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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LAKE**

ANDREA PRIOR on behalf of herself, and all  
aggrieved employees,

Plaintiff,

v.

ADVENTIST HEALTH CLEARLAKE  
HOSPITAL, INC.; and DOES 1 through 10,  
inclusive,

Defendants.

Case No: CV 423216

REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR AN ORDER AWARDING  
ATTORNEYS' FEES, COSTS,  
ENHANCEMENT PAYMENT, AND  
SETTLEMENT ADMINISTRATION FEES**

Date: August 19, 2024

Time: 9:00 a.m.

Dept. 1

Complaint filed: October 21, 2022

Trial: Not set

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiff Andrea Prior (“Plaintiff”), moves this Court for an order awarding attorney’ fees and costs to Plaintiff’s Counsel, an enhancement payment for the representative Plaintiff, and settlement administration costs to Simpluris, Inc., the Parties’ selected settlement administrator for this action.

Plaintiff and Adventist Health Clearlake Hospital, Inc. (“Defendant”) reached a proposed \$500,000 settlement of Plaintiff’s representative action brought under the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, (“PAGA”).<sup>1</sup> Plaintiff concurrently has filed a Motion for Order Approving Settlement of PAGA Action and Dismissing Action with Prejudice (“Motion for Approval of PAGA Settlement”), which addresses the details of the settlement terms, including the distribution of the \$302,611.84 estimated Net Settlement Amount to the California Labor and Workforce Development Agency (“LWDA”) and the PAGA Group.<sup>2</sup>

Through this motion, Plaintiff requests that the Court approve the Settlement Agreement’s terms allocating \$182,388.16<sup>3</sup> for the payment of Plaintiff’s Counsel’s fees and costs, \$7,500 for the representative Plaintiff’s enhancement payment, and settlement administration costs of up to \$7,500.<sup>4</sup>

**II. STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Plaintiff has set forth the details of the case and procedural history in the memorandum supporting the Motion for Approval of PAGA Settlement filed concurrently with this motion. For brevity’s sake, Plaintiff does not repeat those facts here.

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<sup>1</sup> See Declaration of Eric A. Grover submitted in support of this motion and Plaintiff’s Motion for Order Approving Settlement of PAGA Action and Dismissing Action with Prejudice (“Grover Decl.”), Ex. 1 (the Parties’ Labor Code Private Attorneys General Act Settlement Agreement (the “Settlement Agreement”)) at §§ I.P, VIII.B. All “Ex.” references are to Grover Declaration exhibits unless stated otherwise. Also, all capitalized terms shall have the same meaning as set forth in the Settlement Agreement unless noted otherwise.

<sup>2</sup> See Ex. 1 at § I.J, *see also*, §§ I.G, I.I, I.K, I.L, I.P, VI, X, XI.

<sup>3</sup> The Settlement Agreement provides that Plaintiff’s Counsel may request \$166,667 in fees and actual litigation costs, which are \$15,721.16. Ex. 1 at § X; Grover Decl. at ¶¶ 32-49.

<sup>4</sup> See Ex. 1 at §§ VI, X, XI.

**A. Plaintiff's Counsel's work in litigating and settling this action.**

Prior to the filing of this action, Plaintiff's Counsel expended time and effort in investigating and researching Plaintiffs' potential Labor Code claims and preparing this case for litigation. Pursuant to Labor Code § 2699.3's exhaustion requirements, on Plaintiff's behalf, Plaintiff's Counsel drafted and provided written notice of each Plaintiff's PAGA claims to the LWDA and Defendant. After receiving no response from the LWDA in the statutory period, Plaintiff's Counsel drafted and filed the operative complaint.<sup>5</sup>

Plaintiff's Counsel drafted and served written discovery. Plaintiff's Counsel also drafted responses to Defendant's written discovery.<sup>6</sup>

After the Parties exchanged written discovery, Plaintiff's Counsel engaged in discussions with Defense Counsel regarding potential settlement and the Parties agreed to mediate. In preparation, the Parties agreed to exchange relevant information and documents informally. Plaintiff's Counsel drafted and sent a detailed mediation information request to Defense Counsel. Plaintiff's Counsel reviewed and analyzed information and documents that Defendant provided, including documents and information relevant to the claims alleged in the operative complaint, such as timekeeping and payroll records and the number aggrieved employees and total pay periods at issue. The information and documents were sufficient to assess Defendant's off-the-clock and travel time pay, meal period, rest break, termination pay, other pay and wage statement practices and to tabulate the total number of pay periods at issue and identify the approximate total number of individuals falling within the definition of the PAGA Group during the PAGA Release Period.<sup>7</sup>

On April 9, 2024, the Parties participated in a formal mediation session with Deborah Crandall Saxe, Esq., during which the Parties engaged in good faith, arm's-length negotiations. With the mediator's assistance, the Parties were able to resolve the PAGA claims, subject to the

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<sup>5</sup> Grover Decl. at ¶ 10.

