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

9 **COUNTY OF NAPA**

10 **UNLIMITED JURISDICTION**

11 AZUCENA ALONZO-GALEANA, an
12 individual,

13 Plaintiff,

14 v.

15 NAPAIDENCE OPCO, LLC, d.b.a. NAPA
16 POST ACUTE a California limited liability
17 company; and DOES 1-25, inclusive,

18 Defendants.

Case No. 23CV000514

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL
OF SETTLEMENT OF LABOR CODE
§2698, *et seq.* PRIVATE ATTORNEYS
GENERAL ACT ("PAGA") CLAIMS**

Date: November 15, 2024
Time: 8:30 a.m.
Dept.: A

Case Filed: April 25, 2023
Trial Date: None set

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1 **MEMORANDUM**

2 Plaintiff Azucena Alonzo-Galeana respectfully submits the following Memorandum of
3 Points and Authorities in Support of Plaintiff's Motion for Approval of Settlement of Labor Code
4 Section 2698, *et seq.*, Private Attorneys General Act ("PAGA") Claims:

5 **I. INTRODUCTION**

6 This PAGA action involves a number of underlying claims arising from Defendant's
7 alleged Labor Code violations, including failure to pay wages correctly, meal and rest period
8 violations, record keeping violations, failure to provide accurate wage statements, and
9 reimbursement violations, as well as individual claims arising from those same Labor Code
10 violations. Plaintiff contends that Defendant failed to accurately record all hours worked by its
11 employees, and thereby failed to capture all hours worked, leading to underpayment of wages and
12 inaccurate wage statements. Plaintiff also allege that Defendant required employees to work
13 through their meal and rest periods while simultaneously deducting meal periods from employee
14 pay, and that Defendant required employees to use their personal mobile phones without
15 reimbursement. Plaintiff alleges that these purported violations violate several provisions of the
16 California Labor Code and subject Defendant to penalties under PAGA, as well as costs and
17 attorney's fees. In addition to PAGA penalties, Plaintiff also sought individual damages for the
18 violations above.
19

20 Defendant denies the allegations, contending that all employees were paid appropriately
21 and maintains that at all relevant times it complied with all applicable laws.

22 The Parties reached a settlement resolving all claims at issue in this case. By this motion,
23 Plaintiff requests that the Court grant approval of the PAGA Settlement reached between the
24 parties. The Settlement Agreement has been submitted concurrently with motion this as
25 attachment B to the Declaration of John A. Lofton. A copy of the Settlement Agreement and this
26 Motion was also served on the Labor Workforce and Development Agency ("LWDA") on
27 October 17, 2024. See Declaration of John A. Lofton ("Lofton Decl."), ¶ 8. Unless otherwise
28 indicated, all capitalized terms used herein shall have the meanings set forth in the Settlement

1 Agreement.

2 Pursuant to the Settlement and subject to Court approval, Defendant will pay a non-
3 reversionary Gross Settlement Amount of \$220,000.00. All settlement payments will be made
4 from the Gross Settlement Amount, including attorneys' fees and costs, the Incentive Award,
5 Settlement Administrator Costs, the LWDA Settlement Proceeds, and the Covered Employee
6 payments. From the Gross Settlement Amount, Plaintiff's Counsel requests approval of attorney's
7 fees equal to one-third of the Gross Settlement, or \$73,333.00, and reimbursement of costs
8 incurred to prosecute this case, not to exceed \$10,000.00 (currently, Plaintiff's out-of-pocket costs
9 are \$9,307.69). Plaintiff further requests the Court to approve Atticus Administration, LLC as the
10 settlement administrator, with costs for administration not to exceed \$5,000.00. Atticus
11 Administration has provided an initial quote in the amount of \$4,500.00. See Lofton Decl., ¶ 26.
12 Plaintiff requests that the Court award her a PAGA representative Incentive Award in the amount
13 of \$10,000.00, in consideration of Plaintiff's efforts herein, including initiating and pursuing this
14 lawsuit. After deducting these amounts from the Gross Settlement Amount, at least \$121,667.00
15 will be distributed pursuant to PAGA.

16
17 As required by PAGA, 75% of the approximately \$121,667.00 Net Settlement Amount, or
18 \$91,250.25, shall be paid to the LWDA. See Labor Code §2699(i). The remaining 25%, or
19 approximately \$30,416.75, shall be distributed among the Covered Employees. Defendant
20 employed approximately 342 Covered Employees during the Covered Period, from February 19,
21 2022 through June 19, 2024. See Lofton Decl., ¶ 10.

