 97 F.R.D. 400, 407 (approving total PAGA allocation that  
27 was 0.67% of \$750,000 gross settlement).)

28 A PAGA allocation need not represent any particular percentage of the overall

1 settlement value in order to secure court approval, and courts routinely approve PAGA  
2 settlements representing only a tiny fraction of the overall settlement value. The proposed  
3 settlement sum in this case exceeds the percentage of overall settlement value of other PAGA  
4 settlements and should be approved by the Court.

5 **F. The Attorneys' Fees are Reasonable**

6 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. (Lab. Code §  
7 2699, subd. (g).) Similar to awarding fees in a class action, California state and federal courts  
8 have recognized that an appropriate method for determining award of attorneys' fees for  
9 representative actions is to use a percentage of the total value of benefits to class members by  
10 the settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano*  
11 *v. Priest* (1977) 20 Cal. 3d 25, 34 (“*Serrano III*”); *Boeing Co. v. Van Gemert* (1980) 444 U.S.  
12 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1997) 557 F. 2d 759, 769.) The purpose  
13 of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation  
14 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the  
15 entire burden alone.” (*Vincent*, 557 F. 2d at p. 769.)

16 The California Supreme Court has also held that the award of attorneys' fees in  
17 common fund wage and hour class action settlements should start with the percentage method.  
18 See *Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) (“We join the overwhelming  
19 majority of federal and state courts in holding that when class action litigation establishes a  
20 monetary fund for the benefit of the class members, and the trial court in its equitable powers  
21 awards class counsel a fee out of that fund, the court may determine the amount of a  
22 reasonable fee by choosing an appropriate percentage of the fund created”).

23 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3  
24 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. The award approved in *Laffitte* was supported  
25 by a lodestar cross-check that employed a multiplier of 2.13. *Id.* at 487. The court in *Laffitte*  
26 explained that when cross-checking a percentage fee request against the lodestar method, the  
27 court should examine the imputed multiplier in the lodestar calculation and, only when the  
28 multiplier is “extraordinarily high or low [should] the trial court [] consider whether the  
percentage method should be adjusted so as to bring the imputed multiplier within a justifiable

1 range.” *Id.* at 505.

2 When the primary method employed to determine fees is the percentage method, courts  
3 have discretion to use the lodestar method to “cross-check” the amount of fees calculated by  
4 way of percentage. The Laffitte court emphasized, however, that “the lodestar calculation,  
5 when used in this manner, does not override the trial court’s primary determination of the fee  
6 as a percentage of the common fund and thus does not impose an absolute maximum or  
7 minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite*  
8 *Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check does  
9 not trump the primary reliance on the percentage of common fund method”).

10 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a  
11 lodestar cross-check is extraordinarily high or low, the trial court should consider whether the  
12 percentage used should be adjusted so as to bring the imputed multiplier within a justifiable  
13 range, but the court is not necessarily required to make such an adjustment.” *Id.* (emphasis  
14 added). Thus, a lodestar cross-check seeks to uncover astronomical multipliers. Indeed, cross-  
15 checks are not required; in many cases, performing a cross-check “undermines” one of the  
16 primary reasons for using the percentage method: aligning counsel’s incentives with the  
17 benefits delivered to the class and discouraging protracted litigation. *Id.* at 506 (finding trial  
18 courts “retain the discretion to forgo a lodestar cross-check”); *Report of the Third Circuit Task*  
19 *Force, Court Awarded Attorney Fees* 108 F.R.D. 237, 258 (1985); *Lealao v. Beneficial*  
20 *California, Inc.*, 82 Cal. App. 4th 19, 29-30 (2000) (citing the recommendations of the Third  
21 Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar approach  
22 set forth in this Report are now echoed by many authorities, who have been most vocal about  
23 the manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already  
24 overworked trial judge.”).

25 Courts find reasonable multipliers in a lodestar cross-check can “range from 2 to 4 or  
26 even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also*,  
27 *e.g.*, *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a  
28 2.52 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60  
(applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203

1 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in  
2 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check,  
3 affirmed a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82. The intermediate court  
4 opinion was affirmed in full by the California Supreme Court in its decision guiding lower  
5 courts on assessing fees.

