

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)
4 Kyle R. Nordrehaug (State Bar #205975)
5 Aparajit Bhowmik (State Bar #248066)
6 Piya Mukherjee (State Bar #274217)

7 2255 Calle Clara
8 La Jolla, CA 92037
9 Telephone: (858)551-1223
10 Facsimile: (858) 551-1232

11 Attorneys for Plaintiff

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14 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF LOS ANGELES**
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CHARLES SAN NICOLAS, on behalf of the
State of California, as a private attorney
general,

Plaintiffs,

vs.

WEST COVINA CORPORATE FITNESS,
INC., a California Coproration; and Does 1
through 50, Inclusive,

Defendants.

CASE No. **BC616304**

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

**MEMORANDUM OF POINTS AND
AUTHORITIES**

Hearing Date: April 11, 2019
Hearing Time: 9:00 a.m.

Judge: Hon. Daniel J. Buckley
Dept.: 1 (Spring Street)

Action Filed: April 8, 2016
Trial Date: Not Set

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

2 YOU ARE HEREBY NOTIFIED THAT at 9:00 a.m. on April 11, 2019, or as soon
3 thereafter as the matter can be heard, in Department 1 of the above entitled Court before the
4 Honorable Daniel J. Buckley, Plaintiffs Charles San Nicolas, David Price and Peter
5 Contreras ("Plaintiffs") will apply for an order approving the settlement of the PAGA claim
6 alleged against defendants West Covina Corporate Fitness, Inc., Muscle Head, Inc. ("North
7 Hollywood"), Muscle Bound, Inc. ("Hollywood"), LA Corporate Fitness, Inc. ("Downtown
8 LA"), Thousand Oaks Corporate Fitness, Inc., Simi Valley Corporate Fitness, Inc., Culver
9 City Corporate Fitness, Inc., Fullerton Corporate Fitness, Inc., Valencia Corporate Fitness,
10 Inc., Santa Anita Corporate Fitness, Inc. ("Arcadia"), Montclair Corporate Fitness, Inc.,
11 Santa Barbara Corporate Fitness, Inc. ("Downtown, Uptown, and Goleta Gyms"), Anaheim
12 Corporate Fitness, Inc., Glendale Corporate Fitness, Inc., Santa Ana Corporate Fitness, Inc.,
13 and Gym Management Services, Inc. ("Defendants") in accordance with Labor Code
14 §2699(l).

15 This hearing was set by the Order dated February 6, 2019. This Motion will be based
16 on this notice, the accompanying points and authorities, the Declaration of Kyle
17 Nordrehaug, and the complete files and records in this action.

18 Because all parties have agreed to the settlement, this motion is not opposed by
19 Defendants.

20 Dated: March 15, 2019

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW

22 By: 

23 Norman B. Blumenthal
24 Kyle R. Nordrehaug
25 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Charles San Nicolas, David Price and Peter Contreras ("Plaintiffs") reached a
4 settlement of their individual claims and the California Private Attorneys General Act, Cal. Labor
5 Code §2699, et seq. ("PAGA") claim asserted in this action against Defendants.¹ The only claim
6 remaining in this action before this Court is the representative PAGA claim. In accordance with
7 California Labor Code §2699(l), Plaintiffs now seek this Court's approval of the penalties sought as
8 part of the parties' settlement of Plaintiffs' PAGA claim.² This is only a settlement of the PAGA
9 claims for civil penalties, and is not a class settlement and does not release the individual claims of
10 the affected employees, with the exception of Plaintiffs. Cal. Labor Code § 2699(g)(1); *Iskanian v.*
11 *CLS Transportation*, 59 Cal. 4th 348, 381 (2014).

12 A true and correct copy of the Settlement Agreement which sets forth the terms for the
13 settlement of the PAGA claims is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug,
14 filed herewith. Capitalized terms shall have the same meaning as defined in the Settlement
15 Agreement. The LWDA has received notice of this Settlement and this motion as set forth in the
16 accompanying proof of service.

