

MATTHEW J. MATERN (SBN 159798)
MATTHEW W. GORDON (SBN 267971)
VANESSA M. RODRIGUEZ (SBN 316382)
MATERN LAW GROUP, PC
1230 Rosecrans Avenue, Suite 200
Manhattan Beach, California 90266
Telephone: (310) 531-1900
Facsimile: (310) 531-1901

Attorneys for Plaintiff
CARRIE LAMBERT, individually, and
on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — SPRING STREET COURTHOUSE

CARRIE LAMBERT, an individual, on
behalf of herself and all others similarly
situated,

Plaintiff,

vs.

DUAL DIAGNOSIS TREATMENT
CENTER, INC., a California corporation;
SHREYA HEALTH OF CALIFORNIA,
INC., a California corporation; SATYA
HEALTH OF CALIFORNIA, INC., a
California corporation; SOVEREIGN
ASSET MANAGEMENT, INC., a
California corporation; ATHENA
HEALTHCARE, INC., a California
corporation; ADEONA HEALTHCARE,
INC., a California corporation; TONMOY
SHARMA, an individual; and DOES 1
through 50, inclusive,

Defendants.

Case No.: BC616149

[Assigned for all purposes to the
Honorable Lawrence Riff, Dept. SSC-7]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR APPROVAL OF PAGA
SETTLEMENT**

Date: May 16, 2024
Time: 10:00 a.m.
Dept.: SSC-7

Action Filed: April 6, 2016
Trial Date: May 22, 2023

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on May 16, 2024, at 10:00 a.m., or as soon thereafter as this
3 matter may be heard, in Department 7 of the Los Angeles County Superior Court, Spring Street
4 Courthouse, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff Carrie Lambert
5 (“Plaintiff”) will, and hereby does, move this Court, pursuant to Labor Code § 2699(l)(2), for entry of
6 an order and judgment approving the parties’ Joint Stipulation Re: Settlement of PAGA Action and
7 Entry of Judgment under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

8 The motion is based upon this notice, the attached Memorandum of Points and Authorities,
9 the Declaration of Matthew J. Matern and all exhibits thereto, the Declaration of Plaintiff, the
10 complete files and records of this case, and any other evidence or oral argument which may be
11 considered by the Court at the time of the hearing.

12
13 DATED: February 23, 2024

Respectfully submitted,

14 MATERN LAW GROUP, PC

15
16 By: Vanessa M. Rodriguez
17 MATTHEW J. MATERN
18 MATTHEW W. GORDON
19 VANESSA M. RODRIGUEZ
20 Attorneys for Plaintiff CARRIE LAMBERT,
21 individually and on behalf of all others similarly
22 situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”),
4 Labor Code § 2698 *et seq.*, Plaintiff Carrie Lambert (“Plaintiff”) seeks court approval of the Joint
5 Stipulation Re: Settlement of PAGA Action and Entry of Judgment (“Settlement”), which, if
6 approved, will resolve this action entirely. Plaintiff alleges that Defendants Dual Diagnosis Treatment
7 Center, Inc. (“Dual Diagnosis”), Shreya Health of California, Inc. (“Shreya Health”), Satya Health of
8 California, Inc. (“Satya Health”), Sovereign Asset Management, Inc. (“Sovereign”), Athena
9 Healthcare, Inc. (“Athena Healthcare”), Adeona Healthcare, Inc. (“Adeona Healthcare”), and Tonmoy
10 Sharma (“Sharma”) (collectively, “Defendants”) failed to provide Plaintiff and other aggrieved
11 employees with, among other things, lawful meal and rest periods, failed to pay all overtime wages,
12 and failed to furnish accurate itemized wage statements. The Settlement resolves all claims for PAGA
13 penalties based on the alleged Labor Code violations, on behalf of all approximately 1,099 persons
14 who worked for Defendants as non-exempt employees at any time from March 4, 2015 through July
15 31, 2018 (“Aggrieved Employees”).¹

16 Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount of
17 \$880,000.00 to settle Plaintiff’s PAGA claims against the Released Parties. The civil penalties secured
18 by the Settlement are significant and fulfill PAGA’s underlying purpose to benefit the public and to
19 deter future labor law violations. As such, the Court should approve the Settlement. Plaintiff’s request
20 for attorneys’ fees in the amount of \$293,333.33 (i.e., one-third of the Gross Settlement Amount),
21 reimbursement of costs in the amount of \$92,986.78, a service payment to Plaintiff in the amount of
22 \$5,000.00, and settlement administration costs to XPand Legal Consulting, LLC (“XPand Legal”) in
23 the amount of \$10,000.00 are also reasonable and should be approved by the Court. Accordingly,
24 Plaintiff respectfully requests that the Court enter an order and judgment granting approval of the
25 Settlement, pursuant to Labor Code § 2699(l)(2).

