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11 behalf of herself and aggrieved employees

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF SANTA CLARA

14 KAITLIN TALLEY, on behalf of herself and
all others similarly situated and the general
15 public,

16 Plaintiff,

17 v.

18 TRAVEL NURSE ACROSS AMERICA, LLC
19 an Arkansas limited liability company; and
20 DOES 1 to 100,

21 Defendants.

) Case No. 22CV403416
) Honorable Charles F. Adams
) Dept. 7
)
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **PLAINTIFF'S MOTION FOR COURT**
) **APPROVAL OF PAGA SETTLEMENT**
)
) Date: May 8, 2025
) Time: 1:30 p.m.
) Dept.: 7
)
) Action filed: September 22, 2022

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR
COURT APPROVAL OF PAGA SETTLEMENT**

1 **I. INTRODUCTION AND SUMMARY OF MOTION**

2 Plaintiff, Kaitlin Talley (“Plaintiff”) filed a Class Action Complaint on September 22, 2022,
3 against Defendant Travel Nurse Across America, LLC (“Defendant” or “TNAA”). Thereafter,
4 Plaintiff filed a First Amended Complaint on November 8, 2022, which added a claim for PAGA
5 penalties to the Class Action based on the theories discussed herein, among others. The Court
6 dismissed Plaintiff’s class claims on July 24, 2023, leaving only her PAGA claims remaining.

7 Plaintiff has agreed to settle the PAGA claims for a Gross Settlement Amount of
8 \$850,000.00.¹ The settlement is a fair compromise after approximately two years of litigating the
9 claims.

10 The Gross Settlement Amount includes all attorneys’ fees and costs, settlement
11 administration expenses, PAGA Plaintiff enhancement, and payments to the Aggrieved Employees
12 and the Labor and Workforce Development Agency (“LWDA”). The Gross Settlement Amount is
13 approximately \$850,000.00 as explained below. Of the Gross Settlement Amount, 75% or
14 \$396,009.75 is directed to go to the LWDA, and 25% or \$132,003.25 will be allocated to the
15 individual PAGA payments.

16 In exchange for such payment, the Aggrieved Employees, the state of California, and the
17 LWDA are releasing Defendant from all claims for PAGA claims that were alleged or reasonable
18 could have been alleged, based on the facts stated in the First Amended Complaint and PAGA
19 Notice during the PAGA period.

20 Based upon the discovery and investigation performed in this case, and given the
21 considerable risks based on this Court’s discretion to decrease penalties, the proposed settlement is
22 fair, adequate and reasonable and should be approved.

23 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

24 Plaintiff, Kaitlin Talley (“Plaintiff”) filed a Class Action Complaint on September 22, 2022,
25 against Defendant Travel Nurse Across America, LLC (“Defendant”) which alleged causes of
26 action for: (1) unfair competition in violation of Business and Professions Code section 17200; (2)

27 ¹ Unless otherwise stated, all capitalized terms used herein have the same meaning as those terms
28 have in the Parties' Settlement Agreement. **(See Carney Decl., Exhibit 1.)**

1 failure to pay all wages; (3) failure to pay sick pay at the correct regular rate; (4) failure to pay
2 minimum wages; (5) inaccurate wage statements; and (6) failure to pay final wages upon
3 separation.

4 Plaintiff filed a First Amended Complaint (“FAC”) on November 8, 2022 which added a
5 claim for PAGA penalties to the Class Action based on the following theories, among others: (1)
6 failure to pay overtime, meal and rest premiums, and sick pay at the correct rate of pay; (2) failure
7 to include certain remuneration in employees’ regular rate, including without limitation,
8 nondiscretionary bonuses, charge nurse premiums, shift differentials, housing stipends, and meals
9 and incidental stipends; (3) failure to pay minimum wages, including for off-the-clock work related
10 to onboarding processes, and by maintaining on-call and standby time requirements; (4) failure to
11 pay due and owing wages upon ending of employment; (5) failure to provide complete and
12 accurate wage statements; and (6) waiting time penalties.

13 On May 22, 2023, Defendant filed a Motion to Dismiss Class Claims, Compel Arbitration
14 of Individual Claims, Stay Non-Individual PAGA Claims, and Stay Entire Action as its responsive
15 pleading to the FAC (the “MTCA”). On June 6, 2023, Talley filed an Opposition to the MTCA, and
16 on June 16, 2023, Defendant filed a Reply in support of its MTCA. On July 24, 2023, the Court
17 granted in part Defendant’s MTCA, ordered Plaintiff’s class claims dismissed, ordered Plaintiff’s
18 individual claims to arbitration, and entered a stay of all proceedings including the representative
19 portion of the PAGA claim, pending arbitration.

20 On August 4, 2023, Talley initiated an arbitration of her individual claims remaining from
21 the FAC with the American Arbitration Association (Case No. 01-23-0003-4749) (the
22 “Arbitration”), which incorporated by reference the underlying theories and substantive claims
23 remaining from the FAC. The Parties litigated Talley's individual claims in arbitration for
24 approximately eight months, and mutually agreed to abandon the Arbitration before any rulings on
25 the merits were issued by the arbitrator. On April 25, 2024, the Parties agreed to return to court to
26 litigate Plaintiff's PAGA action, subject to a stay to determine whether this matter was capable of
27 resolution at mediation.

28 On September 18, 2024, the parties participated in an all-day mediation presided over by
respected wage and hour mediator Monique Ngo-Bonnici, Esq., which led to an agreement to settle

1 the action. Prior to the mediation, there was an informal exchange of data, and Plaintiff hired an
2 expert to prepare an exposure analysis.