17
18 **II. RELEVANT FACTS**

19 Plaintiffs were employed as non-exempt employees working in Defendants' gyms during the
20 PAGA Period, which is April 25, 2015 to December 31, 2018.

21
22 ¹ The Defendants are West Covina Corporate Fitness, Inc., Muscle Head, Inc. ("North
23 Hollywood"), Muscle Bound, Inc. ("Hollywood"), LA Corporate Fitness, Inc. ("Downtown LA"),
24 Thousand Oaks Corporate Fitness, Inc., Simi Valley Corporate Fitness, Inc., Culver City Corporate
25 Fitness, Inc., Fullerton Corporate Fitness, Inc., Valencia Corporate Fitness, Inc., Santa Anita
26 Corporate Fitness, Inc. ("Arcadia"), Montclair Corporate Fitness, Inc., Santa Barbara Corporate
27 Fitness, Inc. ("Downtown, Uptown, and Goleta Gyms"), Anaheim Corporate Fitness, Inc., Glendale
28 Corporate Fitness, Inc., Santa Ana Corporate Fitness, Inc., and Gym Management Services, Inc.
("Defendants")

² Section 2699(l) provides as follows: "The superior court shall review and approve any
penalties sought as part of a proposed settlement agreement pursuant to this part."

1 On April 8, 2016, plaintiff Charles San Nicolas filed a complaint in the Superior Court of
2 California, County of Los Angeles which asserted five causes of action for individual and class
3 claims alleging various violations of the California Labor Code. After satisfying the statutory
4 notice procedures, on June 3, 2016, plaintiff Charles San Nicolas filed a First Amended Complaint
5 adding a cause of action for civil penalties under the PAGA.

6 On October 21, 2016, Defendants filed a Motion to Compel Arbitration and Dismiss Class
7 Claims. On January 27, 2017, plaintiff Charles San Nicolas and defendant West Covina Corporate
8 Fitness, Inc. filed a Joint Stipulation to Stay Litigation Pending United States Supreme Court
9 Ruling in *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016). On February 3, 2017, the
10 Los Angeles Superior Court granted the Joint Stipulation to Stay Litigation. On January 31, 2018,
11 Plaintiffs filed a Second Amended Complaint adding named plaintiffs Peter Contreras and David
12 Price.

13 On July 6, 2018, the parties stipulated to (1) dismiss the putative class allegations without
14 prejudice, (2) dismiss the individual claims of plaintiff Charles San Nicolas without prejudice, (3)
15 allow plaintiff Charles San Nicolas to proceed in the Superior Court of California, County of Los
16 Angeles on behalf of the State of California, as a private attorney general with respect to the claim
17 for civil penalties pursuant to Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1194,
18 1198, 2802 and the Applicable Wage Order, and (4) dismiss the individual claims of plaintiffs Peter
19 Contreras and David Price without prejudice to proceed in separate individual arbitrations.

20 On June 22, 2018, plaintiff David Price filed a Demand for Arbitration with the American
21 Arbitration Association entitled *Price v. West Covina Corporate Fitness, Inc.*, AAA Case No.
22 01-18-0002-4496. On June 22, 2018, plaintiff Peter Contreras filed a Demand for Arbitration with
23 the American Arbitration Association entitled *Contreras v. West Covina Corporate Fitness, Inc.*,
24 AAA Case No. 01-18-0002-4494.

25 Plaintiffs and Defendants agreed to mediate Plaintiffs' claims with the Honorable William
26 C. Pate (Ret.) regarding the individual claims in arbitration and the PAGA claim on January 15,
27 2019. At the mediation, the parties reached a settlement on behalf of the State of California and on
28 behalf of a group of aggrieved employees, defined as all hourly, non-exempt employees who

1 worked for Defendants from April 8, 2015 to the present (the "PAGA Group"), for alleged
2 violations of the California Labor Code. The parties also reached a settlement on Plaintiffs'
3 individual claims alleged in this action and in the individual arbitrations. The Parties prepared the
4 Settlement Agreement which is now presented to this Court for approval. After mediation, the
5 Parties stipulated to amend the complaint to conform to the agreement reached at the mediation on
6 behalf of the aggrieved employees and the State of California. The Third Amended Complaint was
7 filed on February 4, 2019 and is the operative complaint for purposes of the settlement for which
8 approval is sought
9