26 ///

27 _____
28 ¹ A copy of the Settlement is attached as Exhibit C to the Declaration of Matthew J. Matern.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Plaintiff was employed by Defendants as a House Manager from on or about November 27, 2014 through on or about June 29, 2015. Declaration of Plaintiff Carrie Lambert in Support of Plaintiff's Motion for Approval of PAGA Settlement ("Pl Dec."), ¶ 3. Plaintiff first worked at Defendants' house on Short Avenue in Los Angeles, followed by their house on Ogden Avenue in Los Angeles. As a House Manager, my primary job duties included the supervision of patients, the distribution of medication to patients, the preparation of meals for patients, and the transportation of employees to and from Defendants' Culver City treatment facility.

Defendants operate mental health facilities for the treatment of various substance abuse and behavior health issues including alcoholism, drug addiction, mental health conditions and dual diagnosis (co-occurring substance abuse and mental illness). Defendants offer residential and outpatient treatment programs for adolescents and adults.

B. Procedural History

1. Plaintiff's PAGA Notice and Complaints

Pursuant to Labor Code § 2699.3, on February 29, 2016, Plaintiff gave written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Matern Decl. ¶ 3, Ex. A. The LWDA did not provide notice that it intended to investigate the alleged violations. *Id.* Accordingly, on April 6, 2016, Plaintiff filed a class and representative action against Defendants. *Id.* ¶ 4, Ex. B.

2. Defendants' Motion and Change of Counsel

On January 27, 2017, this Court granted Defendants' motion to compel arbitration as to all of Plaintiff's claims, with the exception of her PAGA cause of action. Matern Decl. ¶ 5. The Court ordered this action stayed as to Plaintiff's PAGA cause of action until conclusion of the parties' arbitration proceedings and dismissed Plaintiff's class allegations. *Id.*

On April 4, 2018, defense counsel filed a Motion to be Relieved as Counsel for Defendants, which the Court granted on May 1, 2018. *Id.* at ¶ 6. Following Defendants' failure to appear at the

June 6, 2018 status conference and the July 9, 2018 Order to Show Cause hearing, the Court lifted the stay on Plaintiff's PAGA claim. *Id.* at ¶ 7.

On November 6, 2018, Plaintiff served Defendants with written discovery and, on January 16, 2019, notices of deposition of person(s) most qualified of Defendants. *Id.* at ¶ 8. After Defendants failed to obtain new counsel, provide any responses to Plaintiff's written discovery requests, or appear at their properly noticed depositions, Plaintiff filed motions for terminating sanctions against Defendants on July 3, 2019. *Id.*

On or about February 28, 2020, Defendants obtained new counsel, and, on July 17, 2020, the Court denied Plaintiff's motions for terminating sanctions. *Id.* at ¶ 9.

On December 7, 2020, the Parties stipulated to extend the 5-year deadline to bring the action to trial to May 7, 2024. *Id.* at ¶ 10.

In April 2023, the parties agreed to participate in a private mediation. *Id.* at ¶ 11.

C. Discovery and Investigation

Prior to mediation, Plaintiff subpoenaed timekeeping and payroll data for approximately 1,099 non-exempt employees for the time period of June 27, 2016 to July 10, 2018. *Id.* at ¶ 12. Plaintiff's counsel hired a data expert to analyze the time and payroll data, which assisted Plaintiff's counsel in preparing a model of the potential civil penalties prior to the mediation. *Id.* In addition, Defendants produced relevant written wage-and-hour policies and procedures. *Id.* Based on this discovery and investigation, Plaintiff's counsel was able to act intelligently and effectively in negotiating the Settlement. *Id.*

D. Settlement Negotiations

On May 3, 2023, the Parties participated in a private mediation with Jeffrey Fuchsman. *Id.* at ¶ 13. On May 5, 2023, the parties accepted a mediator's proposal to resolve the Action, subject to the parties entering into a comprehensive written settlement agreement. *Id.*

On November 9, 2023, the Parties fully executed a Joint Stipulation Re: Settlement of PAGA Action and Entry of Judgment ("Settlement" or "Settlement Agreement"). *Id.* at ¶ 14, Ex. C. On February 23, 2024, Plaintiff submitted a copy of the Settlement to the LWDA. *Id.* at ¶ 55, Ex. E.

