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8
9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

12 **HELENA VISSING**, individually and on behalf
13 of all others similarly situated,

14 Plaintiff,

15 vs.

16 **COALITION FOR THE COMMON GOOD**,
17 an Ohio Non-profit Corporation,

18 Defendant.

CASE NO. 23STCV07770

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL
OF PAGA SETTLEMENT PURSUANT TO
LABOR CODE § 2699(l)**

Date: March 21, 2025

Time: 9:00 a.m.

Dept.: N

Judge: Hon. Lisa K. Sepe-Wiesenfeld

Reservation No: 153891365845

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1 **I. INTRODUCTION**

2 Plaintiff Helena Vissing (“Plaintiff”) hereby seeks approval of a non-reversionary \$250,000
3 Private Attorneys General Act (“PAGA”) settlement reached in this action with Defendant Coalition for
4 the Common Good dba Antioch University (“Defendant” or “Antioch”). The settlement resolves only
5 representative PAGA claims on behalf of approximately 306 adjunct professors employed by Antioch in
6 California (“Adjunct Aggrieved Employees” or “Adjunct AEs”) for unpaid wages and related claims,
7 including but not limited to claims under California Labor Code sections 201- 204, 226(a), 226.2, 226.3,
8 226.7, 515(a), 1194, 2699, and 2802, arising during the PAGA Period (January 30, 2022 through the date
9 the Court grants approval of the Settlement)¹ and on behalf of approximately 184 other employees
10 employed by Antioch in California during the PAGA Period (“Reimbursement Aggrieved Employees” or
11 “Reimbursement AEs”) for failure to reimburse business expenses in violation of Labor Code § 2802.
12 Decl. of Julian Hammond ISO Mot. for Approval of PAGA Settlement (“Hammond Decl.”), filed
13 herewith, at ¶¶ 2-4. A copy of the Settlement Agreement (“SA”) is attached as **Exhibit 1** to the Declaration
14 of Julian Hammond in Support of Plaintiff’s Motion for Approval of PAGA Settlement (“Hammond
15 Decl.”), filed herewith.

16 Approximately \$134,875.59 (fees and costs) is allocated to PAGA civil penalties, 75% will be paid
17 to the LWDA and 25% will be paid to the AEs as their share of the PAGA penalties. Hammond Decl. ¶
18 40. Of the 25% that will be paid to the AEs, 75% will be allocated to the claims of Adjunct AEs and 25%
19 will be allocated to the claims of Reimbursement AEs, which sums will be distributed *pro rata* based on
20 the number of pay periods worked by each AE during the PAGA Period. *See* Lab. Code § 2699(i); SA §
21 3.2. The average net payment per Adjunct AE is estimated at \$82.64 net and per Reimbursement AE is
22 estimated at \$45.81 net. Hammond Decl. ¶ 41. These are excellent results when considering that Adjunct
23 AEs and Reimbursement AEs are only releasing PAGA claims and not their underlying Labor Code claims
24 in this settlement. *See* SA §§ 5.1, 5.2.

25 As demonstrated below and in the accompanying Hammond Decl., the proposed Settlement is fair,
26

27 ¹ The Settlement Agreement allows Defendant to elect to cut off the PAGA period (and the date of the
28 release) on a date earlier than the date the Court grants approval of the Settlement to avoid the triggering
of the escalator clause. *See* SA §§ 1.14, 3.1, 3.5.

reasonable and adequate and warrants the Court's approval. Accordingly, Plaintiff requests that the Court (1) approve the proposed settlement, including the plan for allocation and distribution of settlement funds to AEs and to the LWDA, and (2) approve the requested attorneys' fees and costs, in full.

II. BACKGROUND

A. Brief Factual and Procedural History

Defendant Coalition for the Common Good dba Antioch University is private, non-profit university system with campuses in Los Angeles, Santa Barbara, Seattle and New Hampshire and online programs. In 2023, Antioch University became affiliated with Otterbein University, under a new name of Coalition for the Common Good but continued to operate as a separate university. During the PAGA Period, Antioch employed approximately 306 adjunct professors in California to deliver course instruction and approximately 184 other employees in various positions to support the university operations. Hammond Decl. ¶¶ 5-6.

