

ATTORNEY OR PARTY WITHOUT ATTORNEY NAME: Scott S. Nakama FIRM NAME: Ladva Law Firm STREET ADDRESS: 530 Jackson Street, 2nd Floor CITY: San Francisco STATE: CA ZIP CODE: 94133 TELEPHONE NO.: 415-296-8844 FAX NO.: 415-296-8847 EMAIL ADDRESS: SNakama@LadvaLaw.Com ATTORNEY FOR (name): Plaintiff Angelica Infante	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA STREET ADDRESS: 825 Brown Street MAILING ADDRESS: CITY AND ZIP CODE: Napa, CA 94559 BRANCH NAME:	
PETITIONER: Angelica Infante RESPONDENT: OLE HEALTH, et al.	
PETITION TO ☒ CONFIRM ☐ CORRECT ☐ VACATE CONTRACTUAL ARBITRATION AWARD	
Jurisdiction (check all that apply): ☐ Action is a limited civil case (does not exceed \$35,000) Amount demanded ☐ does not exceed \$10,000 ☐ exceeds \$10,000 ☒ Action is an unlimited civil case (exceeds \$35,000)	CASE NUMBER: 22CV000380
NOTICE: You may use this form to request that the court confirm, correct, or vacate an award in an arbitration conducted pursuant to an agreement between the parties that is subject to Code of Civil Procedure section 1285 et seq. and that does not involve an attorney-client fee dispute. If you are requesting court action after an attorney-client fee arbitration award, please read Alternative Dispute Resolution form ADR-105, <i>Information Regarding Rights After Attorney-Client Fee Arbitration</i> .	

1. **Petitioner and respondent.** Petitioner (name each):
 Angelica Infante

alleges and requests relief against respondent (name each):
 OLE HEALTH

2. **Contractual arbitration.** This petition requests the court to confirm, correct, or vacate an award in an arbitration conducted according to an agreement between the parties that is subject to Code of Civil Procedure section 1285 et seq.
3. Pending or new action.
- a. ☒ A court case is already pending, and this is a petition filed in that action. (If so, proceed to item 4.)
- b. ☐ This petition commences a new action. (If so, complete items 3b(1) through 3b(4).)
- (1) **Petitioner's capacity.** Each petitioner named in item 1 is an individual,
☐ except petitioner (state name and complete one or more of the following)
- (a) ☐ is a corporation qualified to do business in California.
- (b) ☐ is an unincorporated entity (specify):
- (c) ☐ is a representative (specify):
- (d) ☐ is (specify other capacity):
- (2) **Respondent's capacity.** Each respondent named in item 1 is an individual,
☐ except respondent (state name and complete one or more of the following) OLE HEALTH
- (a) ☐ is a business organization, form unknown.
- (b) ☐ is a corporation.
- (c) ☐ is an unincorporated entity (specify):
- (d) ☐ is a representative (specify):
- (e) ☐ is (specify other capacity):

PETITIONER: Angelica Infante RESPONDENT: OLE HEALTH, et al.	CASE NUMBER: 22CV000380
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3. b. (3) **Amount or property in dispute.** This petition involves a dispute over *(check and complete all that apply)*
- (a) ☐ the following amount of money *(specify amount)*: \$
- (b) ☐ property *(if the dispute involves property, complete both of the following)*
- (i) consisting of *(identify property in dispute)*:
- (ii) having a value of *(specify value of property in dispute)*: \$
- (4) ☐ **Venue.** This court is the proper court because *(check (a) or (b))*:
- (a) ☐ this is the court in the county in which the arbitration was held.
- (b) ☐ the arbitration was not held exclusively in any county of California, or was held outside of California, **and** *(check one or more of the following)*:
- (i) ☐ this is the court in the county where the agreement was made.
- (ii) ☐ this is the court in the county where the agreement is to be performed.
- (iii) ☐ the agreement does not specify a county where it is to be performed and was not made in any county in California, and the following party resides or has a place of business in this county *(name of party)*:
- (iv) ☐ the agreement does not specify a county where it is to be performed and was not made in any county in California, and no party to this action resides or has a place of business in California.
4. **Agreement to arbitrate.**
- a. **Date.** Petitioner and respondent entered into a written agreement on or about *(date)*: May 10, 2021
- b. ☒ **Attachment.** A copy of the agreement is submitted as Attachment 4(b) and incorporated herein by this reference.
- c. **Arbitration provision.** Paragraph 5 of the agreement provides for arbitration of disputes arising out of the agreement as follows *(either copy the arbitration provision in full or summarize the provision)*:
Arbitration agreement provides for arbitration of all disputes the parties have against each other whether based on California Labor Code, California Fair Employment and Housing Act, etc.
5. **Dispute subject to arbitration.** A dispute arose between petitioner and respondent concerning the following matter covered by the agreement to arbitrate *(summarize the dispute)*:
1. Whether Respondent discriminated against Petitioner in violation of the California Fair Employment and Housing Act ("FEHA") and wrongfully terminated Petitioner's employment. 2. Whether Respondent failed to accommodate Petitioner and failed to engage in the interactive process in violation of the FEHA. 3. Whether Respondent violated the California Labor Code by failing to timely pay Petitioner her final wages. 4. Whether Respondent violated the Private Attorneys' General Act ("PAGA")
6. **Arbitrator.** The following person was duly selected or appointed as arbitrator *(name of each arbitrator)*:
Honorable Kevin J. Murphy
7. **Arbitration hearing.** The arbitration hearing was conducted as follows *(complete both of the following)*:
- a. **Date** *(each date of arbitration)*: July 11, 2024
- b. **Location** *(city and state where arbitration was conducted)*:
Remote hearing
8. **Arbitration award.**
- a. **Date of award.** The arbitration award was made on *(date)*:
- b. **Terms of award.** The arbitration award *(check one or more of the following)*
- (1) ☒ requires ☐ petitioner ☒ respondent to pay the other party this amount: \$ 25,000.01
- (2) ☐ requires neither party to pay the other anything.
- (3) ☐ is different as to different petitioners and respondents.
- (4) ☒ provides *(specify other terms or check item 8(c) and attach a copy of the award)*:
\$10,000 in civil penalties where 75% of that amount goes to the California Labor and Workforce Development Agency and remaining 25% goes to the aggrieved employees in this PAGA action.
- c. ☒ **Attachment of Award.** A copy of the award is submitted as Attachment 8(c).
9. **Service of award.**
- a. The signed award or an accompanying document indicates that the award was served on petitioner on *(date)*: 7/11/24 & 7/15/24
- b. ☒ Petitioner alleges that a signed copy of the award was actually served on *(date)*: 7/11/24 & 7/15/24

PETITIONER: Angelica Infante
RESPONDENT: OLE HEALTH, et al.

CASE NUMBER:
22CV000380

10. **Petitioner requests that the court** *(check all that apply)*

- a. ☒ **confirm the award, and enter judgment according to it.**
- b. ☐ **correct the award and enter judgment according to the corrected award, as follows:**
- (1) The award should be corrected because *(check all that apply)*
- (a) ☐ the amount of the award was not calculated correctly, or a person, thing, or property was not described correctly.
- (b) the arbitrator exceeded his or her authority.
- (c) the award is imperfect as a matter of form.
- (2) The facts supporting the grounds for correcting the award alleged in item 10b(1) are as follows *(if additional space is required, check here ☐ and submit facts on an attachment labeled 10b(2))*:
- (3) The award should be corrected as follows *(if additional space is required, check here ☐ and describe requested correction on an attachment labeled 10b(3))*:

c. ☐ **Vacate (cancel) the award.**

- (1) The award should be vacated because *(check all that apply)*
- (a) ☐ the award was obtained by corruption, fraud, or other unfair means.
- (b) ☐ an arbitrator was corrupt.
- (c) ☐ the misconduct of a neutral arbitrator substantially prejudiced petitioner's rights.
- (d) ☐ the arbitrator exceeded his or her authority, and the award cannot be fairly corrected.
- (e) ☐ the arbitrator unfairly refused to postpone the hearing or to hear evidence useful to settle the dispute.
- (f) ☐ an arbitrator failed to disclose within the time for disclosure a ground for disqualification of which the arbitrator was then aware.
- (g) ☐ an arbitrator should have disqualified himself or herself after petitioner made a demand to do so.
- (2) The facts supporting the grounds for vacating the award alleged in item 10c(1) are as follows *(if additional space is required, check here ☐ and submit facts on an attachment labeled 10c(2))*:
- (3) Petitioner ☐ does ☐ does not request a new arbitration hearing.

d. ☐ **Award petitioner interest from** *(date)*:

- (1) ☐ at the statutory rate.
- (2) ☐ at rate of _____% per year.

e. ☒ **Award petitioner costs of suit**

- (1) ☒ in the amount of: \$ 8,400.00 to Ladv Law Firm
- (2) ☐ according to proof.

f. ☒ **Award petitioner attorney fees incurred in this action** *(check only if attorney fees are recoverable in this action according to statute or parties' agreement.)*

- (1) ☒ in the amount of: \$30,800 to Ladv Law Firm and \$30,799.99 to Law Offices of Daniel Vega
- (2) ☐ according to proof.

g. ☐ **Award petitioner the following other relief** *(describe relief requested; if additional space is required, check here ☐ and describe relief on an attachment labeled 10g):*

54

11. **Pages and attachments.** *Number of pages attached:* _____

Date: September 9, 2024

Scott S. Nakama

(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER OR ATTORNEY)

ATTACHMENT 4B

ALTERNATIVE DISPUTE RESOLUTION POLICY

OLE Health (hereinafter referred to as the “Company”) hopes that employment disputes with its employees will not occur. However, the Company believes that if disputes do arise, it is in the best interests of the Company and its employees to address the issues promptly with minimum disturbance to the lives of employees and the operations of the Company.

Accordingly, to avoid the expenditure of time, and resources often required in litigation, and a more expeditious resolution of employment-related disputes that may arise between OLE Health and its employees, the Company offers an alternative dispute resolution policy and procedure (the “OLE Health Alternative Dispute Resolution Policy” or the “Policy”). Under the Policy, the Company and its employees agree to resolve any and all disputes, controversies or claims arising from or relating to the employment relationship, exclusively through final and binding arbitration.

Please read and review the alternative dispute resolution policy carefully. Your signature below indicates that you agree to resolve any and all disputes, controversies or claims that may arise or relate to your employment through arbitration. The Company will not retaliate or discriminate against you if you choose not to sign this agreement.

OLE Health Alternative Dispute Resolution Policy

Out of the mutual desire to avoid the expenditure of time and resources often required in litigation, it is hereby agreed by and between Angelica G. Infante (hereinafter the “Employee”) and OLE Health (hereinafter the “Company”) (collectively hereinafter the “Parties”) that any and all disputes, controversies, or claims between the Parties shall be determined exclusively by final and binding arbitration, rather than a judge or a jury.

Claims Covered

The Employee and the Company both agree that except as otherwise provided in this Policy, any claim, dispute, and/or controversy that either party may have against the other (including but not limited to, claims related to compensation or any claims of discrimination and harassment, whether they be based on the California Labor Code or federal Fair Labor Standards Act, California Fair Employment and Housing Act, Title VII of the Civil Rights Acts of 1964, as amended, or claims for unfair competition or misappropriation of proprietary or trade secret information, as well as all other applicable local, state or federal laws or regulations) which would otherwise require or allow resolution by any court between Employee and the Company (or between Employee and the Company’s owners, parent or subsidiary companies, affiliates, directors, officers, managers, employees, agents, and parties affiliated with its employee benefit and health plans) arising from, related to, or having any relationship or connection whatsoever with Employee’s seeking employment with, employment by, or other association with or termination by the Company, whether based on contract, tort, statutory or equitable law or otherwise, shall be submitted to and determined exclusively by binding arbitration.

Additionally, this Policy covers all those claims whether made against Company and of its subsidiary or affiliated entities or its individual officers or directors (in an official or personal capacity).

Claims Not Covered

Claims not covered by this agreement are disputes over workers' compensation claims, unemployment insurance claims, or state or federal disability insurance claims. petitions for judicial review of a decision issued after an administrative hearing, injunctive relief sought by either party in an appropriate court of law, and those claims that the Legislature or the courts have determined may not be arbitrated.

Negotiating in Advance of Arbitration

No claim should be submitted to arbitration without first attempting to resolve the matter informally. The Parties shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, both Employee and Company agree to make good faith efforts at resolving any dispute internally on an informal basis through Company management channels appropriate to that particular dispute.

Employee's contact point to initiate informal, internal resolution is:

Andrew Torge
Chief Human Resources Officer
OLE Health
1100 Trancas Street, Suite 300
Napa, CA 94558

If a covered dispute remains unresolved at the conclusion of the informal, internal resolution efforts, an employment dispute may be submitted to final and binding arbitration. Upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association under its Employment Arbitration Rules and Mediation Procedures.

Initiating Arbitration

To initiate arbitration, the party requesting arbitration shall give written notice of such to the American Arbitration Association ("AAA") and to the other party. Written notice to the Company must be given by personal delivery, nationally-recognized overnight courier, or registered or certified mail (return receipt requested) to the following:

Andrew Torge
Chief Human Resources Officer
OLE Health
1100 Trancas Street, Suite 300
Napa, CA 94558

Contact information for AAA can be found at www.adr.org or by calling 1-877-528-0880. Written notice must be given within the time limit established by the applicable statute of limitations if the claim involves statutory rights, or within one-hundred twenty (120) days from when the claim arises if not based on statutory rights.

Payment of Costs

The Company shall pay the costs of arbitration, except the employee's attorneys' fees and fees and costs of any experts retained by the employee. However, if any party prevails on a statutory claim that entitles the prevailing party to a reasonable attorney's fee (with or without expert fees) as part of the costs, the arbitrator may award reasonable attorneys' fees (with or without expert fees) to the prevailing party in accord with such statute.

Arbitration Rules and Procedures

Arbitration shall take place in (Napa, California) before a single, neutral arbitrator in accordance with the Federal Arbitration Act ("FAA") and the rules and regulations then in effect of the American Arbitration Association ("AAA") for the resolution of employment disputes. If for any reason the FAA is deemed inapplicable, only then will this policy be governed by applicable state arbitration statutes (i.e., the California Arbitration Act, Code of Civil Procedure § 1280 et seq.).

All communications during or in connection with the arbitration proceedings are privileged in accordance with Civil Code § 47(b). If Code of Civil Procedure § 1284.2 conflicts with other substantive statutory provisions or controlling case law, the allocation of costs and arbitrator fees shall be governed by applicable statutory provisions or controlling case law instead of Code of Civil Procedure § 1284.2.

The arbitrator selected shall be a qualified individual to whom the parties mutually agree, and shall be subject to disqualification on the same grounds as would apply to a judge of such court.

The arbitrator shall be vested with authority to determine the applicability, validity, and enforceability of this Policy, and all issues pertaining to the dispute or claims raised.

To the extent applicable in civil actions, the following shall apply and be observed: all rules of pleading (including the right of demurrer) and all rights to resolution of the dispute by means of motions for summary judgment or adjudication and judgment on the pleadings. All such demurrers and motions shall be heard on twenty-eight (28) days' notice and said notice period is subject to change by the arbitrator upon a showing of good cause. Discovery shall be in conformity with the procedures of the California Arbitration Act (including Code of Civil Procedure § 1283.05 and all of the Act's other mandatory and permissive rights to discovery applicable to the dispute being arbitrated). The arbitrator will have the authority to deviate from strict terms such as venue and discovery provisions of this Policy, upon a showing of good cause or for good reason.

The arbitrator shall follow the California Rules of Evidence during the hearing, and any party will have the right to prepare, serve and file a brief with the arbitrator.

The decision of the arbitrator shall be final and conclusive as to all parties to such dispute. The arbitrator shall render an award that shall include a written statement of opinion setting forth the arbitrator's findings of facts and conclusions of law. Judicial review shall only be available to the limited extent required by federal or state law. The award shall remain confidential unless disclosure of such award is required by law.

Any determinations, remedies and awards shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis other than such controlling law.

Judgment upon the award may be entered in any court having jurisdiction thereof. The ability of either party to recover any remedies provided for by statute, including attorneys' fees, is not limited. However, there will be no right or authority for any dispute to be brought, heard, or arbitrated by Employee as a class or collective action or in a representative or private attorney general capacity on behalf of a class of personal or the general public, except to the extent permissible by law.

Waiver of Rights

Under this policy, Company and Employee both waive the right to a jury trial.

By agreeing to this waiver of rights, the parties understand that they are waiving their right to participate as a class representative or as a member in any putative or certified class action or consolidated action brought against the other party in a court of law, or to make claims in a private attorney general capacity. Further, the parties shall not bring a putative or certified class action or consolidated action to arbitration, and claims brought by or against one party may not be joined or consolidated in the arbitration with claims brought by or against any other person or entity.

Severability

If any term or portion of this Policy shall, for any reason, be held by a court of competent jurisdiction to be invalid or unenforceable or to be contrary to public policy or any law, then the remainder of this Policy shall not be affected by such invalidity or unenforceability, but shall remain in full force and effect, as if the invalid or unenforceable term or portion has not existed within this Policy.

However, if: (1) such court (including a court of appeal if an appeal is taken) reviews this Policy's provisions regarding the waiver of class, representative, private attorney general or collective actions and makes a final non-appealable ruling that determines such provisions are invalid and unenforceable under applicable law; and (2) after or in connection with such final ruling, the Employee or Company has asserted, asserts, or seeks to assert class, representative, private attorney general, or collective action claims against the other party, the provisions of this Policy regarding waiver shall not be severed from this Policy and instead, the class, representative, private attorney general, or collective against claims shall be resolved in court and not arbitration.

No Retaliation

Employee will not be subject to retaliation for exercising his or her right to assert claims under this Agreement, and any retaliatory act or omission is directly contrary to Company policy. If the Employee believes that he or she has been retaliated against by anyone at the Company, the Employee should immediately report this to:

Andrew Torge
Chief Human Resources Officer
OLE Health
1100 Trancas Street, Suite 300
Napa, CA 94558

Employee Rights

The Company encourages all Employees to become familiar with employee rights under state and federal wage and hour laws, equal employment opportunity laws, and all other laws. The Company

encourages all Employees to report any violations of applicable law to Andrew Torge, Chief Human Resources Officer and to assert claims under this Policy for any alleged violations of any state and federal laws governing wages, hours, overtime, minimum wage, discrimination, harassment or retaliation, or any other claims or disputes covered by this Policy.

Entire Agreement

It is agreed and understood by the Parties that any agreement contrary to or modifying this Policy must be: (1) entered into; (2) in writing; and (3) signed by the Employee and the (Chief Executive Officer or President of the Company). No supervisor or representative of the Company, other than (the Chief Executive Officer or its President) has the authority to enter into any agreement for employment for any specified period of time or make any agreement contrary to this Policy.

This is the entire agreement between the Company and the Employee regarding dispute resolution. Oral representations made before or after Employee is hired, or before or after Employee signs the Policy, do not alter the Policy. This Policy sets forth the entire agreement between the parties and supersedes any and all prior or contemporaneous agreements and understandings, whether written, oral or implied, pertaining to the subject matter of this Policy. This Policy continues in force even after Employee's employment with the Company ends, for whatever reason.

EMPLOYEE HAS READ, UNDERSTOOD, AND AGREES TO BE LEGALLY BOUND BY ALL OF THE ABOVE TERMS AND UNDERSTANDS THAT BY AGREEING TO RESOLVE ANY AND ALL DISPUTES, CONTROVERSIES OR CLAIMS THROUGH BINDING ARBITRATION, BOTH EMPLOYEE AND THE COMPANY GIVE UP ANY RIGHT TO A TRIAL BY JURY.

Dated: _____

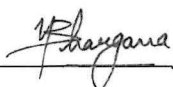
Employee's Name (Please Print)

Employee's Signature

Dated: 05/10/2021

OLE Health

By: Nimisha Bhargava

Print Name: 

Title: Human Resources Generalist



verifies the Electronic Signature of this document

SIGNATURE

Signer Name:	Angelica Infante
User ID:	ainfante@olehealth.org
Date Electronically Signed:	May 10, 2021 01:41 PM EDT
File Name:	Arbitration Agreement - 2021 - Current.pdf
Display Name:	Arbitration Agreement - 2021 - Current.pdf

ATTACHMENT 8C

Honorable Kevin J. Murphy (Ret.)
ADR SERVICES, INC.
100 First Street, 27th Floor
San Francisco, California 94105
(415) 772-0900 PH
(415) 772-0960 FAX
kmurphy@adrservices.com

AMERICAN ARBITRATION ASSOCIATION

ANGELICA INFANTE, individually, and on
behalf of general public, and as an “aggrieved
employee” under the California Labor Code
Private Attorney Generals Act

Claimant,

Vs.

OLE HEALTH and DOES 1-50,

Respondents.

CASE NO. 01-23-0000-7643

**DECISION REGARDING CLAIMANT’S
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND REQUEST FOR
AWARD OF REASONABLE
ATTORNEYS’ FEES**

Hon. Kevin J. Murphy (Ret.), Arbitrator

I. PROCEDURAL BACKFROUND

On April 7, 2022, Claimant notified California Labor and Workforce Development Agency of California and her employer of violations of the California Labor Code (“Labor Code”) and an intent to proceed under Private Attorneys General Act (Labor Code section 2699.3(a)(1)(A)).

This case was initiated with the filing of a Complaint in the Superior Court of the State of California, County of Napa on April 8, 2022. The operative First Amended Complaint was filed June 15, 2022.

In an order filed on January 26, 2023, the Superior Court granted Respondents’ motion to compel arbitration.

1 On February 22, 2023, Claimant filed a 39-page Demand for Arbitration (“Demand”) with the
2 American Arbitration Association. The Demand consisted of 14 causes of action including claims of
3 multiple violations of the California Labor Code, inclusive of a breach of the Private Attorneys
4 Generals Act (“PAGA”), discrimination, and wrongful termination.

5
6 Following the selection of the undersigned to serve as arbitrator, an Arbitration Management
7 Conference was conducted on May 25, 2023. During the conference, the parties agreed to an August
8 12, 2024 arbitration hearing date and acknowledged that California substantive and procedural law
9 would apply to the proceeding as if the case was being litigated in a California court” (Arbitration
10 Management Order para. 5). Subsequent to the Conference, the arbitration hearing date was changed
11 to September 3, 2024.

12
13 Following the Arbitration Management Conference, an order was issued memorializing the
14 arbitration hearing date and agreement regarding the applicable law (Arbitration Management Order
15 para. 1, 5, and 10).

16
17 On or about June 28, 2024, the arbitrator was informed that a tentative settlement has been achieved.
18 Following that notification, a phone conference was conducted with counsel on July 2, 2024. During
19 the conference the date of July 11, 2024 was set to hear a Motion for Approval of the PAGA
20 Settlement and associated attorney’s fees.

21
22 The hearing regarding the settlement agreement proceeded as scheduled on July 11, 2024. After
23 considering the evidence, which includes the entire record of the arbitration proceedings and the
24 arguments of counsel, the following Decision is issued.

25 ///

26 ///

27 ///

28 ///

29 ///

1 II. DECISION

2
3 1. SETTLEMENT

4
5 Labor Code section 2699 1 (2) provides that “the superior court shall review and approve any
6 settlement of any civil action” filed under PAGA.

7
8 A PAGA lawsuit is fundamentally a law enforcement action. Settlements are not required to satisfy
9 class action requirements (Arias v. Superior Court (2009) 46 Cal. 4th 969, 980 and 986).

10
11 A PAGA claim “serves to vindicate the public by imposing civil penalties, rather than conferring a
12 private benefit on the plaintiff and the represented employee” (McKenzie v. Federal Exp. Corp (C.D.
13 2011) 765 Supp. 2d 1222, 1233).

14
15 In evaluating a settlement, courts look to the circumstances to determine whether it is “fair, adequate,
16 and reasonable” (Dunk v. Ford Motor Co. 48 Cal. App 4th 1794, 1801).

17
18 The record of this lawsuit coupled with the declarations of plaintiff’s counsel establish that the
19 resolution was fair and equitable.

20
21 2. ATTORNEY’S FEES AND COSTS

22
23 The party pursuing attorney’s fees bears the burden of establishing the reasonableness of the claimed
24 hourly rate and that the amount of fees sought was reasonably necessary to the conduct of the litigation
25 (Levy v. Toyota Motor Sales, U.S.A., Inc. (1992) 4 Cal. App. 4th 807, 816).

26
27 In deciding the question of reasonable fee compensation, appellate Courts place reliance on the
28 judgment of the trial judge. The California Supreme Court explained that “the trial judge is the best
29

1 judge of the value of professional services rendered in his court” (Ketchum v. Moses (2001) 24 Cal.
2 4th 1122, 1132).

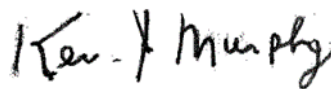
3
4 In reviewing the attorney fee component of the settlement, the undersigned considered the
5 declarations of attorneys Daniel Martinez De La Vega, Ashwin Ladv, and Scott Nakama, the entire
6 record of arbitration process, and observations made of the attorneys’ litigation conduct. The fee
7 request is approved.

8
9 The declarations of counsel also support recovery of costs in the amount requested.

10
11 **III. CONCLUSION**

12
13 The arbitrator approves the settlement of this case as set forth in the settlement agreement.
14 Specifically, the undersigned finds settlement in the gross amount of \$47,202.50 is fair as is the
15 apportionment of that amount reflected in the settlement document.

16
17
18
19
20 **DATE: July 11, 2024**



Hon. Kevin J. Murphy (Ret.), Arbitrator

1
2
3 AMERICAN ARBITRATION ASSOCIATION
4

5 Angelica Infante, individually and on behalf of
6 others similarly situated,

7
8 Plaintiff,

9 vs.

10 OLE HEALTH and Does 1-50,

11 Defendants
12

Case No. 01-23-0000-7643 ~~PROPOSED~~
**ORDER GRANTING PLAINTIFF'S
NOTICE OF MOTION AND MOTION
FOR ATTORNEY'S FEES AND COSTS
FOR PLAINTIFF'S INDIVIDUAL
CLAIMS**

Date: July 11, 2024
Time: 8:30 am

13
14 **I. PROCEDURAL BACKGROUND**

15 This case was initiated with the filing of a Complaint in the Superior Court of the State of
16 California, County of Napa on April 8, 2022. The operative First Amended Complaint was filed
17 June 15, 2022. In an order filed on January 26, 2023, the Superior Court granted Respondents'
18 motion to compel arbitration.
19

20 On February 22, 2023, Claimant filed a 39-page Demand for Arbitration ("Demand")
21 with the American Arbitration Association. The Demand consisted of 14 causes of action
22 including claims of multiple violations of the California Labor Code, inclusive of a breach of the
23 Private Attorneys Generals Act ("PAGA"), discrimination, and wrongful termination. Following
24 the selection of the undersigned to serve as arbitrator, an Arbitration Management Conference
25 was conducted on May 25, 2023. During the conference, the parties agreed to an August 12,
26 2024 arbitration hearing date and acknowledged that California substantive and procedural law
27 would apply to the proceeding as if the case was being litigated in a California court"
28

1 (Arbitration Management Order para. 5). Subsequent to the Conference, the arbitration hearing
2 date was changed to September 3, 2024

3 Following the Arbitration Management Conference, an order was issued memorializing
4 the arbitration hearing date and agreement regarding the applicable law (Arbitration
5 Management Order para. 1, 5, and 10). Claimant accepted a California Code of Civil Procedure
6 Section 998 Offer of \$25,000.01 plus reasonable attorneys' fees and costs to be determined by
7 the arbitrator. (Declaration of Scott Nakama in Support of Motion for Attorneys' Fees
8 ("Nakama Decl."), **Exhibit A**).

9
10 On or about June 28, 2024, the arbitrator was informed that a tentative settlement has
11 been achieved. Following that notification, a phone conference was conducted with counsel on
12 July 2, 2024. During the conference the date of July 11, 2024 was set to hear a Motion for
13 Attorney's Fees and Costs. The hearing regarding the above motion proceeded as scheduled on
14 July 11, 2024. After considering the evidence, which includes the entire record of the arbitration
15 proceedings and the arguments of counsel, the following Decision is issued.
16
17

18 **II. DECISION**

19 Claimant requested \$31,599.99 in attorneys' fees and \$1,197.50 in costs for Claimant's
20 individual or non-representative claims pursuant to California Code of Civil Procedure § 998,
21 CAL. GOV. CODE § 12965(b), 15 U.S. C. § 1681n(a)(3), and California Labor Code § 218.5.
22

23 FEHA claims are subject to a recovery of reasonable attorneys' fees and cost to a plaintiff
24 who is a prevailing party. CAL. GOV. CODE § 12965(b); *See also* CAL. CIV. PROC. CODE §
25 1032(a)(4) (defining "prevailing party" in a non-FEHA case to include the party with "a net
26 monetary recovery"). Under California Government Code Section 12965, the California
27 Supreme Court has held that, in FEHA cases, a prevailing plaintiff "should ordinarily receive his
28

1 or her costs and attorney fees unless special circumstances would render such an award unjust.”
2 *Williams v. Chino Valley Independent Fire Dist.* (2005) 61 Cal.4th 97, 115 (adopting same
3 standard set forth in *Christiansburg Garment Co. v. EEOC* (1978) 434 U.S. 412, 416-17 for
4 recovery of costs and attorneys’ fees in federal court).
5

6 California Labor Code § 218.5 provides that in civil actions brought for the nonpayment
7 of wages, fringe benefits, or health and welfare or pension fund contributions, the Court may
8 award reasonable costs and attorneys’ fees to the prevailing party. In *Kirby v. Immoos Fire*
9 *Protection, Inc.*, 53 Cal.4th 1244, 1248 (2012), the California Supreme Court held that Labor
10 Code § 218.5 provides an award for attorneys’ fees to the prevailing party in actions for the
11 nonpayment of wages. In *Aleman v. Airtouch Cellular* (Cal. 2nd App. Dist. 2012) 209 Cal. App.
12 4th 556, 584, the Court awarded attorneys’ fees and costs for prevailing for a claim of unpaid
13 work pursuant to California Labor Code § 218.5.
14

15 A prevailing party in a Fair Credit Reporting Act (“FCRA”) claim can obtain attorneys’
16 fees and costs. In the case of any successful action to enforce any liability under this section, [the
17 court may award] the costs of the action together with reasonable attorneys’ fees as determined
18 by the court. 15 U.S. C. § 1681n(a)(3).
19

20 The California Supreme Court has described the method of determining attorneys’ fees
21 amount in FEHA cases as follows:
22

23 Pursuant to long-established precedent and practice, section 12965 fees are
24 calculated by determining the number of hours reasonably worked by the
25 attorneys who prosecuted the matter and multiplying that number by the
26 reasonable hourly rate those attorneys should receive for such work. Depending
27 on the circumstances, consideration may also be given to the attorneys’
28 experience, the difficulty of the issues presented, the risk incurred by the attorneys
in litigated the cases, the quality of work performed by the attorneys, and the
result the attorneys achieved.

1 *Flannery v. Prentice* (2001) 26 Cal.4th 572, 584. This is commonly known as the “lodestar”
2 method. See *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. “California courts
3 have consistently held that a computation of time on a case and the reasonable value of that time
4 is fundamental to a determination of an appropriate attorneys’ fee award.” *Margolin v. Regional*
5 *Planning Com.* (1982) 134 Cal.App.3d 999, 1004-1005; see also *Serrano v. Priest* (1977) 20
6 Cal.3d 25, 28 (“*Serrano III*”).

7
8 Statutory fees are awarded to enable plaintiffs of limited means to bring a meritorious suit
9 to vindicate important public policies. See *Cummings v. Benco Building Services* (1992) 11
10 Cal.app.4th 1383, 1387 (court recognizing public policy behind prevailing plaintiffs in FEHA
11 action being entitled to recovery attorneys’ fees while prevailing defendants are not entitled to
12 recover fees). The California legislature has declared it an express purpose of the FEHA “to
13 provide effective remedies that will eliminate” discriminatory employment practices. CAL.
14 GOV. CODE § 12920. An award of attorneys’ fees accomplishes this purpose. *Horsford v. Bd.*
15 *Of Trustees of Cal State Univ.* (2005) 132 Cal.App4th 359, 394. “[W]ithout some mechanism
16 authorizing the award of attorney fees, private actions to enforce such important public policies
17 will as a practical matter frequently be infeasible.” *Flannery v. Prentice* (2001) 26 Cal.4th 572,
18 583 (quotation omitted). The goal is to “fix a fee at the fair market value for the particular
19 action” and ensure that the fee award is “fully compensatory.” *Horsford*, 132 Cal.App4th at 394.
20
21 A trial court may, in fact, award attorneys’ fees in an amount higher than the damages awarded.
22
23 *Beaty v. BET Holdings, Inc.* (9th Cir. 2000) 222 F.3d 607, 612-13.
24

25 Plaintiff’s counsel incurred risk in prosecuting this case on a contingency basis. Ladva
26 Law Firm and Law Offices of Daniel Vega undertook representation of Plaintiff on a contingent
27 basis since 2022. Plaintiff’s counsel understood from the outset that the action would likely be
28

1 hard-fought, that the result would be uncertain, and that there was no hope of compensation or
2 reimbursement for any of it unless they were successful. As expected, they had to litigate the
3 case vigorously, and spent their own funds to obtain vindication for Plaintiff.
4

5 Additionally, as the Ninth Circuit has stated:

6 It must also be kept in mind that lawyers are not likely to spend unnecessary time
7 on contingency fee cases in the hope of inflating their fees. The payoff is too
8 uncertain, as to both the result and the amount of the fee. It would therefore be the
9 highly atypical civil rights case where plaintiff's lawyer engages in churning. By
10 and large, the court should defer to the winning lawyer's professional judgment as
11 to how much time he was required to spend on the case; after all, he won, and
12 might not have, had he been more of a slacker.

13 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).

14 A FEHA fee award should ordinarily include all of the hours reasonably spent by the
15 attorneys litigated to the case to a successful conclusion. *Horsford*, 132 Cal.App4th at 394; see
16 also *Serrano v. Unruh* (1982) 32 Cal.3d 621, 624, 639 (“*Serrano IV*”). This includes time
17 spent on the case before the filing of the lawsuit such as the investigation and evaluation of the
18 claims. See *Stokus v. Marsh* (1990) 217 Cal.App.3d 647, 654-56.

19 A reasonable hourly rate is the market value of the legal services, which may be
20 determined by the rates charged in the local community by attorneys of comparable skills,
21 experience and reputation. See *Serrano IV*, *supra* 32 Cal.3d at 640, 463; see also *Int'l*
22 *Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal Inc.* (1999) 69
23 Cal.App.4th 287, 303 (court holding the statutory fee award was based on market rates for
24 comparable private attorneys rather than amounts billed to client on the case). The reasonable
25 rate should be based on “hourly rates similar to those charged by top law firms” in the local area.
26 *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 82-83; see also *PLCM Group*,

1 supra, 22 Cal.4th at 1095-1096 (proper to use prevailing market rate for comparable services in
2 local community).

3 “District Courts in Northern California have found that rates of \$475-\$975 for partners
4 and \$300-\$490 per hour for hour for associates are reasonable.” “*Superior Consulting Servs v.*
5 *Steeves-Kiss*, 2018 U.S. Dist. LEXIS 80261 * (N.D. May 11, 2018).
6

7 In this case, Plaintiff seeks the following attorney rates of compensation which are
8 commensurate with attorney’s level of experience, skills and knowledge:

- 9 • Ashwin Ladva: \$700 per hour (Attorney with 24-25 years of experience)
- 10 • Daniel Vega: \$500 per hour (Attorneys with 15-16 years of experience)
- 11 • Scott S. Nakama: \$450 per hour (Attorney with 9-10 years of experience):
12

13 Ashwin Ladva has been a member of the California Bar since 2000. Ladva has been
14 practicing in the area of plaintiff’s employment litigation since June 2000, and have represented
15 Plaintiffs in cases involving discrimination, harassment, retaliation, wage and hour violations,
16 wrongful termination and fraudulent business practices. (*See generally* Ladva Declaration for
17 qualifications). He is principal of Ladva Law Firm.
18

19 Daniel Vega is principal of the Law Offices of Daniel Vega and a member of the
20 California Bar since 2009. He has represented Plaintiffs in cases involving discrimination,
21 harassment, retaliation, wage and hour violations, wrongful termination and fraudulent business
22 practices. (*See generally* Vega Declaration for qualifications).
23

24 Scott Nakama was a contract lawyer with Burton Employment Law in June 2015 and an
25 Attorney with Burton Employment Law from July 2015 to February 2020. From February 2020
26 to the present, he has been an associate attorney with the Ladva Law Firm. (*See generally*
27 Nakama Declaration for qualifications).
28

1 Given the experience of Plaintiff’s counsel and the prevailing market rate for attorneys of
2 comparable skill and experience in the relevant market, the requested rate of \$450 per hour for
3 Mr. Nakama, \$500 per hour for Mr. Vega and \$700 per hour for Mr. Ladva for attorneys’
4 services are more than reasonable. Accordingly, this Court should grant this fee motion at the
5 hourly rates requested by Plaintiff.
6

7 As courts have recognized, private actions to enforce the important public policies
8 contained within the FEHA would “frequently be infeasible” without statutory fee awards. See
9 *Flannery*, 26 Cal.4th at 582-583; see also *Horsford*, 132 Cal.App.4th at 394 (statutory fee awards
10 further FEHA’s purpose of providing effective remedies to eliminate discriminatory employment
11 practice). Accordingly, statutory fee awards are to be “fully compensatory”. See *Horsford*, 132
12 Cal.App.4th at 394; see also *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133. “Because
13 time records are not required under California law ... , there is no required level of detail that
14 counsel must achieve.” *Syers Properties III. Inc. v. Rankin* (2014) 226 Cal.App.4th 691.
15

16 Hours are reasonable if “at the time rendered, [they] would have been undertaken by a
17 reasonable and prudent lawyer to advance or protect his client’s interest in the pursuit of a
18 successful recovery.” *Moore v. James H. Matthews & Co.*, 682 F.2d 830, 839 (9th Cir. 1982).
19 Courts have routinely upheld attorney fees award in FEHA cases that have far exceeded the
20 amount of recovery. In *Muniz v. United Parcel Service*, the Ninth Circuit Court of Appeals
21 upheld a district court award of \$697,971.80 in statutory attorney fees under FEHA were only
22 \$27,280 in damages was recovered at trial. *Muniz v. United Parcel Service, Inc.* (9th Cir. 2013)
23 7378 F.3d 214, 218, 227. In *Vo*, an award of \$470,000 in attorney’s fees on FEHA claims was
24 upheld where the recovery at trial had only been \$37,500 in damages. *Vo v. Las Virgenes*
25 *Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 442-443. 446-447. In *Beaty*, the Ninth Circuit
26
27
28

1 held that it was within the trial court's discretion to award \$376,520 in attorneys' fees on FEHA
2 claims where the recovery at trial was only \$30,000 in damages. *Beatty*, 222 F.3d at 609-610,
3 613-614

4
5 Prior to filing the Complaint in this matter, Plaintiff's counsel assisted Plaintiff in
6 exhausting his administrative remedies with the DFEH. Counsel diligently investigated the
7 claims and potential defenses. Counsel then filed this Complaint in 2022.

8 Scott Nakama of the Ladva Law Firm has billed a total of \$69,300 or 154 hours at \$450
9 per hour for this case excluding (1) time spent opposing the motion to compel arbitration, (2)
10 conferring with Defendant about deadlines to respond to Plaintiff's discovery requests that were
11 subject to two hearings with the Arbitrator, (3) the time spent on two status conferences or
12 hearings with the arbitrators regarding discovery disputes, (4) work on Respondent's Motion to
13 Extend the Arbitration Date, and (5) attending the hearing for the Motion to Extend the
14 Arbitration Date. (Nakama Decl., **Exhibit B**). Mr. Nakama has over 9 years of experience
15 practicing employment law. Of the \$69,300, an amount of \$20,205 was spent exclusively for
16 only PAGA related claims such as opposing a motion to dismiss, etc. The remainder of \$49,095
17 after subtracting \$20,205 from \$69,300 was work that was jointly for the benefits of the PAGA
18 and Plaintiff's individual claims such as the mediation brief, preparing a demand letter, etc. Even
19 if Nakama assigned 50% of the remainder of \$49,095 to PAGA, the leftover amount of \$24,547.5
20 (54.55 hours) is a reasonable estimate of time dedicated to Plaintiff's individual claims.
21
22
23

24 Daniel Vega of the Law Offices of Daniel Vega has billed a total of \$94,500 on this
25 case or 189 hours at \$500 per hour. (Vega Decl., **Exhibit A**) Mr. Vega has over 15 years
26 practicing law. Even assuming 40 percent of that amount was for the individual claim, that
27 amount is still \$37,800 (75.6 hours at \$500 per hour) in Attorneys' fees or far more than the
28

\$31,599.99 requested. (Vega Decl., Exhibit A.)

Ashwin Ladva of the Ladva Firm has billed a total \$27,860 or 39.8 hours for this case at rate of \$700 per hour. (Ladva Decl, Exhibit A.) Even assuming 40 percent of that amount was for the individual claim, that amount is still \$11,144 (15.92 hours at \$700 per hour) in Attorneys' fees.

Here, is a chart summarizing Plaintiff's counsel's estimated time on Plaintiff's individual claims or non-PAGA claims and requested hourly rates:

Name	Position	Hourly Rate	Estimated Number of Hours	Total Fees
Ashwin Ladva	Partner Attorney between 24- 25 years of experience	\$700.00	15.92	\$11,144
Scott Nakama	Attorney with 9-10 years of experience	\$450.00	54.55	\$24,547.50
Daniel Vega	Partner Attorney with 15-16 years of experience	\$500.00	75.6	\$37,800
Total			146.07 hours	\$73,491.50

In this case, Claimant's counsel estimates statutory fees are in the amount of \$73,491.50 for all time spent on this matter after excluding the work on the representative action. Ladva Law Firm maintains contemporaneous time records and time is recorded as the work is performed. Even if the hourly attorneys' rates were reduced by 50%, the amount of fees incurred would still exceed Claimant's counsel's request.

Ladva law Firm also incurred costs of **\$1,197.50 or half the price of mediation** litigating this case. (Nakama Decl, **Exhibit C**).

However, Claimant is not requesting the entire amount of fees and costs that he spent on the individual claims on this case. Instead, Claimant is requesting \$31,599.99 in attorneys' fees and \$1,197.50 in costs.

For all the foregoing reasons, Claimant is entitled to an award and reasonable attorneys' fees and cost pursuant to the term of the statutory offer to compromise, California Labor Code § 218.5, the FCRA, and California Government Code § 12965(b). The request is approved for \$31,599.99 in attorneys' fees (\$15,799.99 to the Law offices of Daniel Vega and \$15,800.00 to Ladva Law Firm) and \$1,197.50 in costs to Ladva Law Firm

Erica L. Rosasco (SBN 220836)
erica@rosascolawgroup.com
Michael G. Blankinship (SBN 302659)
mike@rosascolawgroup.com
ROSASCO LAW GROUP, APC
6540 Lonetree Blvd. Ste 100
Rocklin, CA 95765
Telephone: (916) 672-6552
Facsimile: (916) 672-6563

Attorneys for Respondents
OLE HEALTH

AMERICAN ARBITRATION ASSOCIATE

ANGELICA INFANTE, individually, and
on behalf of the general public, and as an
“aggrieved employee” under the California
Labor Code Private Attorney Generals Act,

Claimant,

v.

OLE HEALTH and Does 1-50

Respondent.

Case No.. 01-23-0000-7643

**RESPONDENT OLE HEALTH’S OFFER OF
COMPROMISE PURSUANT TO SECTION
998.**

TO CLAIMANT, ANGELICA INFANTE AND HER ATTORNEY OF RECORD:

Respondent OLE HEALTH hereby offers to have an award to be entered against Respondent and in favor of Plaintiff ANGELICA INFANTE in the above-entitled matter pursuant to California Code of Civil Procedure Section 998 for the sum of \$25,000.01, in exchange for disposition of the entire case except for the claims brought under the Private Attorneys’ General Act of 2004 (“PAGA”). The offer is exclusive of any costs and attorney’s fees, which shall be determined on motion by the arbitrator. The offer is further conditioned upon the Arbitrator granting Claimant’s Motion for Approval of PAGA Settlement before Respondent forfeits the unearned balance of their deposit for the Arbitrator’s fees for Arbitration hearing.

1 If you accept this offer, please date, and sign the attached Notice of Acceptance of Offer set
2 forth below and return this entire document to Erica L. Rosasco, Rosasco Law Group, APC, at the
3 address set forth above. If you do not accept this offer prior to arbitration or within 30 days after the
4 offer is made, whichever occurs first, it will be deemed withdrawn, as provided in California Code
5 of Civil Procedure Section 998(b)(2). If you do not accept this offer and you fail to obtain a more
6 favorable a in this action, your recoverable fees and costs of suit may be reduced and/or you may be
7 liable for some or all of Respondent's costs, as specified in California Code of Civil Procedure
8 Section 998(c).

9
10 Dated: July 9, 2024

ROSASCO LAW GROUP APC

/s/ Michael G. Blankinship

Erica L. Rosasco

Michael G. Blankinship

Attorneys for Respondent OLE HEALTH

11
12
13
14
15 **NOTICE OF ACCEPTANCE OF OFFER:**

16 Plaintiff ANGELICA INFANTE accepts the above offer on the terms stated.

17
18 Dated: July 9, 2024

Angelica Infante
Claimant ANGELICA INFANTE

19
20
21
22
23 Dated: July 9, 2024

Daniel Martinez de la Vega
Daniel Martinez de la Vega
Counsel for Plaintiff ANGELICA INFANTE

Ashwin Ladva, Esq. (S. Bar # 206140)

Scott S. Nakama (SB# 296732)

LADVA LAW FIRM

530 Jackson Street, 2nd Flr.

San Francisco, CA 94133

(415) 296-8844

(415) 296-8847 (f)

Daniel Martinez de la Vega, Esq. (SB# 255885)

LAW OFFICES OF DANIEL VEGA

201 Spear Street, Suite 1100

San Francisco, CA 94105

Telephone: (415) 287-6203

Fax: (415) 704-5067

dvega@vegalawyer.com

Attorneys for Claimant Angelica Infante and others similarly situated

AMERICAN ARBITRATION ASSOCIATION

Angelica Infante, individually and on behalf of
others similarly situated,

Claimant,

v.

OLE HEALTH and Does 1-50,

Respondents.

Case No.: Case No. 01-23-0000-7643

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND REQUEST FOR
AWARD OF REASONABLE ATTORNEYS'
FEES; MPAs**

Date: July 11, 2024

Time: 8:30 am

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1 **NOTICE OF MOTION**

2 PLEASE TAKE NOTICE at the time and date listed in the caption, Plaintiff Angelica Infante
3 will move the Arbitrator for an order recommending granting Plaintiff's Motion for Preliminary
4 Approval of PAGA Settlement. This motion is based on this Notice of Motion and Motion, the
5 Memorandum of Points and Authorities, the Declaration of Scott Nakama, the Declaration of Daniel
6 Vega, the Declaration of Ashwin Ladva, and all other evidence or argument the Court will consider
7 at the hearing.
8

9
10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 Plaintiff Angelica Infante ("Plaintiff"), an aggrieved employee under the California Labor
13 Code's Private Attorneys General Act of 2004 ("PAGA"), respectfully moves the arbitrator for an
14 Order granting approval of the Private Attorneys General Act Settlement Agreement and Release
15 ("Settlement Agreement") with Defendant OLE HEALTH ("Defendant"), which is attached as
16 Exhibit A to the concurrently filed Declaration of Scott Nakama ("Nakama Decl.").

17 This proposed settlement will dispose of Plaintiff's representative PAGA claim filed on
18 behalf of herself and other aggrieved non-exempt employees, as defined by Labor Code § 2699(c),
19 and who worked for Defendant in California from August 7, 2021 through July 11, 2024 (through
20 the date of approval of the PAGA settlement.) The claim is based upon Defendants' alleged failures
21 to pay all wages owed upon termination, improper request earning and arrest history of applicants
22 and signing of waivers on the condition of employment

23 Although Plaintiff sought unpaid wages, damages, and statutory penalties on her individual
24 claims, the relief provided under the proposed settlement is *solely* for the payment of *civil penalties*
25 under PAGA. Defendant have identified approximately 288 aggrieved employees who were
26 employed during the relevant period.

27 The basic terms of the PAGA Settlement Agreement ("Settlement Agreement" or
28 "Settlement") provide for the following:

1. A non-reversionary Gross Settlement Sum of \$47,202.50 (Nakama Decl., Exhibit A, Settlement, ¶ 4.0);
2. An award of up to \$30,000 in attorney fees and up to \$7,202.50 reimbursement of costs to Plaintiff's Counsel for services rendered as counsel on this matter including settlement administration fees and costs (Nakama Decl., Exhibit A, Settlement, ¶ 4.0);
3. \$10,000 in civil penalties allocated as 75% to the LWDA and the remaining 25% to approximately 288 Aggrieved Employees who worked during the PAGA Period (The 25% payable to the Aggrieved Employees shall be allocated as follows: 80% in equal shares to the Aggrieved Employees who filled out an application and the remaining 20% in equal shares to the Aggrieved Employees whose employment with Defendant ended during the PAGA Period) (Nakama Decl., Exhibit A, Settlement, ¶ 4.1);
4. PAGA Period: April 7, 2021 through July 11, 2024 the date of final approval of the Parties' settlement agreement by the Court. (Nakama Decl., Exhibit A, Settlement, ¶ 3.0(a));
5. Aggrieved Employees are defined as individuals who worked for Defendant in California at any time during the PAGA Period (1) who filled out an application of employment with Defendant and/or (2) whose employment ended with Defendant during the PAGA Period (Nakama Decl., Exhibit A, Settlement, ¶ 3.0(b));
6. PAGA Group Size or Number of Aggrieved Employees: an estimated **288** individuals. Of the 288, an estimated 133 are no longer employed by Defendant. (Nakama Decl. ¶ 18);
7. No Reversion: The Settlement is a **non-reversionary** settlement (Settlement, ¶ 5.0);
8. PAGA Release: Plaintiff and the LWDA will release the PAGA Claims set forth in this Action, that were identified in the Operative Complaint.(Nakama Decl., Exhibit A, Settlement, ¶ 6.0,);
9. Class Data for Administration: The Settlement Administrator will receive the Class List within 10 calendar days of the date Plaintiff serves Defendant with the Court's Order confirming the Arbitrator's approval of the PAGA Settlement (Nakama Decl., Exhibit A, Settlement, ¶ 5.0);
10. Address Search: Within 5 days of receipt of confirmation by Counsel, the Administrator

will update the recipients' mailing address using the National Change of Address Database and send the checks to the Aggrieved Employees via first class mail, postage prepaid along with a notice explaining the settlement payment.(Nakama Decl., Exhibit A, Settlement, ¶ 5.2);

11. Returned Addresses: In the event of checks that are returned undelivered, The Administrator shall, within 7 days of receiving the returned check, remail checks to the forwarding address or, if no forwarding address is provided, to any address the Administrator is able to identify during a search of all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces and direct contact by the Administrator with Aggrieved Employees (Nakama Decl., Exhibit A, Settlement, ¶ 5.3);

12. Check Void Period: Settlement checks will be valid for 180 days (Nakama Decl., Exhibit A, Settlement, ¶ 5.4);

13. Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed the State Controller's Unclaimed Property (Nakama Decl., Exhibit A, Settlement, ¶ 5.4);

14. Tax Treatment: The entirety of each Aggrieved Employee's share of settlement shall be allocated as payment of disputed civil penalties, and no amount shall be deducted from any taxed. Aggrieved employees shall receive an IRS Form 1099-MISC from the Settlement Administrator. No party has made any representation as to the taxability of these payments and Aggrieved Employees shall be solely responsible for reporting and paying their share of any taxes on payments received under this settlement. (Nakama Decl., Exhibit A, Settlement, ¶ 7); and

15. Notice of Settlement (Nakama Decl., Exhibit B).

In deciding whether to grant approval of the proposed settlement, the primary issue to be decided by the Court is whether the settlement is fair, reasonable, and adequate. As set forth herein, the proposed settlement embodies all of the features of such a settlement, as it: (1) is the product of

arm’s-length negotiations; (2) was negotiated by attorneys experienced in wage-and-hour issues; (3) was negotiated subsequent to undertaking sufficient investigation to evaluate the relative strength and value of the PAGA claim; and (4) reflects a reasoned compromise based directly on the relative strength and value of the PAGA claim, as well as the risks, expense, complexity and likely duration of further litigation.

The proposed settlement provides for Defendant to pay a total of \$47,203 on a non-reversionary basis. After deducting the amounts requested for attorneys’ fees (\$30,000.00) and litigation costs (\$7,202.50 (including administration), the settlement provides for distribution of approximately \$10,000 to the aggrieved employees and the LWDA. Pursuant to PAGA, this amount will be distributed 25 percent (or approximately \$2,500) to the aggrieved employees (the “Employees’ Portion”), and 75 percent (or approximately \$7,500) to the LWDA (the “LWDA Portion”). (See Labor Code § 2699(i).) Each aggrieved employee will be entitled to payment of a pro rata share of the Employees’ Portion, based on the number of pay periods that he or she worked between April 7, 2021 through July 11, 2024], through the date upon which the Court enters an Order approving PAGA Settlement.

Plaintiff submits that the Settlement is fair, adequate, and reasonable, and meets the requirements for approval by the Court based upon the relevant fairness factors, the relative strengths of the PAGA claims, the risk, expense, and complexity of further litigation, the benefit conferred by the settlement, the scope of the release of claims, the experience and view of counsel, the arms-length negotiations by which settlement was reached, and the reasonableness of the net settlement amount. Indeed, the proposed settlement constitutes a fair, adequate, and reasonable compromise of disputed claims. Accordingly, Plaintiff respectfully requests the Court enter the [Proposed] Order Granting Approval of PAGA Settlement and awarding attorneys’ fees and costs, settlement administration costs, and approve the payments of the LDWA Portion and Employee Portion of the settlement amount that is submitted concurrently with this Motion.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Defendant OLE Health (“OLE”) is a 501(c)(3) nonprofit healthcare provider. (Nakama Decl.

¶ 13.) Plaintiff was employed by Defendants from April 19, 2021 to February 15, 2022 and worked as a Medical Assistant I at the Up-Valley sites. Plaintiff was classified as a non-exempt hourly employee during the entirety of her employment with Defendants. *Id.*

B. Procedural History

As required by California Labor Code § 2699.3, on April 7, 2022 Plaintiff notified the California Labor and Workforce Development Agency (“LWDA”) and Defendants of her intent to assert the rights granted to her under PAGA and the basis for those claims, including the facts and theories to support the alleged violations. (Nakama Dec. ¶ 20.) Following the 65-day notice period, on June 15, 2022, Plaintiff amended her Complaint to add a representative action in this Court alleging a PAGA cause of action. ([Nakama Decl. ¶ 5, Ex. 3).

After investigation and discovery, Plaintiff subsequently filed the operative First Amended Complaint on June 15, 2022. entitled *INFANTE v. OLE HEALTH*, in Napa County Superior Court, (the “Action”) seeking to represent a class consisting of the “current” and former employees of Defendant for claims related 1) Violation Of Labor Code 432.3 and 432.5; 2) Violation Of Labor Code 201-203; 3) Violation Of Labor Code 432.6; 4) Violation Of Labor Code 432.7; 5) Violation of 15 U.S.C. §§ 1681 (Fair Credit Reporting Act); 6) Unfair Competition In Violation Of Cal. Bus. & Prof. Code §§ 17200, Et Seq. Against Ole Health.; 7) Disability Discrimination; 8) Failure To Accommodate; 9) Failure To Engage in The Interactive Process; 10) Retaliation For Requesting an Accommodation; 11) Retaliation For Complaining of Discrimination; 12) Failure To Prevent Discrimination and Retaliation; 13) Retaliation pursuant to LABOR CODE. SECTION 1102.5; 14) Wrongful Termination and 15) PAGA. (Nakama Dec. ¶ 4, Exhibit C.).

On January 26, 2023, the Court granted in part Defendant’s Motion to Compel Arbitration and denied Defendant’s Motion to Dismiss Plaintiff’s Class and PAGA Claims. On February 22, 2023, Plaintiff filed a Demand for Arbitration of the PAGA and individual claims. (Nakama Dec. ¶ 4, Exhibit D.).

1 **C. Discovery and Investigation**

2 The Parties have engaged in substantial formal and informal discovery to develop the case.
3 Plaintiff served two sets of request for production, one set of special interrogatories, one set of
4 request for admission, and one set of employment form interrogatories. (Nakama Dec. ¶ 21).
5 Plaintiff also wrote four meet and confer letters and participated in multiple meet and confer phone
6 conversations with opposing counsel about discovery. (Nakama Dec. ¶ 21). Plaintiff received and
7 reviewed a sampling of time any pay records of terminated employees, and a sample of the
8 documents and information that Defendant obtained through its background searches. This
9 information was sufficient to assess the strength and risks of the case and enter into an informed
10 settlement.

11 Through the discovery process the Parties estimate that there are approximately 288 PAGA
12 Members. The Parties agree that the Class Members, include but are not limited to any current or
13 former employees April 7, 2021 and July 11, 2024 (through the date of preliminary approval of the
14 parties' settlement agreement by the Court) (the "Class Period") that completed an application for
15 employment and/or was either terminated or resigned during the PAGA period.. After reviewing
16 documents regarding Defendant's wage and hour policies and practices and other information
17 obtained during the informal exchange of discovery, Class Counsel were able to evaluate the
18 probability of a PAGA verdict, success on the merits, and the reasonable obtainable maximum
19 monetary exposure for all claims. Class Counsel reviewed these records and performed a damage
20 analysis. Class Counsel also investigated the applicable law regarding the claims and defenses
21 asserted in the litigation. (Nakama Decl. ¶ 7.)

22 Based on class-wide documents produced, as well as Plaintiff's counsel's own
23 independent investigation, review of OLE's application and payroll records, Claimant's counsel
24 believes that the settlement with OLE for the consideration and on the terms set forth in this
25 Agreement is fair, reasonable, and adequate, and is in the best interest of the Aggrieved
26 Employees n light of all known facts and circumstances, including the risks of significant delay
27
28

1 and uncertainty associated with litigation and various defenses asserted by OLE. (Nakama Decl. ¶
2 9.)

3 **D. Mediation**

4 The Parties engaged in a mediation on March 21, 2024 with Judge Kevin Murphy. We
5 reviewed a 20% sample size of payroll records (approximately 1000 documents that included
6 payroll and time records). (Nakama Decl. ¶ 8.). The settlement discussions were conducted at
7 arm's-length and involved an informed and detailed analysis of Defendant's potential liability of
8 total exposure in relation to the costs and risks associated with continued litigation. Discussions
9 between counsel for the Parties, informal discovery, as well as the investigation and evaluation of
10 the allegations in the Complaint by the Parties, have permitted each side to assess the relative
11 merits of the claims and defenses to those claims. (Nakama Decl. ¶ 8.) After a full day of arms-
12 length negotiations, the parties were unable to reach an agreement. (Nakama Decl. ¶ 9.)

13 The Parties went into mediation willing to explore the potential for a settlement of the
14 dispute, but each side was also prepared to litigate its position through trial and appeal if a settlement
15 had not been reached. *Id.* During mediation, the parties vigorously debated the legal and factual
16 bases for Plaintiff's claims and Defendants' defenses, and the parties' analyses and conclusions
17 based on the available data. *Id.*

18 However, after weeks of continued negotiations the Parties eventually agreed to settle
19 Plaintiff's individual claims pursuant to a confidential settlement agreement. *Id.* They also agreed to
20 settle the PAGA claim, and in the months that followed, the parties formalized their agreement and
21 executed the PAGA Settlement Agreement that is now before the Arbitrator for approval. (Nakam
22 Decl. ¶ 9, Ex. A.) ("Settlement") At all times, the Parties' negotiations were adversarial and non-
23 collusive. *Id.*

24 Based on Plaintiff's investigation, formal and informal discovery, and taking into account
25 Plaintiff's claims, Defendants' defenses regarding the merits of the claims and the manageability of
26 a trial thereon, Defendants' potential exposure, the expense and time necessary to pursue this action
27 through trial, the risks and costs of further prosecution of this action, the uncertainties of complex
28 litigation and developing law, and the benefits that will accrue to the LWDA and the aggrieved

1 employees, the Parties and their counsel believe that a settlement on the terms set forth herein is fair,
2 reasonable, adequate, and in the best interests of Plaintiff, the Aggrieved Employees, the LWDA,
3 and Defendant. (Nakama Decl. ¶ 10)

4 Plaintiff now moves for an order granting approval of the settlement pursuant to California
5 Labor Code section 2699(l)(2). The Settlement Agreement and moving and supporting papers for
6 this motion are being submitted to the LWDA in conformity with California Labor Code section
7 2699(l)(2), concurrently with this filing.

8 **III. SUMMARY OF THE PAGA SETTLEMENT TERMS**

9 **A. The Aggrieved Employees**

10 The PAGA Settlement Group Members (“Group Members”) include all persons who were
11 employed from April 7, 2021 and July 11, 2024 (the “PAGA Period”) (1) who filled out an
12 application of employment with Defendant and/or (2) whose employment ended with Defendant
13 during the PAGA Period. (Settlement § 3(c).) As of the date data was produced ahead of mediation,
14 there were approximately 288 Group Members who worked during the PAGA period. (Nakama
15 Decl. ¶ 11.)

16 **B. Settlement Terms and Allocation to PAGA Settlement Members**

17 The PAGA Settlement Agreement provides that Defendants will pay a total of \$47,202.50
18 into a gross settlement fund to settle the PAGA claims. (Settlement § 3(a).) From this amount,
19 payment will be made to the Plaintiff’s Counsel for their attorneys’ fees and litigation costs. *Id.* The
20 balance will be distributed to LWDA and the Aggrieved Employees. *Id.*

21 Plaintiff’s attorneys will receive \$30,000 of the gross settlement fund, Litigation costs in the
22 amount of approximately \$7,202.50 will also be allocated to Plaintiff’s attorneys. *Id.* Through their
23 settlement negotiations, the parties have designated Simpluris, Inc. (“Simpluris”) as a third-party
24 settlement administrator and allocated settlement administration fees in the amount of \$3500.00 from
25 the gross settlement fund. *Id.* The LWDA will receive 75% of the balance, or \$7,5000. *Id.* The
26 Group Members will receive the remaining 25%, or \$2,500.00. The 25% payable to the Aggrieved
27 Employees shall be allocated as follows: 80% in equal shares to the Aggrieved Employees who
28 filled out an application and the remaining 20% in equal shares to the Aggrieved Employees whose

1 employment with Defendant ended during the PAGA Period. Based on information provided by
2 Defendants, there are approximately 288 Aggrieved Employees. *Id.*

3 Simpluris will determine the total number of pay periods worked by each Group Member
4 and the total number of pay periods worked by all Group Members. (Settlement § 4). Simpluris will
5 calculate each Group Member's pro-rata share of the amount allocated for all Group Members by
6 using the proportional number of the total pay periods that the he or she worked for Defendants
7 during the PAGA period. *Id.* Simpluris will issue Settlement Checks to each Group Member for
8 their pro rata share. *Id.* Settlement checks will be distributed to Group Members no later than thirty
9 (30) days following the entry of the Court's order approving settlement. Individual settlement
10 checks will remain valid for one hundred and eighty days (180) from the date they are issued by the
11 Settlement Administrator. Any unclaimed funds after the 180-day period shall be remitted by the
12 Settlement Administrator to the State Controller's Unclaimed Property Fund in the name of the
13 PAGA Representative class member.

14 **C. Scope of the Release**

15 The Settlement Agreement provides that upon the Effective Date, Plaintiff and the other
16 PAGA Settlement Group Members will be deemed to have released any and all claims seeking civil
17 penalties under Labor Code § 2698 et. seq., for Labor Code §§ 201-203; Labor Code 432.3 and
18 432.5; Violation Of Labor Code 432.6; and Violation Of Labor Code 432.7. against Defendants or
19 Defendants' parents, subsidiaries, trustees, directors, officers or managing agents. (Settlement
20 Agreement ¶ 2.) Pursuant to the proposed settlement, and as a matter of law, this limited release
21 does not release Defendants from liability for, nor act as a waiver of, any claims nonparty PAGA
22 Settlement Group Members may have or assert against Defendants for alleged violations of any
23 statute other than PAGA. *Id.*

24 **IV. LEGAL ARGUMENT**

25 **A. Standard of Review**

26 In enacting PAGA, the California State Legislature expressly stated that "the only
27 meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil penalties
28 as provided in the Labor Code." (Stats. 2003 ch. 906, § 1(b).) The Legislature thus determined that

1 it is “in the public interest to allow aggrieved employees, acting as private attorneys general, to
2 recover civil penalties for Labor Code violations, with the understanding that labor law enforcement
3 agencies were to retain primacy over private enforcement efforts.” *Arias v. Superior Court*, 46
4 Cal.4th 969, 980 (2009). Under PAGA, an aggrieved employee may bring a civil action personally
5 and on behalf of other current and former employees to recover civil penalties for Labor Code
6 violations. *Iskanian v. CLS Transp. Los Angeles, LLC* 59 Cal.4th 348, 380 (2014). Any civil penalties
7 recovered under PAGA are to be distributed such that 75 percent goes to the Labor and Workforce
8 Development Agency (“LWDA”) and 25 percent goes to the affected employees. Labor Code §
9 2699(i). PAGA is intended “to augment the limited enforcement capability of [LWDA] by
10 empowering employees to enforce the Labor Code as representatives of the Agency.” *Iskanian*,
11 *supra*, 59 Cal.4th at 383. A judgment in a PAGA action binds all those, including nonparty aggrieved
12 employees, who would be bound by a judgment in an action brought by the government. *Id.* at 381.

13 Labor Code § 2699(l)(2) provides, in part, that “the superior court shall review and approve
14 any settlement of any civil action filed pursuant to [PAGA].” Although the statute does not specify
15 a standard of review for PAGA settlements, courts frequently utilize some of the factors for review
16 of a class action settlement.

17 However, “a PAGA claim asserted on a non-class representative basis . . . is not considered
18 a class action but a law enforcement action, and therefore does not have to meet the requirements of
19 [a class action].” *Casida v. Sears Holdings Corp.* 2012 U.S. Dist. LEXIS 9302 *8 (E.D. Cal. Jan.
20 26, 2012). *See also, Amalgamated Transit Union Local 1756, AFL-CIO v. Superior Court*, 46
21 Cal.4th 993, 1003 (2009) (stating that the PAGA is a mechanism for “an aggrieved employee to
22 recover civil penalties—for Labor Code violations—that otherwise would be sought by state labor
23 law enforcement agencies”); *see also, Iskanian, supra*, at 381

24 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not concerned
25 with the amount that “aggrieved employees” are to receive, but rather, must focus on the total
26 settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in a PAGA suit
27 consists of civil penalties, not individual or class damages.” *Mendez v. Tween Brands, Inc.* 2010
28 U.S. Dist. LEXIS 66454 at 11 (E.D. Cal. July 1, 2010). “Unlike class actions, these civil penalties

are not meant to compensate unnamed employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v. CJADERS Foods, Inc.*, *supra*, 2010 U.S. Dist. LEXIS 32774 at 12 (N.D. Cal. April 2, 2010). While “[a PAGA] action is . . . designed to protect the public and penalize the employer for past illegal conduct,” *Mendez, supra*, 2010 U.S. Dist. LEXIS 66454 at 11, courts must take into account the fact that settlement of a PAGA claim – like any settlement – involves a compromise that stops short of rendering findings of liability and damages. Accordingly, a reviewing court must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” *See Ochoa-Hernandez, supra*, 2010 U.S. Dist. LEXIS 32774 at 12.

Second, because the other unnamed aggrieved employees have no property interest in a PAGA claim, they need not be given notice of the PAGA claim, nor do they have the ability to opt-out of a settlement of such. *Id. at 12*; *see also Robinson v. Southern Counties Oil Co.* (Cal. 1st App. Dist. 2020) 53 Cal. App. 5th 476, 782. This renders the approval process of a PAGA settlement distinct from a class action settlement, as there is no need for the Court to employ the two-step, preliminary and final approval process required under Rule of Court 3.769. Rather, the Court can review a settlement, and if appropriate, order the disbursement of any settlement funds, at once.

Finally, unlike a class action settlement under Rule 3.769, the scope of release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding . . . , the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.” *See Arias, supra* at 986-87. Thus, with the exception of the named plaintiff, the scope of a release in a PAGA settlement is strictly confined to the civil penalties that were or could have been alleged pursuant to PAGA, based on the factual allegations in the complaint. Here, as the only claim at issue is the PAGA claim, it will be the only claim extinguished as a result of proposed settlement.

1 “Unlike a class action seeking damages or injunctive relief for injured employees, the
2 purpose of PAGA is to incentivize private parties to recover civil penalties for the government that
3 otherwise may not have been assessed and collected by overburdened state enforcement agencies.”
4 *McKenzie v. Federal Exp. Corp.* (C.D. Cal. 2011) 765 F. Supp. 2d 1222, 1233. Here, the Settlement
5 penalizes Defendants for their alleged violation of California’s labor laws, provides a substantial
6 benefit of \$7,500 to the State and also provides relief to the Group Members that is genuine and
7 meaningful, consistent with the underlying purpose of the statute to benefit the public. Lastly, the
8 total settlement amount of \$10,000 is significant enough to deter Defendant from future violations.
9 Accordingly, the Settlement fulfills the underlying purpose of the statute and confers a substantial
10 benefit on the public.

11 **B. This Court Should Approve the Settlement Because It Is a Fair, Adequate, and**
12 **Reasonable Compromise of Disputed Claims**

13 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*
14 *Court* 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements (and
15 representative PAGA settlements) involve a court approval process that exists to prevent fraud,
16 collusion, and unfairness to absent individuals. *See Malibu Outrigger Board of Governors v.*
17 *Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). California law generally follows the same
18 standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Hanlon v. Chrysler*
19 *Corp.* 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine “whether
20 a proposed settlement is fundamentally fair, adequate, and reasonable”). To obtain court-approval,
21 a settlement must be “fair, reasonable and adequate to all concerned.” *Reed v. United Teachers Los*
22 *Angeles* 208 Cal.App.4th 322, 337 (2012). Settlement is the preferred means of dispute resolution,
23 particularly in complex representative litigation. *See In re Syncor ERISA Litig.* 516 F.3d 1095, 1101
24 (9th Cir. 2008).

25 The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement
26 taken as a whole is fair, and is not the product of fraud or collusion between the negotiating parties.
27 *See, e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the
28 settlement agreement was negotiated at arm’s length by experienced counsel. *See, e.g., Kullar v.*

1 *Foot Locker Retail, Inc.* 168 Cal.App.4th 116, 130 (2008). Whereas here, a settlement is “the product
2 of extensive and hard-fought adversarial negotiations between the parties” it is entitled to a
3 presumption of fairness. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001).

4 The proposed settlement before the Court is fair, adequate, and reasonable, and Plaintiff
5 respectfully requests that the Court enter an order approving the settlement and directing
6 disbursement of the settlement funds in accordance with the Settlement Agreement.

7 **1. Factors in Evaluating a Representative PAGA Settlement**

8 A settlement is presumptively fair where it is reached through arm’s-length bargaining, based
9 on sufficient discovery and investigation to allow counsel and the court to act intelligently, and
10 counsel is experienced in similar litigation. *Dunk v. Ford Motor Co.* 48 Cal.App.4th 1794, 1802
11 (1996). In deciding whether to approve a proposed settlement, a trial court has broad powers to
12 determine if the proposed settlement is fair under the circumstances of the case. *Mallick v. Superior*
13 *Court* 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure
14 that a proposed settlement is “fair, adequate, and reasonable.” *Dunk, supra*, 48 Cal.App.4th at 1801
15 (internal quotations omitted). In the class action context, relevant factors for the Court to consider
16 include, but are not limited to: (1) the strength of plaintiff’s case; (2) the risk, expense, complexity
17 and likely duration of further litigation; (3) the risk of maintaining class action status through trial;
18 (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the
19 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant;
20 and (8) the reaction of the class members to the proposed settlement. *Id.* These factors require
21 balancing, are non-exhaustive and, as such, trial courts should tailor the factors to each case and give
22 due regard to “what is otherwise a private consensual agreement between the parties.” *Id.* As
23 explained above, in the context of a representative PAGA settlement, the risk of maintaining class
24 action status and the reaction of class members to settlement are inapplicable.

25 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
26 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under
27 all of the circumstances.” *Wershba v. Apple Computer, supra* at 250. Because settlements inherently
28 involve compromise, even settlements providing for substantially narrower relief than likely would

1 be obtained if the suit were successfully litigated can be reasonable because “the public interest may
2 indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding
3 litigation.” *Id.* (quoting *Air Line Stewards, etc., Local 550 v. American Airlines, Inc.* 455 F.2d 101,
4 109 (7th Cir. 1972)). In addition, courts review the discovery process and information received
5 through it to aid them in assessing whether the parties sufficiently developed the claims and their
6 supporting factual bases before reaching settlement. *See Kullar v. Foot Locker Retail Inc.* 168
7 Cal.App.4th 116, 129-31 (2008). Information is sufficient where it allows the parties and the court
8 to form “an understanding of the amount that is in controversy and the realistic range of outcomes
9 of the litigation.” *See Clark v. American Residential Services LLC* 175 Cal.App.4th 785, 801 (2009).

10 **a. The Strength of Plaintiff’s Case**

11 Plaintiff’s counsel to analyze time and pay records to identify potential violations and the
12 number of pay periods in which they occurred. (Nakama Decl. ¶ 11.) Although Plaintiff steadfastly
13 maintains that her PAGA claims are meritorious, Plaintiff acknowledges that Defendants’ have
14 presented defenses that makes recovery uncertain, including that they had lawful written policies at
15 all times, presenting factual as well as manageability concerns. *Id.* Therefore, this factor favors
16 approval of the settlement. *Id.*

17 **b. Risk, Expense, Complexity and Likely Duration of Further Litigation**

18 This factor also weighs in favor of settlement approval. Although the parties engaged in
19 substantial formal and informal discovery prior to mediation, including a sample of wage and hour
20 records of the PAGA group; a significant amount of additional formal discovery, including but not
21 limited to various depositions, would be necessary if this case were to proceed. As a result, both
22 parties would have incurred considerably more attorneys’ fees and costs had the litigation continued.
23 The proposed settlement before the Court avoids those risks and ensures that PAGA Settlement
24 Group Members and the LWDA are compensated in a timely manner.

25 **c. Amount Offered in Settlement Given Realistic Value of Claims**

26 This proposed Settlement provides a fair and reasonable monetary recovery for PAGA
27 Settlement Group Members and the LWDA in the face of hotly disputed claims. Plaintiff reasonably
28 estimates Defendant’s exposure to civil penalties as follows:

1 **1. *Failure to Pay Wages Upon Termination of Employment***

2 Each employee who was not paid all wages on a timely basis when their employment ended
3 during the PAGA period. There is one violation for each of the 133 former employees. At \$100 per
4 violation under § 2699, Defendants' maximum liability is approximately \$13,300.00 (133 Aggrieved
5 Employees * \$100). *Id.*

6 **2. *Claims related to OLE's Application; 1) Alleged improper request for salary***
7 ***history, 2) Arrest History and 3) Waiver of any future of litigation related to background checks***
8 ***performed.***

9 Claimant alleged violations of Labor Code 432.5; Violation Of Labor Code 432.6; and
10 Violation Of Labor Code 432.7. (Nakama Decl. ¶ 22.). Claimant alleged that OLE make applicants
11 and employees; Waive rights to future litigation; Disclose earnings history; and Disclose arrest
12 history. (Nakama Decl. ¶ 17). Each violation was a one time (1X) violation, not a per week or pay
13 period violation. Therefore, the maximum penalty for each violation is \$100 per violation for 288
14 employees. Based on discovery, the same application was signed by approximately 288 Aggrieved
15 Employees and therefore, there are 864 alleged violations calculated by multiplying 288 by 3
16 violations per application. The maximum penalty is \$86,400 (864 violations * \$100) plus
17 attorneys' fees and costs.
18

19 **3. *Total Value of Plaintiff's PAGA Claim:***

20 Based on the above, Defendants' maximum exposure if Plaintiff were to prevail on every
21 claim and obtain the maximum award for each alleged violation would be \$99,700 (\$13,300 +
22 \$86,400) plus attorneys' fees and costs. (Nakama Decl. ¶ 31.)
23

24 Plaintiff calculated OLE' PAGA exposure using a hundred percent (100%) violation rate
25 from August 7, 2021 and July 11, 2024. Multiplying the PAGA exposure by the number of alleged
26 violations under the PAGA theories of recovery (3) gives potential civil penalties of \$0 to \$86,400
27 for the Labor Code Sections 432.5, 432.6 and 432.7 violations. (Nakama Decl. ¶ 30). While
28

1 Claimant is confident in the ultimate merits of this case, a legitimate controversy exists as to each
2 predicate labor violation. For example, Defendant argues that the language in the releases did not
3 have the effect or intent of obtaining any of the prohibited information and therefore did not “seek”
4 prohibited information in violation of the law. As this lawsuit represents a case of first impression
5 for each of the lawsuit’s PAGA claims, there is a considerable risk that Defendant prevails, and
6 neither the State of California nor the aggrieved employees recover anything. (Nakama Decl. ¶ 30).
7 Further, there is no case law or Labor Board or DLSE Opinion Letters on Labor Code Section 432.3
8 as to what is considered seeking salary history which made this case a matter of first impression
9 and thus, very risky.
10

11
12 Finally, Plaintiff claim - and OLE deny - that OLE are liable for civil penalties for violating
13 Labor Code § 201-203 waiting time penalty. (Nakama Decl. ¶ 31) Plaintiff contend that, based on
14 the sample data, OLE failed to pay all terminated on their final day of employment. Plaintiff
15 calculate OLE' total exposure as to the claim for wage statement penalties to be approximately
16 \$13,300.00 (133 employees x \$100 violation). Multiplying the PAGA exposure by the number of
17 alleged violations under the PAGA theories of recovery gives potential civil penalties of \$0 to
18 \$13,300. (Nakama Decl. ¶ 30).
19

20 After adding \$86,400 and \$13,300, Defendants’ maximum exposure if Plaintiff were to
21 prevail on every claim and obtain the maximum award for each alleged violation would be \$99,700
22 plus reasonable attorneys’ fees and costs.
23

24 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
25 (Nakama Decl. ¶ 31) Thus, the maximum penalties for each pay period are not justified. It was
26 indeed arguable whether the Court would award the maximum penalties under the law. Thus,
27 allocating \$10,000 to PAGA civil penalties was reasonable based on the four (4) alleged violations.
28

1 Therefore, there were a total of maximum 869 violations (288 Arrest history, 288 Salary History,
2 288 Waiver requests and 133 waiting time penalties). The total amount paid to the LWDA is \$7,500
3 or \$8.63 per alleged violation. The total amount paid to Aggrieved Employees will be between to
4 \$8.63 to \$11.507. (Nakama Decl. ¶ 31) Where PAGA penalties are negotiated in good faith and
5 "there is no indication that [the] amount was the result of self-interest at the expense of other Class
6 Members," such amounts are generally considered reasonable. (Nakama Decl. ¶ 32).

8 In *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 668-669, the
9 employees sought between \$25,000,000 and \$75,000,000 but only received an award of \$150,000.
10 This judgment represented an award of just one penalty per pay period coupled with a subsequent
11 reduction from \$50 per pay period to \$5 per pay period. The court reduced the amount of the
12 penalty to 10% of the statutory amount. Both parties appealed and the appellate court upheld the
13 award. Notably, the award in *Carrington* was a PAGA penalty awarded for a failure to provide
14 meal periods.

16 The second notable case is *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809. *Atempa* is a
17 published opinion arising from a PAGA trial. At trial, the trial court received a request for PAGA
18 penalties in excess of \$430,000 but awarded only \$27,000. *Id.* at 814. This finding was not
19 reversed on appeal. *Id.* at 828-829. Indeed, the California Supreme Court has previously held that,
20 where a penalty statute is based on an automatic formula, courts must use discretion to limit
21 particular penalties to constitutionally permissible bounds. *Hale v. Morgan* (1978) 22 Cal.3d 388,
22 404; *Kinney v. Vaccari* (1980) 27 Cal.3d 348, 356 (holding that punitive assessment should be
23 proportional to a defendant's misconduct and sufficient to achieve the penalty's deterrent purpose
24 but not constitutionally excessive).

26 The proposed PAGA Settlement Payment of \$47,202.50 represents a recovery of more than
27
28

1 47 percent of the total estimated value of Plaintiff's PAGA claim. This is within the range of amounts
2 received in similar cases, and is thus adequate under both California and federal law. *See, e.g., Glass*
3 *v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 at 13 (N.D. Cal. Jan. 27, 2007) (finding a settlement
4 in the range of 25-35% of claimed damages appropriate); *Singer v. Becton Dickinson & Co.*, 2009
5 U.S. Dist. LEXIS 114547 at 21 (S.D. Cal. Dec. 9, 2009) (granting preliminary approval for a
6 settlement offering class members 26% of their claimed losses); *In re Mego Financial Corp.*
7 *Securities Litigation*, 213 F.3d 454, 459 (9th Cir. 2000) (approving a \$2 million settlement after the
8 parties estimated between \$4 million and \$12 million in losses).
9

10
11 "The fact that a proposed settlement may only amount to a fraction of the potential recovery
12 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
13 disapproved." *Linney v. Cellular Alaska Partnership* 151 F.3d 1234, 1242 (9th Cir. 1998) (internal
14 quotations omitted). As explained above, Plaintiff acknowledges that there was substantial
15 uncertainty and risk associated with her claims. Therefore, approval of the proposed settlement is
16 appropriate as it will provide tangible, monetary relief to PAGA Settlement Group Members and the
17 LWDA.

18 Thus, when the risks of litigation, the burdens of proof necessary to establish liability, and
19 the possibility of appeal of a favorable judgment are considered, the lack of case law on certain
20 issues, the Settlement is reasonable and in the best interest of the State and the public. The
21 Settlement therefore accomplishes PAGA's objectives by imposing sufficient civil penalties "to
22 punish and deter" Defendants from future alleged Labor Code violations, while also ensuring that
23 the penalties are not "unjust, arbitrary and oppressive, or confiscatory." (Lab. Code, § 2699, subd.
24 (e)(2); *Iskanian*, 59 Cal.4th at 384.).

25 **d. Discovery Completed and the Status of Proceedings**

26 As discussed above, the parties engaged in substantial investigation and both formal and
27 informal discovery sufficient to evaluate the potential value of the PAGA claims. Plaintiff carefully
28 reviewed payroll records, employee handbook throughout the PAGA statutory period. *Id.* In

1 addition, Defendants provided Plaintiff with data regarding Settlement Group Members, as well as
2 Defendants’ written policies and procedures relating to the claims asserted. It was only after the
3 exchange of this information, and lengthy discussions about the likelihood of prevailing on the merits
4 of Plaintiff’s claims conducted with the assistance of a respected and experienced mediator, that the
5 parties reached the proposed settlement. *Id.* Settlement was reached at a stage wherein claims had
6 been thoroughly investigated, and the Parties had a clear understanding of the strengths and
7 weaknesses of their case *Id.* Thus, this factor supports settlement approval. *Id.*

8 **e. The Experience and Views of Counsel**

9 “Parties represented by competent counsel are better positioned than courts to produce a
10 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific Enterprises*
11 *Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented by competent
12 and experienced counsel who collectively possess more than 43 years of extensive experience
13 litigating wage and hour class and representative actions. (Nakama Decl. ¶ 38; see generally Ladv
14 Decl; See Vega Decl.) After thoroughly evaluating the underlying claims and weighing the risks
15 associated with continued litigation, Plaintiff’s counsel believes the proposed settlement is fair,
16 adequate and reasonable, and in the best interest of PAGA Settlement Group Members. This factor
17 strongly supports settlement approval. *See Kullar, supra*, 168 Cal.App.4th at 130 (“The court
18 undoubtedly should give considerable weight to the competency and integrity of counsel and the
19 involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm’s
20 length transaction entered without self-dealing or other potential misconduct.”)

21 **C. Plaintiff’s Counsel’s Requested Award for Attorneys’ Fees is Reasonable**

22 Pursuant to the Settlement Agreement, Plaintiff’s counsel requests that this Court approve an
23 award of attorneys’ fees of \$30,000 of PAGA Settlement Payment. Pursuant to Labor Code §
24 2699(g)(1), “Any employee who prevails in any [PAGA] action shall be entitled to an award of
25 reasonable attorney’s fees and costs.”

26 “When a number of persons are entitled in common to a specific fund, and an action brought
27 by plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
28 plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.” *Serrano v. Priest*, 20 Cal. 3d

25, 34 (1997) *See also Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 503 (2016) (“The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts”); *Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 26 (2000) (“percentage fees have traditionally been allowed in . . . common fund cases”). The California Supreme Court has found attorneys’ fees of one-third of the common fund to be reasonable. *See Laffitte*, 1 Cal. 5th 480 (“We therefore agree with the Court of Appeal below that ‘the percentage of fund’ method survives in California [...] and the trial court did not abuse its discretion in using it, in part, to approve the fee request of [one-third of the common fund.]”).

Scott Nakama of the Ladva Law Firm has billed a total of \$69,300 at \$450 per hour for this case excluding (1) time spent opposing the motion to compel arbitration, (2) conferring with Defendant about deadlines to respond to Plaintiff’s discovery requests that were subject to two hearings with the Arbitrator, (3) the time spent on two status conferences or hearings with the arbitrators regarding discovery disputes, (4) work on Respondent’s Motion to Extend the Arbitration Date, and (5) attending the hearing for the Motion to Extend the Arbitration Date. (Nakama Decl. ¶ 40.). Mr. Nakama has over 9 years of experience practicing employment law. Of the \$69,300, an amount of \$20,115 was spent exclusively for only PAGA related claims such as opposing a motion to dismiss, etc. (Nakama Decl. ¶ 40.) The remainder of \$49,185 after subtracting \$20,115 from \$69,300 was work that was jointly for the benefits of the PAGA and Plaintiff’s individual claims such as the mediation brief, preparing a demand letter, etc. (Nakama Decl. ¶ 40.). Even if Nakama assigned 50% of the remainder of \$49,185 to PAGA, that amount of \$24,592.5 added to the \$20,115 would be \$44,707.50 for time spent on the representative PAGA action or far more than the \$30,000 in fees requested.

Daniel Vega of the Law Offices of Daniel Vega has billed a total of \$94,500 on this case at \$500 per hour. (Vega Decl. Exhibit A.) Mr. Vega has over 15 years practicing law. Even assuming 60 percent of that amount was for the representative action, that amount is still \$56,700 in Attorneys’

1 fees or far more than the \$30,000 requested.

2 Ashwin Ladva of the Ladva Firm has billed a total \$27,860 for this case at rate of \$700 per
3 hour. (Ladva Decl., Exhibit A.) Even assuming 60 percent of that amount was for the representative
4 action, that amount is still \$16,716 in Attorneys' fees.

5 Here, under the terms of the parties' agreement, Plaintiff is entitled to seek, and Defendants
6 have agreed not oppose, attorneys' fees in the amount of \$30,000 of the total PAGA Settlement
7 Payment of \$47,203. (Settlement Agreement ¶ 3(a)(i).) The award sought is justified because
8 Plaintiff's counsel achieved a significant monetary recovery in a complex, uncertain, and risky case
9 while bearing the substantial burdens of representation on a contingency basis. *See Vizcaino v.*
10 *Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002). Plaintiff's counsel agreed to bear the
11 contingency risk of this litigation for the benefit of the aggrieved employees, as well as for the State
12 of California (who elected not to take the case after receiving the PAGA notice). The attorneys' fees
13 is warranted, reasonable, and within the range routinely approved by State and federal courts.

14 Plaintiff defeated a Motion to Dismiss after the U.S. Supreme Court's decision in *Viking*
15 *River Cruises, Inc. v. Moriana* (2022) 200 U.S. 321, which created uncertainty on pursuing PAGA
16 claims. Had Plaintiff not prevailed, none of the Aggrieved Employees and the LWDA would have
17 recovered anything. Further, there is no case law on some of the issues alleged and Plaintiff took a
18 risk pursuing a case of first impression.

19
20 **D. Reimbursement of Plaintiff's Counsel's Litigation Costs Should Be Approved As**
21 **They Are Fair and Reasonable**

22 Attorneys are permitted to recover their litigation costs and expenses under PAGA and the
23 common fund doctrine. Cal. Labor Code § 2699(g)(1); *Rider v. County of San Diego*, 11 Cal.App.4th
24 1410, 1424 n.6. (1992). The Settlement Agreement includes a provision entitling Plaintiff's counsel
25 reimbursement of litigation costs and expenses up to \$7,202.50. Of this amount, only half of the
26 mediation fee was counted while the other half was charged to Plaintiff's individual claims. To date,
27 Plaintiff's counsel has incurred \$3,702.50 in litigation costs and expenses including filing fees, half
28 of the mediation fees, and service of process and other incidental expenses. (Nakama Decl. Exhibits

1 E) This amount was reasonable and necessary given the complexity of the prosecution and effective
2 representation of Plaintiff and her fellow Group Members. *Id.*

3 Further, Simpluris is charging an estimate of \$3500 to administer the settlement. (Nakama
4 DeclExhibit F). This cost includes, but is not limited to the expenses associated with preparing,
5 printing, and mailing the notice of PAGA Settlement and the individual settlement shares to the
6 Group Members, re-mailing any returned packages, and handling inquiries and requests from Group
7 Members. *Id.* Simpluris is highly experienced in administration of PAGA settlement processes, as
8 such Plaintiff respectfully requests that the Court grant approval the settlement administration costs
9 in the amount of \$3500.00 to be paid to Simpluris. *Id.*

10 In total, the costs are \$7,202.50. As such, Plaintiff's counsel respectfully requests that the
11 Court award reimbursement of litigation costs and expenses in the amount of \$7,202.50 to Plaintiff's
12 counsel.

13 **V. CONCLUSION**

14 Plaintiff and Plaintiff's counsel submit that the proposed settlement, as documented in the
15 Settlement Agreement, is fair, adequate, reasonable and in the best interest of all parties, including
16 the State of California, as it represents a reasoned compromise of disputed claims that has been
17 reached through arm's-length negotiation. As such, Plaintiff respectfully requests that the Court
18 should approve the Settlement, including the plan of allocation and distribution of the Total
19 Settlement Amount for the LWDA, Payment to the LWDA, Individual Settlement Shares to Group
20 Members, Attorneys' Fees and Costs to Plaintiff's Counsel, and Settlement Administration Costs to
21 the Settlement Administrator.

22 Dated: July 9, 2024

LADVA LAW FIRM

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By _____
Ashwin Ladva
Scott S. Nakama
Attorneys for Plaintiff

DATE: July 9, 2024

LAW OFFICES OF DANIEL VEGA



By _____
Daniel Martinez de la Vega
Attorney for Plaintiff

PROOF OF SERVICE

I, Scott S. Nakama, declare:

I am employed in San Francisco, California. I am over 18 years of age and I am not a party to this action. My business address is 530 Jackson Street, 2nd Floor, San Francisco, California 94113. On September 9, 2024, I served a copy of the attached:

PLAINTIFF'S PETITION TO CONFIRM CONTRACTUAL ARBITRATION AWARD

by depositing a true copy to the following: LWDA

Erica L. Rosasco, Esq.
Michael G. Blankinship, Esq.

- ☐ BY REGULAR MAIL: I caused such envelopes to be deposited in the United States mail at Oakland, California, with postage prepaid.
- ☐ BY FACSIMILE: (C.C.P. § 1013(e)(f)).
- ☐ BY FEDERAL EXPRESS: I caused such envelopes to be delivered by air courier, with next-day service, to the offices of the addresses. (C.C.P. § 1013(c)(d)).
- ☐ BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to the offices of the addresses. (C.C.P. § 1011(a)(b)).
- ☒ BY ELECTRONIC SERVICE: I caused such documents to be electronically served to all parties. (C.C.P. § 1010.6)

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct and this declaration was executed on September 9, 2024 at San Francisco, California

Date: September 9, 2024



Ashwin Ladva, Esq.
Scott S. Nakama, Esq.
Ladva Law Firm