///

1 **III. SUMMARY OF SETTLEMENT**

2 **A. Aggrieved Employees**

3 The Aggrieved Employees consist of any and all persons who worked for Defendants in
4 California as non-exempt employees at any time from March 4, 2015 through July 31, 2018 (the
5 “PAGA Period”). Settlement ¶¶ 1.4, 1.19. Defendants estimate that there are approximately 1,099
6 Aggrieved Employees who worked a total of 22,047 PAGA Pay Periods. Settlement ¶ 4.1.

7 **B. Settlement Terms**

8 Under the terms of the Settlement, the claims of all Aggrieved Employees shall be settled for
9 the Gross Settlement Amount of \$880,000.00, which is inclusive of Individual PAGA Payments, the
10 LWDA PAGA Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses
11 Payment, and the Administration Expenses Payment. Settlement ¶ 1.10.

12 The Gross Settlement Amount shall be allocated as follows:

13 1. PAGA Penalties. The Gross Settlement Amount less Plaintiff’s Service Payment,
14 PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, and the Administration
15 Expenses Payment constitutes the “Net Settlement Amount.” Settlement ¶ 1.15. Seventy-five percent
16 (75%) of the Net Settlement Amount shall be distributed to the LWDA (“LWDA PAGA Payment”),
17 and twenty-five percent (25%) of the Net Settlement Amount shall be distributed to Aggrieved
18 Employees as Individual PAGA Payments. Settlement ¶¶ 1.15, 1.14, 1.11. There will be no reversion
19 to Defendants. Settlement ¶ 3.1. The Administrator will calculate each Individual PAGA Payment by
20 (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties by the total
21 number of pay periods worked by all Aggrieved Employees during the PAGA Period (“PAGA Pay
22 Periods”) and (b) multiplying the result by each Aggrieved Employee’s PAGA Pay Periods.
23 Settlement ¶ 3.2.4.1.

24 2. Plaintiff’s Service Payment. Subject to Court approval, in exchange for executing a
25 general release of her claims against Defendants and in recognition of her efforts and risks in
26 prosecuting the Action, Plaintiff shall be paid up to \$5,000.00 as an enhancement for her service as a
27 PAGA representative. Settlement ¶¶ 1.24, 3.2.2.

28 3. PAGA Counsel’s Attorney Fees and Costs. Subject to Court approval, PAGA Counsel

1 shall receive a PAGA Counsel Fees Payment in an amount not to exceed one-third of the Gross
2 Settlement Amount, which equals \$293,333.33, plus reimbursement of reasonable costs and expenses
3 (“PAGA Counsel Litigation Expenses Payment”) not to exceed \$100,000.00. Settlement ¶ 3.2.1.

4 4. Administration Expenses Payment. Subject to Court approval, the Administrator,
5 XPand Legal Consulting, LLC shall be paid for the reasonable costs and expenses incurred for
6 administration of the Settlement, not to exceed \$10,000.00. Settlement ¶ 1.3, 3.2.2.

7 **C. The Release**

8 Upon Defendants’ funding of the entire Gross Settlement Amount, the claims released by
9 Plaintiff, the Aggrieved Employees, and PAGA Counsel are as follows:

10 Plaintiff and her respective former and present spouses, representatives, agents, attorneys
11 (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and
12 discharge Released Parties from all claims, transactions, or occurrences that occurred during the
13 PAGA Period, including, but not limited to: all claims that were, or reasonably could have been,
14 alleged, based on the facts contained in the Operative Complaint and the PAGA Notice (“Plaintiff’s
15 Release”). Plaintiff’s Release does not extend to any claims or actions to enforce this Agreement, or to
16 any claims for vested benefits, unemployment benefits, disability benefits, social security benefits,
17 workers’ compensation benefits that arose at any time, or based on occurrences outside the PAGA
18 Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,
19 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s
20 Release shall be and remain effective in all respects, notwithstanding such different or additional facts
21 or Plaintiff’s discovery of them. Settlement ¶ 5.1. For purposes of Plaintiff’s Release, Plaintiff
22 expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the
23 California Civil Code. Settlement ¶ 5.1.1.

24 All Aggrieved Employees are deemed to release, on behalf of themselves and their respective
25 former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
26 Released Parties from all claims for PAGA penalties during the PAGA Period that were alleged, or
27 reasonably could have been alleged, based on the facts stated in the Operative Complaint and the
28 PAGA Notice. Settlement ¶ 5.2.

1 PAGA Counsel release on behalf of their present and former attorneys, employees, agents,
2 successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection
3 with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the
4 PAGA Notice. Settlement ¶ 5.3.

5 “Released Parties” means Defendants and each of their former and present directors, officers,
6 shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries,
7 and affiliates. Settlement ¶ 1.27.