6 With respect to Plaintiff’s Counsel’s lodestar, Plaintiff’s Counsel will have expended  
7 approximately 102.4 hours litigating this case, which includes anticipated time spent after  
8 approval responding to correspondence and phone calls from PAGA Settlement Members, the  
9 Settlement Administrator, and defense counsel. (Fitzpatrick Decl. ¶ 6, Ex. A; Agnew Decl. ¶  
10 10, Ex. A.) Plaintiff’s Counsel requests a reduced hourly rate of \$595.00 per hour. (Fitzpatrick  
11 Decl. ¶ 8; Agnew Decl. ¶ 11.) Paralegals at Fitzpatrick & Swanston bill at a rate of \$185.00  
12 per hour. (Fitzpatrick Decl. ¶ 7.) The courts are quite liberal in the evidence required to prove  
13 an attorney’s hours. Detailed time records are not required. An attorney’s testimony alone may  
14 suffice: “Testimony of an attorney as to the number of hours worked on a particular case is  
15 sufficient evidence to support an award of attorney fees, even in the absence of detailed time  
16 records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

17 Reasonable hours include, in addition to time spent during litigation, the time spent  
18 before the action is filed, including time spent interviewing the clients, investigating the facts  
19 and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447  
20 U.S. 54, 62 (1980). The fee award should also include fees incurred to establish and defend the  
21 attorneys’ fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982). The hours for which  
22 Plaintiff’s Counsel seeks compensation involve only these types of tasks. Thus, the number of  
23 hours for which fees are sought is reasonable.

24 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and  
25 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095  
26 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*,  
27 the attorney’s skill and experience, the nature of the work performed, the relevant area of  
28 expertise and the attorney’s customary billing rates. *Flannery v. California Highway Patrol*,  
61 Cal. App. 4th 629, 632-33 (1998).

1 Plaintiff's counsel's skill and experience justify the requested rates. As shown in the  
2 supporting declarations, Plaintiff's counsel have significant experience in the area of  
3 employment and wage and hour actions. Specifically, Plaintiff's counsel's practice focuses on  
4 representing employees in employment matters, particularly wage and hour cases. (Fitzpatrick  
5 Decl. ¶¶ 9-10; Franklin Decl. ¶ 32; Agnew Decl. ¶ 3, 8, 9.) As such, based on the hours and  
6 applicable rate, Plaintiff's Counsel's lodestar amount through the finalization of this settlement  
7 – without a multiplier – will be approximately \$56,828.00. (Fitzpatrick Decl. ¶ 8; Agnew Decl.  
8 ¶ 11.)

9 Once the court establishes the lodestar amount, it may enhance the lodestar number by  
10 applying a multiplier in order to adjust the fees awarded to an amount appropriate to the  
11 circumstances of the case. *Serrano v. Priest*, 20 Cal. 3d 25, 48 (1977). The pertinent factors  
12 include the difficulty of the questions involved and the skill in presenting them, the contingent  
13 nature of the fee award, the extent to which the litigation precluded other employment, and the  
14 percentage-of-the-fund the attorney would have received on the fair market. *Id.*, *Lealao*, 82  
15 Cal. App. 4th at 49. However, this list is not exhaustive, and the court may consider other  
16 factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1139  
17 (2001).

18 *Lealao* contains several factors justifying an enhancement based on the percentage-of-  
19 the-benefit, namely, no objections, commendable conduct by counsel, and significant  
20 recoveries, all of which were previously detailed above. (*Lealao*, 82 Cal. App. 4th at 51-53.)  
21 The extreme effort undertaken by counsel, as shown by their hours and the significantly high  
22 amount of each claim being paid out, shows commendable conduct.

23 It is also critical to note that prompt settlement cannot be used to diminish the fee or  
24 the enhancement based on a percentage-of-the-fund. (*Lealao*, 82 Cal. App. 4th at p. 52 (the  
25 promptness of settlement “cannot be used to justify the refusal to apply a multiplier”).)  
26 According to *Lealao*, courts placed “an extraordinarily high value” on settlement, and counsel  
27 should be rewarded, not punished, for achieving this goal in a timely fashion. (*Id.*)

28 Here, based upon Plaintiff's Counsel's lodestar of \$56,828.00, Plaintiff's lodestar  
actually exceeds the fees requested, such that a negative multiplier is implicated. *Wershba v.*

1 *Apple Computer, Inc.*, 91 Cal. App. 4th 224 (2001) (noting that courts using the lodestar  
2 method to calculate attorney fees awards in class actions typically apply multipliers in the  
3 range of 2 to 4); *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov.  
4 18, 2014) (awarding 33% of the common fund, based on a multiplier of 2.58, in a wage and  
5 hour class action settlement); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210  
6 (C.D. Cal. 2014) (awarding 33% of the common fund, based on a multiplier of 2.52).

7 As such, the requested fee award is fair and reasonable, and should be awarded in its  
8 entirety. Plaintiff's Counsel risked not only a great deal of time, but also a great deal of  
9 expense to ensure the successful litigation of this action. For these reasons, Plaintiff's  
10 Counsel's request for attorneys' fees in the amount of \$25,599.38 should be approved as fair,  
11 reasonable, and adequate.

