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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO**

CAMREE LYNN, on behalf of the State of
California a private attorney general,

Plaintiff,

vs.

BLUE LINK WIRELESS, LLC, a Limited
Liability Company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. **CGC-22-599665**

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

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

Hearing Date: May 2, 2023
Hearing Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer
Dept.: 302

Action Filed: May 17, 2022
Trial Date: None Set

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

2 YOU ARE HEREBY NOTIFIED THAT at 9:30 a.m. on May 2, 2023, or as soon
3 thereafter as the matter can be heard, in Department 302 of the above entitled Court before
4 the Honorable Richard B. Ulmer, Plaintiff Camree Lynn (“Plaintiff”) will and hereby does
5 move for an order approving the settlement of the PAGA claim alleged against Defendant
6 Blue Link Wireless, LLC (“Defendant”) in accordance with Labor Code §2699(l). The
7 proposed settlement is set forth in the accompanying PAGA Settlement Agreement
8 (“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
11 action. The Labor Workforce Development Agency has been served with this motion and
12 the Settlement Agreement as set forth in the accompanying proof of service.

13 Respectfully submitted,

14 Dated: March 31, 2023

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

16 By: /s/ Kyle Nordrehaug
17 Norman B. Blumenthal
18 Kyle R. Nordrehaug
19 Aparajit Bhowmik
20 *Attorneys for Plaintiff*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Camree Lynn (“Plaintiff”) reached a settlement of the California Private
4 Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this
5 action against Defendant Blue Link Wireless, LLC (“Defendant”) (collectively, the
6 “Parties”) which provides for a “Gross PAGA Settlement Amount” payment in the amount
7 of \$200,000.00. In accordance with California Labor Code §2699(l), Plaintiff now asks this
8 Court to review and approve the settlement of Plaintiff’s PAGA claims.¹ This is only a
9 settlement of the PAGA claims for civil penalties, and is not a class settlement and does not
10 release the individual wage claims, if any, of the affected employees other than the Plaintiff
11 herself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381
12 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not
13 recoverable under PAGA).

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

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

23 **II. RELEVANT FACTS**

24 PAGA Counsel mailed the necessary correspondence to the California Labor and
25 Workforce Development Agency (“LWDA”) on March 10, 2022 on behalf of Plaintiff
26 Camree Lynn, requesting authorization from the LWDA to seek civil penalties as provided
27

28 ¹ Section 2699(1)(2) provides as follows: “The superior court shall review and approve any settlement of any civil action pursuant to this part.”

1 by the Private Attorney General Act of 2004 (“PAGA”) for the wage and hour violations
2 alleged in the PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3). The 65-day notice
3 period for the LWDA to notify of its intent to investigate expired on May 15, 2022.

4 On May 17, 2022, Plaintiff Lynn filed a Representative Action Complaint in this
5 Court against Defendant Blue Link Wireless, LLC alleging a single cause of action for
6 recovery of civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

7 Plaintiff and Defendant agreed to mediate with Louis Marlin. Prior to the mediation,
8 the Parties conducted significant investigation and discovery of the facts and law. Defendant
9 produced hundreds of documents relating to its policies, practices, and procedures regarding
10 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
12 data to determine the number of Aggrieved Employees and the number of pay periods in the
13 PAGA Period. The Parties agree that the above-described investigation and evaluation, as
14 well as the information exchanged during the settlement negotiations, are more than
15 sufficient to assess the merits of the Parties’ positions and to compromise the issues on a fair
16 and equitable basis. (Declaration of Kyle Nordrehaug, at ¶3).