3 **III. SUMMARY OF SETTLEMENT**

4 **A. Aggrieved Employees**

5 The Settlement covers the following aggrieved employees: All hourly non-exempt
6 employees of Defendant employed in California during the Relevant Time Period of September 2,
7 2021, through December 18, 2024, or the date of Court approval of the settlement, whichever
8 comes first.

9 Based upon Defendant's records, there are approximately 1,470 aggrieved employees who
10 worked a total 41,889 of PAGA Pay Periods through September 18, 2024.

11 Plaintiff reserved the first available hearing date of May 8, 2025, and also filed a Stipulation
12 concurrently herewith to advance that date, and/or have the Court rule on the motion without a
13 hearing.

14 **B. Settlement Fund**

15 The Net Settlement Amount shall be calculated by deducting the Individual PAGA
16 Payments, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation
17 Expenses Payment, the Representative Service Payment, and the Administration Expenses Payment
18 from the Gross Settlement Amount. Pursuant to the PAGA statute, one hundred percent of the Net
19 Settlement Amount shall be considered payment of penalties and thus will not be subject to local,
20 state, or federal payroll taxes or withholdings (**Carney Decl.; Exhibit 1**).

21 A breakdown of the Gross Settlement Amount of **\$850,000.00** is provided below:

- 22 1. Total PAGA Penalties: \$528,013.00
23 - Net Distribution Amount to Aggrieved Employees: \$132,003.25 (25%);
24 - Net Distribution Amount to the LWDA: \$396,009.75 (75%);
- 25 2. PAGA Counsel Fees Payment: \$297,500.00;
- 26 3. PAGA Counsel Litigation Expenses Payment: \$15,000.00;
- 27 4. Representative Service Payment to Plaintiff: \$1,500.00;
- 28 5. Administrator Expenses Payment: \$7,987.00 (**Carney Decl. ¶18, Exhibit 1**).

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1 **C. Release (See Carney Decl., Exhibit 1, ¶5)**

2 Effective on the date when Defendant fully funds the entire Gross Settlement
3 Amount Plaintiff, all Aggrieved Employees, the State of California, the LWDA, and
4 PAGA Counsel will release claims against all Released Parties as follows:

5 Plaintiff's Release. Upon approval of the settlement by the Court, all Aggrieved
6 Employees (including Plaintiff), the state of California, and the LWDA shall release
7 all claims pled or that could have been pled in the First Amended Complaint for
8 Santa Clara Superior Court Case No. 22CV403416 ("Complaint") pursuant to the
9 Labor Code Private Attorneys' General Act ("PAGA"), California Labor Code §§
10 2698, et seq., deriving from and/or based on the facts alleged in the Complaint and
11 Plaintiff's PAGA letter, arising out of or related to services to or work performed for
12 Defendant during the PAGA Period upon approval of the settlement, including
13 claims for penalties, interest, attorneys' fees and/or costs. The release shall
14 encompass all claims, causes of action or liability pursuant to the PAGA, including
15 but not limited to any penalties based on alleged violations of the IWC Wage Orders
16 or California Labor Code sections §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510,
17 558, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, and 2810.5. The settlement
18 shall be effective to adjudicate and release the claims and/or rights of the LWDA to
19 recover civil penalties against Defendant for the released Labor Code and/or Wage
20 Order violations suffered by any of the Aggrieved Employees (i.e., entry of
21 Judgment shall have res judicata effect as to those claims of the LWDA, whether
22 pursued directly by the LWDA or by a representative pursuant to PAGA). The
23 release shall include Defendant, and its owners, agents, attorneys, insurers, past,
24 present, and future divisions, DBAs (if any), predecessors, successors, shareholders,
25 officers, directors, managers, employees, trustees, representatives, administrators,
26 fiduciaries, assigns, subrogees, executors, partners, parents, subsidiaries, healthcare
27 facility clients, any and all facilities where any Aggrieved Employee performed
28 work for Defendant, any and all entities that operate those facilities, any and all
 alleged joint employers, privies, and/or any and all persons and/or corporate entities
 acting by, through, under or in concert with any of them (collectively, the "Released
 Parties").

 Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes of
 Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
 and benefits, if any, of section 1542 of the California Civil Code, which reads:

 A general release does not extend to claims that the creditor or releasing party does
 not know or suspect to exist in his or her favor at the time of executing the release,

 and that if known by him or her would have materially affected his or her settlement
 with the debtor or Released Party.

 Release by Aggrieved Employees and the LWDA: All Aggrieved Employees, the
 state of California, and the LWDA are deemed to release, on behalf of themselves
 and their respective former and present representatives, agents, attorneys, heirs,
 administrators, successors and assigns, the Released Parties from all claims for

1 PAGA claims that were alleged, or reasonably could have been alleged, based on
2 the facts stated in the Operative Complaint and the PAGA Notice, and alleged in the
3 Action, including but not limited to claims for all alleged Labor Code and Wage
Order violations specified therein..

4 Release by PAGA Counsel: PAGA Counsel release on behalf of their present and
5 former attorneys, employees, agents, successors and assigns the Released Parties
6 from all claims for PAGA Counsel Fees incurred in connection with the Operative
Complaint and the PAGA Period facts stated in the Operative Complaint, the PAGA
Notice, and alleged in the Action.

7 **IV. LEGAL STANDARD FOR APPROVAL OF PAGA SETTLEMENT**

8 The PAGA statute allows an “aggrieved employee” to bring a civil action on behalf of
9 himself or herself and on behalf of other aggrieved employees and the State to recover civil
10 penalties which are specifically established by the PAGA with respect to provisions of the
11 California Labor Code which does not otherwise provide for civil penalties (*Labor Code* §
12 2699(g)), and also, civil penalties which, outside of PAGA, only the LWDA can assess upon and
13 collect from an employer (*Labor Code* § 2699(a)). Before bringing a civil action under PAGA, an
14 employee must comply with *Labor Code* §2699.3. See *Labor Code* §2699(a).

