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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

VALERIE RAYMOND, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

v.

SACRAMENTO RIVER HEALTHCARE
LLC, a Limited Liability Company; SOUTH
BAY HEALTHCARE, INC., a Corporation;
THE PENNANT GROUP, INC., a
Corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 34-2022-00329085-CU-OE-GDS

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

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

Hearing Date: June 28, 2024

Hearing Time: 9:00 a.m.

Reservation ID Number: A-329085-001

Judge: Hon. Jill Talley

Dept.: 23

Action Filed: October 21, 2022

Trial Date: None Set

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

2 YOU ARE HEREBY NOTIFIED THAT at 9:00 a.m. on June 28, 2024, or as soon
3 thereafter as the matter can be heard, in Department 23 of the above entitled Court before the
4 Honorable Jill Talley, Plaintiff Valerie Raymond (“Plaintiff”) will and hereby does move for
5 an order approving the settlement of the PAGA claim alleged against Defendants
6 Sacramento River Healthcare, LLC, South Bay Healthcare, Inc., and The Pennant Group,
7 Inc. (“Defendants”) in accordance with Labor Code §2699(l). The proposed settlement is set
8 forth in the accompanying PAGA Settlement Agreement (“Agreement”).

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

13 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits
14 of this matter by 2:00 p.m., the court day before the hearing. The complete text of the
15 tentative ruling may be downloaded off the court’s website. If the party does not have online
16 access, they may call the dedicated phone number for the department as referenced in the
17 local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day
18 before the hearing and receive the tentative ruling. If you do not call the court and the
19 opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

20 Respectfully submitted,

21 Dated: June 5, 2024

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

22
23 By: /s/ Kyle Nordrehaug
24 Norman B. Blumenthal
25 Kyle R. Nordrehaug
26 Aparajit Bhowmik
27 *Attorneys for Plaintiff*
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Valerie Raymond (“Plaintiff”) reached a settlement of the California Private
4 Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this
5 action against Defendants Sacramento River Healthcare, LLC, South Bay Healthcare, Inc.,
6 and The Pennant Group, Inc. (“Defendants”) (collectively, the “Parties”) which provides for
7 a “Gross PAGA Settlement Amount” payment in the amount of \$325,000.00. In accordance
8 with California Labor Code §2699(l), Plaintiff now asks this Court to review and approve the
9 settlement of Plaintiff’s PAGA claims.¹ This is only a settlement of the PAGA claims for
10 civil penalties and is not a class settlement and does not release the individual wage claims,
11 if any, of the affected employees other than the Plaintiff herself. Cal. Labor Code §
12 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v.*
13 *Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

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

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

23 **II. RELEVANT FACTS**

24 PAGA Counsel mailed the necessary correspondence to the California Labor and
25 Workforce Development Agency (“LWDA”) on August 10, 2022 on behalf of Plaintiff
26 Valerie Raymond, requesting authorization from the LWDA to seek civil penalties as
27

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

1 provided by the Private Attorney General Act of 2004 (“PAGA”) for the wage and hour
2 violations alleged in the PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3). The 65-day
3 notice period for the LWDA to notify of its intent to investigate expired on October 15,
4 2022.

5 On October 31, 2022, Plaintiff Valerie Raymond filed a Representative Action
6 Complaint in this Court against Defendants Sacramento River Healthcare, LLC, South Bay
7 Healthcare, Inc., and The Pennant Group, Inc. alleging a single cause of action for recovery
8 of civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

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

19 Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendants
20 imposed on-duty meal and rest periods without payment of premiums for on-call weekend
21 work. Specifically, Plaintiff worked as an Admissions Coordinator. She was paid an hourly
22 rate of \$28 per hour plus \$150 per weekend for being on call during the weekend. Plaintiff
23 alleged that despite requiring Aggrieved Employees like her to work on-call over the
24 weekend, Defendants failed to provide meal and rest period premiums for the weekend work
25 when Plaintiff and other Aggrieved Employees were required to be on-call and ready to
26 respond. Plaintiff also alleged the on-call payment of \$150 for 16 hours of on-call work was
27 legally insufficient as well as well below the minimum wage. Plaintiff further alleged that
28 Defendants’ wage statements were inaccurate for multiple reasons, such as failing to state