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

11 The Settlement Agreement negotiated by the parties provides for Defendant to pay \$775,000
12 as the "Gross Settlement Amount". (Settlement Agreement at ¶ I(7).) "The PAGA Payment is "the
13 total of the Gross Settlement Amount, less the payments for the Individual Settlement Payments to
14 the Plaintiffs, Attorneys' Fees, Attorneys' Expenses and the Administration Costs, which shall be
15 paid in full settlement of the PAGA Released Claims." (Settlement Agreement at ¶ III(4)(a).) After
16 these deductions, assuming they are made in full, the PAGA Payment is estimated to be
17 \$451,667.00.

18 The PAGA Payment shall be distributed as follows:

19 (1) Seventy-Five Percent (75%) shall be paid as a Labor Code section
20 558 payment to the Aggrieved Employees. Each Individual PAGA Payment
21 shall be based on the number of workweeks each Aggrieved Employee
worked during the PAGA Period as a percentage of the total workweeks
worked by all Aggrieved Employees during the PAGA Period.

22 (2) Twenty-Five Percent (25%) shall be paid as a Labor Code section
23 2699 payment with 75% of this amount being paid to the LWDA and 25%
being paid to the Aggrieved Employees

24 (Settlement Agreement at ¶ III(4)(a).)

25 Within fifteen (15) days after receipt of the Gross Settlement Amount from Defendants, the
26 Settlement Administrator will issue to each Aggrieved Employee a check for their Individual
27 PAGA Payment at their last known home address along with an explanatory letter which will be
28 mutually approved by the parties. Checks will remain negotiable for one hundred eighty (180)

1 days. (Settlement Agreement at ¶ IV(3).)

2 The “Aggrieved Employees” are defined as “all individuals who are or previously were
3 employed by defendants West Covina Corporate Fitness, Inc., Muscle Head, Inc. (“North
4 Hollywood”), Muscle Bound, Inc. (“Hollywood”), LA Corporate Fitness, Inc. (“Downtown LA”),
5 Thousand Oaks Corporate Fitness, Inc., Simi Valley Corporate Fitness, Inc., Culver City Corporate
6 Fitness, Inc., Fullerton Corporate Fitness, Inc., Valencia Corporate Fitness, Inc., Santa Anita
7 Corporate Fitness, Inc. (“Arcadia”), Montclair Corporate Fitness, Inc., Santa Barbara Corporate
8 Fitness, Inc. (“Downtown, Uptown, and Goleta Gyms”), Anaheim Corporate Fitness, Inc., Glendale
9 Corporate Fitness, Inc., Santa Ana Corporate Fitness, Inc., and/or Gym Management Services, Inc.
10 during the period of April 25, 2015 to December 31, 2018.” (Settlement Agreement at ¶ I(2).) The
11 Aggrieved Employees are estimated to consist of 2,700 individuals. (Settlement Agreement at ¶
12 I(2).) (Declaration of Kyle Nordrehaug, at ¶4.)

13 As to the Aggrieved Employees, the PAGA settlement only releases the “PAGA Released
14 Claims” which are: “all PAGA claims alleged in the PAGA Action which occurred during the
15 PAGA Period (“PAGA Released Claims”). This release of PAGA Released Claims shall bind only
16 plaintiff San Nicholas and the State of California and shall not include claims outside of the PAGA
17 Period. The release shall also exclude claims for wrongful termination, unemployment insurance,
18 social security, disability, and workers' compensation. **In no event shall the PAGA Released
19 Claims in this Settlement Agreement release any claim of any individual other than the
20 Plaintiffs, including any class claim, which does not arise under PAGA.”** (Settlement
21 Agreement at ¶ III(5).)