15 The settlement of a PAGA claim requires court approval. See *Labor Code* §2699(1)(2)
16 (“The superior court shall review and approve any settlement of any civil action pursuant to this
17 part”). However, “A PAGA claim asserted on a non-class representative basis . . . is not considered
18 a class action but a law enforcement action” and therefore one does not have to meet the
19 requirements of a class action. *Casida v. Sears Holding Corp.*, 2012 WL 253217, at *3 (E.D. Cal.
20 Jan. 26, 2012); *Thomas v. Aetna Health of Cal., Inc.*, 2011 WL 2173715, at * 11 (E.D. Cal. June 2,
21 2011); *Arias v. Superior Court*, 46 Cal.4th 969, 980-88 (affirming lower court’s holding that
22 “plaintiff need not satisfy class action requirements” to assert a PAGA claim); *Pedroza v.*
23 *PetSmart, Inc.*, 2013 WL 1490667, at *15 (C.D. Cal. Jan. 28, 2013). A court reviewing a PAGA
24 settlement need only “ensur[e] that a negotiated resolution is fair to those affected.” *Williams v.*
Superior Court, 3 Cal.5th 531, 549 (2017).

25 In a PAGA case, the Court’s focus is not the monetary amount which aggrieved employees
26 or the State are to receive, but instead, whether the total settlement amount achieves the PAGA’s
27 objectives. The purpose of the PAGA is “to incentivize private parties to recover civil penalties for
28

1 the government that otherwise may not have been assessed and collected by overburdened state
2 enforcement agencies.” See *Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *4
3 (N.D. Cal. Apr. 2, 2010) (citing *Arias, supra*, 46 Cal.4th at 986). Penalties recovered under the
4 PAGA are, in part, to “be distributed to the [LWDA] for enforcement of labor laws . . . and for
5 education of employers and employees about their rights and responsibilities under this code, to be
6 continuously appropriated to supplement and not supplant the finding to the agency for those
7 purposes.” See *Labor Code* § 2699(j). The recovery of penalties on behalf of the state, by way of a
8 PAGA claim, is essentially a law enforcement action. See *Amalgamated Transit Union, Local*
9 *1756, AFL-CIO v. Sup. Ct.*, 46 Cal.4th 993, 1003 (2009) (stating that the PAGA is mechanism for
10 “an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise
11 would be sought by state labor law enforcement agencies”).

12 **V. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE**

13 The Settlement fulfills the purposes of the PAGA, and is fair, adequate and reasonable.

14 **A. The Settlement Is Presumed Fair**

15 A representative settlement is presumed fair where: (1) the settlement is reached through
16 arm’s length bargaining, (2) investigation and discovery are sufficient to allow counsel and the
17 court to act intelligently, (3) [and] counsel is experienced in similar litigation. (*See Dunk v. Ford*
18 *Motor Company (1996)* 48 Cal. App. 4th 1794, 1802.) A court may also consider factors such as
19 the strength of the plaintiffs’ case, the risk, expense, complexity and likely duration of further
20 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
21 the extent of discovery completed and the stage of the proceedings, the experience and views of
22 counsel, [and] the presence of a governmental participant. . . . (*See Officers of Justice v. Civil*
23 *Service Com’n of City and County of San Francisco* (9th Cir. 1995) 688 F.2d 615, 624.) “This list
24 is not exhaustive and should be tailored to each case. Due regard should be given to what is
25 otherwise a private consensual agreement between the parties.” (*Dunk, supra*, 48 Cal. App. 4th at
26 1801.) Moreover, the trial court has broad powers to determine whether a proposed [representative
27 action] settlement is fair. (*See Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434.) *Moniz v.*
28 *Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021) expressly holds that the standard for reviewing

1 PAGA settlements is similar to the standard for reviewing class settlements, and therefore class
2 cases (including *Dunk* specifically) are instructive in this context.

3 **B. The Settlement is the Product of Arm's Length Negotiations**

4 The stage of the proceedings and the amount of discovery completed are important factors
5 for courts to consider in determining whether a settlement is fair, adequate and reasonable. (*See In*
6 *re Warner Communications Sec. Lit.* (S.D.N.Y. 1985) 618 F.Supp. 735, 741, *affd.*, 198 F.2d 35 (2d
7 Cir. 1986); *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.*, 661 F.2d
8 939 (9th Cir. 1981).)

9 Plaintiff has propounded interrogatories and document requests. Defendant has produced
10 representative documents and data, including payroll records, policy documents, and related
11 employment records for aggrieved employees.

12 Plaintiff hired an expert, and was preparing for the Arbitration hearing when the parties
13 agreed to mediation.

14 The parties attended a mediation on September 18, 2024, presided over by respected wage
15 and hour mediator Monique Ngo-Bonnici, Esq. All of the parties' negotiations have been non-
16 collusive and involved disputes over payment terms. Plaintiff did not settle this case until she and
17 her counsel conducted sufficient investigation into the claims. Further, the LWDA has had the
18 opportunity to review and investigate the claims in the First Amended Complaint and review the
19 proposed Settlement Agreement and has not taken any further action in response as of the date of
20 this motion. (**Decl. Carney ¶ 10**).