17 Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendant
18 failed to pay minimum wages to Plaintiff and other Aggrieved Employees for work
19 performed off the clock. For example, Plaintiff alleged Defendant required her and other
20 Aggrieved Employees to spend time completing a Covid-19 health screening assessment
21 prior to clocking in for their shift but failed to pay minimum wages for the time spent
22 completing the health screening assessment. Also, when store locations lacked coverage,
23 Plaintiff alleged she and other Aggrieved Employees worked during their meal breaks while
24 clocked out but were not paid minimum wages. Plaintiff also alleged that Defendant failed
25 to include various forms of non-discretionary compensation (eg. commission, referral bonus)
26 into their regular rate for purposes of calculating the correct overtime rate during certain pay
27 periods and that Plaintiff and the Aggrieved Employees were underpaid overtime as a result.
28 Additionally, Plaintiff alleged that while Defendant did pay meal break penalty payments,

1 Defendant paid Plaintiff and other Aggrieved Employee at their base hourly rate instead of
2 their regular rate which caused meal break penalties to be underpaid. Plaintiff also alleged
3 that Defendant issued inaccurate wage statements to Plaintiff and other Aggrieved
4 Employees. For example, when Defendant utilized the “Commission OT” pay code to pay
5 additional overtime, Defendant failed to state the hours or hourly rate associated with this
6 payment. Moreover, Plaintiff alleges that she and other Aggrieved Employees were required
7 to use their personal cell phones in order to respond to Defendant’s communications and for
8 scheduling purposes. Plaintiff alleged that Defendant did not, however, fully reimburse
9 Plaintiff and the Aggrieved Employees for the costs related to the use of their personal cell
10 phone for work-related issues. (Declaration of Kyle Nordrehaug, at ¶3).

11 On December 14, 2022, the Parties engaged in an all-day mediation session before
12 Mediator Louis Marlin, a respected and experienced mediator knowledgeable of both the
13 wage and hour laws and representative claims at issue in this action. Through arms-length
14 negotiations with the assistance of the mediator, the Parties reached an agreement to settle
15 the PAGA claims in this action which led to the signing of a Memorandum of Understanding
16 memorializing the settlement.² (Declaration of Kyle Nordrehaug, at ¶3).

17 The settlement was negotiated in light of all known facts and circumstances and the
18 uncertainty associated with litigation – including the risk of Plaintiff not being able to
19 maintain representative claims, the difficulty of proving Plaintiff’s claims in a manageable
20 trial, the merits of Defendant’s potential defenses, and the significant delay and potential
21 appellate issues inherent to litigation – and was reached after extensive arm’s length
22 negotiations, with the assistance of Mediator Marlin. (Declaration of Kyle Nordrehaug, at
23 ¶3).

24 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
25 Plaintiff’s individual claims pursuant to a separate confidential Individual Settlement Agreement
26 (“Individual Settlement”)(Settlement Agreement at ¶ 2.2). The individual claims were not at issue in
27 this action and exist independent and apart from the PAGA claims at issue before the Court. *See Kim*
28 *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.).

III. TERMS OF THE PAGA SETTLEMENT

The PAGA settlement is subject to Court approval consistent with Labor Code §2699(1)(2). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a “Gross PAGA Settlement Amount” payment in the amount of \$200,000 to resolve the Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this PAGA Settlement of \$200,000, there is a deduction of attorneys’ fees (“PAGA Counsel Fees Payment”) in the amount of \$66,666 (which is one-third of the PAGA Settlement), reimbursement of incurred costs (“PAGA Counsel Litigation Expenses Payment”) in an amount not to exceed \$22,000, and Settlement Administration Costs (“Administration Expenses Payment”) not to exceed \$5,000. (Agreement at ¶¶ 3.2.1-3.2.2).³ After these deductions, the amount remaining is the “PAGA Payment”, which is estimated to be no less than \$106,334.⁴

Of the PAGA Payment amount, seventy-five percent (75%) (no less than \$79,750.50) will be paid to the LWDA and the remaining twenty-five percent (25%) (no less than \$26,583.50) will be paid to the Aggrieved Employees. (Agreement at ¶ 3.2.3).⁵ This 75/25 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of pay periods each Aggrieved Employee worked during the PAGA Period as an Aggrieved Employee, as a percentage of the total pay periods worked by all Aggrieved

³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder of these amounts to the PAGA Payment. (Settlement Agreement at ¶ 3.2.1). To the extent the Administration Expenses are less or the Court approves payment less than \$5,000, the Administrator will allocate the remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

⁴ The PAGA Payment is correctly calculated to be at least \$106,334, and the figures in this motion are based on \$106,334. The Agreement has a typographical error and mistakenly indicates that PAGA Payment is \$108,334 instead of \$106,334.

