ERIC A. GROVER (SBN 136080)
eagrover@kellergrover.com
ROBERT W. SPENCER (SBN 238491)
rspencer@kellergrover.com
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861

ALEX P. KATOFSKY (SBN 202754)
alex@apkatlaw.com
LAW OFFICES OF ALEX P. KATOFSKY
A PROFESSIONAL CORPORATION
5743 Corsa Avenue, Suite 123
Westlake Village, California 91362
Telephone: (818) 340-3600

Attorneys for Plaintiff
JENAE HEITKAMP

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

JENAE HEITKAMP, on behalf of herself, and all aggrieved employees, Plaintiff, v. BRIGHTSIDE HEALTH, INC., and DOES 1 through 50, inclusive, Defendants.	Case No: CGC-25-626072 *Assigned to the Honorable Jeffrey S. Ross, Dept. 613* REPRESENTATIVE ACTION **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN ORDER APPROVING ATTORNEYS' FEES, COSTS, ENHANCEMENT PAYMENT, AND SETTLEMENT ADMINISTRATION FEES** Date: October 9, 2026 Time: 9:00 a.m. Dept. 613 Trial Date: TBD Complaint filed: June 9, 2025

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1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax 415.543.7861

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KELLER GROVER LLP
1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax 415.543.7861

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1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax. 415.543.7861

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1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax. 415.543.7861

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1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax 415.543.7861

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jenae Heitkamp ("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 Phoenix Settlement Administrators ("Phoenix"), the Parties' selected settlement administrator for this action.

Plaintiff and Brightside Health, Inc. ("Defendant") reached a proposed $195,000 settlement of Plaintiff's representative action brought under the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, ("PAGA").[1] 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 $118,234.43 estimated Net Settlement Amount to the California Labor and Workforce Development Agency ("LWDA") and the PAGA Group.[2]

Through this motion, Plaintiff requests that the Court approve the Settlement Agreement's terms allocating $67,765.57[3] for the payment of Plaintiff's Counsel's fees and costs, $5,000 for the representative Plaintiff's enhancement payment, and settlement administration costs of up to $4,000.[4]

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

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[1] *See* Declaration of Robert W. Spencer submitted in support of this motion and Plaintiff's Motion for Order Approving Settlement of PAGA Action and Dismissing Action with Prejudice ("Spencer Decl."), Ex. 1 (the Parties' Labor Code Private Attorneys General Act Settlement Agreement (the "Settlement Agreement")) generally, and at §§ II.P, III.E. All "Ex." references are to Spencer Declaration exhibits unless stated otherwise. Also, all capitalized terms shall have the same meaning as set forth in the Settlement Agreement unless noted otherwise.

[2] *See* Spencer Decl. at ¶ 20; Ex. 1 at § II.J, *see also*, §§ II.P, VII, XII, XIII.

[3] The Settlement Agreement provides that Plaintiff's Counsel may request $64,993.50 in fees and actual litigation costs, which are $2,772.07. Ex. 1 at § XII; Spencer Decl. at ¶¶ 20, 47-49, Ex. 8 (Keller Grover costs); Declaration of Alex P. Katofsky ("Katofsky Decl.) at ¶ 5 (Katofsky has no costs).

[4] *See* Ex. 1 at §§ VII, XII, XIII.

brevity's sake, Plaintiff does not repeat those facts here.

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 Plaintiff's 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.[5]

Early in the litigation, Defendant requested an early evaluation conference pursuant to Labor Code § 2699.3(f).[6] The Parties then agreed to exchange additional informal discovery prior to the early evaluation conference.[7] The Parties subsequently exchanged additional informal discovery, including information and documentation concerning the claims set forth in the Litigation and information regarding the number of PAGA Group members and the total pay periods for which services were performed by the PAGA Group during the PAGA Release Period.[8]

The Parties agreed to an informal exchange of information and documents prior to the early evaluation conference. Plaintiff's Counsel reviewed and analyzed information and documentation that Defendant provided, including documentation and information relevant to the claims alleged in the operative complaint, such as the number aggrieved employees and total pay periods at issue. The information and documents, as well as independent investigation by Plaintiff's Counsel, were sufficient to assess Defendant's classification and rest break, termination pay, other relevant 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.[9]

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[5] Spencer Decl. at ¶ 7.