8 **D. Settlement Administration**

9 Within 14 days after entry of judgment, Defendants shall provide the Settlement Administrator
10 with a Microsoft Excel spreadsheet containing the Aggrieved Employee Data. Settlement ¶ 4.2. The
11 Aggrieved Employee Data consists of identifying information in Defendants’ possession and/or the
12 possession of Defendants’ payroll vendors during the PAGA Period, including each Aggrieved
13 Employees’ name, last-known mailing address, Social Security number, and number of PAGA Pay
14 Periods. Settlement ¶ 1.5.

15 Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the
16 Administrator no later than 21 days after the date on which the Court enters a Judgment on its Order
17 Approving the PAGA Settlement. Settlement ¶¶ 4.3, 1.9.

18 Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will
19 mail checks and/or wire payment for all Individual PAGA Payments, the LWDA PAGA Payment,
20 Plaintiff’s Service Payment, the Administration Expenses Payment, PAGA Counsel Fees Payment,
21 and the PAGA Counsel Litigation Expenses Payment. Settlement ¶ 4.4. Disbursement of the PAGA
22 Counsel Litigation Expenses Payment and PAGA Counsel Fees Payment shall not precede
23 disbursement of Individual PAGA Payments. *Id.*

24 The Administrator will issue checks for the Individual PAGA Payments and send them to the
25 Aggrieved Employees via First Class U.S. Mail. Settlement ¶ 4.4.1. The face of each check shall
26 prominently state the date (not less than 180 days after the date of mailing) when the check will be
27 voided. *Id.* The Administrator will cancel all checks not cashed by the void date. *Id.*

28 Before mailing any checks, the Settlement Administrator will update the recipients’ mailing

addresses using the National Change of Address Database. Settlement ¶ 4.4.1. For all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address, the Administrator will conduct an Aggrieved Employee Address Search, which entails searching for current Aggrieved Employee mailing addresses using 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. Settlement ¶¶ 4.4.2, 1.6. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. Settlement ¶¶ 4.4.2. The Administrator shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date. *Id.*

For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. Settlement ¶ 4.4.23.

IV. THE COURT SHOULD GRANT APPROVAL OF THE PAGA SETTLEMENT

A. The Standard for Review and Approval of PAGA Settlements

The PAGA statute specifically provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part.” Lab. Code § 2699(l)(2). The statute, however, does not require a two-step (preliminary and final approval) process or otherwise mimic the class action approval requirements when the parties reach a settlement only as to PAGA civil penalties. *See Arias v. Superior Court* (2009) 46 Cal.4th 969, 975 (class action requirements “need not be met when an employee’s representative action against an employer is seeking civil penalties” under PAGA). “[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz v. Adecco USA, Inc.* (2021) 72 Cal. App.5th 56, 77.

A PAGA representative action to recover civil penalties “is fundamentally a law enforcement action designed to protect the public and not to benefit private parties.” *Iskanian v. CLS*

1 *Transportation, Los Angeles* (2014) 59 Cal.4th 348, 381. When evaluating a PAGA settlement, a trial
2 court “must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented
3 the state’s interests, and hence the public interest.” *Moniz*, 72 Cal.App.5th at 89. In addition, a court
4 must independently determine whether a PAGA settlement is fair, adequate, and reasonable using
5 similar factors that apply to the evaluation of the fairness of a class action settlement, “including the
6 strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration
7 of further litigation, and the settlement amount.” *Id.* at 77.

8 **B. The Settlement Is Fair, Reasonable, and Adequate**

9 Here, the Settlement is consistent with PAGA’s goal of penalizing Defendants for the alleged
10 violations, deterring future violations, and providing a benefit to the public through enforcement of
11 state labor laws.

12 The Gross Settlement Amount of \$880,000.00 is significant enough to deter Defendants from
13 future violations, creating an effective disincentive for Defendants to engage in unlawful business
14 practices. Matern Decl. ¶ 20. The Settlement provides a substantial benefit to the State of California,
15 with the LWDA receiving approximately 359,009.92, as 75 percent of the Net Settlement Amount, to
16 assist with the future enforcement of state labor laws. *Id.* The Settlement also provides a substantial
17 benefit to the Aggrieved Employees, who will share approximately \$119,669.97 as 25 percent of the
18 Net Settlement Amount. *Id.* Accordingly, the Settlement fulfills the underlying purposes of the statute
19 and confers a substantial benefit on the public.