22 The California Labor Workforce Development Agency (“LWDA”) is being served with a
23 copy of this motion and the Settlement Agreement through the online process as required by Labor
24 Code § 2699(l), and therefore has notice of this PAGA settlement and this motion.

25 The additional amounts to be paid from the Gross Settlement Amount other than the PAGA
26 Payment are as follows: (1) Plaintiffs agree to accept \$10,000 each in full settlement and
27 compromise of their individual claims as set forth in this action and the individual arbitrations and
28 agree that the Individual Settlement Payments shall fully and forever discharge and release all their

1 individual claims and causes of action pled in this action and the individual arbitrations, whether
2 now known or now unknown, which Plaintiffs have as individuals against the Defendants and
3 Released Parties in this action and the individual arbitrations; (2) \$193,750 shall be paid to
4 Plaintiffs' Counsel for payment of attorney's fees (25% of the Gross Settlement Amount)³, and up to
5 \$15,000 shall be paid to Plaintiffs' Counsel for costs set forth in the billing statement from
6 Plaintiffs' Counsel (pursuant to a Declaration of Costs by Plaintiffs' Counsel) in prosecuting the
7 PAGA claims; and, (3) Administration Costs to administer the settlement, payable to ILYM Group,
8 in an amount up to \$20,000. (Settlement Agreement at ¶¶ III(4)(b), III(4)(c), III(6).)

9
10 **IV. THE PARTIES HAVE SETTLED PLAINTIFFS' PAGA CLAIM**

11 The claim before this court is Plaintiff Charles San Nicolas' representative claim under
12 PAGA on behalf of the State of California and the PAGA Group for civil penalties pursuant to the
13 PAGA. (Declaration of Kyle Nordrehaug, at ¶3.) The parties have agreed to settle this PAGA
14 claim in its entirety, along with the individual wage and hour claims of the Plaintiffs proceeding in
15 arbitration. Specifically, the parties have agreed to settle Plaintiff San Nicolas' representative
16 PAGA claim for \$451,667 in civil penalties (the "PAGA Payment"). (Declaration of Kyle
17 Nordrehaug, at ¶4.) The settlement is intended to fully and finally resolve the PAGA claim asserted
18 by Plaintiff San Nicolas as to Plaintiffs and the Aggrieved Employees on behalf of the State of
19 California. This is only a settlement of the PAGA claims for civil penalties, and is not a class
20 settlement and does not release the individual claims of the Aggrieved Employees. (See Settlement
21 Agreement at ¶ III(5).) Attorneys' fees equal to 25% of the settlement and costs incurred, will also
22 be paid to Plaintiff's counsel as part of the settlement in accordance with California Labor Code §

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26 _____
27 ³ Though the Settlement Agreement provides for a fee award of up to one-third, Plaintiffs'
28 Counsel request a lower fee award that is equal to 25%, such that the requested award is less than
what was approved in *Laffitte v. Robert Half International, Inc.*, 1 Cal. 5th 480 (2016). The
difference will be added to the PAGA Payment.

1 2699(g)(1) as set forth in the Settlement Agreement.⁴ There is also payment of an amount up to
2 \$20,000 to ILYM Group (the Settlement Administrator) to perform the administrative duties to
3 distribute the settlement money. (Declaration of Kyle Nordrehaug, at ¶4.)

4
5 **IV. THE PARTIES REQUEST APPROVAL OF THE SETTLEMENT OF THE PAGA**
6 **CLAIM**

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

12 **A. The PAGA Penalties To Be Paid Are Fair And Reasonable**

13 The parties believe that the \$451,667 PAGA Payment is fair and reasonable and therefore
14 should be approved. The Labor and Workforce Development Agency has released significant data
15 on PAGA settlement amounts. After removing the outliers at the low and high end, the average,
16 total settlement amount of PAGA claims is approximately \$10,000.

17 This PAGA Payment compares favorably to the estimated amount of PAGA penalties which
18 Plaintiffs calculated to be the maximum amount recoverable for mediation. With the assistance of
19 an expert, Plaintiffs calculated that the maximum PAGA penalties for the Aggrieved Employees
20 was as high as \$17 million. (Declaration of Kyle Nordrehaug, at ¶5.)

