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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES
TORRANCE COURTHOUSE**

TINA CHARNETT, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

EPIC HEALTHCARE STAFFING, LLC, a
Limited Liability Company; EPIC
HEALTHCARE TRAVEL STAFFING, INC., a
Corporation; EPIC SCHOOL STAFFING
HOLDCO, INC., a Corporation; EPIC
STAFFING GROUP, INC., a Corporation;
THERAPY TRAVELERS LLC, a Limited
Liability Company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. **23TRCV00188**

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

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

Hearing Date: March 8, 2024

Hearing Time: 10:00 a.m.

Reservation # 980232222224

Judge: Hon. Deirdre Hill
Dept.: M (Torrance Courthouse)

Action Filed: January 20, 2023
Trial Date: Not yet set

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

2 YOU ARE HEREBY NOTIFIED THAT at 10:00 a.m. on March 8, 2024, or as soon
3 thereafter as the matter can be heard, in Department M at the Torrance Courthouse of the
4 above entitled Court before the Honorable Deirdre Hill, Plaintiff Tina Charnett (“Plaintiff”)
5 will and hereby does move for an order approving the settlement of the PAGA claim alleged
6 against Defendants Epic Healthcare Staffing, LLC, Epic Healthcare Travel Staffing, Inc.,
7 Epic School Staffing Holdco, Inc., Epic Staffing Group, Inc., and Therapy Travelers LLC
8 (“Defendants”) in accordance with Labor Code §2699(l). The proposed settlement is set
9 forth in the accompanying PAGA Settlement Agreement (“Agreement”).

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

14 Respectfully submitted,

15 Dated: February 7, 2024

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

17 By: /s/ Kyle Nordrehaug
18 Kyle R. Nordrehaug
19 *Attorneys for Plaintiff*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Tina Charnett (“Plaintiff”) reached a settlement of the California Private
4 Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this
5 action against Defendants Epic Healthcare Staffing, LLC, Epic Healthcare Travel Staffing,
6 Inc., Epic School Staffing Holdco, Inc., Epic Staffing Group, Inc., and Therapy Travelers
7 LLC (“Defendants”) (collectively, the “Parties”) which provides for a “Gross PAGA
8 Settlement Amount” payment in the amount of \$473,700.00. In accordance with California
9 Labor Code §2699(1), Plaintiff now asks this Court to review and approve the settlement of
10 Plaintiff’s PAGA claims.¹ This is only a settlement of the PAGA claims for civil penalties
11 and is not a class settlement and does not release the individual wage claims, if any, of the
12 affected employees other than the Plaintiff herself. Cal. Labor Code § 2699(g)(1); *Iskanian*
13 *v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th
14 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

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

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

24 ///

25 ///

26 ///

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.”

II. RELEVANT FACTS

PAGA Counsel mailed the necessary correspondence to the California Labor and Workforce Development Agency (“LWDA”) on October 31, 2022 on behalf of Plaintiff Tina Charnett, requesting authorization from the LWDA to seek civil penalties as provided by the Private Attorney General Act of 2004 (“PAGA”) for the wage and hour violations alleged in the PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3). The 65-day notice period for the LWDA to notify of its intent to investigate expired on January 12, 2023.

On January 20, 2023, Plaintiff Tina Charnett filed a Representative Action Complaint in this Court against Defendants Epic Healthcare Staffing, LLC, Epic Healthcare Travel Staffing, Inc., Epic School Staffing Holdco, Inc., Epic Staffing Group, Inc., and Therapy Travelers LLC alleging a single cause of action for recovery of civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

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

Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendants failed to provide Plaintiff and other Aggrieved Employees with compliant meal and rest breaks. For example, once the workday started, Plaintiff and other Aggrieved Employees were confined to Defendants’ premises where they were prohibited from having the freedom to leave during meal and rest breaks. Relief for rest periods was virtually impossible under Defendants’ working conditions where Plaintiff was required to stay with children