21 **C. Plaintiff's Counsel is Experienced in Similar Litigation**

22 The view of attorneys in representative litigation is "entitled to significant weight."
23 (*Fisher Bros. v. Cambridge-Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *see also*
24 *Ellis, supra*, 87 F.R.D. at 18.) Plaintiff's counsel has significant experience in complex,
25 representative, and class action wage and hour litigation. As such, they are experienced and
26 qualified to evaluate the claims and defenses in this case, and unequivocally support the settlement
27 reached herein. (**Decl. Carney ¶22**)

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1 **D. The Strength of Plaintiff's Case, The Amount Offered in Settlement, and The**
2 **Risk, Expense, Complexity, and Duration of Further Litigation Favors**
3 **Settlement**

4 Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon*
5 *v. Chrysler Comm.* (9th Cir. 1998) 150 F.3d 1011, 1026. Moreover, “[t]he expense and possible
6 duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.”
7 (*In re Mega Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454, 458.)

8 **1. Total Exposure of PAGA Penalties**

9 As stated above, during the PAGA period, there were 41,889 pay periods as of September
10 18, 2024 for 1,470 aggrieved employees. Because there is no evidence that Defendant has been the
11 subject of prior *Labor Code* citations for the conduct alleged, subsequent penalty amounts are
12 unlikely here. See *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1208-1209 (2008) (“Until
13 the employer has been notified that it is violating a Labor Code provision. . . , the employer cannot
14 be presumed to be aware that its continuing underpayment of employees is a ‘violation’ subject to
15 penalties”).

16 **A. Regular Rate:**

17 Plaintiff alleges that Defendant failed to properly calculate the regular rate of pay by
18 excluding certain forms of remuneration, including housing and meal stipends, from the regular
19 rate calculation used for overtime and premium pay. The primary dispute centers on the treatment
20 of per diem payments, with Plaintiff arguing that these payments functioned as wages rather than
21 expense reimbursements and thus should have been included in the regular rate calculation.
22 However, the data reveals that non-taxable per diem payments (which present the strongest
23 argument for inclusion in the regular rate) were present in only approximately 3.2% of pay periods
24 for housing stipends and 3.2% of pay periods for meals and incidentals. The vast majority of
25 stipends were treated as taxable wages, with taxable housing stipends appearing in 93.8% of pay
26 periods and taxable meals and incidentals in 83.7% of pay periods.

27 While Defendant contends that these payments should be characterized as estimated
28 expense reimbursements rather than non-discretionary compensation, this defense faces challenges
under *Clarke v. AMN Servs., LLC*, which requires a case-specific analysis of whether per diem
payments function as compensation. The data also shows that 7,437 pay periods involved other

1 forms of non-discretionary pay such as shift differentials and bonuses concurrent with overtime or
2 premium pay, suggesting some merit to Plaintiff's regular rate claims. Given these factors and the
3 various litigation risks, including the limited prevalence of non-taxable per diems and uncertainty
4 surrounding the proper treatment of estimated expense reimbursements, Plaintiff estimates
5 reasonable PAGA exposure for regular rate violations at **\$837,780**, representing approximately
6 20% of the maximum potential penalty exposure of (\$100 x 418,890 pay periods) \$4,188,900.

7 **B. Off the Clock Work:**

8 Plaintiff alleges that Defendant failed to compensate employees for mandatory pre-
9 employment activities, including onboarding tasks, physical examinations, and required training
10 modules. Plaintiff estimates these activities took approximately five hours per employee to
11 complete. Defendant maintains that all pre-employment training was separately compensated,
12 directly contradicting Plaintiff's core allegation regarding unpaid onboarding time.

13 The viability of these claims faces several litigation risks. First, there are potential factual
14 disputes regarding whether employees were actually compensated for training time, as Defendant
15 asserts. Second, there may be variations in the actual time spent by different employees completing
16 these tasks, making it difficult to establish a uniform measure of damages. Third, while California
17 law broadly defines "hours worked" to include time under the employer's control, there could be
18 disputes about when the employment relationship legally began, particularly regarding pre-
19 employment physicals and paperwork. Given these considerations, Plaintiff estimates reasonable
20 PAGA exposure for off-the-clock violations at **\$14,700**, representing approximately 10% of the
21 maximum potential penalty exposure of (\$100 x 1,470 pay periods) \$147,000.

22 **C. Wage Statement Violations:**

23 The wage statement claims in this matter arise from both derivative and stand-alone
24 violations under Labor Code section 226(a). The derivative claims stem from Defendant's alleged
25 failure to properly record and pay all hours worked and accurately calculate the regular rate of pay.
26 Additionally, Plaintiff alleges stand-alone violations based on Defendant's failure to explicitly list
27 "total hours worked" on wage statements, though Defendant contends that total hours can be
28 calculated by adding up the hours provided in different categories.

Based on the data, there were 41,889 pay periods during the PAGA period where potential
wage statement violations occurred. At the maximum initial penalty rate of \$100 per pay period
under PAGA, this creates a theoretical maximum exposure of \$4,188,900. However, several factors
significantly reduce the reasonable value of these claims. First, many of the wage statement

1 violations are purely derivative of the underlying regular rate and off-the-clock claims. Therefore,
2 any successful defense to those primary claims would defeat the corresponding wage statement
3 violations. Second, to establish liability for wage statement violations, Plaintiff must prove that any
4 inaccuracies or omissions were "knowing and intentional." Defendant's argument that total hours
5 worked can be calculated from the information provided, even if ultimately incorrect, could
6 potentially defeat the knowing and intentional requirement. Given these substantial litigation risks,
7 Plaintiff estimates reasonable PAGA exposure for wage statement violations at **\$209,445**,
8 representing approximately 5% of the maximum potential penalty exposure.