21 Importantly, these calculations were performed at the maximum statutory rate for the
22 penalties, when in fact, it is likely that any penalties awarded would be at a lower rate. In
23 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a
24 judgment after trial which only provided for a PAGA penalty of \$5 per violation. Therefore, at
25 trial, any PAGA penalties awarded could be significantly less than Plaintiffs' calculation even

26 ⁴ Pursuant to the accompanying Declaration of Kyle Nordrehaug, Plaintiffs' Counsel seeks
27 actual incurred costs in the amount of \$11,342.98. See Declaration of Nordrehaug at ¶ 7. This is
28 less than the allocation of \$15,000 in the Settlement Agreement, and the difference will be added to
the PAGA Payment. *Id.* at ¶7.

1 where Plaintiff prevailed on the PAGA claim. Notably, the amount of the PAGA Payment here is
2 300% higher than was awarded after a PAGA trial in *Carrington v. Starbucks*. (Declaration of Kyle
3 Nordrehaug, at ¶5.)

4 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming*
5 *v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA
6 penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum
7 penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually
8 awarded no civil penalties, even when Labor Code violations are established. See *Makabi v.*
9 *Gedalia*, 2016 Cal. App. Unpub. 1489, o5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA
10 penalties were awarded by the Los Angeles County Superior Court) (unpublished decision); *In re*
11 *Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016)
12 (PAGA penalties denied after trial).

13 Finally, an important consideration for Plaintiffs in the negotiations was Defendants'
14 financial situation. Defendants are a group of privately-owned small businesses, not a fortune 500
15 company. Several of these individual small businesses, health clubs, are losing money. The overall
16 financial condition is such that the ability to borrow is adversely impacted. Such impact makes
17 borrowing for even working capital more expensive and difficult. As a result, Plaintiffs were
18 understandably concerned that Defendants may be unable to satisfy a significant judgment. The
19 guaranteed settlement presented here is preferable to further litigation which could result in no
20 actual monetary recovery. (Declaration of Kyle Nordrehaug, at ¶6.)

21 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each
22 of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
23 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff
24 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the
25 Labor Code by the defendant."). Here, Plaintiffs would need to prove that each non-exempt
26 employee suffered a violation related to unpaid straight or overtime wages, meal breaks, rest breaks,
27 expense reimbursements and/or all of the other Labor Code violations Plaintiffs have asserted.

28 Defendants maintain that Plaintiffs and the Aggrieved Employees were properly

1 compensated, and that they did not violate the Labor Code as to any of them. Defendant asserted
2 additional defenses to the PAGA claim, not only as to liability but also as to the amount of the
3 penalties. Defendants could also argue that no penalties prior to the PAGA notification should be
4 awarded, and at least one Court has so ruled. These additional defenses present a risk to the PAGA
5 claim and the potential that some or all of the PAGA penalties sought may not be awarded. As
6 discussed above, the financial circumstances of the Defendant were also an important consideration
7 and could have negated or curtailed any significant judgment. (Declaration of Kyle Nordrehaug, at
8 ¶6.)

9 Given Defendants’ potential defenses to the claimed Labor Code violations at issue, the
10 risks and costs of continued litigation, and Defendants’ financial circumstances, Plaintiffs and their
11 attorneys believe that the PAGA Payment is fair and reasonable. (Declaration of Kyle Nordrehaug,
12 at ¶6.) Plaintiffs’ Counsel has significant experience litigating claims for PAGA penalties, and the
13 PAGA Payment here is similar to or greater than similar settlements that Plaintiffs’ Counsel has
14 negotiated and courts have approved. (Declaration of Kyle Nordrehaug, at ¶ 8(b).) The PAGA
15 Payment, along with the other terms of the proposed settlement, were negotiated by experienced
16 counsel at arm's length with the assistance of a private mediator, Hon William C. Pate. (Declaration
17 of Kyle Nordrehaug, at ¶6.) The LWDA has been provided notice of this motion and the PAGA
18 settlement, and the decision of LWDA to accept the PAGA settlement and not oppose the motion
19 should be given considerable weight. This is not a situation where the Court needs to be concerned
20 about the rights of absent employees as in a class settlement, as this PAGA-only settlement does not
21 release the individual claims of absent employees other than the Plaintiffs, and the LWDA is a
22 sophisticated government entity that is more than able to look out for its own rights.⁵

