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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LAVALE GRAHAM, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

PINNACLE TECHNICAL RESOURCES, INC.,
a Corporation and DOES 1 through 50, inclusive,

Defendant.

Case No. 22TRCV01089

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

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

Hearing Date: April 3, 2024

Hearing Time: 8:30 a.m.

Reservation ID: 362416773892

Judge: Hon. Douglas W. Stern

Dept.: B

Action Filed: October 28, 2022

Trial Date: None Set

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

3 YOU ARE HEREBY NOTIFIED THAT at 8:30 a.m. on April 3, 2024, or as soon
4 thereafter as the matter can be heard, in Department B of the above entitled Court before the
5 Honorable Douglas W. Stern, Plaintiff Lavale Graham (“Plaintiff”) will and hereby does
6 move for an order approving the settlement of the PAGA claim alleged against Defendant
7 Pinnacle Technical Resources, Inc. (“Defendant”) in accordance with Labor Code §2699(1).
8 The proposed settlement is set forth in the accompanying PAGA Settlement Agreement
9 (“Agreement”).

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

14 Respectfully submitted,

15 Dated: March 7, 2024

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Lavale Graham (“Plaintiff”) reached a settlement of the California Private
4 Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this action
5 against Defendant Pinnacle Technical Resources, Inc. (“Defendant”) (collectively, the
6 “Parties”) which provides for a “Gross PAGA Settlement Amount” payment in the amount of
7 \$392,500.00. In accordance with California Labor Code §2699(l), Plaintiff now asks this
8 Court to review and approve the settlement of Plaintiff’s PAGA claims.¹ This is only a
9 settlement of the PAGA claims for civil penalties, and is not a class settlement and does not
10 release the individual wage claims, if any, of the affected employees other than the Plaintiff
11 himself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381
12 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not
13 recoverable under PAGA).

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

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

23 **II. RELEVANT FACTS**

24 PAGA Counsel mailed the necessary correspondence to the California Labor and
25 Workforce Development Agency (“LWDA”) on August 9, 2022 on behalf of Plaintiff Lavale
26 Graham, requesting authorization from the LWDA to seek civil penalties as provided by the
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 Private Attorney General Act of 2004 (“PAGA”) for the wage and hour violations alleged in
2 the PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3). The 65-day notice period for the
3 LWDA to notify of its intent to investigate expired on October 13, 2022.

4 On October 28, 2022, Plaintiff Lavale Graham filed a Representative Action Complaint
5 in this Court against Defendant Pinnacle Technical Resources, Inc. alleging a single cause of
6 action for recovery of civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

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

17 Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendant
18 deprived Plaintiff and other Aggrieved Employees of compliant meal and rest breaks on a
19 regular basis. Plaintiff’s expert determined that meal break premiums were paid for less than
20 1% of all facial violations. Plaintiff also alleged that he and other Aggrieved Employees were
21 contacted by Defendant’s representatives and customers after hours with work-related issues.
22 This included work-related communications before clocking in and after clocking out for
23 shifts. Plaintiff alleges such work was done off the clock and that he was not paid any wages
24 by Defendant for this work. Further, Plaintiff alleged he used his personal cell phone for
25 customer related issues, including but not limited to providing tech support to assist customers
26 with their computer problems. Plaintiff alleges he was not reimbursed for the costs associated
27 with using his personal cell phone for work-related purposes. Moreover, Plaintiff alleged he
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1 worked from his home office but was not reimbursed by Defendant for his home office
2 expenses such as internet, printing, and electricity. (Declaration of Kyle Nordrehaug, at ¶3).

3 On July 13, 2023, the Parties engaged in an all-day mediation session before Mediator
4 Walsh, a respected and experienced mediator knowledgeable of both the wage and hour laws
5 and representative claims at issue in this action. Through arms-length negotiations with the
6 assistance of the mediator, the Parties reached an agreement to settle the PAGA claims in this
7 action which led to the signing of a Memorandum of Understanding memorializing the
8 settlement.² (Declaration of Kyle Nordrehaug, at ¶3).

9 The settlement was negotiated in light of all known facts and circumstances and the
10 uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain
11 representative claims, the difficulty of proving Plaintiff’s claims in a manageable trial, the
12 merits of Defendant’s potential defenses, and the significant delay and potential appellate
13 issues inherent to litigation – and was reached after extensive arm’s length negotiations, with
14 the assistance of Mediator Walsh. (Declaration of Kyle Nordrehaug, at ¶3).