[6] *Id.* at ¶ 8. Further, Plaintiff's Counsel drafted discovery, but did not propound it due to the Court issuing a stay associated with the early evaluation conference. *Id.* at ¶ 8, fn 2.

[7] *Id.* at ¶ 8.

[8] *Id.* at ¶¶ 8-9; Ex. 1 at § III.A.

[9] Spencer Decl. at ¶¶ 8-9. Ex. 1 at §§ III.A-C.

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On January 7, 2026, the Parties participated in a formal Early Evaluation Conference before the Honorable Brian L. Ferrall, as well as a follow-up session on January 13, 2026, during which the Parties engaged in good faith, arm's-length negotiations.[10] With Judge Ferrall's assistance, the Parties were able to resolve the PAGA claims, subject to the Court's approval.[11]

After the early evaluation conference, Plaintiff's Counsel has spent time communicating with Defense Counsel regarding the terms of the written settlement agreement. Plaintiff's Counsel expects to spend additional hours working with the Settlement Administrator, speaking with PAGA Group members, finalizing and filing this motion, and preparing for and attending the approval hearing.[12]

B. The Proposed Settlement

Plaintiff also refers to the Motion for Approval of PAGA Settlement and accompanying memorandum to avoid repeating the details of the proposed settlement's terms and benefits to the LWDA and the PAGA Group members. In brief summary, the Settlement Agreement provides that all PAGA Group members, defined as ""all individuals who were engaged as independent contractors by Defendant in California during the PAGA Period, and who fall within the scope of the violations alleged in the LWDA Notice."[13] The PAGA Release Period is defined as the period from and including April 2, 2024 through January 7, 2026, inclusive. [14] PAGA Group members do not need to submit a claim form to receive a settlement payment.[15]

If all requests are approved, the Net Settlement Amount to be distributed to the LWDA and PAGA Group members is estimated to be $118,234.43.[16] The PAGA Group members will divide 35% of the Net Settlement Amount, a total of approximately $41,382.05, based on the formula set

[10] Spencer Decl. at ¶ 10.

[11] Ex. 1 at § III.B; Spencer Decl. at ¶¶ 10.

[12] Spencer Decl. at ¶ 16.

[13] Ex. 1 at § II.K.

[14] Ex. 1 at § II.L.

[15] Ex.1 at § VIII, *see also*, §§ II.G, IX.A.

[16] Spencer Decl. at ¶ 20; Ex. 1 at §§ II.I, II.J, IX.A, *see also*, §§ I.P, VII, XII, XIII.

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forth in the Settlement Agreement.[17] The LWDA will receive 65% of the Net Settlement Amount, which is approximately $76,852.38.

1) Settlement administration.

The Settlement Agreement provides for the payment of the costs of settlement administration not to exceed $4,000 to Phoenix Settlement Administrators.[18]

2) Attorneys' fees and costs.

The Settlement Agreement permits Plaintiff's Counsel to seek an award of attorneys' fees of up to $64,993.50 and actual litigation costs, which are $2,772.07.[19] The request is discussed in Section III.B below.

3) Enhancement award for the representative Plaintiff.

The Settlement Agreement provides that Plaintiff Delgado may seek an enhancement payment of $5,000 for her work bringing this action on behalf of the LWDA and the PAGA Group.[20] The service award request is discussed in Section III.C below.

III. LEGAL ARGUMENT

A. Standards for approval of a PAGA settlement.

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

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

Pursuant to the Settlement Agreement, Plaintiff's Counsel seek $64,993.50 attorneys' fees

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[17] Spencer Decl. at ¶ 2-; Ex. 1 at § II.I, II.J, IX.A; Lab. Code § 2699(m) (requiring that the LWDA receive 65% and aggrieved employees receive 35% of PAGA penalties awarded).