#### 12 **G. The Costs are Reasonable**

13 Additionally, Plaintiff's counsel's request for reimbursement of actual litigation costs  
14 in the amount of \$3,908.02 is also reasonable, given that the Settlement Agreement allocates  
15 for reimbursement of litigation costs of up to \$4,000.00. As set forth in Plaintiff's counsel's  
16 declaration, Plaintiff's counsel incurred actual litigation costs in the amount of \$3,908.02,  
17 which are costs that were directly incurred in the prosecution of this action, including filing  
18 fees, court fees, service of process fees, and mediation fees. (Fitzpatrick Decl. ¶12, Ex. B;  
19 Agnew Decl. ¶ 12, Ex. B.) As such, the requested costs should be awarded as fair and  
20 reasonable.

#### 21 **H. The Settlement Administrator's Fees Should be Approved**

22 Pursuant to the terms of the Settlement, the fees and costs of the Settlement  
23 Administrator, Phoenix Settlement Administrators, are to be paid out of the class settlement  
24 funds. For such reasons, it is requested that the Settlement Administration Costs fees be  
25 approved.

#### 26 **I. Plaintiff's Enhancement Payment Should be Approved**

27 Courts have held that named plaintiffs in class or private attorney general actions can  
28 request a service award. (*Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59  
(explaining that service awards "are intended to compensate class representatives for work

1 done on behalf of the class, to make up for financial or reputational risk undertaken in bringing  
2 the action, and, sometimes, to recognize their willingness to act as a private attorney  
3 general”) (emphasis added).)

4 Here, Plaintiff seeks \$2,500.00 for the Service Award, which is intended to compensate  
5 Plaintiff for the efforts in prosecuting the case and her time spent on this case, including  
6 discussing the case and facts pertaining to Defendant’s policies and practices, searching for  
7 and providing documents, and reviewing the various pleadings and documents in connection  
8 with this lawsuit, including payroll documents, the PAGA letter, the complaint, and the  
9 Settlement Agreement. As Plaintiff’s requested service award is a modest amount, the Court  
10 should approve this service award as requested.

11 **J. Notice to the LWDA Has Been Provided**

12 Concurrent with the filing of this Motion, Plaintiff uploaded the instant motion, the  
13 Settlement Agreement, and Proposed Order to the LWDA’s website. (Franklin Decl. ¶ 33.)

14 **V. CONCLUSION**

15 Based on the above, Plaintiff and Defendant mutually request that this Court grant  
16 approval to the PAGA settlement in this matter. The terms of the PAGA settlement  
17 completely comply with the requirements of the Labor Code, and are fair, reasonable and  
18 adequate.

19 As such, in accordance with PAGA and the relevant case law, including the seminal  
20 case of *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties respectfully request that this  
21 Court grant approval to the joint stipulation regarding the settlement.

22 Dated: October 23, 2024

FITZPATRICK & SWANSTON  
DIVERSITY LAW GROUP, P.C.

23  
24 By: \_\_\_\_\_

B. James Fitzpatrick  
Larry W. Lee  
Attorneys for Plaintiff,  
BILLIE JO PHILLIPS, on behalf of  
herself and all similarly aggrieved  
employees

1 **PROOF OF SERVICE**

2 I am employed in the County of Monterey, State of California. I am over the age of 18  
3 and not a party to the within action; my business address is FITZPATRICK & SWANSTON,  
4 555 S. Main Street, Salinas, California 93901.

5 On the date written below, I served the foregoing document(s), described as  
6 **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT**  
7 **AGREEMENT PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT;**  
8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**  
9 on the interested parties in this action as indicated below and by the following means:

10 Larry W. Lee (SBN: 228175)  
11 Kristen Agnew (SBN: 247656)  
12 DIVERSITY LAW GROUP, P.C.  
13 515 South Figueroa Street, Suite 1250  
14 Los Angeles, California 90071  
15 Telephone: (213) 488-6555  
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17 [lwlee@diversitylaw.com](mailto:lwlee@diversitylaw.com)  
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19 xx

(BY ELECTRONIC SERVICE) Pursuant to CCP § 1010.6 and Cal.  
Rules of Court, Rule 2.251, I caused the document(s) to be served  
through the Odyssey eFileCA portal ([www.california.tylerhost.net](http://www.california.tylerhost.net)),  
addressed to the person(s) at the e-mail address(es) listed above. I did  
not receive within a reasonable time after e-service, any electronic  
message or other indication that e-service was unsuccessful.

20 I declare under penalty of perjury under the laws of the State of California that the  
21 foregoing is true and correct, and that this declaration was executed on October 23, 2024, at  
22 Salinas, California.

/s/

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27  
28  
\_\_\_\_\_  
Josie Favila