1 throughout the day who could never be left alone as they had special education needs.
2 Further, Plaintiff alleges Defendants did not pay required meal and rest period premiums for
3 meal and rest period violations that occurred on a regular basis. Plaintiff also alleged that
4 she and other Aggrieved Employees were not paid for off the clock temperature checks
5 before shifts began and off the clock phone calls to her personal cell phone after shifts ended
6 to discuss scheduling issues. Plaintiff alleges that she and other Aggrieved Employees were
7 required, while off the clock, to log into Defendants' app on their cell phone to fill out their
8 timesheets. Plaintiff alleges that not only was all this time uncompensated but also that
9 Defendants failed to reimburse Plaintiff and the Aggrieved Employees for the costs
10 associated with the use of their personal cell phone for work-related purposes. (Declaration
11 of Kyle Nordrehaug, at ¶3)

12 On October 11, 2023, the Parties engaged in an all-day mediation session before
13 Mediator Hon. Carl J. West (Ret.), a former judge as well as a respected and experienced
14 mediator knowledgeable of both the wage and hour laws and representative claims at issue in
15 this action. Through arms-length negotiations with the assistance of the mediator, the Parties
16 reached an agreement to settle the PAGA claims in this action which led to the signing of a
17 Memorandum of Understanding memorializing the settlement.² (Declaration of Kyle
18 Nordrehaug, at ¶3).

19 The settlement was negotiated in light of all known facts and circumstances and the
20 uncertainty associated with litigation – including the risk of Plaintiff not being able to
21 maintain representative claims, the difficulty of proving Plaintiff's claims in a manageable
22 trial, the merits of Defendants' potential defenses, and the significant delay and potential
23 appellate issues inherent to litigation – and was reached after extensive arm's length

24 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
25 Plaintiff's individual claims pursuant to a separate confidential Individual Settlement Agreement
26 ("Individual Settlement"). (Settlement Agreement at ¶ 2.2). The individual claims were not at issue
27 in this action and exist independent and apart from the PAGA claims at issue before the Court. *See*
28 *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 negotiations, with the assistance of Mediator Hon. Carl J. West (Ret.). (Declaration of Kyle
2 Nordrehaug, at ¶3).

3 4 **III. TERMS OF THE PAGA SETTLEMENT**

5 The PAGA settlement is subject to Court approval consistent with Labor Code
6 §2699(1)(2). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a
7 “Gross PAGA Settlement Amount” payment in the amount of \$473,700 to resolve the
8 Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this
9 PAGA Settlement of \$473,700, there is a deduction of attorneys’ fees (“PAGA Counsel Fees
10 Payment”) in the amount of \$157,898 (which is one-third of the PAGA Settlement),
11 reimbursement of incurred costs (“PAGA Counsel Litigation Expenses Payment”) in an
12 amount not to exceed \$18,000, and Settlement Administration Costs (“Administration
13 Expenses Payment”) not to exceed \$7,500. (Agreement at ¶¶ 3.2.1-3.2.2).³ After these
14 deductions, the amount remaining is the “PAGA Payment”, which is estimated to be no less
15 than \$280,302.

16 Of the PAGA Payment amount, seventy-five percent (75%) (no less than
17 \$210,226.50) will be paid to the LWDA and the remaining twenty-five percent (25%) (no
18 less than \$70,075.50) will be paid to the Aggrieved Employees (Agreement at ¶ 3.2.3).⁴ This
19 75/25 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior*
20 *Court*, 8 Cal.5th 175 (2019).

21 The Individual PAGA Payment for each Aggrieved Employee shall be based on the
22 number of pay periods each Aggrieved Employee worked during the PAGA Period as an

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. (Settlement Agreement at ¶ 3.2.1). To the extent the Administration
26 Expenses are less or the Court approves payment less than \$7,500, 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 previously were employed by
28 Defendants in California and classified as a non-exempt employee at any time during the PAGA
Period. The PAGA Period is the period from October 31, 2021 to November 11, 2023. (Settlement
Agreement at ¶¶ 1.4, 1.23).