1 total hours worked and failing to state the pay periods and check date on the paystubs. In
2 addition, Plaintiff alleged at mediation that Defendants miscalculated sick pay wages by
3 failing to increase the regular rate of pay so as to accurately pay these wages. Plaintiff also
4 alleged her wage statements were replete with unlawful deductions such as negative 14 hours
5 of overtime deducted on a wage statement. Plaintiff also alleged at mediation that the use of
6 her home office entitled her to reimbursement for at least a pro rated amount of her rent or
7 mortgage based on the amount of square footage she allocated to her work space.
8 (Declaration of Kyle Nordrehaug, at ¶3).

9 On January 29, 2024, the Parties engaged in an all-day mediation session before
10 Mediator Ortman, a well-respected and experienced mediator knowledgeable of both the
11 wage and hour laws and representative claims at issue in this action. Through arms-length
12 negotiations with the assistance of the mediator, the Parties reached an agreement to settle
13 the PAGA claims in this action which led to the signing of a Memorandum of Understanding
14 memorializing the settlement.² (Declaration of Kyle Nordrehaug, at ¶3).

15 The settlement was negotiated in light of all known facts and circumstances and the
16 uncertainty associated with litigation – including the risk of Plaintiff not being able to
17 maintain representative claims, the difficulty of proving Plaintiff’s claims in a manageable
18 trial, the merits of Defendants’ potential defenses, and the significant delay and potential
19 appellate issues inherent to litigation – and was reached after extensive arm’s length
20 negotiations, with the assistance of Mediator Ortman. (Declaration of Kyle Nordrehaug, at
21 ¶3).

22
23
24 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
25 Plaintiff’s individual claims pursuant to separate confidential Individual Settlement Agreement
26 (“Individual Settlement”) (Settlement Agreement at ¶ 2.2). The individual claims were not at issue
27 in this action and exist independent and apart from the PAGA claims at issue before the Court. *See*
28 *Kim v. Reins Int’l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does not
strip an PAGA Employee of standing, as the state’s authorized representative, to pursue PAGA
remedies” nor resolve the PAGA claims.).

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

2 The PAGA settlement is subject to Court approval consistent with Labor Code
3 §2699(1)(2). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a
4 “Gross PAGA Settlement Amount” payment in the amount of \$325,000 to resolve the
5 Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this
6 PAGA Settlement of \$325,000, there is a deduction of attorneys’ fees (“PAGA Counsel Fees
7 Payment”) in the amount of \$108,333 (which is one-third of the PAGA Settlement),
8 reimbursement of incurred costs (“PAGA Counsel Litigation Expenses Payment”) in an
9 amount not to exceed \$25,000 and Settlement Administration Costs (“Administration
10 Expenses Payment”) not to exceed \$6,000. (Agreement at ¶¶ 3.2.1-3.2.2).³ After these
11 deductions, the amount remaining is the “PAGA Payment”, which is estimated to be no less
12 than \$185,667.

13 Of the PAGA Payment amount, seventy-five percent (75%) (no less than
14 \$139,250.25) will be paid to the LWDA and the remaining twenty-five percent (25%) (no
15 less than \$46,416.75) will be paid to the Aggrieved Employees (Agreement at ¶ 3.2.3).⁴ This
16 75/25 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior*
17 *Court*, 8 Cal.5th 175 (2019).

18 The Individual PAGA Payment for each Aggrieved Employee shall be based on the
19 number of pay periods each Aggrieved Employee worked during the PAGA Period as an
20 Aggrieved Employee, as a percentage of the total pay periods worked by all Aggrieved
21

22 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
23 Payment less than the amounts requested, the Administrator will allocate the remainder of these
24 amounts to the PAGA Payment. (Settlement Agreement at ¶ 3.2.1). To the extent the Administration
25 Expenses are less or the Court approves payment less than \$6,000, the Administrator will allocate
the remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

26 ⁴ “Aggrieved Employees” means all hourly-paid, non-exempt employees who are or previously were
27 employed by First Call Hospice and Palliative Care or South Bay Healthcare, Inc. dba Sequoia Home
28 Health and Hospice in the State of California during the PAGA Period. The PAGA Period is the
period from August 10, 2021 through January 29, 2024, or an alternative date to be selected by
Defendants, at their sole discretion, subject to the provisions set forth in paragraph 8 of the
Agreement. (Settlement Agreement at ¶¶ 1.4, 1.24).