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

16 The PAGA settlement is subject to Court approval consistent with Labor Code
17 §2699(1)(2). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a
18 “Gross PAGA Settlement Amount” payment in the amount of \$392,500 to resolve the
19 Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this PAGA
20 Settlement of \$392,500, there is a deduction of attorneys’ fees (“PAGA Counsel Fees
21 Payment”) in the amount of \$130,833 (which is one-third of the PAGA Settlement),
22 reimbursement of incurred costs (“PAGA Counsel Litigation Expenses Payment”) in an
23 amount not to exceed \$11,000, and Settlement Administration Costs (“Administration
24

25 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
26 Plaintiff’s individual claims pursuant to a separate confidential Individual Settlement Agreement
27 (“Individual Settlement”)(Settlement Agreement at ¶ 2.3). The individual claims were not at issue in
28 this action and exist independent and apart from the PAGA claims at issue before the Court. *See Kim v. Reins Int’l Cal., Inc.*, 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does not strip an aggrieved employee of standing, as the state’s authorized representative, to pursue PAGA remedies” nor resolve the PAGA claims.).

1 Expenses Payment”) not to exceed \$7,000. (Agreement at ¶¶ 3.2.1-3.2.2).³ After these
2 deductions, the amount remaining is the “PAGA Payment”, which is estimated to be no less
3 than \$243,667.

4 Of the PAGA Payment amount, seventy-five percent (75%) (no less than \$182,750.25)
5 will be paid to the LWDA and the remaining twenty-five percent (25%) (no less than
6 \$60,916.75) will be paid to the Aggrieved Employees (Agreement at ¶ 3.2.3)⁴ This 75/25
7 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8
8 Cal.5th 175 (2019).

9 The Individual PAGA Payment for each Aggrieved Employee shall be based on the
10 number of pay periods each Aggrieved Employee worked during the PAGA Period as an
11 Aggrieved Employee, as a percentage of the total pay periods worked by all Aggrieved
12 Employees during the PAGA Period.⁵ The PAGA Period is the time period from August 9,
13 2021 through April 16, 2023. (Agreement at ¶ 1.23).

14 Based on a review of its records, Defendant estimates that there are approximately 394
15 Aggrieved Employees who worked a total of 7,339 pay periods during the PAGA Period.
16 (Agreement at ¶ 4.1). (Declaration of Kyle Nordrehaug, at ¶4)

17 Upon entry of final judgment, the Released Parties shall be entitled to a release from
18 the State of California, the Aggrieved Employees and the LWDA only for any “Released
19 PAGA Claims”, which means all PAGA claims alleged or that could have reasonably been
20 alleged arising out of the facts in the operative Complaint. This includes PAGA claims that
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 \$7,000, the Administrator will allocate the
26 remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

27 ⁴ “Aggrieved Employees” means all current and former employees who worked for Defendant in
28 California and were classified as non-exempt employees during the PAGA Period. The PAGA Period
is the period from August 9, 2021 to April 16, 2023. (Settlement Agreement at ¶¶ 1.4, 1.23).

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

1 occurred during the PAGA Period for: (1) failure to provide accurate itemized wage
2 statements; (2) failure to properly record and provide legally required meal periods; (3) failure
3 to properly record and provide legally required rest periods; (4) failure to pay all wages owed;
4 (5) failure to pay overtime wages (including failing to pay overtime at the correct regular rate
5 of pay); (6) failure to provide or properly calculate paid sick leave; (7) failure to reimburse
6 employees for all required expenses; (8) failure to pay all wages when due during employment
7 and upon termination; and (9) failure to maintain proper records, including time and payroll
8 records (the “Released PAGA Claims”) (Agreement at ¶ 5.2). The Released PAGA Claims
9 expressly excludes other claims, including claims for vested benefits, wrongful termination,
10 violation of the Fair Employment and Housing Act, unemployment insurance, disability, social
11 security, workers’ compensation, California non-PAGA class claims, and PAGA claims
12 outside of the PAGA Period. (*Id.*) The Agreement expressly confirms that “In no event shall
13 the release of the Released PAGA Claims in this Settlement Agreement release any non-PAGA
14 claims of any individuals.” (*Id.*)

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

23 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
24 Agreement and this motion to the LWDA concurrently with the filing of the instant motion for
25 settlement approval as set forth in the accompanying proof of service in compliance with Labor
26 Code section 2699(1). In addition, Plaintiff shall submit to the LWDA a copy of the Court’s
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28 ⁶ Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement
of the Individual PAGA Payments. (*Id.*)

1 judgment and order approving the Agreement within ten (10) days after entry of judgment or
2 order.