9 Plaintiff further alleges that Defendant failed to provide legally compliant wage statements,
10 a.k.a. "paystubs" pursuant to *Labor Code* § 226. Plaintiff alleges that the pay stubs are inaccurate
11 as a result of the Defendant's failure to correctly calculate the regular rate. If proven, Defendant's
12 pay stubs could violate *Labor Code* § 226 and such violation would be on every check distributed
13 to Defendant's employees who received overtime and premium pay at an incorrect regular rate.
14 *Labor Code* § 226 requires, inter alia, that the pay stub accurately itemize the "gross wages earned"
15 and the "total hours worked." Defendant fails to include accurate "total hours worked," a vital
16 component to determine if employees are being paid properly. For example, Defendant violates
17 *Labor Code* § 226(a) by printing the total hours as it is not clear if it is hours worked or hours paid.
18 Plaintiff further alleges that to obtain PAGA penalties for pay stub violations, a plaintiff need not
19 satisfy the "injury" or "knowing and intentional" requirements of *Labor Code* § 226(e)(1). See
20 *Raines v. Coastal Pacific Food Distributors, Inc.*, 23 Cal.App.5th 667 (2018).

21 On the other hand, Defendant argues that its pay stubs are compliant, and therefore no such
22 PAGA penalties are owed. Moreover, Defendant argues derivative violations of *Labor Code* § 226
23 do not give rise to pay stub violations upon which PAGA penalties arise—See *Maldonado v.*
24 *Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308 (2018); see also *Culley v. Lincare Inc.*, 236 F.Supp.3d
25 1184, 1195-1196 (E.D. Cal. 2017). Defendant further argues that any such violations were
26 inadvertent, and therefore not actionable. See *Heritage Residential Care, Inc. v. Division of Labor*
27 *Standards Enforcement*, 192 Cal.App.4th 75 (2011).

28 **D. Waiting Time Penalties:**

Plaintiff alleges violations of *Labor Code* sections 201-203 on behalf of the 40 Aggrieved
Employees who ended their employment with Defendant during the PAGA period. These claims

1 are derivative of the underlying regular rate and off-the-clock violations, as they are based on
2 Defendant's alleged failure to timely pay all wages due upon separation, including unpaid overtime
3 at the correct regular rate and compensation for pre-employment activities.

4 With only 40 separated employees during the PAGA period, the maximum PAGA penalty
5 exposure for waiting time violations is \$4,000 (calculated at \$100 per employee). This exposure is
6 further reduced by several factors. First, as derivative claims, any successful defense to the
7 underlying wage violations would defeat the corresponding waiting time penalties. Second, waiting
8 time penalties require a willful failure to pay wages, and Defendant's good faith arguments
9 regarding regular rate calculation and pre-employment compensation could potentially defeat a
10 finding of willfulness. Given these considerations and litigation risks, Plaintiff estimates reasonable
11 PAGA exposure for waiting time violations at **\$400**, representing approximately 10% of the
12 maximum potential penalty exposure.

13 Plaintiff further alleges that pursuant to *Labor Code* §§ 201 and 202, Aggrieved Employees
14 terminated from Defendant's employment are entitled to a penalty pursuant to *Labor Code* § 203,
15 because Defendant did not pay them all wages due upon separation. Such a claim is derivative, and
16 for the same reasons as stated above, Defendant contends no wages are due, and thus no penalties
17 owed under PAGA. Defendant further argues that its failure to pay wages upon separation was not
18 "willful," in that the law is uncertain as to claims asserted in this case or whether the failure to pay
19 is due to a good faith dispute. See *Barnhill v. Robert Saunders & Co.*, 125 Cal.App.3d 1, 8 (1981)
20 (employer's failure to pay is not willful if its failure is due to uncertainty in the law); *Road*
21 *Sprinkler Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc.*, 102 Cal.App.4th 765, 782
(2002) (willfulness not met if defendant's failure to pay a result of a "good faith mistaken belief
that wages are not owed").

22 **E. Fairness of the Settlement**

23 The proposed settlement amount of \$850,000 represents approximately **80%** of the risk-
24 adjusted maximum PAGA penalties of \$1,062,325, making it an excellent result for the Aggrieved
25 Employees given the substantial risks and uncertainties of continued litigation. Beyond the claim-
26 specific risks detailed above, several additional factors support the reasonableness of this
settlement.

27 First, recovery through continued litigation would require Plaintiff to prevail on complex
28 legal issues regarding the proper treatment of per diem payments and the compensability of pre-

1 employment activities. These issues would likely require expensive expert testimony and extensive
2 motion practice, with no guarantee of success. Second, establishing PAGA penalties requires a
3 showing that violations were knowing and intentional, and courts have significant discretion to
4 reduce PAGA penalties even where liability is established. Third, the settlement provides
5 immediate relief to Aggrieved Employees without the delay, expense, and uncertainty of prolonged
litigation, which could take years to resolve through trial and potential appeals.

6 Plaintiff further believes this to be a good result, given that there is a substantial question as
7 to whether a trial court will even award cumulative penalties sought by Plaintiff for alleged
8 multiple *Labor Code* violations because there is no precedent for such an award. Moreover, *Labor*
9 *Code* § 2699(e)(2) also gives a trial court broad discretion to reduce PAGA penalties: “[A] court
10 may award a lesser amount than the maximum civil penalty amount specified by this part if, based
11 on the facts and circumstances of the particular case, to do otherwise would result in an award that
12 is unjust, arbitrary and oppressive, or confiscatory.” Case law supports a trial court’s discretion in
13 downgrading penalties based on these factors. See *Thurman v. Bayshore Transit Management,*
14 *Inc.*, 203 Cal.App.4th 1112, 1135-1136 (2012) (no abuse of discretion by reducing penalty by 30
15 percent).