On January 30, 2023, Plaintiff Vissing submitted her PAGA Notice to the LWDA and Defendant alleging that Defendant misclassified its adjunct professors because it classified them as exempt under Labor Code § 515.7 even though that statute does not apply to employers (like Defendant) who were incorporated outside of California.² Plaintiff alleges that as a result of misclassifying its adjunct professors as exempt, Defendant (1) failed to pay wages for all hours worked in violation of Labor Code § 1194, (2) failed to provide paid rest breaks in violation of Labor Code § 226.7, (3) failed to issue accurate itemized wage statements in violation of Labor Code § 226(a), (4) failed to pay wages timely before the 26th of every month in violation of Labor Code § 204, (5) failed to pay wages due at the time of discharge in violation of Labor Code §§ 201-203. Plaintiff also alleges that Defendant required and/or expected employees to work remotely from home yet failed to reimburse business expenses in violation of Labor Code § 2802. Hammond Decl. ¶¶ 8-11. On April 10, 2023, after exhausting administrative requirements,

² At the time Plaintiff filed her Complaint Labor Code § 515(a) provided that the statute applies to "an independent institution of higher education, as defined in subdivision (b) of Section 66010 of the Education Code." Section 66010 of the Education Code defines an independent institution higher education as "nonpublic higher education institutions . . . that are formed as nonprofit corporations in this state" On July 18, 2024, Section 515.7 was amended by, *inter alia*, to remove the reference to Section 66010 of the Education Code. (AB-3105, Chaptered July 18, 2024, amending Lab. Code § 515.7). The amendment is effective January 2025.

1 Plaintiff filed her Complaint alleging a single cause of action for PAGA penalties based on the violations
2 alleged in her PAGA Notice. *Id.* ¶ 12.

3 After learning that Antioch University was renamed Coalition for the Common Good, Plaintiff
4 sent an amended PAGA Notice and subsequently filed a First Amended Complaint naming Coalition for
5 the Common Good as the defendant. *Id.* ¶ 15.

6 **B. Mediation and Pre-Mediation Investigation and Discovery**

7 The parties attended mediation on June 20, 2024. Hammond Decl. ¶ 20. Prior to the mediation,
8 Plaintiff conducted both formal and informal discovery and was sufficiently informed to engage in
9 settlement negotiations. *Id.* ¶¶ 17-19. As part of this discovery, Defendant provided the number of Adjunct
10 AEs and the number of Reimbursement AEs that were employed during the PAGA Period, as well as the
11 number of pay periods they worked during that PAGA Period. Defendant also produced over 800 pages
12 of documents including its Collective Bargaining Agreement (“CBA”) that went into effect on August 1,
13 2023; charts showing its corporate structure; Adjunct AEs’ sample appointment letters and wage
14 statements; Handbooks and policies applicable to Adjunct AEs; samples of course syllabi; course
15 schedules; and expense reimbursement policies and communications sent out to employees regarding
16 remote work from home. *Id.* ¶ 18.

17 Prior to mediation, Plaintiff submitted a detailed mediation brief that included Plaintiff’s Counsel’s
18 assessment of the case. *Id.* ¶ 19. Following a full-day mediation with experienced mediator Lisa Klerman,
19 the parties reached a settlement that is presented now for the Court approval. *Id.* ¶¶ 20, 25.

20 **C. Terms of the Proposed PAGA Settlement**

21 The Settlement resolves all claims for PAGA penalties of Plaintiff, the LWDA, and Adjunct AEs
22 and Reimbursement AEs against Defendant asserted in the PAGA Notice and in the First Amended
23 Complaint. A summary of the Settlement terms are as follows:

24 a. Gross Settlement Amount (“GSA”) – Defendant will pay a non-reversionary sum of
25 \$250,000 to settle the PAGA claims. SA § 1.12.

26 b. Aggrieved Employees and PAGA Period – “Adjunct Aggrieved Employees” are all
27 persons who were employed by Defendant in California as adjunct professors at any time during the
28 PAGA Period. SA § 1.5. “Reimbursement Aggrieved Employees” are all persons, other than Adjunct

1 AEs, who were employed by Defendant in California during the PAGA Period. SA § 1.6. The “PAGA
2 Period” is defined as January 20, 2022 through to the date the Court grants approval of the Settlement (or
3 an earlier date, if Defendant exercises its right to cut off the PAGA Period at an earlier date, pursuant to
4 the escalator clause). SA § 1.14, 3.5.

5 c. Attorneys’ Fees and Costs – as explained in detail below, Plaintiff’s counsel seek
6 attorneys’ fees of up to \$100,000 (40% of the GSA), and reimbursement of litigation costs of \$2,624.41.
7 See SA §§ 1.6, 1.17, 3.2; Hammond Decl. ¶ 70.

8 d. Settlement Administration – costs are capped at \$5,000. SA § 3.2.3. The Parties have
9 mutually agreed to Simpluris, Inc. as the Settlement Administrator. SA §§ 1.20, 7.1. Within 7 calendar
10 days of the Effective Date, Defendant will provide Simpluris with an Aggrieved Employee list. SA § 4.1.
11 Simpluris will update the addresses for the AEs using industry-standard mailing address databases,
12 including the National Change of Address. SA § 4.4. The Settlement Administrator will mail the Notice
13 of PAGA Settlement and the Individual PAGA Payments by First-Class U.S. Mail to the last known
14 address of each AE. SA § 4.5. In the event a mailing is returned as undeliverable, the Settlement
15 Administrator will remail the Notice to the forwarding address provided or, if no forwarding address is
16 provided, to the address, if any, determined through standard skip trace or a manual “in-depth skip trace”
17 if no new information is ascertained by a standard skip trace. SA § 4.6.

