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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

DANIEL DE LA TORRE, on behalf of the State
of California, as a private attorney general,

Plaintiff,

vs.

FREENOME HOLDINGS, INC., a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. CGC-22-603540

**NOTICE OF MOTION AND MOTION
TO APPROVE PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION**

Hearing Date: April 30, 2024

Hearing Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer
Dept.: 302

Action Filed: December 16, 2022
Trial Date: Not Set

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

2 YOU ARE HEREBY NOTIFIED THAT at 9:30 a.m. on April 30, 2024, or as soon
3 thereafter as the matter can be heard, in Department 302 of the above entitled Court before
4 the Honorable Richard B. Ulmer, Plaintiff Daniel De La Torre (“Plaintiff”) will and hereby
5 does move for an order approving the settlement of the PAGA claim alleged against
6 Defendant Freenome Holdings, Inc. (“Defendant”) in accordance with Labor Code
7 §2699(1)(2). The proposed settlement is set forth in the accompanying PAGA Settlement
8 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 Agreement as set forth in the accompanying proof of service.

13 Respectfully submitted,

14 Dated: April 4, 2024

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

16 By: /s/ Kyle Nordrehaug
17 Kyle R. Nordrehaug

18 *Attorneys for Plaintiff*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Daniel De La Torre (“Plaintiff”) reached a settlement of the California
4 Private Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in
5 this action against Defendant Freenome Holdings, Inc. (“Defendant”) (collectively, the
6 “Parties”) which provides for a “Gross PAGA Settlement Amount” payment in the amount
7 of \$425,000.00. In accordance with California Labor Code §2699(1)(2), Plaintiff now asks
8 this 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 Aggrieved Employees other than the Plaintiff
11 himself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348,
12 381 (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
22 submitted herewith.

23
24 **II. SUMMARY OF ALLEGATIONS**

25 PAGA Counsel mailed the necessary correspondence to the California Labor and
26 Workforce Development Agency (“LWDA”) on September 27, 2022 on behalf of Plaintiff
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 Daniel De La Torre, requesting authorization from the LWDA to seek civil penalties as
2 provided by the Private Attorney General Act of 2004 (“PAGA”) for the wage and hour
3 violations alleged in the PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3). The 65-
4 day notice period for the LWDA to notify of its intent to investigate expired on December 3,
5 2022. On December 16, 2022, Plaintiff filed a Representative Action Complaint in this
6 Court against Defendant alleging a single cause of action for recovery of civil penalties for
7 Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

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

19 Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendant
20 instituted unlawful meal and rest period policies and practices. For example, Plaintiff
21 claimed that Defendant required employees to remain on premises for rest breaks, stating
22 that employees are only allowed to leave the worksite during meal periods. Consistent with
23 this admonition, Plaintiff alleged that he never left the premises during rest breaks. Plaintiff
24 also alleged that Defendant discouraged the payment of premium wages for interrupted meal
25 or rest periods by failing to include any policy for the payment of premium wages or
26 instructions on how to obtain such wages in the event of a violation. In addition, Plaintiff
27 also alleged that Aggrieved Employees were not paid for all wages that were due. For
28 example, Plaintiff claimed that Defendant required employees to submit to mandatory

1 temperature checks and symptoms questionnaires for COVID-19 screening while off the
2 clock. He further alleged that Defendant did not pay any wages for the time it took for
3 temperature checks and the symptoms questionnaire. Defendant also allegedly required
4 various forms of cell phone usage on personal cell phones for work related purposes, such as
5 scheduling issues, entering time off and text messages from supervisors, but failed to provide
6 any reimbursement for the cell phone expenses incurred by aggrieved employees.
7 (Declaration of Kyle Nordrehaug, at ¶3). Defendant denies Plaintiff's claims and any
8 liability.

9 On December 4, 2023, the Parties engaged in an all-day mediation session before
10 Mediator Dickstein, a respected and experienced mediator knowledgeable of both the wage
11 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 alleged in this action which led to the signing of a Memorandum of
14 Understanding 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 Defendant's 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 Dickstein. (Declaration of Kyle Nordrehaug, at
21 ¶3).

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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 ¶ 2.2). The individual claims were not at issue
28 in 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 **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 \$425,000 to resolve the
5 Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this
6 PAGA Settlement of \$425,000, there is a deduction of attorneys’ fees (“PAGA Counsel Fees
7 Payment”) in the amount of \$141,667 (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 \$20,000, and Settlement Administration Costs (“Administration
10 Expenses Payment”) not to exceed \$4,000. (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 \$259,333.

13 Of the PAGA Payment amount, seventy-five percent (75%) (no less than
14 \$194,499.75) will be paid to the LWDA and the remaining twenty-five percent (25%) (no
15 less than \$64,833.25) 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
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23 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
24 Payment less than the amounts requested, the Administrator will allocate the remainder of these
25 amounts to the PAGA Payment. (Agreement at ¶ 3.2.1). To the extent the Administration Expenses
26 are less, or the Court approves payment less than \$4,000, the Administrator will allocate the
remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

27 ⁴ “Aggrieved Employees” means all individuals who are or were directly employed by Defendant in
28 California and classified as hourly or non-exempt at any time during the PAGA Period. The PAGA
Period is the period from September 1, 2021 through December 2, 2023. (Agreement at ¶¶ 1.20,
1.21).