16 Because of the discretionary nature of PAGA penalties, oftentimes the penalties are
17 discounted by approximately 75%-85%. See, e.g., *Magadia v. Wal-Mart Associates, Inc.* (N.D.
18 Cal. May 31, 2019) 384 F.Supp.3d 1058, 1104 (penalties on wage statement claim reduced by
19 80%); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) 2011 WL 7563047, *4.

20 Plaintiff asserts the PAGA settlement of \$850,000 is 80% of the maximum risk adjusted
21 exposure. As explained below, the PAGA settlement is within the range of reasonableness when
viewed in tandem with the attendant risks described above.

22 **The Settlement is Within the Range of Reasonableness**

23 “In determining whether the proposed settlement falls within the range of reasonableness,
24 perhaps the most important factor to consider is plaintiff’s expected recovery balanced against the
25 value of the settlement offer.” (*Cotter v. Lyft* (N.D. Cal. 2016) 176 F.Supp.3d 930, 936.)

26 First, there was a risk that for the regular rate claim, the stipends could be determined to be
27 reimbursements, and if so, they would not need to be included in the regular rate.

1 Second, for the derivative penalties, since they are dependent on the success of the
2 underlying violations and there are the enumerated risks, this is another reason bolstering the more
3 realistic recovery.

4 Third, because of the discretionary nature of PAGA penalties, oftentimes the penalties are
5 discounted by approximately 75%-85% from the maximum penalty. See, e.g., *Magadia v. Wal-*
6 *Mart Associates, Inc.* (N.D. Cal. May 31, 2019) 384 F.Supp.3d 1058, 1104 (penalties on wage
7 statement claim reduced by 80%). (See also *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504
8 (2018). The court affirmed a 90% reduction from the maximum).

9 Plaintiff asserts that the \$850,000 settlement is 80% of the realistic recovery of **\$1,062,325**
10 and is certainly within the range of reasonableness and merits granting the motion.

11 **VI. NOTICE OF THE SETTLEMENT IS NOT REQUIRED**

12 “[A] PAGA action is a statutory action for penalties brought as a proxy for the State,” as
13 such, “there is no need to protect absent employees’ due process rights[.]” *Williams v. Superior*
14 *Court*, 3 Cal.5th 531, 546 (2017). “Unnamed employees need not be given notice of the PAGA
15 claim, nor do they have the ability to opt-out of the representative PAGA claim.” *Ochoa-*
16 *Hernandez v. Cjaders Foods, Inc.*, 2010 WL 1340777, at *5 (N.D. Cal. Apr. 2, 2010). A
17 representative PAGA action need not satisfy class action requirements, and no due process concern
18 arises from the fact that there are “nonparty aggrieved employees who are not given notice of, and
19 an opportunity to be heard in, a representative action that is not brought as a class action.” *Arias v.*
20 *Sup. Ct.*, 46 Cal.4th 969, 984 (2009). “PAGA does not make other potentially aggrieved employees
21 parties” to the action and no “due process concerns arise under PAGA because absent employees
22 do not own a personal claim for PAGA civil penalties and whatever personal claims the absent
23 employees might have for a relief are not at stake.” *Williams, supra*, 3 Cal. 5th at 546-547 (internal
24 references omitted, citing *Amalgamated Transit Union, Local 1756, AFL-CIO v. Sup. Ct.*, 46th
25 Cal.4th 993, 1003 (2009) and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348,
26 381 (2014).)

27 Moreover, Plaintiff has served (uploaded) the LWDA with the Settlement Agreement and
28 will upload this motion and supporting documents after they are filed (**Carney Decl. ¶24; Exhibit**
5).

1 **VII. PLAINTIFF’S ATTORNEYS’ FEES, COSTS, AND ADMINISTRATIVE EXPENSES**
2 **ARE FAIR AND REASONABLE**

3 Pursuant to the PAGA Settlement Agreement, Plaintiff’s counsel requests that this Court
4 approve an award of attorneys’ fees of \$297,500.00, or 35% of the total PAGA settlement.

5 Pursuant to *Labor Code* § 2699 subd. (g)(1): “Any employee who prevails in any [PAGA] action
6 shall be entitled to an award of reasonable attorney’s fees and costs.”

7 **A. Fees Can Be Awarded as A Percentage of the Common Fund**

8 When a common fund is created, attorneys who secured the fund are entitled to a
9 percentage of the fund. (See *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 [“the court
10 may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
11 created]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 [“percentage fees have
12 traditionally been allowed in . . . common fund cases”]). Plaintiff’s request for 35% of the
13 common fund is reasonable, and is fair compensation for undertaking complex litigation on a
14 contingent basis. (See, e.g., Rubinstein, Conte and Newberg, *Newberg on Class Actions* at § 14:6
15 [surveying cases and finding that 30-50% of fees awarded in cases in which the common fund is
16 relatively small]; see also *In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494
[court approved attorney fee award equal to 45% of the settlement fund].)

17 Under the common fund doctrine, “a litigant or a lawyer who recovers a common fund for
18 the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from
19 the fund as a whole.” (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; see also *Laffitte, supra*,
20 1 Cal.5th at 503 [“the percentage method is a valuable tool that should not be denied our trial
21 courts”]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [“one who expends attorneys’ fees in winning a
22 suit which creates a fund from which other derive benefits, may require those passive beneficiaries
23 to bear a fair share of the litigation costs”].)

24 Because Plaintiff’s attorneys secured a successful PAGA settlement, they are entitled to a
25 reasonable percentage of that fund.