1 Employees during the PAGA Period.⁵ The PAGA Period is the time period from August 10,
2 2021 through January 29, 2024, or an alternative date to be selected by Defendants, at their
3 sole discretion, subject to the provisions set forth in paragraph 8 of the Agreement.
4 (Agreement at ¶ 1.24).

5 Based on a review of its records, Defendants estimate the Aggrieved Employees
6 worked a total of 7,500 pay periods during the PAGA Period. (Agreement at ¶4.1).
7 (Declaration of Kyle Nordrehaug, at ¶4)

8 Upon entry of final judgment, the Released Parties shall be entitled to a release from
9 the State of California and all Aggrieved Employees for any “Released PAGA Claims”,
10 which means all claims for civil PAGA penalties predicated on Labor Code sections 201,
11 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512,
12 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
13 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section
14 11070(14), Violation of Applicable Industrial Welfare Commission Wage Order(s) pursuant
15 to California Labor Code section 2699.5, including but not limited to costs and attorneys’
16 fees related thereto, that were alleged in Plaintiff’s PAGA Notice and/or the Operative
17 Complaint filed in this action, as well as the claims for civil penalties that could have been
18 sought by the Labor Commissioner for the violations of the California Private Attorneys
19 General Act of 2004 identified in Plaintiff’s PAGA Notice and/or Operative Complaint, and
20 those based upon the facts alleged in the PAGA Notice and/or the Operative Complaint that
21 occurred during the PAGA Period. (the “Released PAGA Claims”)(Agreement at ¶ 5.2).
22 The Released PAGA Claims expressly excludes all other claims, including claims for vested
23 benefits, wrongful termination, violation of the Fair Employment and Housing Act,
24

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

1 unemployment insurance, disability, social security, workers' compensation, California class
2 claims, and PAGA claims outside of the PAGA Period. (*Id.*)

3 Within fourteen (14) days after Defendants fund the Gross PAGA Settlement
4 Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA
5 PAGA Payment, the Administration Expenses Payment and the PAGA Counsel Expenses
6 Payment. (Agreement at ¶ 4.4).⁶ Checks will remain negotiable for one hundred eighty
7 (180) days. (*Id.*) For any Aggrieved Employee whose Individual PAGA Payment check is
8 uncashed and cancelled after the void date, the Administrator transmit the funds represented
9 by such checks to the State of California Unclaimed Property Fund in the name of the
10 individual who failed to cash their check (*Id.* at ¶ 4.4.2).

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

17 18 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

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

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

1 PAGA claim.⁷ PAGA Counsel Fees equal to one-third of the Gross PAGA Settlement
2 amount (\$108,333) and PAGA Counsel Litigation Expenses in an amount not to exceed
3 \$25,000 will also be paid to PAGA Counsel as part of the settlement in accordance with
4 California Labor Code § 2699(g)(1), as set forth in the Agreement.⁸ Lastly, payment to the
5 Administrator in an amount not to exceed \$6,000 to perform the administrative duties to
6 distribute the settlement money shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-
7 5.)

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

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

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

17 The Parties believe that the PAGA Settlement amount is fair and reasonable and
18 therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency
19 has released data on PAGA settlement amounts. Here, the Gross PAGA Settlement Amount
20 of \$325,000 is significantly more than other PAGA settlements and constitutes
21 approximately \$43 per pay period. (Declaration of Nordrehaug, at ¶6.)

22 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
23 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
24 statutory PAGA civil penalties was potentially \$750,000 based on 7,500 pay periods

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

27 ⁸ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
28 in the current amount of \$27,253.90, which is more than the cap of \$25,000 in the Settlement
Agreement. See Declaration of Nordrehaug at ¶ 9.