<sup>6</sup> Grover Decl. at ¶ 11.

<sup>7</sup> Ex. 1 at § II.B; Grover Decl. at ¶ 12.

1 Court's approval.<sup>8</sup>

2 After the mediation, Plaintiff's Counsel has spent time communicating with Defense  
3 Counsel regarding the terms of the written settlement agreement. Plaintiff's Counsel expects to  
4 spend additional hours working with the Settlement Administrator, speaking with PAGA Group  
5 members, finalizing and filing this motion, and preparing for and attending the approval hearing.<sup>9</sup>

6 **B. The Proposed Settlement**

7 Plaintiff also refers to the Motion for Approval of PAGA Settlement and accompanying  
8 memorandum to avoid repeating the details of the proposed settlement's terms and benefits to the  
9 LWDA and the PAGA Group members. In brief summary, the Settlement Agreement provides  
10 that all PAGA Group members, defined as "All persons within the State of California who are or  
11 were employed by Defendant in the State of California as an hourly, non-exempt employee at any  
12 time within the PAGA Release Period.<sup>10</sup> The PAGA Release Period is August 16, 2021 through  
13 April 9, 2024, inclusive.<sup>11</sup> PAGA Group members do not need to submit a claim form to receive  
14 a settlement payment.<sup>12</sup>

15 If all requests are approved, the Net Settlement Amount to be distributed to the LWDA  
16 and PAGA Group members is estimated to be \$302,611.84.<sup>13</sup> The PAGA Group members will  
17 divide 25% of the Net Settlement Amount, a total of approximately \$75,652.96, based on the  
18 formula set forth in the Settlement Agreement.<sup>14</sup> The LWDA will receive 75% of the Net  
19 Settlement Amount, which is approximately \$226,958.88.<sup>15</sup>

20  
21  
22 <sup>8</sup> Ex. 1 at § II.B; Grover Decl. at ¶¶ 13-14.

23 <sup>9</sup> Grover Decl. at ¶¶ 16.

24 <sup>10</sup> Ex. 1 at § I.K.

25 <sup>11</sup> Ex. 1 at § I.L.

26 <sup>12</sup> Ex.1 at §§ I.G, VII, VIII.A.

27 <sup>13</sup> Grover Decl. at ¶ 20; Ex. 1 at §§ I.J, I.P, VI, X, XI.

28 <sup>14</sup> Grover Decl. at ¶¶ 20,22; Ex. 1 at § VIII.A, *see also*, Ex. 1 at §§ I.G, I.J, I.P, VI, X, XI; Lab.  
Code § 2699(i) (requiring that the LWDA receive 75% and aggrieved employees receive 25% of  
PAGA penalties awarded).

<sup>15</sup> Grover Decl. at ¶¶ 20, 21; Ex. 1 at §§ I.J, *see also*, I.J, I.P, VI, X, XI; Lab. Code § 2699(i).

1                   **1) Settlement administration.**

2           The Settlement Agreement provides for the payment of the costs of settlement  
3 administration not to exceed \$7,500 to Simpluris, Inc.<sup>16</sup>

4                   **2) Attorneys' fees and costs.**

5           The Settlement Agreement permits Plaintiff's Counsel to seek an award of attorneys' fees  
6 of up to \$166,667 and actual litigation costs, which are \$15,721.16.<sup>17</sup> The request is discussed in  
7 Section III.B below.

8                   **3) Enhancement award for the representative Plaintiff.**

9           The Settlement Agreement provides that Plaintiff Prior may seek an enhancement  
10 payment of \$7,500 for her work bringing this action on behalf of the LWDA and the PAGA  
11 Group.<sup>18</sup> The service award request is discussed in Section III.C below.

12           **III. LEGAL ARGUMENT**

13                   **A. Standards for approval of a PAGA settlement.**

14           The reasons supporting approval of the main terms of the PAGA settlement are discussed  
15 in the memorandum accompanying the Motion for Approval of PAGA Settlement. Here, Plaintiff  
16 focuses on the request for an award of attorneys' fees and costs, Plaintiff's enhancement payment,  
17 and payment of the settlement administrator's fees, all of which are requested in accordance with  
18 the Settlement Agreement.