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28 /////

1 **B. Plaintiff's Attorneys Fees Are Also Recoverable Under the Lodestar**
2 **Adjustment Approach**

3 Fees in representative cases are also appropriate under the lodestar method, whereby the
4 number of hours reasonably expended is multiplied by a reasonable hourly rate. (*See Lealao, supra*,
5 82 Cal.App.4th at 26.) Once a lodestar has been established, it may “be adjusted, based on
6 consideration of factors specific to the case, in order to fix the fee at the fair market value for the
7 legal services provided.” (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095). In
8 evaluating the lodestar, and whether an upward adjustment is appropriate, courts look to the
9 qualifications of counsel, the reasonableness of the rates charged, the novelty and difficulty of the
10 case, the contingent nature of the case, the results achieved, and related matters. (See, e.g., *Serrano*,
11 *supra*, 20 Cal.3d 25, 49; see also *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 321-322.) All
12 such factors support the fee award here.

13 **1. Plaintiff's Counsel Are Well-Qualified to Represent the Aggrieved**
14 **Employees and their Rates Are Reasonable**

15 Counsel for Plaintiff is experienced employment lawyers and have extensive experience in
16 the specific subcategory of wage and hour claims (**Carney Decl. ¶2**). Moreover, counsel for
17 Plaintiff have hourly rates that are reasonable in the relevant market. They are as follows:

18 **JANELLE CARNEY – ATTORNEY AT LAW, APC**

19 Janelle Carney (25 years' experience): \$850.00

20 **FRONTIER LAW CENTER**

21 Adam Rose (22 years' experience): \$850.00

22 Manny Starr (6 years' experience): \$650.00

23 Plaintiff asserts that Plaintiff's counsel's rates are reasonable market rates in California and
24 have been reasonably incurred in connection with this litigation (**Carney Decl. ¶22**).

25 **2. Plaintiffs' Counsel's Lodestar Is Well Documented**

26 A properly supported motion for attorney's fees is prima facie evidence that the expenses
27 and services were necessarily incurred. (*Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 682.) Here,
28 counsel provides an appropriately detailed declaration (**Carney Decl. ¶19**). Plaintiff's counsel's
collective lodestar is approximately \$231,582.50 with 347.77 hours to date. Plaintiff anticipates

1 that counsel will incur up to another 10-15 hours to appear at the hearing, ensure the settlement
2 receives approval, and comply with the filing of post hearing filings once the settlement is
3 distributed to the aggrieved employees as well as answer any questions any Aggrieved Employee
4 may have (**Carney Decl. ¶21**)

5 A lodestar “cross check” also supports the fee request in this case and would result in a
6 modest multiplier of approximately 1.28 times counsels' current regular hourly fees. Currently,
7 there are 347.77 attorney and paralegal hours spent between both firms for an approximate lodestar
8 of 231,582.50.

9 **3. Novelty And Difficulty of The Case**

10 Given Defendant’s employees are placed at locations throughout the state, and many likely
11 reside or work outside of California at any given time due to the nature of the travel healthcare
12 professional industry at issue, this case presented potential manageability issues.

13 **4. Plaintiff’s Counsel Worked Efficiently and Skillfully**

14 Since the beginning of this case, Plaintiff’s counsel worked diligently for the aggrieved
15 employees, both in the PAGA case and in Plaintiff’s individual claims, with an eye at proving the
16 claims on a representative basis once the individual trial was concluded.

17 **5. Plaintiff’s Counsel Worked Entirely on A Contingency Basis**

18 Plaintiff’s counsel worked on a complete contingency and advanced all expenses and costs.
19 The contingent risk included liability issues, damage issues, and evolving changes under PAGA.
20 According to the California Supreme Court:

21 A contingent fee must be higher than a fee for the same legal services paid as they
22 are performed. The contingent fee compensates the lawyer not only for the legal
23 services he renders but for the loan of those services. The implicit interest rate on
24 such a loan is higher because the risk of default (the loss of the case, which cancels
25 the debt of the client to the lawyer) is much higher than that of conventional loans.
26 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, *Economic*
27 *Analysis of Law* (4th ed. 1992) pp. 534, 567.)

28 **6. Plaintiff’s Counsel Achieved a Good Result**

Plaintiff’s counsel believes the \$850,000 PAGA settlement is a good result given the
substantial risks of going to trial on this case and the discretionary nature of the penalties.

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1 **C. Plaintiffs' Counsel's Costs and Administrative Expenses Are Appropriate**
2 **and Well Documented**

3 Plaintiff's counsel is also entitled to their reasonable out-of-pocket costs incurred in
4 prosecuting this action. Plaintiff's counsel has incurred costs of approximately \$11,825.55 as of
5 the date of filing this motion (not including the cost of filing the herein motion or any subsequent
6 documents to be filed). It is anticipated that additional costs will be incurred for final filing costs
7 for the motion and the post motion filings of approximately \$150.00-\$200.00. The costs incurred
8 were necessary to prosecute this case (**Carney Decl., ¶19**). Moreover, after obtaining two quotes to
9 be the administrator, Rust has agreed to provide settlement administration services in the amount of
10 \$7,987.00 including preparing and mailing the notices to the Aggrieved Employees, distributing the
11 payments, and performing other administration duties for this PAGA settlement (**Carney Decl.,**
12 **¶23**). All such amounts should be deducted from the common fund created, and Defendant does not
13 oppose Plaintiff's counsel's request for costs up to \$15,000.00 and administration costs up to
14 \$7,987.00.