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

4 The claim before this Court is solely the representative claim under PAGA on behalf of
5 the State of California for civil penalties pursuant to the PAGA. The parties have agreed to
6 settle this PAGA claim in its entirety after investigation and an arm's length mediation session.
7 (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and finally resolve
8 the Released PAGA Claims asserted by Plaintiff on behalf of the State of California. This is
9 only a settlement of the PAGA claims for civil penalties, and is not a class settlement and does
10 not release the individual claims, if any, of the Aggrieved Employees, other than any claims
11 under PAGA. This settlement does not release any claim that is not a PAGA claim.⁷ PAGA
12 Counsel Fees equal to one-third of the Gross PAGA Settlement amount (\$130,833.00) and
13 PAGA Counsel Litigation Expenses in an amount not to exceed \$11,000 will also be paid to
14 PAGA Counsel as part of the settlement in accordance with California Labor Code §
15 2699(g)(1), as set forth in the Agreement.⁸ Lastly, payment to the Administrator in an amount
16 not to exceed \$7,000 to perform the administrative duties to distribute the settlement money
17 shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)

18 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
19 **SETTLEMENT OF THE PAGA CLAIM**

20 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement
21 of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be
22 submitted to the agency at the same time that it is submitted to the court." Consequently, the
23 Parties respectfully ask the Court to review and approve the settlement of the PAGA claims
24 and the PAGA Payment to be paid as part of the proposed settlement.

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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, costs to be recovered are at
28 capped amount of \$11,000, which is less than actual costs incurred. See Declaration of Nordrehaug
at ¶ 9.

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

2 The Parties believe that the PAGA Settlement amount is fair and reasonable and
3 therefore "shall" be reviewed and approved. The Labor and Workforce Development Agency
4 has released data on PAGA settlement amounts. After removing the outliers at the low and
5 high end, the average, total settlement amount of PAGA claims (including PAGA settlements
6 and class and PAGA settlements) is approximately \$10,000. Here, the Gross PAGA
7 Settlement Amount of \$392,500 is above this average settlement range and constitutes
8 approximately \$53 per pay period. (Declaration of Nordrehaug, at ¶6.)

9 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
10 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
11 statutory PAGA civil penalties was potentially \$733,900 based on 7,339 pay periods
12 applicable to the Aggrieved Employees during the PAGA Period.⁹ (Declaration of
13 Nordrehaug, at ¶6.) Importantly, however, these calculations were performed at the maximum
14 statutory rate for the penalties, when in fact, it is likely that any penalties awarded would be at
15 a lower rate. California Labor Code Section 2699(e)(1) permits a Court to award a lesser
16 amount than the maximum civil penalty if based on the facts and circumstances to do otherwise
17 would result in an award that is "unjust, arbitrary and oppressive or confiscatory."

18 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
19 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period.
20 Therefore, at trial, any PAGA penalties awarded could be significantly less than Plaintiff's
21 calculation even where Plaintiff prevailed on the PAGA claim. If the amount of \$5 per pay
22 period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties would be
23 only \$36,695, which is far less than this settlement provides.

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26 ⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The
27 valuation of \$733,900 is the civil penalty amount without stacking. If stacking is permitted, then the
28 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 Under PAGA, Courts have considerable discretion to reduce the penalty award. In
2 *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced
3 PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found
4 maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts
5 have actually awarded no civil penalties, even when Labor Code violations are established.
6 See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6,
7 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court)
8 (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557,
9 *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

10 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove
11 each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*,
12 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of
13 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
14 suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to prove
15 that each Aggrieved Employee suffered a violation for each period the employee worked in
16 relation to meal or rest period violations, failure to pay minimum wages, failure to pay
17 overtime wages, failure to provide accurate itemized wage statements, failure to reimburse
18 employees for required expenses, failure to provide or properly calculate paid sick leave,
19 failure to pay all wages when due during employment and upon termination and failure to
20 maintain proper records, including time and payroll records.