19                   **B. Plaintiff's Counsel is entitled to recover their reasonable fees and costs.**

20           Pursuant to the Settlement Agreement, Plaintiff's Counsel seek \$166,667 attorneys' fees  
21 and \$15,721.16 in litigation costs.<sup>19</sup> Plaintiff's Counsel's entitlement to an award of fees and  
22 costs is warranted on multiple independent grounds, which are discussed below.

23    ///

24    ///

25                   \_\_\_\_\_

26           <sup>16</sup> Ex. 1 at § VI; see Grover Decl. at ¶ 19.

27           <sup>17</sup> Ex. 1 at § X; Grover Decl. at ¶¶ 32-49, Ex. 4.

28           <sup>18</sup> Ex. 1 at § XI.

<sup>19</sup> Ex. 1 at § X; Grover Decl. at ¶¶ 32-49, Ex. 4.

**1) Plaintiff is entitled statutorily to an award of attorneys’ fees and costs.**

In a PAGA action, the plaintiff’s counsel is entitled to recover attorney’s fees and costs as a matter of right under PAGA. Labor Code § 2699(g)(1) provides that “[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.” Given that PAGA’s purpose is to allow employees to enforce the Labor Code in order to further the State’s law enforcement interest,<sup>20</sup> the statute ensures that an individual who performs this law enforcement function is able to recover his or her attorneys’ fees and costs.<sup>21</sup>

“The PAGA does not provide a specific standard for evaluating attorney’s fees in connection with a settlement of PAGA claims.”<sup>22</sup> The California Supreme Court has held the percentage of the common fund or the lodestar method may be used when determining attorneys’ fees in class action settlements that produce a specific, identifiable common fund.<sup>23</sup> “The choice of a fee calculation method is generally one within the discretion of the trial court,” with the goal “being the award of a reasonable fee to compensate counsel for their efforts.”<sup>24</sup>

In addition, California Code of Civil Procedure § 1021.5 also entitles the Plaintiff to an award of attorneys’ fees and costs. That statute provides for the award of:

attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.

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<sup>20</sup> See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.

<sup>21</sup> Lab. Code § 2699(g)(1).

<sup>22</sup> *Cresci v. Cox Auto. Corporate Servs.* (C.D. Cal. May 5, 2021) No. 2:20-cv-06832-VAP-SKx, 2021 U.S. Dist. LEXIS 134293, at \*13-15, quoting *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. Aug. 25, 2017) No. 16-CV-04708-LHK, 2017 U.S. Dist. LEXIS 137272, at \*18.

<sup>23</sup> *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503, 506 (affirming that trial court did not abuse its discretion in awarding 33.33% fees based on the percentage of the fund method). Ninth Circuit case law holds the same. See e.g., *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1047 (where a settlement creates a common fund, the district court has discretion to apply the percentage-of-the-fund method to determine an award of attorneys’ fees.).

<sup>24</sup> *Laffitte, supra*, 1 Cal.5th at 504.

1 The instant PAGA representative action was, by definition, “for the public benefit” that  
2 secured monetary awards for the LWDA and the 1,210 aggrieved employees who make up the  
3 PAGA Group and was authorized due the State’s lack of enforcement resources.<sup>25</sup>

4 **2) Plaintiff’s Counsel is entitled to an award of reasonable attorneys’ fees and**  
5 **costs under the percentage of the common fund doctrine.**

6 Counsel is entitled to recover attorneys’ fees and costs under the “common fund” doctrine  
7 as a matter of right. As held by the U.S. Supreme Court, “a lawyer who recovers a common fund  
8 for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee  
9 from the fund as a whole.”<sup>26</sup>

10 Courts have long recognized the “common fund” or “common benefit” doctrine, under  
11 which attorneys who create a common fund or benefit for a group of persons may be awarded  
12 their fees and costs to be paid out of the fund.<sup>27</sup> In *Laffitte*, the California Supreme Court held  
13 that, “when class action litigation establishes a monetary fund for the benefit of the class  
14 members, and the trial court in its equitable powers awards class counsel a fee out of that fund,  
15 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of  
16 the fund created.”<sup>28</sup> The California Supreme Court also noted that the percentage of the fund  
17 method “more accurately reflects the results achieved” than the lodestar method, serves as a  
18 “better approximation of market conditions in a contingency case,” and encourages “counsel to  
19 seek an early settlement and avoid unnecessarily prolonging the litigation.”<sup>29</sup>

20 When applying the percentage of the fund method, California courts routinely grant fee

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21 <sup>25</sup> See e.g., *Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 16-17  
22 (finding that, because the plaintiff pursued class action not only for himself but on behalf of a  
23 class and ultimately obtained awards for 209 drivers, he satisfied “the ‘significant benefit,’  
24 ‘public interest,’ and ‘large class of persons’ requirements of [C.C.P. §] 1021.5.”).