1 Aggrieved Employee, as a percentage of the total pay periods worked by all Aggrieved
2 Employees during the PAGA Period.⁵ The PAGA Period is the time period from October 31,
3 2021 to November 11, 2023. (Agreement at ¶ 1.23).

4 For mediation, Defendants represented that there are approximately 495 Aggrieved
5 Employees who collectively worked approximately 13,820 pay periods during the PAGA
6 Period. (Agreement at ¶ 4.1).

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

19 Within fourteen (14) days after Defendants fund the Gross PAGA Settlement
20 Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA
21 PAGA Payment, the Administration Expenses Payment and the PAGA Counsel Expenses
22 Payment. (Agreement at ¶ 4.4).⁶ Checks will remain negotiable for one hundred eighty (180)
23 days. (*Id.* at ¶ 4.4.1) For any Aggrieved Employee whose Individual PAGA Payment check
24

25 ⁵ See Settlement Agreement at ¶ 3.2.3 (“The Administrator will calculate each Individual PAGA
26 Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Payment by
27 the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
28 PAGA Period and (b) 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 is uncashed and cancelled after the void date, the Administrator shall transmit the funds
2 represented by such checks to the State Controller Unclaimed Property Fund in the name of
3 the individual who failed to cash their check (*Id.* at ¶ 4.4.3).

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

10 11 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

12 The claim before this Court is solely the representative claim under PAGA on behalf
13 of the State of California for civil penalties pursuant to the PAGA. The parties have agreed
14 to settle this PAGA claim in its entirety after investigation and an arm's length mediation
15 session. (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and
16 finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the State of
17 California. This is only a settlement of the PAGA claims for civil penalties and is not a class
18 settlement and does not release the individual claims, if any, of the Aggrieved Employees,
19 other than any claims under PAGA. This settlement does not release any claim that is not a
20 PAGA claim.⁷ PAGA Counsel Fees equal to one-third of the Gross PAGA Settlement
21 amount (\$157,898) and PAGA Counsel Litigation Expenses in an amount not to exceed
22 \$18,000 will also be paid to PAGA Counsel as part of the settlement in accordance with
23 California Labor Code § 2699(g)(1), as set forth in the Agreement.⁸ The Plaintiff will
24 receive a service award for her participation and service as detailed in the accompanying
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 \$17,917.95, which is less than the cost allocation in the Settlement
Agreement. See Declaration of Nordrehaug at ¶ 9.

1 Declaration of Tina Charnett. Lastly, payment to the Administrator in an amount not to
2 exceed \$7,500 to perform the administrative duties to distribute the settlement money shall
3 also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)
4

5 **V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE**
6 **SETTLEMENT OF THE PAGA CLAIM**

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

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

13 The Parties believe that the PAGA Settlement amount is fair and reasonable and
14 therefore "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount of
15 \$473,700 is more than other PAGA settlements as it constitutes approximately \$34 per pay
16 period. (Declaration of Nordrehaug, at ¶6.)

17 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
18 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
19 statutory PAGA civil penalties was potentially \$1,382,000 based on 13,820 pay periods
20 applicable to the Aggrieved Employees during the PAGA Period.⁹ (Declaration of
21 Nordrehaug, at ¶6.) Importantly, however, these calculations were performed at the
22 maximum statutory rate for the penalties, when in fact, it is likely that any penalties awarded
23 would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to
24 award a lesser amount than the maximum civil penalty if based on the facts and
25

26 ⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct.
27 The valuation of \$1,382,000 is the civil penalty amount without stacking. If stacking is permitted,
28 then 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 circumstances to do otherwise would result in an award that is "unjust, arbitrary and
2 oppressive or confiscatory."

3 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
4 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay
5 period. Therefore, at trial, any PAGA penalties awarded could be significantly less than
6 Plaintiff's calculation even where Plaintiff prevailed on the PAGA claim. If the amount of \$5
7 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties
8 would be only \$69,100, which is far less than this settlement provides.