20 In assessing whether the Settlement is fair, reasonable, and adequate, the Court may balance
21 the amount in penalties with the risks of further litigation. Here, Plaintiff obtained a meaningful
22 amount in civil penalties despite facing significant challenges and risks had the litigation continued.
23 *Id.* ¶ 16. Plaintiff considered several factors in reaching the decision to settle at this point in the
24 litigation, including significant risks in proceeding with litigation. *Id.* Plaintiff recognizes that proving
25 liability and PAGA penalties at trial would be an expensive, time-consuming, and extremely uncertain
26 proposition. *Id.* Moreover, continued litigation would very likely reduce and substantially delay any
27 recovery to the state and the Aggrieved Employees. *Id.* Even if Plaintiff were to obtain a favorable
28 judgment at trial, Defendant would likely appeal the judgment, which would further delay any

1 recovery. *Id.* Additionally, this area of the law is constantly evolving, creating uncertainty for
2 employees. *Id.*

3 Plaintiff also considered the reality that courts have discretion to substantially reduce any
4 award of civil penalties on the grounds that “to do otherwise would result in an award that is unjust,
5 arbitrary and oppressive, or confiscatory,” pursuant to Labor Code § 2699(e)(2). *Id.* ¶ 17.

6 Further, while Plaintiff and MLG remain confident in the merits of the case, a legitimate
7 controversy exists as to each predicate Labor Code claim. *Id.* ¶ 18. Defendants contend that,
8 throughout the PAGA Period, they complied with applicable California law. *Id.* The Settlement
9 removes all of these risks. *Id.* at 20.

10 Here, Plaintiff has calculated the maximum potential penalties in an “everything goes right”
11 scenario to be approximately \$8,553,901.00. Matern Decl. ¶ 15. Considering the risks of continued
12 litigation, the burdens of proof necessary to establish liability, the unsettled state of the law, the
13 possibility that the Court would reduce an award of civil penalties, and the probability of appeal of a
14 favorable judgment, it is clear that the non-reversionary settlement amount of \$880,000 is fair,
15 adequate, and reasonable in light of PAGA’s purpose to remediate present labor law violations, to
16 deter future violations, and to maximize enforcement of the Labor Code. *Id.* ¶ 21.

17 For these reasons, the Court should find that the Settlement is fair, reasonable, and adequate.

18 **V. THE REQUESTED SERVICE AWARD IS REASONABLE**

19 The State of California and the Aggrieved Employees are beneficiaries of a settlement that
20 would not have been made possible but for the effort and commitment of Plaintiff. Matern Decl. ¶¶
21 22-27; Pl Dec. ¶¶ 4-11. The Settlement provides that Plaintiff shall be paid an enhancement award in
22 an amount not to exceed \$5,000.00, in recognition of her efforts and risks in prosecuting the Actions.
23 Settlement ¶ 3.2.2. The amount of the requested service award is reasonable in light of incentive
24 payments approved in other PAGA settlements. *See, e.g., Blanchard v. BJ's Restaurants, Inc.*,
25 Orange County Superior Court Case No. 30-2014-00761961-CU-OE-CXC (Sept. 26, 2016)
26 (approving \$10,000 service award); *Bui v. Vitamin Shoppe Industries Inc.*, Los Angeles County
27 Superior Court Case No. BC518486 (Aug. 31, 2016) (approving \$10,000 service award); *Miranda v.*
28 *HomeDeliveryLink, Inc.*, San Bernardino County Superior Court Case No. CIV DS1505393 (Aug. 9,

1 2016) (approving \$10,000 service award); *Sheldon v. AHMC Monterey Park Hospital LP*, Los
2 Angeles County Superior Court Case No. BC440282 (March 2, 2016) (approving \$10,000 service
3 award).

4 Plaintiff has actively participated in this action, including responding to written discovery and
5 preparing for and attending her deposition. Matern Decl. ¶¶ 22-27; Pl Dec. ¶¶ 4-11. Plaintiff also faced
6 the real risk that future employers may not hire her because she brought a representative action against
7 her employer, as well as the real risk that she could have been liable for Defendants' litigation costs if
8 the action went to trial and she lost. *Id.* In addition, Plaintiff has entered into a much broader release
9 (with a Civil Code § 1542 waiver) than the other Aggrieved Employees. *Id.*; Settlement ¶¶ 5.1, 5.1.1.

10 As part of the Settlement, the LWDA will receive approximately \$359,009.92 as 75 percent of
11 the Net Settlement Amount, which is a substantial amount to assist with the enforcement of state labor
12 laws. Matern Decl. ¶ 20. In addition, without Plaintiff's efforts in bringing a PAGA action, those
13 Aggrieved Employees who worked for Defendants at any time from March 4, 2015 through July 31,
14 2018 likely would not have received any payment for civil penalties. Accordingly, Plaintiff
15 respectfully request that the Court approve an enhancement award in the amount of \$5,000.00.