25 <sup>26</sup> See *Boeing, supra*, 444 U.S. at 478.

26 <sup>27</sup> *Id.*; see also, e.g., *Serrano v. Priest* (“*Serrano III*”) (1977) 20 Cal.3d 25, 34; *Glendale City*  
27 *Employees’ Assoc. v. City of Glendale* (1975) 15 Cal.3d 328, 341, fn.19; *In re Consumer Privacy*  
28 *Cases* (2009) 175 Cal.App.4th 545, 557; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478;  
*Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

29 <sup>28</sup> *Laffitte, supra*, 1 Cal.5th at 503 (providing an extended analysis of California law regarding fee  
award methodology).

<sup>29</sup> *Id.* at 503-04.

awards of 33.33% and higher.<sup>30</sup> Further, courts have recognized that “[f]ee award percentages generally are higher in cases where the common fund is below \$10 million.”<sup>31</sup>

a. The requested fee amount is within the range of reasonable fee awards under the “percentage of the fund” method.

The amount of fees that Plaintiff’s Counsel requests – 33.33% of the Settlement Amount – is reasonable based on standards applicable to the “percentage of the fund” method – especially when compared to the lodestar in this case. “When assessing whether the percentage requested is reasonable, courts look to factors such as: (a) the results achieved; (b) the risk of litigation; (c) the skill required, (d) the quality of work; (e) the contingent nature of the fee and the financial burden; and (f) the awards made in similar cases.”<sup>32</sup>

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<sup>30</sup> See e.g., *Laffitte*, *supra*, 1 Cal.5th at 506 (affirming that trial court did not abuse its discretion in awarding 33.33% fees based on the percentage of the fund method); *Roos v. Honeywell International, Inc.* (Nov. 10, 2015) 2015 Cal. App. LEXIS 1004, at \*26, (affirming 37.5% fee award in \$8,150,000 million class settlement), *overruled on other grounds* by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260, 269; *Borelli v. Black Diamond Aggregates, Inc.* (E.D. Cal. June 8, 2022) No. 2:14-cv-02093-KJM-KJN, 2022 U.S. Dist. LEXIS 103734, at \*26-27 (granting 33% fee request, citing string of cases that did the same); *Johnson v. United States Bank Nat’l Ass’n* (S.D. Cal. Aug. 20, 2020) No. 19-CV-286 JLS (LL), 2020 U.S. Dist. LEXIS 151168, at \*9 (awarding 33% fee award, finding that the percentage “is in line with other attorneys’ fees awards in California and the Ninth Circuit,”) citing *Laffitte*, *supra*, 1 Cal.5th at 506 and other cases; *Aguilar v. Wawona Frozen Foods* (E.D. Cal. May 18, 2017) No. 1:15-cv-00093-DAD-EPG, 2017 U.S. Dist. LEXIS 76751, at \*14-15 (approving one-third fee award); *Deaver v. Compass Bank* (N.D. Cal. Dec. 11, 2015) No. 13-cv-00222-JSC, 2015 U.S. Dist. LEXIS 166484, 2015 WL 8526982, at \*9-14 (approving one-third fee award); *Barbosa v. Cargill Meat Solutions Corp.* (E.D. Cal. July 2, 2013) 297 F.R.D. 431, 450 (approving a one-third fee award, citing cases with similar awards); *Burden v. SelectQuote Ins. Servs.* (N.D. Cal. Aug. 2, 2013) No. C 10-5966 LB, 2013 U.S. Dist. LEXIS 109110, at \*13 (granting one-third fee award); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Ca. 2010) 266 F.R.D. 482, 491-92 (granting 33.33% fee award, citing cases with similar awards).

<sup>31</sup> *Alvarez v. Farmers Ins. Exch.* (N.D. Cal. Jan. 17, 2017) No. 3:14-cv-00574-WHO, 2017 U.S. Dist. LEXIS 119128, at \*9; see also, e.g., *Hawkins v. Kroger Co.* (S.D. Cal. Feb. 4, 2022) No. 15cv2320 JM (AHG), 2022 U.S. Dist. LEXIS 20956, at \*29 (recognizing same); *Moreno v. Capital Bldg. Maint. & Cleaning Servs.* (N.D. Cal. Sep. 10, 2021) No. 19-cv-07087-DMR, 2021 U.S. Dist. LEXIS 172633, at \*12 (same); *Martin v. AmeriPride Servs.* (S.D. Cal. June 9, 2011), No. 08cv440-MMA (JMA), 2011 U.S. Dist. LEXIS 61796, at \*23 (same); *Cicero*, *supra*, 2010 U.S. Dist. LEXIS 86920, at \*18 (same).

