

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (SBN #068687)

Kyle R. Nordrehaug (SBN #205975)

Aparajit Bhowmik (SBN #248066)

Nicholas J. De Blouw (SBN #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858) 551-1223

Facsimile: (858) 551-1232

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO**

CYNTHIA KOSNIKOWSKI, on behalf of the
State of California, as a private attorney general,

Plaintiff,

vs.

HONOR HOME CARE SERVICES
CALIFORNIA, INC., a California Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. **CGC-22-602974**

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

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

Hearing Date: September 9, 2024

Hearing Time: 9:30 a.m.

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

Action Filed: November 15, 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 September 9, 2024, or as
3 soon thereafter as the matter can be heard, in Department 302 of the above entitled Court
4 before the Honorable Richard B. Ulmer, Plaintiff Cynthia Kosnikowski (“Plaintiff”) will and
5 hereby does move for an order approving the settlement of the PAGA claim alleged against
6 Defendant Honor Home Care Services California, Inc. (“Defendant”) in accordance with
7 Labor Code §2699(l). The proposed settlement is set forth in the accompanying PAGA
8 Settlement Agreement (“Agreement”).

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

13 Respectfully submitted,

14 Dated: August 14, 2024

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

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

18 Attorneys for Plaintiff

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	6
II. RELEVANT FACTS.....	6
III. TERMS OF THE PAGA SETTLEMENT	9
IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS.....	11
V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIM.....	12
VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE.....	15
VII. CONCLUSION.....	17

TABLE OF AUTHORITIES

Page(s)

Cases:

<i>Amaro v. Anaheim Arena Mgmt., LLC,</i> 69 Cal. App. 5th 521 (2021)	16
<i>Boyd v. Bank of America,</i> 2014 WL 6473804, at *11 (C.D. Cal. 2014).....	16
<i>Cardenas v. McLane Foodservice, Inc.,</i> 2011 U.S. Dist. LEXIS 13126 (C.D. Cal. 2011).....	14
<i>Carrington v. Starbucks Corp.,</i> 30 Cal.App.5th 504 (2018).....	13
<i>Chavez v. Netflix, Inc.,</i> 162 Cal.App.4th 43 (2008).....	16
<i>Fleming v. Covidien,</i> 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011).....	13
<i>Hopkins v. Stryker Sales Corp.,</i> No. 11-CV-02786-LHK, 2013 WL 496358 (N.D. Cal. Feb. 6, 2013).....	17
<i>In re Taco Bell Wage & Hour Actions,</i> 2016 U.S. Dist. LEXIS 48557 (E.D. Cal. Apr. 6, 2016).....	14
<i>Iskanian v. CLS Transportation,</i> 59 Cal. 4th 348, 381 (2014).....	6
<i>Ketchum v. Moses,</i> 24 Cal.4th 1122, 1132 (2001).....	17
<i>Kim v. Reins Int'l Cal., Inc.,</i> 9 Cal. 5th 73, 80 (2020)	9
<i>Laffitte v. Robert Half Int'l,</i> 1 Cal. 5th 480, 503 (2016).....	16
<i>Makabi v. Gedalia,</i> 2016 Cal. App. Unpub. 1489 (2nd Dist. Ct. of App. 2016).....	13

1	<i>Pellegrino v. Robert Half Intern., Inc.</i> ,	
2	182 Cal.App.4th 278 (2010).....	16
3	<i>Stetson v. Grissom</i> ,	
4	821 F.3d 1157, 1166 (9th Cir. 2016).....	17
5	<i>Vandervort v. Balboa Capital Corp.</i> ,	
6	8 F.Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	16
7	<i>Wershba v. Apple Computer, Inc.</i> ,	
8	91 Cal.App.4th 224, 254 (2001).....	16
9	<i>ZB, N.A. v. Superior Court</i> ,	
10	8 Cal.5th 175 (2019).....	6, 10, 12

11 **Statutes:**

12	California Labor Code §2698.....	7
13	California Labor Code §2699.....	<i>passim</i>

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Cynthia Kosnikowski (“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 Honor Home Care Services California, Inc. (“Defendant”)
6 (collectively, the “Parties”) which provides for a “Gross PAGA Settlement Amount” payment
7 in the amount of \$980,000.00. In accordance with California Labor Code §2699(l), Plaintiff
8 now asks this Court to review and approve the settlement of Plaintiff’s PAGA claims.¹ This
9 is only a settlement of the PAGA claims for civil penalties and is not a class settlement and
10 does not release the individual wage claims, if any, of the affected employees other than the
11 Plaintiff herself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th
12 348, 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 submitted
22 herewith.

