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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO**

JONATHAN TEJEDA, on behalf of the State
of California, as a private attorney general,

Plaintiff,

vs.

SACRAMENTO BEHAVIORAL
HEALTHCARE HOSPITAL, LLC, a
California Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 34-2022-00332060-CU-OE-GDS

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

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

Hearing Date: March 28, 2025
Hearing Time: 9:00 a.m.
Reservation # **A-332060-001**

Judge: Hon. Hon. Jill H. Talley
Dept.: 23

Action Filed: December 28, 2022
Trial Date: Not Set

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

2 YOU ARE HEREBY NOTIFIED THAT at 9:00 a.m. on March 28, 2025, or as soon thereafter
3 as the matter can be heard, in Department 23 of the above entitled Court before the Honorable Jill H.
4 Talley, Plaintiff Jonathan Tejada (“Plaintiff”) will and hereby does move for an order approving the
5 settlement of the PAGA claim alleged against Defendant Sacramento Behavioral Healthcare Hospital,
6 LLC (“Defendant”) in accordance with Labor Code §2699(l). The proposed settlement is set forth in
7 the accompanying PAGA Settlement Agreement (“Agreement”).

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

12 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
13 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative ruling may be
14 downloaded off the court's website. If the party does not have online access, they may call the
15 dedicated phone number for the department as referenced in the local telephone directory between the
16 hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling.
17 If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no
18 hearing will be held.

19 Respectfully submitted,

20 Dated: March 4, 2025

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

22 By: /s/ Kyle Nordrehaug
23 Kyle R. Nordrehaug

24 Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jonathan Tejada (“Plaintiff”) reached a settlement of the California Private Attorneys
4 General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this action against Defendant
5 Sacramento Behavioral Healthcare Hospital, LLC (“Defendant”) (collectively, the “Parties”) which
6 provides for a “Gross PAGA Settlement Amount” payment in the amount of \$730,000.00. Because
7 the final figure of PAGA Pay Periods is 15,601, under the escalator provision in paragraph 8 of the
8 PAGA Settlement Agreement (“Agreement”), Defendant has agreed to pay the additional 13.5%
9 amount, which is an additional \$98,550. As a result, the final Gross PAGA Settlement Amount is
10 \$828,550.

11 In accordance with California Labor Code §2699(l), Plaintiff now asks this Court to review
12 and approve the settlement of Plaintiff’s PAGA claims.¹ This is only a settlement of the PAGA claims
13 for civil penalties and is not a class settlement and does not release the individual wage claims, if any,
14 of the affected employees other than the Plaintiff himself. Cal. Labor Code § 2699(g)(1); *Iskanian v.*
15 *CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182
16 (2019) (unpaid wages are not recoverable under PAGA).

17 The PAGA settlement is set forth in the Agreement and the form used for Agreement is based
18 on the Los Angeles Superior Court’s model form. A true and correct copy of the Agreement which
19 sets forth the terms for the settlement of the PAGA claims is attached as Exhibit #1 to the Declaration
20 of Kyle Nordrehaug, filed herewith. Capitalized terms shall have the same meaning as defined in the
21 Agreement. The attestation of counsel as to the Sacramento Checklist along with the items therein are
22 addressed in the Declaration of Kyle Nordrehaug at ¶ 2(A). The LWDA received notice of this
23 Settlement, and this motion as set forth in the accompanying proof of service.

24 A proposed order confirming review and approval of the PAGA settlement is submitted
25 herewith.

26
27 ¹ Labor Code Section 2699(1)(2) provides as follows: “The superior court shall review and approve
28 any settlement of any civil action pursuant to this part.” Because this Action was filed before June
2024, the 75/25 allocation is based upon the older enactment of Section 2699.

II. RELEVANT FACTS

PAGA Counsel mailed the necessary correspondence to the California Labor and Workforce Development Agency (“LWDA”) on October 14, 2022, on behalf of Plaintiff, 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 December 18, 2022. On December 28, 2022, Plaintiff filed a Representative Action Complaint in this Court against Defendant Sacramento Behavioral Healthcare Hospital, LLC alleging a single cause of action for recovery of civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

Plaintiff and Defendant agreed to mediate with Hon. Carl J. West (Ret.). Prior to the mediation, the Parties conducted significant investigation and informal discovery of the facts and law. Defendant produced hundreds of 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 equitable basis. (Declaration of Kyle Nordrehaug, at ¶3).

Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendant is liable for miscalculating overtime and sick pay as a result of not including certain remunerations into the regular rate. For example, the following additional remunerations were not fully incorporated into the regular rate for the purpose of paying the correct overtime: Bonus (1,806 payments, \$706,111), Retention COVID-19 (148 payments, \$142,250), REG Night - NOC (2,797 payments, \$173,494), REG Eve - PM (6,543 payments, \$148,675), REG Wknd - Night - NOC (1,776 payments, \$99,229), REG Wknd - Day (3,837 payments, \$89,878), REG Wknd - Eve (4,285 payments, \$84,515), Trainer Diff (549 payments, 17,200), Supervisor (96 payments, \$9,439), OT Eve - PM (1,862 payments, \$19,219), OT Wknd - Eve (1,353 payments, \$16,397), OT Wknd - Night - NOC (708 payments, \$11,028), OT Night

1 - NOC (727 payments, \$7,913), OT Wknd - Day (1,219 payments, \$6,443), DBL - Eve - PM (2,871
2 payments, \$8,167), DBL Wknd - Eve (1,757 payments, \$7,302), DBL Night - NOC (1,393 payments,
3 \$2,248), DBL Wknd - NOC (726 payments, \$1,670), DBL Wknd - Day (52 payments, \$71). Plaintiff's
4 expert determined that 59.8% of Aggrieved Employees and 22% of pay periods had overtime and
5 additional remunerations earned or had weighted average rate issues. Plaintiff alleged there was also
6 unpaid sick pay due from not including the above remunerations in the regular rate and from weighted
7 averages. There were sick and meal premium underpayments due from the bonuses and weighted
8 averages. Plaintiff's expert determined that (1) 41.7% of Aggrieved Employees and 5.4% of pay
9 periods have unpaid sick pay due to regular rate and (2) 47.1% of employees and 13% of pay periods
10 have unpaid meal premiums due to regular rate. Moreover, Plaintiff alleged he was required to work
11 off the clock. For example, Plaintiff and the Aggrieved Employees were always subjected to
12 cancellations or modifications. Defendant, however, never paid any reporting time premiums for
13 sessions that were called off. Defendant also allowed Aggrieved Employees to be subjected to a
14 deluge of off-the-clock calls and text messages. Plaintiff was never paid a premium for on duty rest
15 breaks. Plaintiff alleges Defendant was never obviated of the duty to *record all* the On Duty Meal
16 Periods that occurred. The failure to maintain these records means that even on duty meal periods did
17 not occur and, as a result, Defendant's wage statements are also inaccurate. The time punch records
18 reflect a meal break violation rate assuming waiver of 44.1% of shifts greater than 6 hours (24,487
19 unique violations out of 55,530 shifts greater than 6 hours). The pay data reflects meal break premiums
20 paid for 4,538 instances, therefore roughly 18.5% of facial violations have had a premium paid. The
21 24,487 unique meal break violations include 16,942 late (after 5th hour), 2,045 missed (for shifts
22 greater than 6 hours), 758 short (under 30 minutes), and 11,978 missed 2nd meal breaks (for shifts
23 greater than 12 hours). 52.9% of recorded meals are exactly 30 minutes long, which are not included
24 as violations. PAGA penalties for L.C. 512 / 226.7 are calculated at \$100 for each violation with 56.8%
25 of pay periods in the PAGA period exhibiting at least one meal break violation after meal premium
26 offsets. Plaintiff's meal violation rate assuming waiver is 52.5%. There are 32 total violations,
27 including 2 late first meals, 2 missed first meals, 3 short first meals, and 30 missed second meals.
28 84.7% of Plaintiff's meals are exactly 30 minutes long, which are not included as violations. Plaintiff's

1 pay data reflects 1 meal premium paid (1.6% of the violations). (Declaration of Kyle Nordrehaug, at
2 ¶3). Defendant maintained that it always complied with applicable wage and hour regulations.
3 Specifically, Defendant argued that its policies, documents, and expert analysis supported a conclusion
4 that the calculation of the regular rate and weighted averages accounted for all applicable remuneration
5 consistent with applicable law.

6 On October 14, 2022, the Parties engaged in an all-day mediation session before Mediator
7 Hon. Carl J. West (Ret.), a respected and experienced mediator knowledgeable of both the wage and
8 hour laws and representative claims at issue in this action. Through arms-length negotiations with the
9 assistance of the mediator, the Parties reached an agreement to settle the PAGA claims in this action
10 which led to the signing of a Memorandum of Understanding memorializing the settlement.²
11 (Declaration of Kyle Nordrehaug, at ¶3).