[18] Ex. 1 at §§ II.O, VII; *see* Spencer Decl. at ¶ 19.

[19] Ex. 1 at § XII; Spencer Decl. at ¶¶ 20, 47-49, Ex. 8 (costs – Keller Grover). Katofsky's law firm has no costs. Katofsky Decl. at 4.

[20] Ex. 1 at § XIII.

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and $2,772.07 in litigation costs.[21] Plaintiff's Counsel's entitlement to an award of fees and costs is warranted on multiple independent grounds, which are discussed below

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(k)(1) provides that any 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,[22] the statute ensures that an individual who performs this law enforcement function is able to recover his or her attorneys' fees and costs.[23]

"'The PAGA does not provide a specific standard for evaluating attorney's fees in connection with a settlement of PAGA claims.'"[24] 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.[25] "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."[26]

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

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[21] Ex. 1 at § XII; Spencer Decl. at ¶¶ 20, 47-49, Ex. 8 (costs – Keller Grover). Katofsky's law firm has no costs. Katofsky Decl. at 4. Further, Plaintiff's Fee Sharing Agreement is attached as Ex. 7 to the Spencer Decl.

[22] *See Arias v. Superior Court* (2009) 46 Cal.4th 969, 986.

[23] Lab. Code § 2699(k)(1).

[24] *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.

[25] *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.).

[26] *Laffitte, supra*, 1 Cal.5th at 504.

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1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax. 415.543.7861

> 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.

The instant PAGA representative action was, by definition, "for the public benefit" that secured monetary awards for the LWDA and the 139 aggrieved employees who make up the PAGA Group and was authorized due the State's lack of enforcement resources.[27]

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

Counsel is entitled to recover attorneys' fees and costs under the "common fund" doctrine as a matter of right. As held by the U.S. Supreme Court, "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."[28]

Courts have long recognized the "common fund" or "common benefit" doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund.[29] In *Laffitte*, the California Supreme Court held that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created."[30] The California Supreme Court also noted that the percentage of the fund method "more accurately reflects the results achieved" than the lodestar method, serves as a "better approximation of market conditions in a contingency case," and encourages "counsel to seek an

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[27] *See e.g., Estrada v. FedEx Ground Package System, Inc.* (2007) 154 Cal.App.4th 1, 16-17 (finding that, because the plaintiff pursued class action not only for himself but on behalf of a class and ultimately obtained awards for 209 drivers, he satisfied "the 'significant benefit,' 'public interest,' and 'large class of persons' requirements of [C.C.P. §] 1021.5.").

[28] *See Boeing*, *supra*, 444 U.S. at 478.

[29] *Id.*; *see also, e.g., Serrano v. Priest ("Serrano III")* (1977) 20 Cal.3d 25, 34; *Glendale City Employees' Assoc. v. City of Glendale* (1975) 15 Cal.3d 328, 341, fn.19; *In re Consumer Privacy 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.

[30] *Laffitte, supra*, 1 Cal.5th at 503 (providing an extended analysis of California law regarding fee award methodology).

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early settlement and avoid unnecessarily prolonging the litigation."[31]

When applying the percentage of the fund method, California courts routinely grant fee awards of 33.33% and higher.[32] Further, courts have recognized that "[f]ee award percentages generally are higher in cases where the common fund is below $10 million."[33]

3) 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;

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[31] *Id.* at 503-04.

[32] *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 *Lafitte*, *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).

[33] *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).