⁵ “Aggrieved Employees” means all individuals who were employed by Defendant Blue Link Wireless, LLC in California and classified as a non-exempt employee at any time during the PAGA Period. The PAGA Period is the period from March 10, 2021 to February 15, 2023. (Agreement at ¶¶ 1.4, 1.23).

1 Employees during the PAGA Period.⁶ The PAGA Period is the time period from March 10,
2 2021 to February 15, 2023 (Agreement at ¶ 1.23).

3 For mediation, Defendant represented that there are approximately 412 Aggrieved
4 Employees who collectively worked approximately 4,518 pay periods during the PAGA
5 Period. (Agreement at ¶ 4.1). Defendant will provide a declaration as required by the
6 Agreement confirming the accuracy of the above figures. (Declaration of Kyle Nordrehaug,
7 at ¶4)

8 Upon entry of final judgment, the Released Parties shall be entitled to a release from
9 the State of California and the Aggrieved Employees only for any “Released PAGA Claims”,
10 which means all claims for PAGA penalties that were alleged, or reasonably could have been
11 alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which
12 occurred during the PAGA Period (the “Released PAGA Claims”). (Agreement at ¶ 5.2).
13 The Released PAGA Claims expressly excludes all other claims, including claims for vested
14 benefits, wrongful termination, violation of the Fair Employment and Housing Act,
15 unemployment insurance, disability, social security, workers’ compensation, and California
16 class claims, and PAGA claims outside of the PAGA period. (*Id.*) The Released PAGA
17 Claims do not include any claims that cannot be released as a matter of law. (*Id.*) The
18 Agreement expressly confirms that **“In no event shall the release of the Released PAGA**
19 **Claims in this Settlement Agreement release any individual claims of any individuals”**
20 (*Id.*)

21 Within fourteen (14) days after Defendant funds the Gross PAGA Settlement
22 Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA
23 PAGA Payment, the Administration Expenses Payment and the PAGA Counsel Expenses
24 Payment. (Agreement at ¶ 4.4).⁷ Checks will remain negotiable for one hundred eighty (180)

25
26 ⁶ See Agreement at ¶ 3.2.3 (“The Administrator will calculate each Individual PAGA Payment by (a)
27 dividing the amount of the Aggrieved Employees’ 25% share of PAGA Payment by the total number
28 of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods.”)

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

1 days. (*Id.* at ¶ 4.4.1) For any Aggrieved Employee whose Individual PAGA Payment check
2 is uncashed and cancelled after the void date, the Administrator shall transmit the funds
3 represented by such checks to the State Controller Unclaimed Property Fund in the name of
4 the individual who failed to cash their check. (*Id.* at ¶ 4.4.3)

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

11 12 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

13 The claim before this Court is solely the representative claim under PAGA on behalf
14 of the State of California for civil penalties pursuant to the PAGA. The parties have agreed
15 to settle this PAGA claim in its entirety after investigation and an arm’s length mediation
16 session. (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and
17 finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the State of
18 California. This is only a settlement of the PAGA claims for civil penalties, and is not a
19 class settlement and does not release the individual claims, if any, of the Aggrieved
20 Employees, other than any claims under PAGA. This settlement does not release any claim
21 that is not a PAGA claim.⁸ PAGA Counsel Fees equal to one-third of the Gross PAGA
22 Settlement amount (\$66,666.00) and PAGA Counsel Litigation Expenses in an amount not to
23 exceed \$22,000.00 will also be paid to PAGA Counsel as part of the settlement in
24 accordance with California Labor Code § 2699(g)(1), as set forth in the Agreement.⁹ Lastly,

25
26 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.”

27 ⁹ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
28 in the current amount of \$20,011.80, which is less than the cost allocation in the Agreement. See
Declaration of Nordrehaug at ¶ 9.

1 payment to the Administrator in an amount not to exceed \$5,000 to perform the
2 administrative duties to distribute the settlement money shall also be paid. (Declaration of
3 Kyle Nordrehaug, at ¶¶ 4-5.)
4

5 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
6 **SETTLEMENT OF THE PAGA CLAIM**

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

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

13 The Parties believe that the PAGA Settlement amount is fair and reasonable and
14 therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency
15 has released data on PAGA settlement amounts. Here, the Gross PAGA Settlement Amount
16 of \$200,000 is significantly more than other PAGA settlements and constitutes
17 approximately \$44 per pay period. (Declaration of Nordrehaug, at ¶6.)