<sup>32</sup> See *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 482, 492.

1 First, the results achieved are significant, as approximately \$226,958.88 will be paid out  
2 to the LWDA and \$75,652.96 will be paid to the PAGA Group — for a total payout of  
3 \$302,611.84.<sup>33</sup> Second, such results were achieved in the face of significant risks. Defendant  
4 maintained defenses to Plaintiff’s PAGA claims that would place a serious risk to recover at  
5 trial.<sup>34</sup> Third, notwithstanding this risk of loss, Plaintiff’s Counsel undertook representation of  
6 the instant PAGA claims for the benefit of the State (and the PAGA Group) on a contingency  
7 basis for the duration of this litigation.<sup>35</sup> This not only required Plaintiff’s Counsel to personally  
8 assume the risk of nonpayment in securing the financial benefit that the State of California stands  
9 to receive, but constitutes a “loan” on Plaintiff’s Counsel service—both of which are factors  
10 warranting fee enhancement under applicable California Supreme Court authority:

11 One of the most common fee enhancers ... is for contingency risk. We  
12 reaffirmed the propriety of a contingency risk enhancement in *Ketchum*:  
13 “The economic rationale for fee enhancement in contingency cases has  
14 been explained as follows: ‘A contingent fee must be higher than a fee for  
15 the same legal services paid as they are performed. The contingent fee  
16 compensates the lawyer not only for the legal services he renders but for  
17 the loan of those services. The implicit interest rate on such a loan is  
18 higher because the risk of default (the loss of the case, which cancels the  
19 debt of the client to the lawyer) is much higher than that of conventional  
20 loans.’ (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534, 567.)  
21 ‘A lawyer who both bears the risk of not being paid and provides legal  
22 services is not receiving the fair market value of his work if he is paid only  
23 for the second of these functions. If he is paid no more, competent  
24 counsel will be reluctant to accept fee award cases.’”<sup>36</sup>

25 Finally, the percentage requested falls within a typical range, particularly in light of the  
26 settlement size.<sup>37</sup> It is recognized that “courts may award attorney’s fees in the 30-40% range in  
27 wage and hour class actions that result in recovery of a common fund under \$10 million.”<sup>38</sup>

28 <sup>33</sup> See Grover Decl. at ¶¶ 20-22, *see also*, ¶¶ 17, 27, Ex. 1 at §§ I.I, I.J, I.K, VI, X, XI. Defendant  
has identified 1,210 PAGA Group members. Ex. 1 at § I.K; Grover Decl. at ¶¶ 7, 18.

<sup>34</sup> Grover Decl. at ¶¶ 28-29, 43.

<sup>35</sup> Grover Decl. at ¶¶ 32, 41-43.

<sup>36</sup> *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579-580.

<sup>37</sup> See *e.g.*, *Alvarez*, *supra*, 2017 U.S. Dist. LEXIS 119128, at \*9; *Hawkins*, *supra*, 2022 U.S.  
Dist. LEXIS 20956, at \*29; *Moreno*, *supra*, 2021 U.S. Dist. LEXIS 172633, at \*12; *Martin*,  
*supra*, 2011 U.S. Dist. LEXIS 61796, at \*23; *Cicero*, *supra*, 2010 U.S. Dist. LEXIS 86920, at  
\*18.

<sup>38</sup> See *e.g.*, *Alvarez*, *supra*, 2017 U.S. Dist. LEXIS 119128, at \*9, citing *Cicero*, *supra*, 2010 U.S.

Accordingly, Plaintiff's Counsel's fee request is fair and reasonable and is consistent with other awards in California and the Ninth Circuit.

**3) The requested fees are justified under the lodestar method.**

As a common fund case, the lodestar method serves as cross check the reasonableness of the percentage fee request.<sup>39</sup> Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. Plaintiff's Counsel's hourly rates are summarized in the Grover Declaration filed in support of this motion.<sup>40</sup> Counsel's hourly rates have been approved in other cases<sup>41</sup> and are well within the range of those found permissible for attorneys practicing class action litigation in California.<sup>42</sup>

Plaintiff's Counsel has spent over 110 hours litigating this case through July 9, 2024, as

Dist. LEXIS 86920, at \*18.