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1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax. 415.543.7861

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1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax. 415.543.7861

and (f) the awards made in similar cases."[34]

First, the results achieved are significant, as approximately $76,852.38 will be paid out to the LWDA and $41,382.05 will be paid to the PAGA Group — for a total payout of $118,234.43.[35] Second, such results were achieved in the face of significant risks. Defendant maintained defenses to Plaintiff's PAGA claims that would place a serious risk to recover at trial.[36] Third, notwithstanding this risk of loss, Plaintiff's Counsel undertook representation of the instant PAGA claims for the benefit of the State (and the PAGA Group) on a contingency basis for the duration of this litigation.[37] This not only required Plaintiff's Counsel to personally assume the risk of nonpayment in securing the financial benefit that the State of California stands to receive, but constitutes a "loan" on Plaintiff's Counsel service—both of which are factors warranting fee enhancement under applicable California Supreme Court authority:

> One of the most common fee enhancers … is for contingency risk. We reaffirmed the propriety of a contingency risk enhancement in *Ketchum*: "The economic rationale for fee enhancement in contingency cases has been explained as follows: 'A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.' (Posner, Economic Analysis of Law (4th ed. 1992) pp. 534, 567.) 'A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.'"[38]

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[34] *See Vasquez v. Coast Valley Roofing, Inc*. (E.D. Cal. 2010) 266 F.R.D. 482, 492.

[35] *See* Spencer Decl. at ¶¶ 20-22, *see also*, ¶¶ 17-28, Ex. 1 at §§ II.I, II.J, II.P, IX.A. Defendant has identified 139 PAGA Group members. Ex. 1 at § II.K; Spencer Decl. at ¶ 9.

[36] Spencer Decl. at ¶¶ 27-28.

[37] Spencer Decl. at ¶¶ 41-42.

[38] *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579-580.

Finally, the percentage requested falls within a typical range, particularly in light of the settlement size.[39] It is recognized that "courts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million."[40]

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

4) 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.[41] 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 Spencer and Katofsky Declarations filed in support of this motion.[42] Counsel's hourly rates have been approved in other cases[43] and are well within the range of those found permissible for attorneys practicing class

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[39] *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.

[40] *See e.g.*, *Alvarez*, *supra*, 2017 U.S. Dist. LEXIS 119128, at *9, citing *Cicero*, *supra*, 2010 U.S. Dist. LEXIS 86920, at *18.

[41] *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).

[42] Spencer Decl. at ¶¶ 31-40, Katofsky Decl. at ¶ 4.

[43] *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.

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action litigation in California.[44]

Plaintiff's Counsel Keller Grover LLP has spent over 138 hours litigating this case through July 7, 2026, as described in further detail in the Spencer Declaration.[45] Plaintiff's Counsel Law Offices of Alex P. Katofsky, A Professional Corporation, has spent approximately 15 hours litigating this case through July 7, 2026, as described in further detail in the Katofsky Declaration.[46] 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.[47] The fee award should include fees incurred to establish and defend the attorneys' fee claim.[48]

The lodestar for Plaintiff's Counsel Keller Grover LLP through July 7, 2026 is $113,420.[49] Keller Grover LLP expects to incur another $8,000 in fees for a total final lodestar of $121,420 an amount that represents a negative multiplier of approximately 0.53.[50] Adding in the additional loadstar of $12,000 reflecting time spent by co-counsel Law Offices of Alex P. Katofsky, A Professional Corporation,[51] the combined loadstar of the two firms is $133,420.[52] This represents a negative multiplier of approximately 0.49.[53]

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[44] *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).

[45] Spencer Decl. at ¶¶ 33-39.

[46] Katofsky Decl. at ¶ 4.

[47] Spencer Decl. at ¶¶ 33, 39.

[48] *Serrano v. Unruh* (1982) 32 Cal. 3d 621, 639 ("*Serrano IV*").

[49] Spencer Decl. at ¶ 32-39.

[50] *Id.*

[51] Katofsky Decl. at ¶ 4, *see also* Spencer Decl. at ¶ 39.

[52] Spencer Decl. at ¶ 39.

[53] *Id.*

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C. Plaintiff's Counsel has submitted their fee sharing agreement.