18 e. Net Settlement Amount and Calculation of Settlement Shares – the Net Settlement
19 Amount (“NSA”) is the portion of the GSA distributed to Adjunct AEs and Reimbursement AEs after
20 deducting the 75% PAGA Payment to the California Labor & Work Development Agency, Court-
21 approved attorneys’ fees, litigation costs, Plaintiff’s service award, and administration costs. SA § 1.13.
22 The NSA is estimated to be \$134,875.59. Hammond Decl. ¶ 39. The NSA will be allocated 75% to the
23 Adjunct AEs and 25% to the Reimbursement AEs, and will be distributed on a pro rata basis among the
24 individual Adjunct AEs and Reimbursement AEs based on the number of pay periods worked during the
25 PAGA Period. SA §§ 1.18, 3.3.

26 f. Tax Consequences of Settlement Payments – 100% of the payments distributed to the AEs
27 will be deemed civil penalties and reported on IRS 1099 form. SA § 3.4.

28 g. Distribution of Uncashed Checks – AEs will have 180 calendar days after mailing by

1 Simpluris of the settlement share to cash their checks. SA § 4.5. Any check that is not cashed within
2 180 calendar days will be transferred to the designated *cy pres*, Bet Tzedek, subject to Court approval.
3 *Id.* ¶ 4.7.

4 h. Scope of Release – Plaintiff, in her capacity as a private attorney general, will, on behalf of
5 the State of California and the AEs, release any and all claims for PAGA penalties arising during the
6 PAGA Period asserted in the Action or that could have been asserted in the Action under PAGA based on
7 the facts alleged, including for Defendant’s violation of California Labor Code §§ 201-204, 226(a), 226.2,
8 226.3, 226.7, 515(a), 1194, 2699, and 2802, and applicable wage orders. SA §§ 5.1-5.2.

9 **III. THE SETTLEMENT IS FAIR AND REASONABLE AND SHOULD BE APPROVED**

10 The proposed Settlement Agreement is fair, reasonable and adequate, as it provides for a
11 meaningful recovery for the Adjunct AEs and Reimbursement AEs and the LWDA for the release of
12 PAGA penalties. The amount of the PAGA Settlement is reasonable in light of the potential recovery and
13 the risks of non-recovery. Below, Plaintiff summarizes the potential PAGA exposure on each claim, the
14 discount she has considered to account for the risks faced, and why Plaintiff’s counsel’s view the
15 settlement as reasonable.

16 **A. The Settlement is a Reasonable Compromise of PAGA Claims**

17 “The superior court shall review and approve any penalties sought as part of a proposed PAGA
18 Settlement pursuant to this part.” Cal. Lab. Code § 2699(*l*). Although PAGA settlements need not satisfy
19 the requirements of a class action settlement, PAGA plaintiffs do “take on a special responsibility to their
20 fellow aggrieved workers who are effectively bound by any judgment,” and an analysis of the *Kullar*
21 factors applicable to class action settlements is appropriate. *O’Connor v. Uber Techs., Inc.*, 201 F. Supp.
22 3d 1110, 1134 (N.D. Cal. 2016); *Arias v. Superior Court*, 46 Cal. 4th 969, 984 (2009) (rejecting the
23 argument that PAGA settlement violates the due process rights of “nonparty aggrieved employees who
24 are not given notice of, and an opportunity to be heard in, a representative action that is not brought as a
25 class action”).

26 The *Kullar* factors include: (1) the strength of plaintiffs’ case balanced against the settlement
27 amount; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the extent of
28 discovery completed and stage of proceedings; and (4) the experience and views of counsel. *Kullar v.*

1 *Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008). A fifth *Kullar* factor, the reaction of the
2 Class Members, is not relevant in a PAGA settlement because notice to the AEs is not required, nor
3 contemplated by the PAGA statute. *See* Lab. Code § 2699(l)(2) (requiring notice to the LWDA, giving it
4 an opportunity to object); *see also Ochoa-Hernandez v. Cjaders Foods, Inc.*, 2010 U.S. Dist. LEXIS
5 32774, *13 (N.D. Cal. April 2, 2010) (“Unnamed employees need not be given notice of the PAGA claim,
6 nor do they have the ability to ‘opt-out’ or ‘contest a settlement.’”). The real party in interest in a PAGA
7 claim is not the AEs, but the State. *See Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th
8 348, 382 (2014) (“A PAGA representative action is [] a type of qui tam action . . . The government entity
9 . . . is always the real party in interest in the suit.”); *Arias*, 46 Cal. 4th at 986 (“An employee plaintiff suing
10 [under PAGA] does so as the proxy or agent of the state’s labor law enforcement agencies.”). That is why
11 the State is the party with a right to notice and the opportunity to object.