23
24 **II. RELEVANT FACTS**

25 PAGA Counsel mailed the necessary correspondence to the California Labor and
26 Workforce Development Agency (“LWDA”) on September 8, 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 Kosnikowski, requesting authorization from the LWDA to seek civil penalties as provided by
2 the Private Attorney General Act of 2004 (“PAGA”) for the wage and hour violations alleged
3 in the PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3). The 65-day notice period for
4 the LWDA to notify of its intent to investigate expired on November 13, 2022. On November
5 15, 2022, Plaintiff Kosnikowski filed a Representative Action Complaint in this Court against
6 Defendant Honor Home Care Services California, Inc. alleging a single cause of action for
7 recovery of civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

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

18 Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendant is
19 liable for miscalculating overtime and sick pay as a result of not including certain
20 remunerations into the regular rate. For example, the following additional remunerations were
21 not fully incorporated into the regular rate for the purpose of paying the correct overtime:
22 Incentive Bonus (cpbon), Referral Bonus (cpref), Sign on Bonus (cpbso), Gift Card (gift).
23 Moreover, Plaintiffs alleged many pay periods had pay at multiple hourly rates. Weighted
24 average calculations were used to include any overpayments or underpayments due to mixed
25 hourly rates in a pay period. Plaintiff’s expert determined that 42.3% of Aggrieved Employees
26 and 18% of pay periods had overtime and additional remunerations earned or had weighted
27 average rate issues. Plaintiff alleged there was also unpaid sick pay due from not including
28 the above remunerations in the regular rate and from weighted averages. 40% of Aggrieved

1 Employees and 4.1% of pay periods had sick pay and additional remunerations earned or had
2 weighted average rate issues. Plaintiff also alleged at mediation that Defendant issued
3 inaccurate wage statements to the Aggrieved Employees. For example, time spent on “pre-
4 visit” work was included on the “gross” section for total hours worked but this time was not
5 included in the “total hours worked” section causing confusion. In addition, Plaintiff alleged
6 that Defendant unlawfully put a system in place that facilitated the misclassification of
7 Aggrieved Employees under the personal attendant exemption. This exemption applies only if
8 at least 80% of the employees’ time is spent supervising (eg. supervision of bathing,
9 showering, getting in or out of a bed or chair and using a toilet) and includes “assistance in
10 obtaining medical care, preparing meals, managing money, shopping for groceries or personal
11 items, using a telephone or performing housework when such activities are related to the
12 independent living of the person and cannot be performed by him or herself alone due to a
13 health or are limitation.” DLSE Opinion Letter 2005, 11-23. The caveat is that “housework”
14 should not exceed 20% of the weekly working time spent by the personal attendant. Plaintiff
15 alleged that the personal attendant exemption did not apply because the amount of time
16 Plaintiff and other Aggrieved Employees spent on housekeeping far exceeded 20% of their
17 weekly duties. Plaintiff alleged at mediation that Aggrieved Employees spent closer to 80%
18 of their time performing housekeeping tasks such as cleaning refrigerators, doing laundry,
19 cooking, making the beds, changing sheets, vacuuming and dusting. (Declaration of Kyle
20 Nordrehaug, at ¶3). Defendant maintained that it always complied with applicable wage and
21 hour regulations. Specifically, Defendant argued that its policies, documents, and expert
22 analysis supported a conclusion that the calculation of the regular rate and weighted averages
23 accounted for all applicable remuneration consistent with applicable law.

24 On April 15, 2024, the Parties engaged in an all-day mediation session before Mediator
25 Serratore, a respected and experienced mediator knowledgeable of both the wage and hour
26 laws and representative claims at issue in this action. Through arms-length negotiations with
27 the assistance of the mediator, the Parties reached an agreement to settle the PAGA claims in
28

1 this action which led to the signing of a Memorandum of Understanding memorializing the
2 settlement.² (Declaration of Kyle Nordrehaug, at ¶3).