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

18 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove
19 each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*,
20 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of
21 PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven
22 suffered a violation of the Labor Code by the defendant."). Here, Plaintiff would need to
23 prove that each Aggrieved Employee suffered a violation for each period the employee
24 worked in relation to meal or rest period violations, failure to pay minimum wages, failure to
25 pay overtime wages, failure to provide accurate itemized wage statements, failure to provide
26 wages when due and failure to reimburse employees for required expenses.

27 Defendants maintain that Plaintiff and the Aggrieved Employees were properly
28 compensated, and that they did not violate the Labor Code. Accordingly, Defendants dispute

1 and deny Plaintiff's allegations and claims asserted in both the PAGA Notice and the
2 Operative Complaint, which are resolved by the Agreement. Defendants asserted additional
3 defenses to the PAGA claim, not only as to liability but also as to the amount of the
4 penalties. Defendants could argue that no penalties prior to the PAGA notification should be
5 awarded because the violations were not intentional, and at least one Court has so ruled.
6 These defenses present a risk to the PAGA claims and the potential that some or all of the
7 PAGA penalties sought may not be awarded. (Declaration of Nordrehaug, at ¶7.)

8 Given Defendants' potential defenses to the violations at issue, the risks and costs of
9 continued litigation, Plaintiff and her attorneys believe that the PAGA Settlement is fair and
10 reasonable. (Declaration of Nordrehaug, at ¶7.) Defendants have similarly concluded that it
11 is desirable that the action is settled in the manner and upon the terms and conditions set
12 forth in the Agreement in order to avoid further expense, inconvenience and distraction of
13 further legal proceedings, as well as the uncertainty of litigation. Defendants have
14 determined that it is desirable and beneficial to put to rest the claims in this action and
15 Defendants agree that the PAGA Settlement is fair, reasonable, and adequate.

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

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

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

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

9
10 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

11 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the
12 amount of \$157,898 representing one-third of the \$473,700 Gross PAGA Settlement
13 Amount. PAGA does not have any requirements for reviewing attorneys' fees, and
14 Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a
15 matter of contract for contingent representation. Nevertheless, should this Court review the
16 requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

17 First, the requested fees are justified by the result achieved. PAGA Counsel
18 negotiated a recovery of \$473,700.00, and this result justifies the requested fees equal to one
19 third of this recovery. This percentage is within the standard contingent recovery percentage
20 of one-third, and this percentage is what was expressly approved by the Supreme Court in
21 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt.,*
22 *LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that ““fee awards in class actions
23 average around one-third of the recovery”” regardless of ““whether the percentage method or
24 the lodestar method is used.”” (*quoting Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11
25 (2008))).

26 Second, the fee award is justified by the work performed and contributions to the
27 case. As detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award
28 represents PAGA Counsel's current lodestar of \$132,667.50 with a reasonable multiplier of

1 less than 1.2, with significant additional work to be performed such that the multiplier will
2 ultimately be closer to 1.1.

3 Generally, the Ninth Circuit and California Courts award positive multipliers between
4 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation
5 or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award
6 with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182
7 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
8 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254
9 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa*
10 *Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund,
11 which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at
12 *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar);
13 *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal.
14 Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the
15 "majority" range for risk multipliers).

16 Third, consideration of the enhancement factors justifies the enhancement of the
17 lodestar. Courts multiply the lodestar by a factor to account for the risk of non-payment,
18 delay in payment, the quality of work, and the novelty and difficulty of the issues involved.
19 See *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in
20 cases that meet these criteria is an abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157,
21 1166 (9th Cir. 2016). Here, where there is little enhancement of the lodestar, the requested
22 fee amount is undoubtedly reasonable.

23 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation
24 expenses in the total amount of \$17,917.95 which is less than the \$18,000 allocation for costs
25 in the Agreement, so the difference of \$17,917.95 will be added to the PAGA Payment
26 amount. These expenses are documented in the accompanying Declaration of Nordrehaug at
27 ¶9.

1 **VII. CONCLUSION**

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

5 Dated: February 7, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

7 By: /s/ Kyle Nordrehaug
8 Kyle Nordrehaug
9 Attorney for Plaintiff
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