21 Defendant maintains that Plaintiff and the Aggrieved Employees were properly
22 compensated, and that it did not violate the Labor Code. Accordingly, Defendant disputes and
23 denies Plaintiff's allegations and claims asserted in both the PAGA Notice and the Operative
24 Complaint, which are resolved by the Agreement. Defendant asserted additional defenses to
25 the PAGA claim, not only as to liability but also as to the amount of the penalties. Defendant
26 could argue that no penalties prior to the PAGA notification should be awarded because the
27 violations were not intentional, and at least one Court has so ruled. Defendant also contended
28 Plaintiff's PAGA claims were subject to individual arbitration and that the representative

1 PAGA claims were subject to stay pending individual arbitration. These defenses present a
2 risk to the PAGA claims and the potential that some or all of the PAGA penalties sought may
3 not be awarded. (Declaration of Nordrehaug, at ¶7.)

4 Given Defendant's potential defenses to the violations at issue, the risks and costs of
5 continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and
6 reasonable. (Declaration of Nordrehaug, at ¶7.) Although Defendant denies any liability,
7 Defendant has similarly concluded that it is desirable that the action is settled in the manner
8 and upon the terms and conditions set forth in the Agreement in order to avoid further expense,
9 inconvenience and distraction of further legal proceedings, as well as the uncertainty of
10 litigation. Defendant has determined that it is desirable and beneficial to put to rest the claims
11 in this action and Defendant agrees that the PAGA Settlement is fair, reasonable, and adequate.

12 PAGA Counsel have significant experience litigating wage and hour claims including
13 claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than similar
14 settlements that courts have approved. (Declaration of Nordrehaug, at ¶¶ 7, 10.) The PAGA
15 Settlement, along with the other terms of the proposed settlement, were negotiated by
16 experienced counsel at arm's length with the assistance of a private mediator, Hon. Brian C.
17 Walsh (Ret). (Declaration of Nordrehaug, at ¶7.)

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

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

26 Although PAGA requires that a court approve the proposed PAGA settlement, Labor
27 Code § 2699(1) does not require that a court approve any other elements of the proposed
28 settlement. Because there are no class allegations for which Plaintiff seeks approval, the

1 approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not
2 apply. Accordingly, the Court only needs to approve the settlement of the civil penalties
3 sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for
4 attorneys' fees and costs are reasonable.

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

6 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the
7 amount of \$130,833 representing one-third of the \$392,500 Gross PAGA Settlement Amount.
8 PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position
9 is that the payment of attorneys' fees and costs in this settlement is a matter of contract for a
10 contingent representation. Nevertheless, should this Court review the requested attorneys'
11 fees, it is clear that the requested fees and costs are reasonable.

12 First, the requested fees are justified by the result achieved. PAGA Counsel negotiated
13 a recovery of \$392,500.00, and this result justifies the requested fees equal to one third of this
14 recovery. This percentage is within the standard contingent recovery percentage of one-third,
15 and this percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert*
16 *Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App.
17 5th 521, 545 (2021) (recognizing that ““fee awards in class actions average around one-third
18 of the recovery”” regardless of ““whether the percentage method or the lodestar method is
19 used.”” (quoting *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008))).

20 Second, the fee award is justified by the work performed and contributions to the case.
21 As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award
22 represents PAGA Counsel's current lodestar of \$152,645.00 without a multiplier, which means
23 the requested award is less than the lodestar incurred by PAGA Counsel.

24 Generally, the Ninth Circuit and California Courts award positive multipliers between
25 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation
26 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award
27 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
28 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and

1 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001)
2 (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*,
3 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52
4 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014)
5 (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales*
6 *Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving
7 fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk
8 multipliers). Here, where the fee award is less than the lodestar, representing a negative
9 multiplier, there can be no dispute that the fee award is reasonable.¹⁰

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

16 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses
17 in the capped amount of \$11,000 which is less than the actual costs incurred of \$11,079.13.
18 These expenses are documented in the accompanying Declaration of Nordrehaug at ¶9.

19 VII. CONCLUSION

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

23 Dated: March 7, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

24 By: /s/ Kyle Nordrehaug

25 Kyle Nordrehaug
26 Attorney for Plaintiff

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