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

9 10 **III. TERMS OF THE PAGA SETTLEMENT**

11 The PAGA settlement is subject to Court approval consistent with Labor Code
12 §2699(1)(2). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a
13 “Gross PAGA Settlement Amount” payment in the amount of \$980,000 to resolve the
14 Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this PAGA
15 Settlement of \$980,000, there is a deduction of attorneys’ fees (“PAGA Counsel Fees
16 Payment”) in the amount of \$326,667 (which is one-third of the PAGA Settlement),
17 reimbursement of incurred costs (“PAGA Counsel Litigation Expenses Payment”) in an
18 amount not to exceed \$25,000, a service award of \$5,000 (“Service Award”) and Settlement
19 Administration Costs (“Administration Expenses Payment”) not to exceed \$15,000.
20 (Agreement at ¶¶ 3.2.1-3.2.4).³ After these deductions, the amount remaining is the “PAGA
21 Payment”, which is estimated to be no less than \$608,333.

22
23 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
24 Plaintiff’s individual claims pursuant to separate confidential Individual Settlement Agreement
25 (“Individual Settlement”) (Settlement Agreement at ¶ 2.3). The individual claims were not at issue in
26 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
27 an Aggrieved Employee of standing, as the state’s authorized representative, to pursue PAGA
28 remedies” nor resolve the PAGA claims.).

³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
Payment less than the amounts requested, the Administrator will allocate the remainder of these
amounts to the PAGA Payment. (Settlement Agreement at ¶ 3.2.1). To the extent the Administration
Expenses are less, or the Court approves payment less than \$15,000, the Administrator will allocate

1 Of the PAGA Payment amount, seventy-five percent (75%) (no less than \$456,249.75)
2 will be paid to the LWDA and the remaining twenty-five percent (25%) (no less than
3 \$152,083.25) will be paid to the Aggrieved Employees (Agreement at ¶ 3.2.3).⁴ This 75/25
4 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8
5 Cal.5th 175 (2019).

6 The Individual PAGA Payment for each Aggrieved Employee shall be based on the
7 number of pay periods each Aggrieved Employee worked during the PAGA Period as an
8 Aggrieved Employee, as a percentage of the total pay periods worked by all Aggrieved
9 Employees during from September 8, 2021, through the earlier of settlement approval by the
10 Court or July 12, 2024.⁵ The PAGA Period is the time period from September 8, 2021 through
11 July 12, 2024. (Agreement at ¶ 1.23). For mediation, Defendant represented that there are
12 approximately 3,296 Aggrieved Employees who collectively worked approximately 115,000
13 pay periods during the PAGA Period. (Agreement at ¶ 4.1).

14 Upon entry of final judgment, the Released Parties shall be entitled to a release from
15 the Aggrieved Employees for any “Released PAGA Claims”, which means all claims for
16 PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts
17 stated in the Operative Complaint, and the PAGA Notice submitted by Plaintiff to the LWDA,
18 which occurred during the PAGA Period (collectively the “Released PAGA Claims”).
19 (Agreement at ¶5.2). The Released PAGA Claims expressly excludes all other claims
20 including claims for vested benefits, wrongful termination, violation of the Fair Employment
21

22 the remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2). In the event the Service Award is
23 approved for less than \$5,000.00 to Plaintiff, the unawarded difference will be added to the PAGA
24 Payment for distribution and not paid to Plaintiff, PAGA Counsel, or Defendant. (*Id.* at ¶ 3.2.4).

24 ⁴ “Aggrieved Employee” means all individuals who are or were employed by defendant Honor Home
25 Care Services of California, Inc. in California and classified as a non-exempt employee at any time
26 during the period from September 8, 2021, through the earlier of settlement approval by the Court or
27 July 12, 2024. (Settlement Agreement at ¶¶ 1.4, 1.23).