In compliance with the Court's order dated June 3, 2026, Plaintiff's Counsel has submitted their fee sharing agreement as Exhibit 7.[54]

D. Plaintiff's Counsel's requested costs are reasonable.

During this litigation, Plaintiff's Counsel had to incur out-of-pocket costs of $2,472.07 and expects to incur an additional $300 in costs for filing fees and mailing costs.[55] As described in the Spencer Declaration the incurred costs included filing fees, legal research fees, service fees, and mailing charges.[56] Such costs are appropriate for cost reimbursement in these types of cases.[57]

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 $2,772.07 is reasonable and should be granted.

E. The enhancement payment sought by Plaintiff is reasonable.

As the Settlement Agreement permits, Plaintiff seeks an enhancement payment in the amount of $5,000 for the representative PAGA Plaintiff.[58] 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.[59]

Although PAGA does not address service payments to private attorneys general, the reasoning of case law approving named plaintiff's service award in class actions supports that they also are appropriate in PAGA representative actions. Like in class actions, service payments should be awarded to named plaintiffs in representative actions to acknowledge the effort and risk

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[54] *Id.* at ¶ 46. The fee sharing agreement holds that the Law Offices of Alex. P. Katofsky shall be paid a referral fee of 33.33% of the total attorney's fees collected with respect to this case, the remainder goes to Keller Grover LLP.

[55] *See* Spencer Decl. at ¶¶ 47-49, Ex. 8. Katofsky's law firm had no costs. Katofsky Decl. at ¶ 5.

[56] Spencer Decl. at ¶ 47, Ex. 8.

[57] *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.

[58] Ex. 1 at § VIII.

[59] Declaration of Jenae Heitkamp, submitted herewith; *see* Spencer Decl. at ¶¶ 29-30.

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they undertake to obtain a reward on behalf of others.[60] The California Court of Appeal has found that "incentive awards are fairly typical in class action cases" and "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."[61] The Ninth Circuit also has recognized that a named Plaintiff's "willingness to act as a private attorney general" may justify the award of an incentive payment.[62]

Further, two separate authorities compel service payments for an employee plaintiff serving as a private attorney general. First, PAGA and its legislative history make clear that its purpose is to incentivize individuals to act on behalf of, and for the benefit of, the State to enforce the Labor Code due to shortage of the State's law enforcement resources.[63] With that goal in mind, it is reasonable to conclude that the statute permits compensation for individuals who take on that work. Even if, for example, the statute that enables the State to employ an attorney general did not specify a salary for that position, it would be reasonable to conclude that the State has authority to pay the individual who performs that work. The same must be true for an individual who acts as a private attorney general. The Legislature's stated purpose of encouraging private law enforcement work necessarily contemplates compensation for individuals who do that work.

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

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[60] *See e.g.*, *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-94, citing *Clark v. Am. Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.

[61] *Id.* at 1393-94 (internal citations, quotations and alterations omitted), citing *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958, 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.

[62] *Rodriguez*, *supra*, 563 F.3d at 959.

[63] *Iskanian*, *supra*, 59 Cal.4th at 379 (discussing the goal stated in PAGA and its legislative history to enable private attorneys general to enforce the Labor Code due to the State's shortage of resources).

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The second authority supporting a service award is the California Supreme Court's consistent mandate that courts must "liberally construe[]" the Labor Code "in favor of affording workers protection."[64] When addressing questions for which there is no specific statutory answer, the California Supreme Court has explained that courts interpreting the Labor Code must "adopt the construction that best gives effect to the purpose of the Legislature" which is "the protection of employees."[65] The Court's mandate weighs in favor of providing service awards because refusing them would dramatically impair the State's ability to achieve its goal of Labor Code enforcement through private attorneys general. If an employee plaintiff acting as a private attorney general can expect no compensation other than his or her individual share of the recovered penalties, it would be extremely difficult to find anyone willing to undertake the extensive risk and effort involved in bringing a representative PAGA action.