1 applicable to the Aggrieved Employees during the PAGA Period.⁹ (Declaration of
2 Nordrehaug, at ¶6.) Importantly, however, these calculations were performed at the
3 maximum statutory rate for the penalties, when in fact, it is likely that any penalties awarded
4 would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to
5 award a lesser amount than the maximum civil penalty if based on the facts and
6 circumstances to do otherwise would result in an award that is "unjust, arbitrary and
7 oppressive or confiscatory."

8 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
9 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay
10 period. Therefore, at trial, any PAGA penalties awarded could be significantly less than
11 Plaintiff's calculation even where Plaintiff prevailed on the PAGA claim. If the amount of \$5
12 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties
13 would be only \$37,500, which is far less than this settlement provides.

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

23 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove
24 each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*,

26 ⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.
27 The valuation of \$750,000 is the civil penalty amount without stacking. If stacking is permitted, then
28 the valuation increases with each additional penalty added to each pay period. Plaintiff, however, is
not aware of any PAGA award which permitted stacking and in the cases cited herein, only one
penalty per pay period was assessed.

1 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of
2 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
3 suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to
4 prove that each Aggrieved Employee suffered a violation for each period the employee
5 worked in relation to meal or rest period violations, failure to pay minimum wages, failure to
6 pay overtime and sick pay wages, failure to provide wages when due, failure to provide
7 accurate itemized wage statements and failure to reimburse employees for required expenses.

8 Defendants maintain that Plaintiff and the Aggrieved Employees were properly
9 compensated, and that they did not violate the Labor Code. Accordingly, Defendants dispute
10 and deny Plaintiff's allegations and claims asserted in both the PAGA Notice and the
11 Operative Complaint, which are resolved by the Agreement. Defendants asserted additional
12 defenses to the PAGA claim, not only as to liability but also as to the amount of the
13 penalties. Defendants could argue that no penalties prior to the PAGA notification should be
14 awarded because the violations were not intentional, and at least one Court has so ruled.
15 These defenses present a risk to the PAGA claims and the potential that some or all of the
16 PAGA penalties sought may not be awarded. (Declaration of Nordrehaug, at ¶7.)

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

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

1 experienced counsel at arm's length with the assistance of a private mediator, Tripper
2 Ortman. (Declaration of Nordrehaug, at ¶7.)

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

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

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

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

20 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the
21 amount of \$108,333 representing one-third of the \$325,000 Gross PAGA Settlement
22 Amount. PAGA does not have any requirements for reviewing attorneys' fees, and
23 Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a
24 matter of contract for a contingent representation. Nevertheless, should this Court review the
25 requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

26 First, the requested fees are justified by the result achieved. PAGA Counsel
27 negotiated a recovery of \$325,000.00, and this result justifies the requested fees equal to one
28 third of this recovery. This percentage is within the standard contingent recovery percentage

1 of one-third, and this percentage is what was expressly approved by the Supreme Court in
2 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.*,
3 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that ““fee awards in class actions
4 average around one-third of the recovery”” regardless of ““whether the percentage method or
5 the lodestar method is used.”” (*quoting Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11
6 (2008)).

7 Second, the fee award is justified by the work performed and contributions to the
8 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award is
9 less than PAGA Counsel’s current lodestar of \$121,949.25, and thus represents a negative multiplier,
10 with significant additional work to be performed.

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

24 Third, consideration of the enhancement factors justify the enhancement of the
25 lodestar. Courts multiply the lodestar by a factor to account for the risk of non-payment,
26 delay in payment, the quality of work, and the novelty and difficulty of the issues involved.
27 See *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in
28

1 cases that meet these criteria is an abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157,
2 1166 (9th Cir. 2016).

3 Finally, as to litigation expenses, the award of litigation expenses is based upon the actual
4 expenses incurred by PAGA Counsel, which currently are \$27,253.90. Under the Agreement,
5 PAGA Counsel will be recovering litigation expenses in the total capped amount of \$25,000 which
6 is less than the actual costs incurred. These expenses are documented in the accompanying
7 Declaration of Nordrehaug at ¶9.

8 9 **VII. CONCLUSION**

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

13
14 Dated: June 5, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

15
16 By: /s/ Kyle Nordrehaug
17 Kyle Nordrehaug
18 Attorney for Plaintiff
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