27 ⁵ See Settlement Agreement at ¶ 3.2.3 (“The Administrator will calculate each Individual PAGA
28 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 and Housing Act, unemployment insurance, disability, social security, workers' compensation,
2 and California class claims, and PAGA claims outside of the PAGA period. (*Id.*)

3 Within fourteen (14) days after Defendant funds the Gross PAGA Settlement Amount,
4 the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA
5 Payment, the Administration Expenses Payment, the Service Award and the PAGA Counsel
6 Fees Payment and PAGA Counsel Expenses Payment. (Agreement at ¶ 4.4).⁶ Checks will
7 remain negotiable for one hundred eighty (180) days. (*Id.* at ¶ 4.4.1) For any Individual PAGA
8 Payment check that is uncashed and cancelled after the void date, the Administrator shall
9 transmit the funds represented by such checks to the State Controller Unclaimed Property Fund
10 in the name of the individual who failed to cash their check, subject to Court approval. (*Id.* at
11 ¶ 4.4.3).

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

18 19 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

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

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

1 under PAGA. This settlement does not release any claim that is not a PAGA claim.⁷ PAGA
2 Counsel Fees equal to one-third of the Gross PAGA Settlement amount (\$326,667), a Service
3 Award of \$5,000 and PAGA Counsel Litigation Expenses in an amount not to exceed \$25,000
4 will also be paid to PAGA Counsel as part of the settlement in accordance with California
5 Labor Code § 2699(g)(1), as set forth in the Agreement.⁸ Lastly, payment to the Administrator
6 in an amount not to exceed \$15,000 to perform the administrative duties to distribute the
7 settlement money shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)
8

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

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

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

17 The Parties believe that the PAGA Settlement amount is fair and reasonable and
18 therefore "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount of
19 \$980,000 is more than other PAGA settlements as it constitutes approximately \$8.52 per pay
20 period. (Declaration of Nordrehaug, at ¶6.)
21

22 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
23 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
24 statutory PAGA civil penalties was potentially \$11,500,000 based on 115,000 pay periods
25

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

28 ⁸ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
in the current amount of \$22,225.47, which is less than the cost allocation in the Settlement Agreement.
See Declaration of Nordrehaug at ¶ 9.

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

7 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
8 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period.
9 Therefore, at trial, any PAGA penalties awarded could be significantly less than Plaintiff's
10 calculation even where Plaintiff prevailed on the PAGA claim. If the amount of \$5 per pay
11 period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties would be
12 only \$575,000, which is far less than this settlement provides. (Declaration of Nordrehaug, at
13 ¶6.)

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

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

26 ⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The
27 valuation of \$11,500,000 is the civil penalty amount without stacking. If stacking is permitted, then
28 the valuation increases with each additional penalty added to each pay period. Plaintiff, however, is
not aware of any PAGA award which permitted stacking and in the cases cited herein, only one penalty
per pay period was assessed.

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

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

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

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

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

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

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

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

18 19 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

20 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the
21 amount of \$326,667 representing one-third of the \$980,000 Gross PAGA Settlement Amount.
22 PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position
23 is that the payment of attorneys' fees and costs in this settlement is a matter of contract for
24 contingent representation. Nevertheless, should this Court review the requested attorneys'
25 fees, it is clear that the requested fees and costs are reasonable.

26 First, the requested fees are justified by the result achieved. PAGA Counsel negotiated
27 a recovery of \$980,000.00, and this result justifies the requested fees equal to one third of this
28 recovery. This percentage is within the standard contingent recovery percentage of one-third,

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

6 Second, the fee award is justified by the work performed and contributions to the case.
7 As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award
8 represents PAGA Counsel’s current lodestar of \$167,200.00 with a reasonable multiplier of
9 less than 2, with significant additional work to be performed such that the multiplier will
10 ultimately be even less.¹⁰

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

24 Third, consideration of the service factors justify the service of the lodestar. Courts
25 multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the
26 quality of work, and the novelty and difficulty of the issues involved. See *Ketchum v. Moses*,

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

1 24 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in cases that meet these criteria
2 is an abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016).

3 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses
4 in the total amount of \$22,225.47 which is less than the \$25,000 allocation for costs in the
5 Agreement, so the difference of \$2,774.53 will be added to the PAGA Payment amount. These
6 expenses are documented in the accompanying Declaration of Nordrehaug at ¶9.

7
8 **VII. CONCLUSION**

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

12 Dated: August 14, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

14 By: /s/ Kyle Nordrehaug
15 Kyle Nordrehaug
16 Attorney for Plaintiff
17
18
19
20
21
22
23
24
25
26
27
28