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

18 19 **III. TERMS OF THE PAGA SETTLEMENT**

20 The PAGA settlement is subject to Court approval consistent with Labor Code §2699(1)(2).
21 (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a “Gross PAGA
22 Settlement Amount” payment in the amount of \$730,000 to resolve the Released PAGA Claims, which
23 is increased by \$98,550 as a result of the Escalator, to the final amount of \$828,550 (hereinafter
24

25 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
26 Plaintiff’s individual claims pursuant to a separate confidential Individual Settlement Agreement
27 (“Individual Settlement”) (Agreement at ¶ 2.2). The individual claims were not at issue in this action
28 and exist independent and apart from the PAGA claims at issue before the Court. *See Kim v. Reins*
Int’l Cal., Inc., 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does not strip an
Aggrieved Employee of standing, as the state’s authorized representative, to pursue PAGA remedies”
nor resolve the PAGA claims.).

1 referred to as the “PAGA Settlement”). From this PAGA Settlement of \$828,550, there is a deduction
2 of attorneys’ fees (“PAGA Counsel Fees Payment”) in the amount of \$276,183 (which is one-third of
3 the PAGA Settlement), reimbursement of incurred costs (“PAGA Counsel Litigation Expenses
4 Payment”) in an amount not to exceed \$30,000, and the expense of settlement administration
5 (“Administration Expenses Payment”) not to exceed \$6,500. (Agreement at ¶¶ 3.2.1-3.2.3).³ After
6 these deductions, the amount remaining is the “PAGA Payment”, which is estimated to be no less than
7 \$515,867.

8 Of the PAGA Payment amount, seventy-five percent (75%) (no less than \$386,900.25) will be
9 paid to the LWDA and the remaining twenty-five percent (25%) (no less than \$128,966.75) will be
10 paid to the Aggrieved Employees.⁴ The 25% payable to the Aggrieved Employees results in an
11 average recovery of \$181.64 per individual and \$8.26 per pay period. This 75/25 allocation is required
12 by Labor Code §2699 (as it was in effect prior to June 2024) as explained by *ZB, N.A. v. Superior*
13 *Court*, 8 Cal.5th 175 (2019).

14 The Individual PAGA Payment for each Aggrieved Employee is based on the number of pay
15 periods each Aggrieved Employee worked during the PAGA Period.⁵ The PAGA Period is the time
16 period from October 14, 2021 through October 13, 2024. (Agreement at ¶ 1.23). For the final figures,
17 Defendant represented that there are approximately 710 Aggrieved Employees who collectively
18 worked approximately 15,601 pay periods during the PAGA Period.

19 Effective on the date when Defendant fully funds the entire Gross PAGA Settlement Amount,
20 the Released Parties shall be entitled to a release from all members of the Aggrieved Employees of
21

22 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
23 Payment less than the amounts requested, the Administrator will allocate the remainder of these
24 amounts to the PAGA Payment. (Agreement at ¶ 3.2.1). To the extent the Administration Expenses
25 are less, or the Court approves payment less than \$6,500, the Administrator will allocate the remainder
of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

26 ⁴ “Aggrieved Employees” are all individuals who are or were employed by Defendant in California
and classified as a non-exempt employee at any time during the PAGA Period. (Agreement at ¶¶ 1.4).

27 ⁵ See Agreement at ¶ 3.2.3 (“The Administrator will calculate each Individual PAGA Payment by (a)
28 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 the “Released PAGA Claims”, which means all claims for PAGA penalties that were alleged, or
2 reasonably could have been alleged, based on the facts stated in the Operative Complaint, and the
3 PAGA Notice submitted by Plaintiff to the LWDA, which occurred during the PAGA Period. The
4 Released PAGA Claims expressly excludes all other claims, including Plaintiff’s Individual
5 Settlement Payment which is subject to a separate release, claims for vested benefits, wrongful
6 termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability,
7 social security, workers’ compensation, and California class claims, and PAGA claims outside of the
8 PAGA period. (Agreement at ¶5.2).

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

17 Pursuant to California Labor Code Section 2699(1), Plaintiff served a copy of the Agreement
18 and this motion to the LWDA concurrently with the filing of the instant motion for settlement approval
19 as set forth in the accompanying proof of service in compliance with Labor Code section 2699(1). In
20 addition, Plaintiff shall submit to the LWDA a copy of the Court’s judgment and order approving the
21 Agreement within ten (10) days after entry of judgment or order.