18 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
19 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
20 statutory PAGA civil penalties was potentially \$451,800 based on 4,518 pay periods
21 applicable to the Aggrieved Employees during the PAGA Period.¹⁰ (Declaration of
22 Nordrehaug, at ¶6.) Importantly, however, these calculations were performed at the
23 maximum statutory rate for the penalties, when in fact, it is likely that any penalties awarded
24 would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to
25 award a lesser amount than the maximum civil penalty if based on the facts and

26 ¹⁰ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.
27 The valuation of \$451,800 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 circumstances to do otherwise would result in an award that is "unjust, arbitrary and
2 oppressive or confiscatory."

3 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
4 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay
5 period. Therefore, at trial, any PAGA penalties awarded could be significantly less than
6 Plaintiff's calculation even where Plaintiff prevailed on the PAGA claim. If the amount of \$5
7 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties
8 would be only \$22,590, which is far less than this settlement provides.

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

18 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove
19 each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*,
20 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of
21 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
22 suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to
23 prove that each Aggrieved Employee suffered a violation for each period the employee
24 worked in relation to meal or rest period violations, failure to pay minimum wages, failure to
25 pay overtime and sick pay wages, failure to provide accurate itemized wage statements,
26 failure to pay wages when due and failure to reimburse employees for required expenses.

27 Defendant maintains that Plaintiff and the Aggrieved Employees were properly
28 compensated, and that it did not violate the Labor Code. Accordingly, Defendant disputes

1 and denies Plaintiff's allegations and claims asserted in both the PAGA Notice and the
2 Operative Complaint, which are resolved by the Agreement. Defendant asserted additional
3 defenses to the PAGA claim, not only as to liability but also as to the amount of the
4 penalties. Defendant could argue that no penalties prior to the PAGA notification should be
5 awarded because the violations were not intentional, and at least one Court has so ruled.
6 These defenses present a risk to the PAGA claims and the potential that some or all of the
7 PAGA penalties sought may not be awarded. (Declaration of Nordrehaug, at ¶7.)

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

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

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

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

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

9
10 **VI. THE ATTORNEYS’ FEES AND COSTS ARE FAIR AND REASONABLE**

11 PAGA Counsel seek approval of attorneys’ fees from the PAGA settlement in the
12 amount of \$66,666 representing one-third of the \$200,000 Gross PAGA Settlement Amount.
13 PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff’s position
14 is that the payment of attorneys' fees and costs in this settlement is a matter of contract for a
15 contingent representation. Nevertheless, should this Court review the requested attorneys'
16 fees, it is clear that the requested fees and costs are reasonable.

17 First, the requested fees are justified by the result achieved. PAGA Counsel
18 negotiated a recovery of \$200,000.00, and this result justifies the requested fees equal to one
19 third of this recovery. This percentage is within the standard contingent recovery percentage
20 of one-third, and this percentage is what was expressly approved by the Supreme Court in
21 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.,*
22 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that ““fee awards in class actions
23 average around one-third of the recovery”” regardless of ““whether the percentage method or
24 the lodestar method is used.”” (*quoting Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11
25 (2008))).

26 Second, the fee award is justified by the work performed and contributions to the
27 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award
28 is less than PAGA Counsel’s current lodestar of \$97,422, which represents a negative

multiplier of 0.68. A fee award that is less than the lodestar incurred is most certainly reasonable.

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

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

Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses in the total amount of \$20,011.80 which is less than the \$22,000 allocation for costs in the Agreement, so the difference of \$1,988.20 will be added to the PAGA Payment amount. These expenses are documented in the accompanying Declaration of Nordrehaug at ¶9.

1 **VII. CONCLUSION**

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

5
6 Dated: March 31, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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8 By: /s/ Kyle Nordrehaug
9 Kyle Nordrehaug
10 Attorney for Plaintiff
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