1 Employees during the PAGA Period.⁵ The PAGA Period is the time period from September
2 1, 2021 through December 2, 2023. (Agreement at ¶ 1.23).

3 For mediation, Defendant represented that there are approximately 150 Aggrieved
4 Employees who collectively worked approximately 3,699 pay periods during the PAGA
5 Period. (Agreement at ¶ 4.1).

6 Upon entry of final judgment, the Released Parties shall be entitled to a release from
7 the Aggrieved Employees for any “Released PAGA Claims”, which means all claims,
8 demands or causes of action of any kind for PAGA penalties that were alleged, or reasonably
9 could have been alleged, based on the facts stated in the Operative Complaint and the PAGA
10 Notice submitted by Plaintiff to the LWDA, which occurred during the PAGA Period. (the
11 “Released PAGA Claims”). (Agreement at ¶¶ 5.1, 5.2). The Released PAGA Claims
12 expressly excludes all other claims, including Plaintiff’s individual claims, claims for vested
13 benefits, wrongful termination, violation of the Fair Employment and Housing Act,
14 unemployment insurance, disability, social security, workers’ compensation, California class
15 claims, and PAGA claims outside of the PAGA period. (*Id.*) The Agreement expressly
16 confirms that “In no event shall the release of the Released PAGA Claims in this Settlement
17 Agreement release any individual claims of any individuals.” (*Id.*)

18 Within thirty (30) days after Defendant funds the Gross PAGA Settlement Amount,
19 the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA
20 Payment, the Administration Expenses Payment and the PAGA Counsel Expenses Payment.
21 (Agreement at ¶ 4.4).⁶ Checks will remain negotiable for one hundred eighty (180) days. (*Id.*
22 at ¶ 4.4.1) For any Aggrieved Employee whose Individual PAGA Payment check is
23 uncashed and cancelled after the void date, the Administrator shall transmit the funds
24

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

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

1 represented by such checks to the State of California Unclaimed Property Fund in the name
2 of the individual who failed to cash their check. (*Id.* at ¶ 4.4.3).

3 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of
4 the Agreement and this Motion to the LWDA concurrently with the filing of the Motion as
5 set forth in the accompanying proof of service in compliance with Labor Code section
6 2699(1). In addition, Plaintiff shall submit to the LWDA a copy of the Court's judgment and
7 order approving the Agreement within ten (10) days after entry of judgment or order.

8 9 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

10 The claim before this Court is solely the representative claim under PAGA on behalf
11 of the State of California for civil penalties pursuant to the PAGA. The parties have agreed
12 to settle this PAGA claim in its entirety after investigation and an arm's length mediation
13 session. (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and
14 finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the State of
15 California. This is only a settlement of the PAGA claims for civil penalties and is not a class
16 settlement and other than the named Plaintiff, this settlement does not release any claim that
17 is not a PAGA claim.⁷ PAGA Counsel Fees equal to one-third of the Gross PAGA
18 Settlement amount (\$141,667.00) and PAGA Counsel Litigation Expenses in an amount not
19 to exceed \$20,000 will also be paid to PAGA Counsel as part of the settlement in accordance
20 with California Labor Code § 2699(g)(1), as set forth in the Agreement.⁸ Lastly, payment to
21 the Administrator in an amount not to exceed \$4,000 to perform the administrative duties to
22 distribute the settlement money shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-
23 5.)

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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, PAGA Counsel incurred costs
28 in the current amount of \$18,216.74, which is less than the cost allocation in the Settlement
Agreement. See Declaration of Nordrehaug at ¶ 9.

1 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
2 **SETTLEMENT OF THE PAGA CLAIM**

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

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

9 The Parties believe that the PAGA Settlement amount is fair and reasonable and
10 therefore "shall" be reviewed and approved. (Declaration of Nordrehaug, at ¶6.)

11 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
12 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
13 statutory PAGA civil penalties potentially ranging from \$369,900 to \$909,750 based on
14 3,699 pay periods applicable to the Aggrieved Employees during the PAGA Period.⁹
15 (Declaration of Nordrehaug, at ¶6.) Importantly, however, these calculations were
16 performed at the maximum statutory rate for the penalties, when in fact, it is likely that any
17 penalties awarded would be at a lower rate. California Labor Code Section 2699(e)(1)
18 permits a Court to award a lesser amount than the maximum civil penalty if based on the
19 facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary
20 and oppressive or confiscatory."

21 Under PAGA, Courts have considerable discretion to reduce the penalty award. In
22 *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court
23 reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the
24 court found maximum penalties "unjust" because the employees had suffered no injuries.
25 Some trial courts have actually awarded no civil penalties, even when Labor Code violations

26 _____
27 ⁹ The valuation range is dependent upon the violations established and the amount of stacking of
28 penalties is permitted. Stacking is where more than one civil penalty is imposed in a pay period.
The valuation of \$369,900 is the civil penalty amount without stacking and the valuation of
\$909,750 is with stacking using a second penalty assessment.