<sup>39</sup> See e.g., *Glass v. UBS Fin. Servs.* (9th Cir. 2009) 331 F.App'x 452, 456 (approving the district court's "informal lodestar cross-check" for confirming the reasonableness of the percentage award); *Vizcaino, supra*, 290 F.3d at 1050 (similar).

<sup>40</sup> Grover Decl. at ¶¶ 35-39.

<sup>41</sup> See e.g., *Parker v. Cherne Contr. Corp.*, 2021 U.S. Dist. LEXIS 236229, \*20-21 (N.D. Cal. Dec. 9, 2021) (finds that Keller Grover LLP's billing rates used "to calculate the lodestar are reasonable and in line with prevailing rates in this district for personnel of comparable experience, skill, and reputation,") citing *Hefler v. Wells Fargo & Co.* (N.D. Cal. Dec. 18, 2018) No. 16-CV-05479, 2018 U.S. Dist. LEXIS 213045, 2018 WL 6619983, at \*14 (finding rates from \$650 to \$1,250 for partners or senior counsel and \$400 to \$650 for associates were reasonable) and *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.* (N.D. Cal. Mar. 17, 2017) No. 2672 CRB (JSC), 2017 U.S. Dist. LEXIS 39115, 2017 WL 1047834, at \*5 (finding rates up to \$1600 for partners and up to \$790 for associates were reasonable). Courts have found that "rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." *Cresci, supra*, 2021 U.S. Dist. LEXIS 134293, at \*14, quoting *United Steel Workers v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.

<sup>42</sup> See cases cited in previous footnote; see also, e.g., *Gonzalez v. S. Wine & Spirits of Am., Inc.* (9th Cir. 2014) 555 F. App'x 704, 704-05 (reversing district court's order reducing attorneys' hourly rates without considering evidence of "prevailing hourly rates for comparable legal services in the community"); *O'Bannon v. NCAA*, (N.D. Cal. 2015) 114 F. Supp. 3d 819, 827 (similar range of rates for Bay Area counsel experienced in complex class actions were reasonable); *Williams v. SuperShuttle Int'l, Inc.* (N.D. Cal. Feb. 12, 2015) No. 12-cv-06493-WHO, 2015 U.S. Dist. LEXIS 19341, at \*5 (similar); *Steinfeld v. Discover Fin. Servs.* (N.D. Cal. Mar. 31, 2014) 2014 U.S. Dist. LEXIS 48540, at \*4-5 (similar); *Vedachalam v. Tata Consulting Serv. Ltd.* (N.D. Cal. July 18, 2013) 2013 U.S. Dist. LEXIS 100796, at \*8 (similar); *Bolton v. U.S. Nursing Corp.* (N.D. Cal. Oct. 18, 2013) 2013 U.S. Dist. LEXIS 150299, at \*14-15 (similar).

described in further detail in the Grover Declaration.<sup>43</sup> Counsel expects to spend another 10 hours completing the work on this motion, preparing for and attending the approval hearing, and dealing with settlement administration issues.<sup>44</sup> The fee award should include fees incurred to establish and defend the attorneys' fee claim.<sup>45</sup>

The lodestar for Plaintiff's Counsel through July 9, 2024 is \$89,250.<sup>46</sup> Without counting the additional work to be performed after this motion is filed, the requested fee award of \$166,667 thus represents a modest 1.70 multiplier.

**4) Plaintiff's Counsel's requested costs are reasonable.**

During this litigation, Plaintiff's Counsel had to incur out-of-pocket costs of \$15,721.16.<sup>47</sup> As described in the Grover Declaration, the incurred costs included filing fees, legal research fees, consultant fees, mediation fees, service fees, and mailing charges.<sup>48</sup> Such costs are appropriate for cost reimbursement in these types of cases.<sup>49</sup>

The costs that Plaintiff's Counsel incurred in this litigation benefited the LWDA, the Plaintiff and the PAGA Group members. Plaintiff's cost request of \$15,721.16 is reasonable and should be granted.

**C. The enhancement payment sought by Plaintiff is reasonable.**

As the Settlement Agreement permits, Plaintiff seeks an enhancement payment in the amount of \$7,500 for the representative PAGA Plaintiff.<sup>50</sup> The service award is intended to recognize the time and efforts that she spent on behalf of the State and other aggrieved employees during this litigation.<sup>51</sup>

<sup>43</sup> Grover Decl. at ¶¶ 34-35, *see also*, ¶¶ 10-16.