23 In this regard, the amount of the PAGA Penalties payment exceeds amounts that have been
24 approved by courts in other cases. For instance, in *Franco v. Ruiz Food Products, Inc.*, 2012 WL
25 5941801 (E.D. Cal. 2012), the court approved a total PAGA penalty amount of \$10,000, with the

27 ⁵ The Settlement Agreement makes clear at Section III(5) that: “In no event shall the PAGA
28 Released Claims in this Settlement Agreement release any claim of any individual other than the
Plaintiffs, including any class claim, which does not arise under PAGA.”

1 \$2,500 employee portion divided between as many as 2,055 current and former employees. In
2 *Schiller v. David's Bridal, Inc.*, 2012 WL 217001 (E.D. Cal. 2012), the court also approved a PAGA
3 penalty amount of \$10,000, with the \$2,500 employee portion divided between as many as 3,326
4 individuals. Here, the parties have agreed to a PAGA Payment of \$451,667, with the \$366,979.43
5 employee portion divided among the estimated 2,700 employees.

6 **B. The Remaining Settlement Terms Do Not Require Court Approval**

7 Although PAGA requires that a court approve the penalties that are sought as part of a
8 proposed settlement, Labor Code § 2699(1) does not require that a court approve any other
9 elements of the proposed settlement, including the Plaintiffs' individual settlements and the
10 attorneys' fees and costs.⁶ Similarly, because there are no class allegations, the approval provisions
11 applicable to class settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the
12 Court only needs to approve the settlement of the civil penalties sought in the PAGA claim.

13 **V. THE ATTORNEYS' FEES ARE REASONABLE**

14 PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiffs' position
15 is that the payment of attorneys' fees in this settlement is a matter of contract for a contingent
16 representation. Nevertheless, should this Court review the requested attorneys' fees, it is clear that
17 the requested fees are reasonable.

18 First, the requested fees are justified by the result achieved. Plaintiffs' Counsel negotiated a
19 recovery of \$775,000, and this result justifies the requested fees equal to 25% of this recovery. This
20 percentage is below the standard contingent recovery percentage of one-third, and this percentage is
21 lower than what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1
22 Cal.5th 480, 504, (2016).

23 Second, the requested fees are justified by the work performed. As detailed in the
24 accompanying Declaration of Kyle Nordrehaug at ¶9, the requested fees represent Plaintiffs'

26
27 ⁶ As set forth in the accompanying Declaration of Nordrehaug at ¶7, Plaintiffs' Counsel will be
28 recovering litigation expenses in the total amount of \$11,342.98, which is less than the allocation of
\$15,000 with the difference to be added to the PAGA Payment.

1 Counsel's lodestar with a reasonable multiplier of less than 2. Generally, the Ninth Circuit and
2 California Courts award multipliers between 2 to 4 times the lodestar to reward counsel for
3 accepting the contingent risks of the litigation or obtaining good results. *See, e.g., Laffitte*, 1 Cal.
4 5th at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v.*
5 *Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0
6 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th
7 224, 254 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa*
8 *Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a
9 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014)
10 (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales*
11 *Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee
12 award that represented a multiplier of 2.76 as falling within the "majority" range for risk
13 multipliers).

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

19 VI. CONCLUSION

20 Based on the foregoing, Plaintiffs respectfully request this Court approve the PAGA
21 settlement and the PAGA Payment as set forth in the Settlement Agreement.

22 Dated: March 15, 2019

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

24 By: 

25 Norman B. Blumenthal, Esq.
26 Kyle R. Nordrehaug, Esq.
27 Attorneys for Plaintiffs
28