16 **VI. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

17 The Settlement provides for attorneys' fees to PAGA Counsel in an amount up to one-third of
18 the Gross Settlement Amount, for a maximum fee award of \$293,333.33, plus reasonable litigation
19 costs not to exceed \$100,000.00. Settlement ¶ 3.2.1. Plaintiff request attorneys' fees pursuant to the
20 "common fund theory" with a lodestar cross-check. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.
21 5th 480, 504 ("[t]he lodestar method better accounts for the amount of work done, while the percentage
22 of the fund method more accurately reflects the results achieved").

23 **A. Plaintiff's Counsel Are Entitled to Attorneys' Fees and Costs under PAGA**

24 Labor Code § 2699(g)(1) provides that "[a]ny employee who prevails in any [PAGA] action
25 shall be entitled to an award of reasonable attorney's fees and costs." Lab. Code § 2699(g)(1). It is
26 undisputed that Plaintiffs are the prevailing party with a net monetary recovery. *See DeSaulles v.*
27 *Cmty Hosp. of Monterey Peninsula* (2016) 62 Cal.4th 1140, 1157 ("the rule is that a partial recovery,
28 as long as it is a net monetary recovery, entitles a plaintiff to costs."). Accordingly, Plaintiff is entitled

1 to recover reasonable attorneys' fees and costs.

2 **B. The Requested Fees Are Reasonable Under the Common Fund Method**

3 A request for attorneys' fees as a percentage of the gross settlement amount is supported by the
4 "common fund theory," where "one who expends attorney fees in winning a suit which creates a fund
5 from which others derive benefits, may require those passive beneficiaries to bear a fair share of the
6 litigation costs." *Serrano v. Priest* (1977) 20 Cal.3d 25, 35 (citing *Quinn v. State of California* (1975)
7 15 Cal.3d 162); *Laffitte*, 1 Cal.5th at 503 (trial court "may determine the amount of a reasonable fee by
8 choosing an appropriate percentage of the fund created"). The percentage is properly based upon the
9 maximum settlement amount, rather than upon the amount of funds distributed to class members.
10 *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026. In *City and County of*
11 *San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the
12 common fund doctrine has been applied "consistently in California when an action brought by one
13 party creates a fund in which other persons are entitled to share." *Id.* at 110, fn. omitted.

14 The lodestar analysis may be used to cross-check a percentage-of-recovery award. *In re*
15 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556-558. However, the Supreme Court of
16 California clarified that:

17 [W]hen an attorney fee is awarded out of the common fund preserved or recovered by
18 means of litigation [citation], the award is not per se unreasonable merely because it
is calculated as a percentage of the common fund.

19 *Laffitte*, 1 Cal.5th at 486. The *Laffitte* court further held that "trial courts have discretion to conduct a
20 lodestar cross-check on a percentage fee . . . [and] also retain the discretion to forego a lodestar cross-
21 check and use other means to evaluate the reasonableness of a requested percentage fee." *Id.* at 506.

22 California courts routinely award attorneys' fees equaling one-third or more of the common
23 fund. *See, e.g., Laffitte*, 1 Cal.5th at 506 (affirming fee award representing one-third of a non-
24 reversionary fund); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ("fee awards in class
25 actions average around one-third of the recovery"); Eisenberg & Miller, *Attorney Fees in Class Action*
26 *Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at
27 35 (independent studies of class action litigation nationwide conclude that fees representing one-third
28 of the total recovery is consistent with market rates). In addition, a fee award in the amount of one-

1 third of the common fund is reasonable because it best reflects the market rate for contingency fees.
2 *See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 47 (“[A]ttorneys providing the
3 essential enforcement services must be provided incentives roughly comparable to those negotiated in
4 the private bargaining that takes place in the legal marketplace.”).

5 Here, Plaintiff’s request for attorneys’ fees in the amount of one-third of the Gross Settlement
6 Amount is reasonable given the significant result achieved on behalf of the State of California and
7 Aggrieved Employees. Plaintiff’s counsel has litigated the Action for almost eight years on a purely
8 contingent basis, incurring almost \$100,000.00 in costs with no guarantee of recovery. *Id.* ¶¶ 49-50.
9 Plaintiff’s counsel invested over 670 hours of attorney and support staff time into the Action, with
10 payment deferred to the end and entirely contingent on the outcome. *Id.* ¶¶ 30-32. In addition, the
11 requested fee percentage is less than that charged by Plaintiff’s counsel for other employment cases.
12 *Id.* ¶ 29.

13 Accordingly, Plaintiff’s request for attorneys’ fees in the amount of \$293,333.33, or one-third
14 of the Gross Settlement Amount, is reasonable under California law.