<sup>44</sup> Grover Decl. at ¶¶ 16, 34.

<sup>45</sup> *Serrano v. Unruh* (1982) 32 Cal. 3d 621, 639 ("Serrano IV").

<sup>46</sup> Grover Decl. at ¶¶ 35, 40.

<sup>47</sup> *See* Grover Decl. at ¶¶ 47-49, Ex. 4.

<sup>48</sup> Grover Decl. at ¶ 47, Ex. 4.

<sup>49</sup> *See e.g., In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, \*6 (quoting *Newberg*, Attorney Fee Awards, § 2.19 (1987)); *see also, In re GNC Shareholder Litig.* (W.D. Pa. 1987) 668 F. Supp. 450, 452.

<sup>50</sup> Ex. 1 at § XI.

<sup>51</sup> Declaration of Andrea Prior, submitted herewith; *see* Grover Decl. at ¶¶ 30-31.

1 Although PAGA does not address service payments to private attorneys general, the  
2 reasoning of case law approving named plaintiff's service award in class actions supports that  
3 they also are appropriate in PAGA representative actions. Like in class actions, service  
4 payments should be awarded to named plaintiffs in representative actions to acknowledge the  
5 effort and risk they undertake to obtain a reward on behalf of others.<sup>52</sup> The California Court of  
6 Appeal has found that "incentive awards are fairly typical in class action cases" and "are  
7 intended to compensate class representatives for work done on behalf of the class, to make up for  
8 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize  
9 their willingness to act as a private attorney general."<sup>53</sup> The Ninth Circuit also has recognized  
10 that a named Plaintiff's "willingness to act as a private attorney general" may justify the award  
11 of an incentive payment.<sup>54</sup>

12 Further, two separate authorities compel service payments for an employee plaintiff  
13 serving as a private attorney general. First, PAGA and its legislative history make clear that its  
14 purpose is to incentivize individuals to act on behalf of, and for the benefit of, the State to  
15 enforce the Labor Code due to shortage of the State's law enforcement resources.<sup>55</sup> With that  
16 goal in mind, it is reasonable to conclude that the statute permits compensation for individuals  
17 who take on that work. Even if, for example, the statute that enables the State to employ an  
18 attorney general did not specify a salary for that position, it would be reasonable to conclude that  
19 the State has authority to pay the individual who performs that work. The same must be true for  
20 an individual who acts as a private attorney general. The Legislature's stated purpose of  
21

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22 <sup>52</sup> See e.g., *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-94, citing  
23 *Clark v. Am. Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.

24 <sup>53</sup> *Cellphone Termination*, *supra*, 186 Cal.App.4th at 1393-94 (internal citations, quotations and  
25 alterations omitted), citing *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958,  
26 4 *Newberg on Class Actions* (4th ed. 2002) § 11:38, p. 81, and Eisenberg & Miller, *Incentive  
Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303.

26 <sup>54</sup> *Rodriguez*, *supra*, 563 F.3d at 959.

27 <sup>55</sup> *Iskanian*, *supra*, 59 Cal.4th at 379 (discussing the goal stated in PAGA and its legislative  
28 history to enable private attorneys general to enforce the Labor Code due to the State's shortage  
of resources).

1 encouraging private law enforcement work necessarily contemplates compensation for  
2 individuals who do that work.

3 It should not be assumed that the share of compensation paid to each aggrieved employee  
4 is somehow intended to be the only money available to the individual who takes on the risk and  
5 effort of filing and litigating a lawsuit. If that were the rule, each employee who is subjected to  
6 an illegal wage and hour practice would be better off waiting for someone else to file a  
7 representative claim so that he or she could reap the same reward without taking any risk.

8 The second authority supporting a service award is the California Supreme Court's  
9 consistent mandate that courts must "liberally construe[]" the Labor Code "in favor of affording  
10 workers protection."<sup>56</sup> When addressing questions for which there is no specific statutory  
11 answer, the California Supreme Court has explained that courts interpreting the Labor Code must  
12 "adopt the construction that best gives effect to the purpose of the Legislature" which is "the  
13 protection of employees."<sup>57</sup> The Court's mandate weighs in favor of providing service awards  
14 because refusing them would dramatically impair the State's ability to achieve its goal of Labor  
15 Code enforcement through private attorneys general. If an employee plaintiff acting as a private  
16 attorney general can expect no compensation other than his or her individual share of the  
17 recovered penalties, it would be extremely difficult to find anyone willing to undertake the  
18 extensive risk and effort involved in bringing a representative PAGA action.