Without Plaintiff's efforts, there would be no recovery at all. An incentive award is appropriate to compensate Plaintiff for the risk and expense she incurred in conferring a benefit on other of Defendant's employees and the State of California. As a result of Plaintiff's efforts, the State of California will receive $76,852.38 to be put toward education about, and enforcement of, California's labor laws.[66] The PAGA Group members will receive monetary settlement payments – on average, approximately $297.71 each.[67]

In this case, Plaintiff performed the following tasks, among others: (1) assisted Plaintiff's Counsel in investigating and substantiating the claims alleged in this action, including multiple telephone calls with counsel to review facts, documents, and Defendant's policies; (2) assisted in the preparation of the PAGA letter and complaint in this action; (3) produced evidentiary documents to Plaintiff's Counsel; (4) attended two separate early evaluation conferences, and (5) reviewed the Settlement Agreement.[68] Moreover, as with any plaintiff who files a civil action,

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[64] *See e.g.*, *Ward v. United Airlines, Inc*. (2020) 9 Cal.5th 732, 754, citing string of California Supreme Court cases stating the same.

[65] *Troester v. Starbucks Corp*. (2018) 5 Cal.5th 829, 839.

[66] Spencer Decl. at ¶¶ 20-21; Ex. 1 at §§ II.I, II.J, IX.A; Lab. Code § 2699(m).

[67] Spencer Decl. at ¶ 21 ($41,382.05/139 = $297.71); Ex. 1 at §§ II.G, II.J, II.K, IX.A.

[68] *See generally*, Heitkamp Declaration; *see also*, Spencer Decl. at ¶¶ 29-30.

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Plaintiff undertook the financial risk that, in the event of a judgment in favor of Defendant in this action, she could have been personally responsible for any attorneys' fees and costs awarded in its favor.

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

F. The Settlement Administrator's fee is reasonable and should be paid.

Phoenix has agreed to provide all administrative functions necessary for the distribution of the Settlement Amount for an amount not to exceed $4,000, which is the amount set forth in the Settlement Agreement.[69] Plaintiff requests that the Court approve payment to Phoenix of up to $4,000. If the amount is lower, it will revert to the Net Settlement Amount.[70]

IV. CONCLUSION

For all the reasons set forth above, Plaintiff respectfully requests that this Court, as set forth in the proposed Order Approving Settlement submitted herewith, approve Phoenix Settlement Administrators as the Settlement Administrator and approve payment of its administration fees of up to $4,000; approve an award of $64,993.50 in attorneys' fees and $2,772.07 in costs to Plaintiff's Counsel, and approve an enhancement award to Plaintiff Heitkamp in the amount of $5,000.

Dated: July 17, 2026

KELLER GROVER LLP

By: ______________________________

ERIC A. GROVER
ROBERT SPENCER
Counsel for Plaintiff
JENAE HEITKAMP

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[69] Ex. 1 at § VII; Spencer Decl. at ¶ 19.

[70] Ex. 1 at § VII.

KELLER GROVER LLP
1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax. 415.543.7861

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 17, 2026**, in the case of *Jenae Heitkamp v. Brightside Health, Inc.*, San Francisco Superior Court Case Number CGC-25-626072, I served the foregoing document(s):

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

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

Maria C. Rodriguez Elvira R. Kras Megan A. Lee Claudia LeBrane Courtney Danglade **MCDERMOTT WILL & EMERY LLP** 2049 Century Park East, Suite 3200 Los Angeles, CA 90067-3206	**Attorneys for Defendant** *Brightside Health, Inc* mcrodriguez@mwe.com ekras@mwe.com malee@mwe.com clebrane@mwe.com cdanglade@mwe.com
Alex P. Katofsky **LAW OFFICES OF ALEX P. KATOFSKY A PROFESSIONAL CORPORATION** 5743 Corsa Avenue, Suite 123 Westlake Village, California 91362	**Attorneys for Plaintiff** *Jenae Heitkamp* alex@apkatlaw.com

☒	(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.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

JOEY GONZALEZ

KELLER GROVER LLP
1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax. 415.543.7861