15 **C. The Requested Fees Are Reasonable Under the Lodestar Cross-Check**

16 Plaintiff’s request for attorneys’ fees is reasonable based upon a crosscheck of PAGA
17 Counsel’s lodestar with the application of a multiplier. Under the lodestar method, the court considers
18 a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the
19 reasonableness of the fee requested. *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th
20 615, 622. The moving party meets its burden in this regard by submitting “declarations evidencing the
21 reasonable hourly rate for their services and establishing the number of hours spent working on the
22 case” as “California case law permits fee awards in the absence of detailed time sheets.” *Wershba v.*
23 *Apple Computer* (2001) 91 Cal.App.4th 224, 254-55; *Dunk v. Ford Motor Company* (1996) 48
24 Cal.App.4th 1794, 1810; *Nightengale v. Hyundai Motors America* (1994) 31 Cal.App.4th 99, 103.
25 The hours spent and the reasonable hourly compensation are computed to arrive at a “lodestar” figure
26 which may then be augmented or diminished by the court taking into account various “multiplier”
27 factors. *See Ramos*, 82 Cal.App.4th at 622 (citing *Serrano*, 20 Cal.3d at 48-49).

28 Here, the lodestar of Plaintiff’s counsel is **\$443,665.00** which is based on 541.90 hours of

1 attorney time and 126.70 hours of support staff time at customary hourly rates. Matern Decl. ¶¶ 28-51.
2 Plaintiff is requesting attorneys' fees in the amount of \$293,333.33. *Id.*

3 **1. Plaintiff's Counsel's Hours Are Reasonable**

4 In determining whether the number of hours expended on the litigation was reasonable, the
5 court must determine that "the time spent was reasonably necessary and that [] counsel made 'a good
6 faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise
7 unnecessary.'" *Jordan v. Multnomah County* (9th Cir. 1987) 815 F.2d 1258, 1263 n.8. The court
8 "should defer to the winning lawyer's professional judgment as to how much time he was required to
9 spend on the case." *Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112 (noting that
10 "[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating
11 their fees. The payoff is too uncertain, as to both the result and the amount of the fee."). It is well
12 established that reasonable fees for support staff services may be included as part of a fee award. *See*
13 *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal.App.3d 914, 951 ("necessary
14 support services for attorneys, e.g. secretarial and paralegal services, are includable within an award of
15 attorney fees"); *Guinn v. Dotson* (1994) 23 Cal.App.4th 262, 268-270 ("[a]n award of attorney's fees
16 which does not compensate for paralegal service time would not fully compensate the attorney");
17 *Missouri v. Jenkins* (1989) 491 U.S. 274, 285 (fee award must account for work of non-attorneys
18 "whose labor contributes to the work product for which an attorney bills her client").

19 Here, Plaintiff's counsel expended a significant amount of time litigating the Action to achieve
20 the excellent result on behalf of the State of California and Aggrieved Employees. Matern Decl. ¶¶ 31-
21 32. The efforts expended by Plaintiff's counsel thus far include, but are not limited to, the following:
22 interviewing Plaintiff and reviewing documents provided by Plaintiff; drafting a PAGA notice letter
23 on behalf of Plaintiff; drafting the complaint; preparing for and attending numerous court hearings and
24 status conferences; preparing Plaintiff for her deposition; propounding 42 sets of discovery on behalf
25 of Plaintiff; responding to written discovery; meeting and conferring with Defendants' counsel to
26 obtain relevant documents and information; filing motions for terminating sanctions following
27 Defendants' failure to respond to written discovery requests, appear at status conferences, and appear
28 at properly noticed depositions; drafting and entering into a stipulation and protective order to

1 facilitate the exchange of discovery; issuing subpoenas and explanatory letters to be served on
2 Defendants' payroll vendors; reviewing time and payroll records and other employment records
3 produced by Defendants and their payroll vendors; deposing Defendant Tonmoy Sharma and the
4 Person Most Knowledgeable at Defendants Dual Diagnosis, Shreya Health, Satya Health, Sovereign,
5 Athena Healthcare, and Adeona Healthcare; retaining a data expert to analyze voluminous time
6 records and corresponding payroll data; performing legal research regarding Plaintiff's claims;
7 drafting a mediation brief and preparing a damages analysis; attending two private mediation sessions;
8 negotiating, drafting, and revising the Settlement; and drafting the Motion for Approval of PAGA
9 Settlement and accompanying documents. *Id.* ¶ 31.

10 To date, PAGA Counsel have spent over 542 hours of attorney time and over 127 hours of
11 support staff time litigating the Action. *Id.* at ¶¶ 31-32. These hours were necessary and reasonable to
12 achieve the excellent result on behalf of the State and the Aggrieved Employees.