19 Without Plaintiff's efforts, there would be no recovery at all. An incentive award is  
20 appropriate to compensate Plaintiff for the risk and expense she incurred in conferring a benefit  
21 on other of Defendant's employees and the State of California. As a result of Plaintiff's efforts,  
22 the State of California will receive more than \$226,000, to be put toward education about, and  
23 enforcement of, California's labor laws.<sup>58</sup> The PAGA Group members will receive monetary  
24

25 \_\_\_\_\_  
26 <sup>56</sup> See e.g., *Ward v. United Airlines, Inc.* (2020) 9 Cal.5th 732, 754, citing string of California  
Supreme Court cases stating the same.

27 <sup>57</sup> *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 839.

28 <sup>58</sup> Grover Decl. at ¶ 21; Ex. 1 at §§ I.I, I.J, I.P, VI, X, XI; Lab. Code § 2699(i).

1 settlement payments –on average, approximately \$62.52 each.<sup>59</sup>

2 In this case, Plaintiff performed the following tasks, among others: (1) assisted Plaintiff’s  
3 Counsel in investigating and substantiating the claims alleged in this action, including multiple  
4 telephone calls with counsel to review facts, documents, and Defendant’s policies; (2) assisted in  
5 the preparation of the complaint in this action; (3) produced evidentiary documents to Plaintiff’s  
6 Counsel; and (4) reviewed the Settlement Agreement.<sup>60</sup> Moreover, as with any plaintiff who  
7 files a civil action, Plaintiff undertook the financial risk that, in the event of a judgment in favor  
8 of Defendant in this action, she could have been personally responsible for any attorneys’ fees  
9 and costs awarded in its favor.

10 The enhancement payment to Plaintiff Prior is especially warranted in a case like this  
11 one, involving claims brought to enforce the Labor Code’s protections for employees. Plaintiff  
12 should be commended for pursuing representative PAGA claims; a modest enhancement award  
13 like that sought here is an appropriate means of doing so. Considering the work that Plaintiff  
14 performed on behalf of the State and the PAGA Group, the requested service payment is  
15 reasonable and appropriate.

16 **D. The Settlement Administrator’s fee is reasonable and should be paid.**

17 Simpluris has agreed to provide all administrative functions necessary for the distribution  
18 of the Settlement Amount for an amount not to exceed \$7,500, which is the amount set forth in  
19 the Settlement Agreement.<sup>61</sup> Plaintiff requests that the Court approve payment to Simpluris of  
20 up to \$7,500. If the amount is lower, it will revert to the Net Settlement Amount.<sup>62</sup>

21 **IV. CONCLUSION**

22 For all the reasons set forth above, Plaintiff respectfully requests that this Court, as set  
23 forth in the proposed Order Approving Settlement submitted herewith, approve Simpluris, Inc. as  
24 the Settlement Administrator and approve payment of its administration fees of up to \$7,500;

25 \_\_\_\_\_  
26 <sup>59</sup> Grover Decl. at ¶¶ 20, 22 (\$75,652.96/1,210 = \$62.52); Ex. 1 at §§ I.G, I.J, VIII.A.

27 <sup>60</sup> See generally, Prior Declaration; see also, Grover Decl. at ¶¶ 30-31.

28 <sup>61</sup> Ex. 1 at § VI; Grover Decl. at ¶ 19.

<sup>62</sup> Ex. 1 at § VI.

1 approve an award of \$166,667 in attorneys' fees and \$15,721.16 in costs to Plaintiff's Counsel,  
2 and approve an enhancement award to Plaintiff Prior in the amount of \$7,500.

3  
4 Dated: July 19, 2024

**KELLER GROVER LLP**

5  
6 By: 

7 ERIC A. GROVER  
8 ROBERT SPENCER  
9 *Counsel for Plaintiff*  
10 Andrea Prior

**PROOF OF SERVICE**

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On July 19, 2024, in the case of *Andrea Prior v. Adventist Health Clearlake Hospital, Inc.*, Lake County Superior Court Case Number CV 423216, I served the foregoing document(s):

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN ORDER AWARDING ATTORNEYS' FEES, COSTS, ENHANCEMENT PAYMENT, AND SETTLEMENT ADMINISTRATION FEES**

on the interested party(ies) below, using the following means:

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HOSPITAL, INC.**

|                                     |                                                                                                                                                                                                                                                   |
|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | (BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the parties. |
| <input checked="" type="checkbox"/> | (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.                                                                                                                          |

  
\_\_\_\_\_  
JOEY GONZALEZ