12 The first *Kullar* factor – the strength of Plaintiff’s case – is the most important. *Kullar*, 168 Cal.
13 App. 4th at 130. The maximum total exposure for PAGA civil penalties for violation of the Labor Code
14 provisions enumerated in the paragraph above were calculated as follows. When the violated Section does
15 not specifically provide a “civil penalty,” an employee may recover \$100 for each aggrieved employee
16 per pay period for the initial violation and \$200 for each employee per pay period for each subsequent
17 violation. Lab. Code § 2699(f)(2).³ Although the subsequent violation penalty, according to two California
18 Court of Appeals decisions, only applies if the employer was notified by a state agency or court that it is
19 in violation of the labor code. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008);
20 *Gunther v. Alaska Airlines*, 72 Cal. App. 5th 334, 355-356 (2021). Accordingly, Plaintiff calculated
21 penalties based only on the \$100 initial penalty amount because Defendant could have argued that it was
22 never notified by any agency or court that it committed the violations alleged by the Plaintiff. Hammond
23 Decl. ¶ 26.

24 **B. The Strength of Plaintiff’s Case Balanced Against the Settlement Amount**

25 As set out below, Plaintiff calculated Defendant’s maximum exposure on all claims, for settlement
26 purposes, as \$1,442,525. However, Plaintiff recognizes that is highly unlikely that she would prevail on
27

28 ³ The actual amount of expenses or unpaid wages is immaterial to liability under the PAGA.

every claim and that, even if she did, the Court would award the full measure of PAGA penalties. Hammond Decl. ¶¶ 27-34.

1. Plaintiff Faced Significant Hurdles on the Merits

Although Plaintiff believes she has a strong case, she faced significant hurdles on the merits, and even if she prevailed, the Court would have discretion to reduce any PAGA penalties. *See* Lab. Code § 2699(e)(2) (discretion to reduce penalties if oppressive or unjust).

i. Risk the Court Would Find that Antioch Did Not Misclassify Adjunct AEs

All of Plaintiff's claims, except for claims based on the alleged violation of Labor Code § 2802, rest on the theory that Defendant misclassified its Adjunct AEs as exempt under Labor Code § 515.7. Labor Code § 515.7, enacted on September 8, 2020, allows California-based universities⁴ to treat their adjunct professors as professionally exempt if they are paid the specified per classroom hourly rate set out in Section 515.7(b), without having to comply with the minimum salary test based on a 40-hour workweek set out in Labor Code § 515(a) for the professional exemption. Plaintiff alleged that while Defendant paid its adjunct professors the minimum per classroom hourly rate set out in Section 515.7(b), the statute does not apply to Defendant because it is a university incorporated out-of-state. Hammond Decl. ¶¶ 8-9.

However, on July 18, 2024, the California Legislature passed Assembly Bill 3105, which amended section 515.7 to cover adjunct professors employed at independent institutions of higher education incorporated out-of-state.⁵ Hammond Decl. ¶ 20. The amendment is effective January 1, 2025, and provides that "[t]he changes made by this act do not constitute a change in, but are declaratory of, existing law."⁶ Based on this language, and based on the fact that the change was to a single provision and not an entirely new statutory scheme, Defendant contended that the Court would likely find that the amendment applies retroactively, thereby barring all of Plaintiff's claims except for the claim for unreimbursed expenses under Labor Code § 2802. *Id.* While Plaintiff's Counsel successfully argued in *Gola v. University*

⁴ Labor Code § 515.7 expressly states that its provisions apply to "independent institution of higher education, as defined in subdivision (b) of Section 66010 of the Education Code", which defined such institutes as "those nonpublic higher education institutions...that are formed as nonprofit corporations *in this state*..." (emphasis added).

⁵ At the time the parties attended mediation on June 20, 2024, Assembly Bill 3105 had been pending and was expected to be voted into law.

⁶ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB3105

1 of *San Francisco*, 90 Cal. App. 5th 548 (2023) that section 515.7, enacted on September 8, 2020, did not
2 apply retroactively to acts prior to its enactment, Plaintiff acknowledges that the case may be different
3 where the amendment is to a discrete provision of a statute. *Id.* Accordingly, Plaintiff believed that this
4 risk warranted a significant discount to Defendant's exposure to penalties on all claims (except for the
5 remote work expense claim). *See* Hammond Decl. ¶ 36.