22 Individual settlement payments to Covered Employee will be calculated based on the
23 number of pay periods worked by each Covered Employee during the Covered Period. Each
24 Covered Employee will receive a pro rata share of the Covered Employees' Settlement Proceeds
25 based on the number of pay periods each worked during the Covered Period as compared to the total
26 pay periods of the Covered Period. This formula will result in Covered Employees receiving several
27 dollars per pay period during the Covered Period. See id., ¶ 7, Exhibit B.

28 Per Defendant's records and representations, Covered Employees worked a total of

1 approximately 7,316 pay periods from February 19, 2022 through June 19, 2024. See id., ¶ 10.
2 The Covered Employees Share of the \$30,416.75 will be divided by the total number of pay
3 periods (7,316) for a per-pay period amount of approximately \$4.16 per pay period, which will be
4 multiplied by the number of pay periods each Covered Employee worked in the Covered Period to
5 determine the amount he or she will receive. For example, a Covered Employee who worked 40
6 pay periods during the Covered Period would receive \$166.40 (40 x \$4.16). See id., Exhibit B. If
7 all Covered Employees had worked the same number of workweeks, the average recovery per
8 Covered Employee would be approximately \$88.94.

9 The Covered Employees will be mailed their checks directly by the Settlement
10 Administrator. Covered Employees will have 120 days to cash their checks. If any funds remain
11 after the expiration date of the check cashing period, any residual funds will be distributed to the
12 DIR Unclaimed Property Fund. See id., Exhibit B.

13 The Settlement was the product of arm's-length negotiations by experienced counsel on
14 both sides. On June 19, 2024, the Parties participated in a mediation conducted by Jill R. Sperber.
15 See id., ¶ 9. In advance of the mediation, Defendant provided Plaintiff's Counsel with information
16 sufficient to allow Plaintiff's counsel to analyze the case, including, but not limited to, documents
17 and data regarding the claims in the case. During the mediation, each side, represented by its
18 respective counsel, recognized the substantial risk of an adverse result in the case, the costs
19 involved litigating the case, and the Court's substantial discretion in modifying the dollar amount
20 of any award. It was with this understanding that the parties agreed to resolve the claims
21 presented as set forth in the Settlement Agreement. This Settlement is a fair and reasonable
22 resolution on behalf of the LWDA and for the Covered Employees.

23 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

24 Plaintiff submitted her notice of Labor Code violations to the LWDA on January 20, 2023,
25 and her amended notice on March 8, 2023. See id., ¶ 3. Plaintiff filed her Complaint in Napa
26 County Superior Court on April 25, 2023 and her First Amended Complaint on May 15, 2023.

27 As set forth in the First Amended Complaint, Plaintiff alleges that Defendant violated
28

1 Labor Code §§ 201, 202, 204, 226, 226.7, 247.5, 510, 512, 558, 1174, 1197, 2802, and IWC Wage
2 Order No. 5-2001 (8 C.C.R. §11050). With respect to Plaintiff and the Covered Employees, who
3 have been injured as a result of these violations, they allege that they are entitled to civil penalties
4 pursuant to Labor Code §§203, 210, 226, 226.3, 226.7, 558, 1198.5, 2699(a), and 2699(f), and to
5 recover costs and attorney’s fees pursuant to California law, including Labor Code § 2699(g)(1).

6 **A. Factual Allegations and Legal Analysis of Claims in the First Amended**
7 **Complaint**

8 Defendant operates a rehabilitation facility in Napa, California, employing approximately
9 342 employees during the Covered PAGA Period of February 19, 2022 through June 19, 2024.
10 See Lofton Decl., ¶ 10. Ms. Alonzo-Galeana was employed by Defendant as a non-exempt hourly
11 employee from approximately June 7, 2021 to December 15, 2022. See First Amended
12 Complaint, ¶ 6 (filed May 15, 2023).

13
14 Plaintiff alleges that throughout her employment, due to Defendant’s inadequate staffing,
15 excessive workload, scheduling of doctors’ rounds, and other factors, she and other employees
16 were denied timely and uninterrupted meal and rest periods and that they were often required to
17 work during their breaks, whether they were clocked in or not. See id., ¶¶ 7-8.

18 Plaintiff alleges that Defendant unilaterally adjusted employee time records to make it
19 appear that employees had taken a compliant meal period when they had not. This practice also
20 resulted in unpaid wages for the time deducted. Thus Plaintiff also alleges that Defendant failed to
21 maintain accurate records of time worked and meal periods taken, and failed to provide accurate
22 wage statements. See id., ¶¶ 9-10.

23 Plaintiff also alleges that she and other employees were required to use their personal
24 phones for work purposes without compensation. See id., ¶ 12.

25 Defendant denies the allegations, contending that all employees were paid appropriately
26 and maintains that at all relevant times it complied with all applicable laws.

27 **B. Mediation and Settlement**

28 On June 19, 2024, the Parties participated in a mediation conducted by Jill R. Sperber. See

1 Lofton Decl., ