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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

KATHY MADISON and RAGEEM
MARABLE, on behalf of the State of California,
as private attorney generals,

Plaintiffs,

vs.

COMMUNITY ACTION PARTNERSHIP OF
SAN BERNARDINO COUNTY, a California
Nonprofit Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. **CIVSB2219004**

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

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

Hearing Date: January 29, 2024
Hearing Time: 8:30 a.m.

Judge: Hon. Jessica Morgan
Dept.: S26

Action Filed: August 31, 2022
Trial Date: Not Set

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

2 YOU ARE HEREBY NOTIFIED THAT at 8:30 a.m. on January 29, 2024, or as soon
3 thereafter as the matter can be heard, in Department S26 of the above entitled Court before
4 the Honorable Jessica Morgan, Plaintiffs Kathy Madison and Rageem Marable (“Plaintiffs”)
5 will and hereby do move for an order approving the settlement of the PAGA claim alleged
6 against Defendant Community Action Partnership of San Bernardino County (“Defendant”)
7 in accordance with Labor Code §2699(l). The proposed settlement is set forth in the
8 accompanying PAGA Settlement Agreement (“Agreement”).

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

13 Respectfully submitted,

14 Dated: December 13, 2023

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Kathy Madison and Rageem Marable (“Plaintiffs”) reached a settlement of
4 the California Private Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim
5 asserted in this action against Defendant Community Action Partnership of San Bernardino
6 County (“Defendant”) (collectively, the “Parties”) which provides for a “Gross PAGA
7 Settlement Amount” payment in the amount of \$115,000.00. In accordance with California
8 Labor Code §2699(1), Plaintiffs now ask this Court to review and approve the settlement of
9 Plaintiffs’ PAGA claims.¹ This is only a settlement of the PAGA claims for civil penalties
10 and is not a class settlement and does not release the individual wage claims, if any, of the
11 affected employees other than the Plaintiffs themselves. Cal. Labor Code § 2699(g)(1);
12 *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8
13 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

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

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

23 **II. RELEVANT FACTS**

24 PAGA Counsel mailed the necessary correspondence to the California Labor and
25 Workforce Development Agency (“LWDA”) on May 2, 2022, on behalf of Plaintiffs Kathy
26 Madison and Rageem Marable, requesting authorization from the LWDA to seek civil
27

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

1 penalties as provided by the Private Attorney General Act of 2004 (“PAGA”) for the wage and
2 hour violations alleged in the PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3). The
3 65-day notice period for the LWDA to notify of its intent to investigate expired on July 7,
4 2022.

5 On August 31, 2022, Plaintiffs Kathy Madison and Rageem Marable filed a
6 Representative Action Complaint in this Court against Defendant Community Action
7 Partnership of San Bernardino County alleging a single cause of action for recovery of civil
8 penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

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

19 Plaintiffs’ theory of PAGA liability as argued at mediation alleged that Defendant failed
20 to provide Plaintiffs and other aggrieved employees with compliant meal and rest breaks. For
21 example, Plaintiffs contend the time punch records reflect a meal break violation rate of 40.7%
22 (number of pay periods with at least one unique meal break violation), but that meal period
23 premium wages were not paid for every alleged violation. The pay data also reflected that no
24 rest period premium wages were paid even though Plaintiffs allege they were always on duty
25 and responding to calls and client issues, including being burdened with duties that were never
26 relieved during rest periods. Plaintiffs also alleged that the aggrieved employees were called
27 and texted on their personal cell phones for scheduling issues. Plaintiffs allege that Defendant
28 failed to reimburse these employees for the costs associated with the use of their personal cell

1 phone for work-related purposes. Plaintiffs also alleged Defendant had had an illegal rounding
2 system in place which deprived aggrieved employees of wages. Plaintiffs allege the number
3 of aggrieved employees who were underpaid by rounding was 59.6% and the number of pay
4 periods in the PAGA Period with at least one shift underpaid was 2,065. (Declaration of Kyle
5 Nordrehaug, at ¶3).

6 Defendant disputes the above-referenced allegations. Rather, Defendant contends that
7 all employees were provided one-hour meal breaks and were repeatedly instructed to ensure
8 those breaks were taken in a timely manner. Further, multiple employees provided declarations
9 attesting to the fact that they (and Plaintiffs) were never prevented from taking compliant meal
10 breaks and were given unfettered discretion regarding those breaks. Defendant also has an
11 automated timekeeping system that records working time to the minute and will automatically
12 issue premium payments for noncompliant meal breaks. Defendant also has evidence in the
13 form of witness declarations and time records that indicate employees were provided
14 compliant rest breaks during their shifts. Finally, Defendant confirmed that employees were
15 instructed not to use personal cell phones for work, had access to work phones, and were told
16 to speak to their supervisor if they believed they were entitled to business expense
17 reimbursement. Defendant's witness statements and records indicate that no such
18 reimbursements were requested by Plaintiffs or were due to them or other employees.

19 On May 10, 2023, the Parties engaged in an all-day mediation session before Mediator
20 Subramaniam, a respected and experienced mediator knowledgeable of both the wage and
21 hour laws and representative claims at issue in this action. Through arms-length negotiations
22 with the assistance of the mediator, the Parties reached an agreement to settle the PAGA claims
23 in this action which led to the signing of a Memorandum of Understanding memorializing the
24 settlement.² (Declaration of Kyle Nordrehaug, at ¶3).

26 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
27 Plaintiffs' individual claims pursuant to separate confidential Individual Settlement Agreements
28 ("Individual Settlement")(Settlement Agreement at ¶ 2.2). The individual claims were not at issue in
this action and exist independent and apart from the PAGA claims at issue before the Court. *See Kim*
v. Reins Int'l Cal., Inc., 9 Cal. 5th 73, 80 (2020) (the "[s]ettlement of individual claims does not strip

1 The settlement was negotiated in light of all known facts and circumstances and the
2 uncertainty associated with litigation – including the risk of Plaintiffs not being able to
3 maintain representative claims, the difficulty of proving Plaintiffs’ claims in a manageable
4 trial, the merits of Defendant’s potential defenses, and the significant delay and potential
5 appellate issues inherent to litigation – and was reached after extensive arm’s length
6 negotiations, with the assistance of Mediator Subramaniam. (Declaration of Kyle Nordrehaug,
7 at ¶3).

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

9 The PAGA settlement is subject to Court approval consistent with Labor Code
10 §2699(1)(2). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a
11 “Gross PAGA Settlement Amount” payment in the amount of \$115,000 to resolve the
12 Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this PAGA
13 Settlement of \$115,000, there is a deduction of attorneys’ fees (“PAGA Counsel Fees
14 Payment”) in the amount of \$38,333 (which is one-third of the PAGA Settlement),
15 reimbursement of incurred costs (“PAGA Counsel Litigation Expenses Payment”) in an
16 amount not to exceed \$17,500, and Settlement Administration Costs (“Administration
17 Expenses Payment”) not to exceed \$5,000. (Agreement at ¶¶ 3.2.1-3.2.2).³ After these
18 deductions, the amount remaining is the “PAGA Payment”, which is estimated to be no less
19 than \$54,167.

20 Of the PAGA Payment amount, seventy-five percent (75%) (no less than \$40,625.25)
21 will be paid to the LWDA and the remaining twenty-five percent (25%) (no less than
22

23
24 an aggrieved employee of standing, as the state’s authorized representative, to pursue PAGA
25 remedies” nor resolve the PAGA claims.).

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

1 \$13,541.75) will be paid to the Aggrieved Employees (Agreement at ¶ 3.2.3)⁴ This 75/25
2 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8
3 Cal.5th 175 (2019).

4 The Individual PAGA Payment for each Aggrieved Employee shall be based on the
5 number of pay periods each Aggrieved Employee worked during the PAGA Period as an
6 Aggrieved Employee, as a percentage of the total pay periods worked by all Aggrieved
7 Employees during the PAGA Period.⁵ The PAGA Period is the time period from May 2, 2021
8 to May 10, 2023. (Agreement at ¶ 1.23).

9 For mediation, Defendant represented that there are approximately 122 Aggrieved
10 Employees who collectively worked approximately 4,130 pay periods during the PAGA
11 Period. (Agreement at ¶ 4.1).

12 Upon entry of final judgment, the Released Parties shall be entitled to a release from
13 the State of California and the Aggrieved Employees only for any “Released PAGA Claims”,
14 which means all claims for PAGA penalties that were alleged, or reasonably could have been
15 alleged, based on the facts stated in the Operative Complaint respectively, and the PAGA
16 Notice submitted by Plaintiffs to the LWDA, which occurred during the PAGA Period
17 (including, alleged violations of Labor Code §§ 201-204 *et seq.*, 210, 218, 221, 226(a), 226.7,
18 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
19 Regulations, Title 8, Section 11040(5)(A)-(B) and all applicable Wage Orders)(the “Released
20 PAGA Claims”)(Agreement at ¶ 5.2). The Released PAGA Claims expressly excludes all
21 other claims, including claims for vested benefits, wrongful termination, violation of the Fair
22 Employment and Housing Act, unemployment insurance, disability, social security, workers’
23

24 ⁴ “Aggrieved Employees” means all individuals who are or previously were employed by Defendant
25 in California and classified as a non-exempt employee at any time during the PAGA Period. The
26 PAGA Period is the period from May 2, 2021 to May 10, 2023. (Settlement Agreement at ¶¶ 1.4,
1.23).

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

1 compensation, and California class claims, and PAGA claims outside of the PAGA period.
2 (*Id.*) The Agreement expressly confirms that “In no event shall the release of the Released
3 PAGA Claims in this Settlement Agreement release any individual claims of any individuals.
4 (*Id.*)

5 Within fourteen (14) days after Defendant funds the Gross PAGA Settlement Amount,
6 the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA
7 Payment, the Administration Expenses Payment and the PAGA Counsel Expenses Payment.
8 (Agreement at ¶ 4.4).⁶ Checks will remain negotiable for one hundred eighty (180) days. (*Id.*
9 at ¶ 4.4.1) For any Aggrieved Employee whose Individual PAGA Payment check is uncashed
10 and cancelled after the void date, the Administrator transmit the funds represented by such
11 checks to the State Controller Unclaimed Property Fund in the name of the individual who
12 failed to cash their check (*Id.* at ¶ 4.4.3).

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

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

20 The claim before this Court is solely the representative claim under PAGA on behalf of
21 the State of California for civil penalties pursuant to the PAGA. The parties have agreed to
22 settle this PAGA claim in its entirety after investigation and an arm’s length mediation session.
23 (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and finally resolve
24 the Released PAGA Claims asserted by Plaintiffs on behalf of the State of California. This is
25 only a settlement of the PAGA claims for civil penalties, and is not a class settlement and does
26 not release the individual claims, if any, of the Aggrieved Employees, other than any claims
27

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

1 under PAGA. This settlement does not release any claim that is not a PAGA claim.⁷ PAGA
2 Counsel Fees equal to one-third of the Gross PAGA Settlement amount (\$38,333.00) and
3 PAGA Counsel Litigation Expenses in an amount not to exceed \$17,500 will also be paid to
4 PAGA Counsel as part of the settlement in accordance with California Labor Code §
5 2699(g)(1), as set forth in the Agreement.⁸ Lastly, payment to the Administrator in an amount
6 not to exceed \$5,000 to perform the administrative duties to distribute the settlement money
7 shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)

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

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

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

16 The Parties believe that the PAGA Settlement amount is fair and reasonable and
17 therefore "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount of
18 \$115,000 is more than other PAGA settlements as it constitutes approximately \$28 per pay
19 period. (Declaration of Nordrehaug, at ¶6.)

20 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
21 penalties. With the assistance of an expert, Plaintiffs calculated that the maximum amount of
22 statutory PAGA civil penalties was potentially \$413,000 based on 4,130 pay periods
23 applicable to the Aggrieved Employees during the PAGA Period.⁹ (Declaration of

24
25 ⁷ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: “Nonparty employees are bound
by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties.”

26 ⁸ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
27 in the current amount of \$12,410.31 which is less than the cost allocation in the Settlement Agreement.
See Declaration of Nordrehaug at ¶ 9.

28 ⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The
valuation of \$413,000 is the civil penalty amount without stacking. If stacking is permitted, then the

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

6 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
7 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period.
8 Therefore, at trial, any PAGA penalties awarded could be significantly less than Plaintiffs'
9 calculation even where Plaintiffs prevailed on the PAGA claim. If the amount of \$5 per pay
10 period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties would be
11 only \$20,650, which is far less than this settlement provides.

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

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

27 valuation increases with each additional penalty added to each pay period. Plaintiffs, however, are
28 not aware of any PAGA award which permitted stacking and in the cases cited herein, only one penalty
per pay period was assessed.

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

5 As noted above, Defendant maintains that Plaintiffs and the Aggrieved Employees were
6 properly compensated, and that it did not violate the Labor Code. Accordingly, Defendant
7 disputes and denies Plaintiffs' allegations and claims asserted in both the PAGA Notice and
8 the Operative Complaint, which are resolved by the Agreement. Defendant asserted additional
9 defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties.
10 Defendant could argue that no penalties prior to the PAGA notification should be awarded
11 because the violations were not intentional, and at least one Court has so ruled. Further, the
12 fact that Defendant is a non-profit organization established under the Economic Opportunity
13 Act of 1964/President Lyndon B. Johnson's "War on Poverty" movement with a goal of
14 assisting underserved communities in San Bernardino County could weigh against awarding
15 significant – or any – penalties. These defenses present a risk to the PAGA claims and the
16 potential that some or all of the PAGA penalties sought may not be awarded. (Declaration of
17 Nordrehaug, at ¶7.)

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

26 PAGA Counsel have significant experience litigating wage and hour claims including
27 claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than similar
28 settlements that courts have approved. (Declaration of Nordrehaug, at ¶¶ 7, 10.) The PAGA

1 Settlement, along with the other terms of the proposed settlement, were negotiated by
2 experienced counsel at arm's length with the assistance of a private mediator, Tagore
3 Subramaniam. (Declaration of Nordrehaug, at ¶7.)

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

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

12 Although PAGA requires that a court approve the proposed PAGA settlement, Labor
13 Code § 2699(1) does not require that a court approve any other elements of the proposed
14 settlement. Because there are no class allegations for which Plaintiffs seek approval, the
15 approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not
16 apply. Accordingly, the Court only needs to approve the settlement of the civil penalties
17 sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for
18 attorneys' fees and costs are reasonable.

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

20 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the
21 amount of \$38,333.00 representing one-third of the \$115,000 Gross PAGA Settlement
22 Amount. PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiffs'
23 position is that the payment of attorneys' fees and costs in this settlement is a matter of contract
24 for a contingent representation. Nevertheless, should this Court review the requested
25 attorneys' fees, it is clear that the requested fees and costs are reasonable.

26 First, the requested fees are justified by the result achieved. PAGA Counsel negotiated
27 a recovery of \$115,000.00, and this result justifies the requested fees equal to one third of this
28 recovery. This percentage is within the standard contingent recovery percentage of one-third,

1 and this percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert*
2 *Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App.
3 5th 521, 545 (2021) (recognizing that ““fee awards in class actions average around one-third
4 of the recovery”” regardless of ““whether the percentage method or the lodestar method is
5 used.”” (quoting *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008))).

6 Second, the fee award is justified by the work performed and contributions to the case.
7 As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award
8 represents PAGA Counsel’s current lodestar of **\$118,626.25**, which means the requested
9 award is significantly less than the lodestar incurred by PAGA Counsel.

10 Generally, the Ninth Circuit and California Courts award positive multipliers between
11 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation
12 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award
13 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
14 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
15 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001)
16 (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*,
17 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52
18 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014)
19 (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales*
20 *Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving
21 fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk
22 multipliers). Here, where the fee award is less than the lodestar, representing a negative
23 multiplier, there can be no dispute that the fee award is reasonable.¹⁰

24 Third, consideration of the enhancement factors justify the enhancement of the lodestar.
25 Courts multiply the lodestar by a factor to account for the risk of non-payment, delay in
26

27 ¹⁰ “The lodestar amount is presumptively the reasonable fee amount.” *Topete v. Ramos Furniture*, 2018
28 U.S. Dist. LEXIS 142033 (E.D. Cal. 2018), citing *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F. 3d
1041, 1045 (9th Cir. 2000).

1 payment, the quality of work, and the novelty and difficulty of the issues involved. See
2 *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in cases
3 that meet these criteria is an abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th
4 Cir. 2016).

5 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses
6 in the total amount of \$12,410.31 which is less than the \$17,500 allocation for costs in the
7 Agreement, so the difference of \$5,089.69 will be added to the PAGA Payment amount. These
8 expenses are documented in the accompanying Declaration of Nordrehaug at ¶9.

9 **VII. CONCLUSION**

10 Based on the foregoing, Plaintiffs respectfully requests this Court approve the PAGA
11 settlement as set forth in the Agreement and enter the proposed order and judgment submitted
12 herewith.

13 Dated: December 13, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

14 By: /s/ Kyle Nordrehaug

15 Kyle Nordrehaug
16 Attorney for Plaintiffs
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