6 **ii. Risk that Labor Code § 515.7 Would be Found to be Unconstitutional**

7 Plaintiff also faced a substantial risk to recovery based on Defendant's contention that Labor Code
8 § 515.7 is unconstitutional and based on a stipulated injunction, entered in federal court, staying all LWDA
9 enforcement actions against Antioch University, as follows. Several months after Plaintiff submitted her
10 PAGA Notice, Defendant filed a complaint against the Attorney General, Rob Bonta, and other state
11 agencies, including the LWDA, in the United States District Court for the Central District of California,
12 alleging that Labor Code § 515.7 was unconstitutional due to its disparate treatment of California-based
13 non-profit and out-of-state non-profit universities operating in California. *Antioch University v. Bonta,*
14 *et al.*, No. 2:23-cv-5341 (C.D. Cal.). On October 26, 2023, Antioch and defendants in that case (including
15 the Attorney General and the LWDA) entered into a stipulated injunction providing that Section 515.7
16 would be treated as applying to non-profit out-of-state institutions and enjoining "all enforcement actions
17 undertaken by the Defendant against the Plaintiffs," which included Plaintiff's instant PAGA Action. Dkt.
18 33; Hammond Decl. ¶¶ 21-22. The United States District Court for the Central District of California then
19 issued an order administratively closing the case and ordering for the stipulated injunction to remain in
20 effect, allowing either side to move to reopen the case if the dispute is not legislatively resolved or for
21 Plaintiff to seek dismissal if the dispute is mooted by legislative action. *See* Dkt. 39. Accordingly,
22 Defendant could have requested that this Court stay the instant case pursuant to the stipulated injunction.
23 If or when the injunction was lifted, Defendant could argue that Section 515.7, as enacted on September
24 8, 2020, is unconstitutional and, in any event, that the July 2024 amendment applies retroactively as if it
25 were enacted as part of the original statute on September 8, 2020.

26 **iii. Other Risks on the Merits**

27 Plaintiff faced the following additional risks on the merits. On August 1, 2023, Adjunct AEs
28 became bound by a Collective Bargaining Agreement, which sets out Adjunct AEs' compensation and

1 contained provisions regarding payment schedule. Hammond Decl. ¶ 23. Defendant contended that
2 Adjunct AEs' claims arising after August 1, 2023 are preempted by § 301 of the Labor Management
3 Relations Act ("LMRA") because the Court would need to interpret the CBA in order to resolve Plaintiff's
4 claim based on unpaid wages. *Id.*; see e.g. *Gola*, 90 Cal. App. 5th at 568-570 (affirming the trial court's
5 finding that claims for unpaid wages and waiting time penalties were preempted under the LMRA because
6 they required interpretation for the CBA to determine whether the compensation under the teaching
7 contracts was meant to cover all work performed and whether adjuncts were discharged from employment
8 at the end of their teaching assignments). In addition, Defendant argued that any claim under Labor Code
9 § 204 was precluded as of August 1, 2023 because the CBA set out payment schedule. Hammond Decl.
10 ¶ 23; See Lab. Code § 204(c) ("[W]hen employees are covered by a collective bargaining agreement that
11 provides different pay arrangements, those arrangements shall apply to the covered employees").

12 Defendant could also raise the following arguments: (1) that Adjunct AEs' contracts, even before
13 August 1, 2023, set out their compensation for all work they needed to carry out in order to successfully
14 complete the teaching of their assigned courses, which included prep time, mandatory trainings, and all
15 grading, and they had no claims for unpaid wages; (2) that very few classes were scheduled to be taught
16 for 3.5 hours and that Adjunct AEs were required to provide students with breaks if classes ran for 3.5
17 hours or longer so could themselves take breaks; (3) that no wages were owed at the time of discharge
18 because Adjunct AEs were properly paid for the work they performed. Hammond Decl. ¶ 24.

19 Finally, with respect to the expense reimbursement claim, Defendant contended that Adjunct AEs
20 and Reimbursement AEs were not required to work remotely during the majority of the PAGA Period
21 and any remote work expenses they incurred were therefore not necessary and not required to be
22 reimbursed pursuant to Section 2802. To support its contention, Defendant pointed to the fact that it
23 reopened its California campuses prior to January 2022 and closed them only briefly between January 17
24 and 30, 2022 when the country experienced a surge of the Omicron variant of COVID-19. *Id.*

25 **2. Discounted Value of Plaintiff's Claims Based on the Merits Risks Compares Very**
26 **Favorably to the Gross Settlement Amount**

27 Plaintiff calculated the maximum exposure to PAGA penalties (based on the initial violation \$100
28

penalty), for settlement purposes, as \$1,442,525.⁷ *Id.* ¶¶ 27-34. Based on the merits' risks discussed above, Plaintiff calculated Defendant's discounted exposure as approximately \$525,478.⁸ *See Id.* ¶¶ 35-38. The Gross Settlement Amount represents approximately 17% of Defendant's maximum exposure and approximately 48% of discounted exposure. This is a very good result. *Id.* ¶¶ 35, 38.

3. Risk of Reduction of Penalties by the Court

Plaintiff faced several additional risks that could have dramatically reduced the recovery even if she prevailed on her claims. *See* Hammond Decl. ¶ 35. First, the Court has broad statutory discretion to reduce the penalties assessed. Cal. Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming reduction of PAGA penalties and emphasizing broad discretion). For example, in *Fleming v. Covidien*, the court calculated the civil penalties for an employer providing 8,000 non-compliant wage statements to be \$2.8 million (\$100 per violation) (*Fleming v. Covidien, Inc.*, 2011 U.S. Dist. Lexis 154590 at *3-4 (C. D. Cal. August 12, 2011), vacated and remanded in part on other grounds, 546 Fed. Appx. 616 (9th Cir. 2013).) Although the court found that the employer had violated Labor Code § 226, it noted that none of the employees suffered any injury because of this non-compliance (and none complained of the issues prior to filing suit.) *Id.* Pursuant to Labor Code § 2699(e)(2), the court reduced PAGA civil penalties from \$2.8 million to \$500,000. *Id.*

In a case tried several years ago, Plaintiff's counsel prevailed on a PAGA claim at trial for a class of adjunct professors, but the Court only awarded 15% of the maximum PAGA penalties. Hammond Decl. ¶ 39. Here, total *stacked* penalties, before any discounts are taken, are approximately \$1,442,525. 15% of that amount is \$216,379, which is 87% of the negotiated settlement amount. Moreover, unlike defendant in the *Gola* case, Defendant here could have argued that it attempted to comply with the Labor Code by paying the per classroom hour set out in Section 515.7. *See Id.* ¶ 8; *see Lusardi Constr. Co. v. Aubry*, 1 Cal. 4th 976, 996-97 (1992) ("[C]ourts refuse to impose civil penalties against a party who acted with a good faith and reasonable belief in the legality of his or her actions.").

⁷ Of the \$1,442,525, \$1,079,873 was the exposure based on claims of Adjunct AEs and \$362,652 was the exposure based on the claims of Reimbursement AEs. Hammond Decl. ¶ 34.

⁸ Of the \$525,478, \$398,550 was the realistic exposure based on the claims of the Adjunct AEs and \$126,928 was the realistic exposure on the claims of the Reimbursement AEs. Hammond Decl. ¶ 38.

Second, the Court might not permit “stacking” of PAGA penalties – *i.e.*, not award more than one PAGA penalty for each employee in each pay period. On the one hand, Labor Code § 2699 implies that a separate civil penalty may be recovered for each violation of the Labor Code. *See* Lab. Code § 2699(f) (stating “*a* civil penalty for *a* violation”) (emphasis added). On the other hand, Labor Code § 2699(g)(1) states that “an aggrieved employee may recover *the* civil penalty described in subsection (f) . . . on behalf of himself or herself and other current or former employees against whom *one or more of the alleged violations* was committed” (emphasis added). Some courts have impliedly allowed stacking of PAGA penalties for jurisdictional purposes. *See, e.g., Schiller v. David’s Bridal, Inc.*, 2010 U.S. Dist. LEXIS 81128, at *27 (E.D. Cal. July 14, 2010) (defendant could aggregate PAGA penalties to establish amount in controversy). Others have denied it. *See, e.g., Castillo v. ADT, LLC*, 2017 U.S. Dist. LEXIS 10579, at *11 (E.D. Cal. Jan. 24, 2017). Even if the Court interpreted the statute to permit stacking, the Court could decline to do so as a matter of discretion.

Thus, even if Plaintiff were to prevail on the merits, there is substantial uncertainty as to the ultimate award for PAGA penalties.

C. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

Plaintiff recognizes that further litigation poses significant risks and would result in significant additional costs and delay including further discovery, motion practice, including on the issue of retroactivity of § 515.7, as amended, the issues presented by the stipulated injunction entered into between Defendant, the Attorney General, the LWDA, and other state agencies, and trial preparation. Hammond Decl. ¶ 42. Such litigation would result in significant additional out-of-pocket expenses and attorneys’ fees and could delay the final outcome by several years and put AEs at a risk of recovering less than the settlement amount, or nothing at all. *Id.* This settlement provides an early and certain resolution of the dispute and ensures that AEs obtain meaningful recovery on their PAGA claims. *Id.* ¶ 43.

D. The Extent of Discovery Completed and Stage of Proceedings

As discussed above, Plaintiff obtained documents and information as part of formal discovery, as well as further data and documents as part of an informal exchange of documents in aid of mediation. *See* Hammond Decl. ¶¶ 16-18. Defendant produced over 800 pages of documents, including employee and faculty handbooks, Adjunct AEs’ contracts and wage statements, the Collective Bargaining Agreement,

1 communications with its employees regarding COVID-19 campus closures and reopening, responded to
2 interrogatories and requests for admission, and supplemented formal discovery with documents and
3 information produced on an informal basis. Plaintiff's Counsel closely analyzed documents and data
4 produced by Defendant, met and conferred with Defendant after receiving the initial set of documents,
5 and independently investigated Plaintiff's claims by interviewing aggrieved employees and researching
6 publicly available information. *See Id.* ¶¶ 16-19, 44. Accordingly, Plaintiff's Counsel had sufficient
7 information to make an informed decision about settlement.

8 **E. Views of Experienced Counsel Support the Settlement's Reasonableness**

9 The Settlement is the result of extensive negotiations conducted at arm's length and informed by
10 substantial factual and legal investigation. Hammond Decl. ¶ 45. Throughout this case, the Parties have
11 been represented by counsel with extensive experience in California wage and hour litigation. Plaintiff's
12 Counsel consider the settlement to be fair, reasonable, and adequate. *Id.* The realistic exposure,
13 discounted for risks on the merits only, and without taking into account the Court's discretion to reduce
14 penalties, represents approximately 48% of the Gross Settlement Amount, which is a very good result
15 given that no underlying Labor Code claims are being released. *Id.*

16 **I. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE FAIR AND**
17 **REASONABLE**

18 **A. The Requested Attorneys' Fees Are a Reasonable Percentage of the Common Fund**
19 **and Represent a Negative Multiplier**

20 Plaintiff requests that the Court approve an award of attorneys' fees of \$100,000. SA §§ 1.16,
21 3.2.1; *see* Hammond Decl. ¶ 46. PAGA states that "[a]ny employee who prevails in an action [under
22 PAGA] shall be entitled to an award of reasonable attorney's fees and costs." Cal. Lab. Code § 2699(g)(1).
23 It is well established that courts may award attorneys' fees out of a "common fund." *See Laffitte v. Robert*
24 *Half Int'l, Inc.*, 1 Cal. 5th 480, 504-05 (2016). Courts apply this approach in PAGA-only cases. *See*
25 *Starks v. Vortex Industries, Inc.*, No. BC590955 (L.A. Cnty. Super. Ct. Oct. 24, 2017) (Order Approving
26 PAGA Settlement); *see also Gonsales v. Acosta*, No. 17-cv-5767-VC (N.D. Cal. Apr. 1, 2019) (Order
27 approving PAGA only settlement and awarding fees of one third of the gross settlement fund). Under
28

1 *Laffitte*, California courts may award fees using a percentage-of-the-fund method, accompanied by a
2 lodestar-multiplier cross-check. Ultimately, the goal is “the award of a reasonable fee to compensate
3 counsel for their efforts.” *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480, 504 (2016) (citing
4 *Consumer Privacy Cases*, 175 Cal. App. 4th 545, 557-58 (2009)); *see also Cundiff v. Verizon Cal., Inc.*,
5 167 Cal. App. 4th 718, 724 (2008).

6 Here, under the percentage-of-the-fund analysis, the requested fee award of \$100,000 is 40% of
7 the common fund (\$250,000). The requested award is within the range of awards courts routinely accept,
8 and it is well justified in this case. *See Singer v. Becton Dickinson*, 2010 U.S. Dist. LEXIS 53416, at *23
9 (S.D. Cal. June 1, 2010) (citing cases awarding 40% of common fund in wage and hour class actions);
10 *Cicero v. DirectTV, Inc.*, 2010 U.S. Dist. LEXIS 86920, at *17 (C.D. Cal. July 27, 2010) (“Other case law
11 surveys suggest that 50% is the upper limit, with 30-50% commonly being awarded in case in which the
12 common fund is relatively small.”); *see also Burleigh v. National University*, No. MSC21-00939 (Contra
13 Costa Cnty. Super. Ct., Aug. 26, 2022) (awarding HammondLaw 40% of \$925,000 class settlement) and
14 other cases listed in Hammond Decl. at ¶ 48.

15 Here, several factors support awarding fees above the one-third benchmark. First, Plaintiff’s
16 Counsel undertook significant risk in agreeing to litigate this case and advance costs on a contingency
17 basis. *Id.* ¶ 47. Based on the risks discussed above, including, in particular, the amendment to Section
18 515.7, Plaintiff faced significant risk of losing on all or some of her claims. If the case had been
19 unsuccessful, counsel would have received zero compensation for their time spent litigating this case on
20 behalf of Plaintiff and AEs. Second, awards of common fund fees are important to attract competent
21 counsel to handle complex contingency cases. *Melendres v. City of Los Angeles.*, 45 Cal. App. 3d 267,
22 273 (1975) (counsel “will be more willing to undertake and diligently prosecute proper litigation for the
23 protection or recovery of the fund if [they are] assured that [they] will be promptly and directly
24 compensated should [their] efforts be successful.”). Third, accepting this litigation on a contingency basis
25 resulted in Counsel foregoing other employment. *See* Hammond Decl. ¶ 47; *Serrano v. Priest*, 20 Cal. 3d
26 25, 49 (1977) (relevant factor is “the extent to which the nature of the litigation precluded other
27 employment by the attorneys”).