15 **D. Plaintiff's Enhancement**

16 The Settlement Agreement sets forth the amount of the enhancement request being sought
17 for the Plaintiff. Plaintiff seeks an award of One Thousand Five Hundred Dollars (\$1,500.00) for
18 the time, effort, and risks associated with bringing this action. Both class and PAGA named
19 plaintiffs receive an incentive or enhancement payment. Incentive awards "are fairly typical in
20 class action cases." *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010)
21 (affirming incentive awards of \$10,000); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958
22 (9th Cir. 2009). Incentive awards "are intended to compensate class representatives for work done
23 on behalf of the class, to make up for financial or reputational risk undertaken in bringing the
24 action, and, sometimes, to recognize their willingness to act as a private attorney general."
25 *Rodriguez*, 563 F.3d at 958–59. In both, class and representative actions, the
26 incentive/enhancement award is meant to reward the individual employee for bringing the lawsuit.
27 See, e.g., *Clark*, 96 Cal.Rptr.3d at 455 (incentive award is to induce the plaintiff to file a class
28 action); *Dunlap v. Superior Court*, 47 Cal.Rptr.3d 614, 617-618 (Cal. Ct. App. 2006) (PAGA was
adopted to enhance the enforcement abilities of the Labor Commissioner).

1 Without the named plaintiff the state would not have the ability to enforce *Labor Code*
2 violations throughout the state. Since being an aggrieved employee is a necessary requirement as a
3 private attorney general under the PAGA statute, the Plaintiff should be provided an award for
4 remedying the wrongs asserted. “Since without a named plaintiff there can be no class action, such
5 compensation as may be necessary to induce him to participate in the suit could be thought the
6 equivalent of the lawyers' nonlegal but essential case specific expenses, such as long distance
7 phone calls, which are reimbursable.” (*Clark v. American Residential Services, LLC* 175
8 Cal.App.4th 785, 804, 96, (2009) fn. omitted, citing *Matter of Continental Illinois Securities*
9 *Litigation*, 962 F.2d 566, 571 (7th Cir.1992).) The same rationale is applied to the named plaintiff
10 representing the state to enforce the labor code violations.

11 Plaintiff, since the time of filing this action, was quite aware that the mere filing of the
12 action and participation could jeopardize her future employability (**Talley Decl., ¶5**). In today's
13 internet driven society, any potential employer who conducts an internet search of the Plaintiff in
14 connection with a job application will easily learn that she served as a representative plaintiff in an
15 action against her employer.

16 Plaintiff asserts that it is likely that the courage evidenced by the Plaintiff may well result in
17 her future denial of employment, without ever being told that her lead role in this case was the
18 cause. As she stated in her declaration, she believes that the reason she was not receiving
19 assignments was due to filing this litigation (although Defendant denies this). It has been
20 recognized by no less than the California Supreme Court that: “...retaliation against employees for
21 asserting statutory rights under the Labor Code is widespread,” and that “retaliation . . . cause(s)
22 immediate disruption of the employee's life and economic injury. (*Gentry v. Superior Court*, (2007)
23 42 Cal.4th 443, 461.)

24 Plaintiff submits the amount sought is well within the range of reasonableness for such
25 awards in other wage and hour class and representative actions. (*Nelson v. Avon 5 Prod., Inc.* (N.D.
26 Cal. Feb. 24, 2017) 2017 WL 733145, at *7 (approving incentive award of \$10,000 where plaintiff
27 “appeared for an all-day deposition, searched for documentation relating to the class action,
28 reviewed documents and settlement papers, attended the mediation and subsequent negotiations,
and aided Class Counsel with negotiation efforts.”); *Torchia v. W.W. Grainger, Inc.* (E.D. Cal.

1 2014) 304 F.R.D. 256 (approving \$7,500 incentive award). Here, Plaintiff's proposed service
2 award is well within the typical range cited by the court in approval.

3 Plaintiff was regularly called upon to assist in the prosecution of this case. Plaintiff spent
4 many hours meeting with and being interviewed by counsel, searching for, and producing
5 documents from her employment with Defendant (**Talley Decl., ¶4**). Plaintiff spent many
6 additional hours assisting in reviewing documents produced by Defendant. Plaintiff was regularly
7 involved in the process of educating counsel as to the details of the procedures allegedly employed
8 by Defendant, all of which information was invaluable to Plaintiff's Counsel. Plaintiff made herself
9 available throughout the entire day of mediation and continued to make herself available
10 throughout the approval process. (*Id.*). Plaintiff was always totally committed to the litigation, and
11 devoted regular attention to the matter. Indeed, her declaration filed concurrently herewith
12 demonstrates that she was personally involved in the prosecution of this lawsuit. In short, Plaintiff
13 was an ideal representative plaintiff for the aggrieved employees she stood for, and greatly
14 facilitated the litigation process.

15 The incentive award is also justified in light of the general release that Plaintiff was
16 required to sign. Under the *Cal. Civ. Code* § 1542 release, Plaintiff will release any and all claims
17 she may have against Defendant arising out of her employment. This general release is
18 considerably broader than the separate, narrower release required of the aggrieved employees, a
19 consideration that further supports the requested incentive awards.

20 The end result of that process is the Eight Hundred Fifty Thousand Dollar (\$850,000.00)
21 settlement now before this Court. Plaintiff willingly assumed great risk by acting as a
22 representative Plaintiff, as is demonstrated in her declaration. It is probable that the stigma
23 associated with Plaintiff's involvement in prosecuting this case to its successful conclusion will
24 play a significant role in her ability to find future employment in nursing industry in Southern
25 California. As a representative Plaintiff, she has performed this role admirably.

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28 /////

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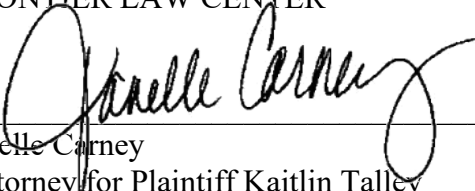
CONCLUSION

Based on the foregoing, Plaintiff respectfully requests that this Court grant her Motion to Approve PAGA Settlement and enter the Order/Judgment accordingly.

Dated: December 20, 2024

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

By:


Janelle Carney
Attorney for Plaintiff Kaitlin Talley