1 are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of
2 App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior
3 Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.
4 LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

5 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove
6 each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*,
7 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of
8 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
9 suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to
10 prove that each Aggrieved Employee suffered a violation for each period the employee
11 worked in relation to meal or rest period violations, failure to pay minimum wages, failure to
12 pay overtime and sick pay wages, failure to provide accurate itemized wage statements,
13 failure to reimburse employees for required expenses and failure to pay wages when due.

14 Defendant maintains that Plaintiff and the Aggrieved Employees were properly
15 compensated, and that it did not violate the Labor Code. Accordingly, Defendant disputes
16 and denies Plaintiff's allegations and claims asserted in both the PAGA Notice and the
17 Operative Complaint, which are resolved by the Agreement. Defendant asserted additional
18 defenses to the PAGA claim, not only as to liability but also as to the amount of the
19 penalties. Defendant could argue that no penalties prior to the PAGA notification should be
20 awarded because the violations were not intentional, and at least one trial court has so ruled.
21 These defenses present a risk to the PAGA claims and the potential that some or all of the
22 PAGA penalties sought may not be awarded. (Declaration of Nordrehaug, at ¶7.)

23 Given Defendant's potential defenses to the violations at issue, the risks and costs of
24 continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and
25 reasonable. (Declaration of Nordrehaug, at ¶7.) Defendant has similarly concluded that it is
26 desirable that the action is settled in the manner and upon the terms and conditions set forth
27 in the Agreement in order to avoid further expense, inconvenience and distraction of further
28 legal proceedings, as well as the uncertainty of litigation. Defendant has determined that it is

1 desirable and beneficial to put to rest the claims in this action and Defendant agrees that the
2 PAGA Settlement is fair, reasonable, and adequate.

3 PAGA Counsel have significant experience litigating wage and hour claims including
4 claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than
5 similar settlements that courts have approved. (Declaration of Nordrehaug, at ¶¶ 7, 10.) The
6 PAGA Settlement, along with the other terms of the proposed settlement, were negotiated by
7 experienced counsel at arm's length with the assistance of a private mediator, Michael
8 Dickstein. (Declaration of Nordrehaug, at ¶7.)

9 As set forth in the accompanying proof of service, the LWDA has been provided
10 notice of this motion and the PAGA settlement. The decision of the LWDA to accept the
11 PAGA Settlement and not oppose the motion should be given considerable weight. This is
12 not a situation where the Court needs to be concerned about the rights of absent employees
13 as in a class settlement, as this is a PAGA-only settlement, and the LWDA is a sophisticated
14 government entity that is more than able to look out for its own rights.

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

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

23 24 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

25 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the
26 amount of \$141,667.00 representing one-third of the \$425,000 Gross PAGA Settlement
27 Amount. PAGA does not have any requirements for reviewing attorneys' fees, and
28 Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a

1 matter of contract for a contingent representation. Nevertheless, should this Court review the
2 requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

3 First, the requested fees are justified by the result achieved. PAGA Counsel
4 negotiated a recovery of \$425,000.00, and this result justifies the requested fees equal to one
5 third of this recovery. This percentage is within the standard contingent recovery percentage
6 of one-third, and this percentage is what was expressly approved by the Supreme Court in
7 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.,*
8 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that ““fee awards in class actions
9 average around one-third of the recovery”” regardless of ““whether the percentage method or
10 the lodestar method is used.”” (*quoting Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11
11 (2008)).

12 Second, the fee award is justified by the work performed and contributions to the
13 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award
14 represents PAGA Counsel’s current lodestar of \$76,115 with a reasonable multiplier of 1.86,
15 with significant additional work to be performed such that the multiplier will ultimately be
16 less than 1.7.¹⁰

17 Generally, the Ninth Circuit and California Courts award positive multipliers between
18 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation
19 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award
20 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
21 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
22 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
23 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa*
24 *Capital Corp.*, 8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which
25 was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D.
26 Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v.*

27
28 ¹⁰ A true and correct copy of PAGA Counsel’s billing statement is attached as Exhibit #2 to the
Declaration of Kyle Nordrehaug, filed herewith.

1 *Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6,
2 2013) (approving fee award that represented a multiplier of 2.76 as falling within the
3 "majority" range for risk multipliers).

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

10 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation
11 expenses in the total amount of \$18,216.74 which is less than the \$20,000 allocation for costs
12 in the Agreement, so the difference of \$1,783.26 will be added to the PAGA Payment
13 amount. These expenses are documented in the accompanying Declaration of Nordrehaug at
14 ¶9.

16 **VII. CONCLUSION**

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

20 Dated: April 4, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

22 By: /s/ Kyle Nordrehaug
23 Kyle Nordrehaug
24 Attorney for Plaintiff