28 Moreover, Plaintiff’s requested fee award of \$100,000 is eminently reasonable when checking it

1 against Plaintiff's Counsel lodestar to date. In determining the reasonableness of the fee under the lodestar
2 method, the Court begins with the "lodestar," which is calculated by multiplying the number of hours the
3 party reasonably expended on the litigation by a reasonable hourly rate. *Press v. Lucky Stores, Inc.*, 34
4 Cal. 3d 311, 322 (1983). "That figure may then be increased or reduced by the application of a 'multiplier'
5 after the trial court has considered other factors concerning the lawsuit." *Id.* The lodestar method
6 underscores the principle that Plaintiff's Counsel are entitled to recover fees for all hours reasonably spent
7 working on the case. *Vo v. Las Virgenes Mun. Water Dist.*, 79 Cal. App. 4th 440, 446 (2000).

8 Plaintiff's Counsel has expended more than 180 hours in this litigation to date for a combined
9 lodestar of over \$167,125 – making the requested fee award a **negative multiplier of 0.59** (i.e., only
10 59.8% of Plaintiff's Counsel lodestar to date). Hammond Decl. ¶¶ 49. This lodestar amount is
11 documented by detailed and contemporaneous billing records maintained by Plaintiff's Counsel. *Id.* ¶ 51.
12 Plaintiff's Counsel's hourly rates have been previously approved and found reasonable by numerous
13 courts. *Id.* ¶¶ 55-56. The Court should therefore approve the requested award of attorneys' fees in the
14 amount of \$100,000.

15 **B. The Requested Attorneys' Costs Are Fair and Reasonable**

16 Plaintiff also request reimbursement for out-of-pocket litigation costs incurred by Plaintiff's
17 Counsel of \$2,624.41 (including \$250 in anticipated costs in connection with the filing of this Motion and
18 filings connected to final accounting that this Court may require). Hammond Decl. ¶ 71. Plaintiff's
19 Counsel seek reimbursement for commonly reimbursed costs, including filing fees and process-serving
20 fees and research costs, as detailed in counsel's declaration. *See Id.* Plaintiff is entitled to recover
21 litigation costs and expenses reasonably incurred in the litigation of this action. *See* Cal. Lab. Code §
22 2699(g)(1).

23 **II. PLAINTIFF'S INDIVIDUAL SETTLEMENT AWARD IS REASONABLE**

24 Plaintiff requests an Individual Settlement Award of \$7,500 in consideration for her entering into
25 a general release, unlike the other Aggrieved Employees, and for her service as a PAGA representative on
26 behalf of the State and the Aggrieved Employees. In assessing the reasonableness of a service award
27 request, courts generally consider "the actions the plaintiff has taken to protect the interests of the class,
28 the degree to which the class has benefitted from those actions, . . . the amount of time and effort the

1 plaintiff expended in pursuing the litigation . . . and reasonable fears of workplace retaliation.” *Staton v.*
2 *Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003) (internal quotation marks, citation, and brackets omitted).

3 The requested award is reasonable and fair. In agreeing to serve first as a private attorney general
4 (and initially also as a class representative), Plaintiff formally agreed to accept the responsibility of
5 representing the interests of all aggrieved employees and the State. She collected documents and diligently
6 assisted Plaintiff’s Counsel in the factual development, investigation of the case, and informal discovery.
7 Plaintiff also attended and took an active participation in the mediation session. Plaintiff’s participation
8 and assistance was critical to the success of this litigation and the enforcement of Labor Code protections.
9 Without her commitment to come forward and serve as the sole lead plaintiff, this litigation, which
10 enforces the protections of the California Labor Code, would not have been brought. Plaintiff assumed
11 the risk of being branded as a “troublemaker” and blacklisted by other employers in her industry.
12 Hammond Decl. ¶ 72; Declaration of Helena Vissing, filed herewith. Importantly, unlike other Aggrieved
13 Employees, Plaintiff is entering into a general release of claims. SA § 5.3.

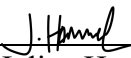
14 III. CONCLUSION

15 The Settlement represents a very good result for the State and the AEs considering the risks of
16 further litigation and the fact that AEs are releasing only their claims for PAGA penalties and not their
17 claims for the underlying substantive Labor Code violations. Accordingly, Plaintiff respectfully requests
18 that the Court enter the accompanying proposed order approving the Settlement. Counsel has provided a
19 copy of the Settlement Agreement to the LWDA, along with the PAGA Approval Motion, on the date this
20 Motion was served and filed with the Court.

21
22 Dated: December 18, 2024

Respectfully submitted,

HAMMONDLAW, P.C.

23
24
25 By:  _____
26 Julian Hammond
27 Polina Brandler

Counsel for Plaintiff and Aggrieved Employees