22 23 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

24 The claim before this Court is solely the representative claim under PAGA on behalf of the
25 State of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this
26 PAGA claim in its entirety after investigation and an arm’s length mediation session. (Declaration of
27 Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and finally resolve the Released PAGA
28 Claims asserted by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA

1 claims for civil penalties and is not a class settlement and does not release the individual claims, if
2 any, of the Aggrieved Employees, other than any claims under PAGA. This settlement does not release
3 any claim that is not a PAGA claim.⁶ PAGA Counsel Fees equal to one-third of the Gross PAGA
4 Settlement amount (\$276,183), and PAGA Counsel Litigation Expenses in an amount not to exceed
5 \$30,000 will also be paid to PAGA Counsel as part of the settlement in accordance with California
6 Labor Code § 2699(g)(1), as set forth in the Agreement.⁷ Lastly, payment to the Administrator in an
7 amount not to exceed \$6,500 to perform the administrative duties to distribute the settlement money
8 shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)

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

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

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

18 The Parties believe that the PAGA Settlement amount is fair and reasonable and therefore
19 "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount of \$828,550 is more
20 than other PAGA settlements as it constitutes approximately \$53 per pay period. (Declaration of
21 Nordrehaug, at ¶6.)

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 statutory
24 PAGA civil penalties was potentially \$1,250,000 based on 12,500 pay periods applicable at

25
26 ⁶ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: “Nonparty employees are bound
by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties.”

27 ⁷ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
28 in the current amount of \$22,723.62, which is less than the cost allocation in the Agreement. See
Declaration of Nordrehaug at ¶ 9.

1 mediation.⁸ As a result of the increase in PAGA Pay Periods in the final figures to 15,601 for which
2 Defendant is pay the additional \$98,550, the revised maximum amount of statutory PAGA civil
3 penalties was potentially \$1,560,100. As a result, the Gross PAGA Settlement Amount compares
4 favorably to this potential maximum recovery. (Declaration of Nordrehaug, at ¶6.) Importantly,
5 however, these calculations were performed at the maximum statutory rate for the penalties, when in
6 fact, it is likely that any penalties awarded would be at a lower rate. California Labor Code Section
7 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if based on the
8 facts and circumstances to do otherwise would result in an award that is “unjust, arbitrary and
9 oppressive or confiscatory.”

10 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed
11 a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at
12 trial, any PAGA penalties awarded could be significantly less than Plaintiff’s calculation even where
13 Plaintiff prevailed on the PAGA claim. If the amount of \$5 per pay period from *Carrington v.*
14 *Starbucks* is used, the potential recovery of civil penalties would be only \$78,005, which is far less
15 than this settlement provides. (Declaration of Nordrehaug, at ¶6.)

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

25
26 ⁸ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The
27 valuation of \$1,250,000 is the civil penalty amount without stacking. If stacking is permitted, then the
28 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 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of
2 the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
3 LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot
4 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
5 Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered
6 a violation for each period the employee worked in relation to meal or rest period violations, failure
7 to pay minimum wages, failure to pay overtime and sick pay wages, failure to provide accurate
8 itemized wage statements, failure to reimburse employees for required expenses, and failure to pay
9 wages when due.

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

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

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

length with the assistance of a private mediator, Hon. Carl J. West (Ret.). (Declaration of Nordrehaug, at ¶7.)

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

B. The Remaining Settlement Terms Are Fair And Reasonable

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

VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE

PAGA Counsel seeks approval of attorneys' fees from the PAGA settlement in the amount of \$276,183 representing one-third of the \$828,550 Gross PAGA Settlement Amount. PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a matter of contract for contingent representation. Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

First, the requested fees are justified by the result achieved. PAGA Counsel negotiated a recovery of \$828,550.00, and this result justifies the requested fees equal to one third of this recovery. This percentage is within the standard contingent recovery percentage of one-third, and this percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th

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

5 Second, the fee award is justified by the work performed and contributions to the case. As
6 detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award represents PAGA
7 Counsel’s current lodestar of \$141,300.00 with a reasonable multiplier of less than 2, with significant
8 additional work to be performed such that the multiplier will ultimately be even less.⁹

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

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

26
27
28 ⁹ 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 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses in the
2 total amount of \$22,723.62 which is less than the \$30,000 allocation for costs in the Agreement, so
3 the difference of \$7,276.38 will be added to the PAGA Payment amount. These expenses are
4 documented in the accompanying Declaration of Nordrehaug at ¶9.

5
6 **VII. CONCLUSION**

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

9 Dated: March 4, 2025

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

11 By: /s/ Kyle Nordrehaug
12 Kyle Nordrehaug
13 Attorney for Plaintiff
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