13 **2. Plaintiff's Counsel's Hourly Rates Are Reasonable**

14 The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group,*
15 *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. "[I]n assessing a reasonable hourly rate, the trial court is
16 allowed to consider the attorneys' skill as reflected in the quality of work, as well as the attorneys'
17 reputation and status." *MBNA Am. Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3. The trial court
18 may also "find hourly rates reasonable based on evidence of other courts approving similar rates."
19 *Parkinson v. Hyundai Motor Am.* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172. "Affidavits of the
20 plaintiff's attorney and other attorneys regarding prevailing fees in the community, and rate
21 determinations in other cases, particularly those setting a rate for the plaintiff's attorney, are
22 satisfactory evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps Dodge*
23 *Corp.* (9th Cir. 1990) 896 F.2d 403, 407; *Bouman v. Block* (9th Cir. 1991) 940 F.2d 1211, 1235 (9th
24 Cir. 1991) (the submission of "declarations stating that the rate was the prevailing market rate in the
25 relevant community [was]... sufficient to establish the appropriate rate for lodestar purposes").

26 PAGA Counsel's rates are in line with the prevailing market rates of other Southern California
27 employment law attorneys with comparable experience and qualifications. Matern Decl. ¶¶ 33-47,
28 Exh. D; *see also Roberti v. OSI Sys., Inc.*, No. CV1309174MWFMRW, 2015 WL 8329916, at *7

(C.D. Cal. Dec. 8, 2015) (finding rates between \$525 and \$975 per hour reasonable); *Rodriguez v. County of Los Angeles*, 96 F.Supp.3d 1012, 1023 (C.D. Cal. 2014) (approving attorney rates in 2014 from \$500 to \$975); *Perfect 10, Inc. v. Giganews, Inc.*, No. CV 11-07098-AB SHX, 2015 WL 1746484, at *15-18 (C.D. Cal. Mar. 24, 2015), *aff'd*, 847 F.3d 657 (9th Cir. 2017) (finding hourly rates of \$825-\$930 for a senior partner, \$350-\$690 for associates, and \$290 and \$240 for support staff—for work performed in 2011 and 2014—to be reasonable and prevailing market rates at that time); *In re Linkedin User Priv. Litig.*, 309 F.R.D. 573, 591 (N.D. Cal. 2015) (reasonable rate for litigation support staff from \$150 to \$240). PAGA Counsel are experienced litigators who specialize in employment law, with a substantial wage and hour class action practice. Matern Decl. ¶¶ 33-45. Numerous courts have approved Plaintiff's Counsel's hourly rates. *Id.* ¶¶ 50-52. Given PAGA Counsel's skill and experience, PAGA Counsel's hourly rates are reasonable.

D. Plaintiffs' Counsel's Costs Are Reasonable

PAGA Counsel is entitled to reimbursement of reasonable litigation costs under PAGA. *See* Lab. Code § 2699(g)(l). The Settlement provides for reimbursement of costs not to exceed \$100,000.00. Settlement ¶ 3.2.1. To date, Plaintiff's counsel has incurred actual costs in the amount of **\$92,926.78**. Matern Decl. ¶ 57. PAGA Counsel will incur approximately \$60.00 in future costs for motion filing fees, for a total of **\$92,986.78** in costs. *Id.* Because these costs were reasonably incurred in prosecuting the Action on behalf of the State of California and Aggrieved Employees, the costs should be approved by the Court. *Id.* Accordingly, Plaintiff's counsel respectfully requests the Court approve the reimbursement of costs in the amount of **\$92,986.78**.

VII. THE REQUESTED ADMINISTRATION COSTS ARE REASONABLE

The Settlement provides for settlement administration costs up to \$10,000.00 to be paid from the Gross Settlement Amount to Xpand Legal Consulting, LLC. Settlement ¶ 3.2.3. Given the number of Aggrieved Employees and the scope of the duties to be performed by Xpand Legal Consulting, LLC, the Court should approve the settlement administration costs as reasonable. Settlement ¶ 4.

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1 **VIII. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests that the Court grant approval of the
3 Settlement and enter the proposed judgment.

4
5 DATED: February 23, 2024

Respectfully submitted,

6 MATERN LAW GROUP, PC

7
8 By: Vanessa M. Rodriguez
9 MATTHEW J. MATERN
10 MATTHEW W. GORDON
11 VANESSA M. RODRIGUEZ
12 Attorneys for Plaintiff CARRIE LAMBERT
13 individually and on behalf of all others similarly
14 situated
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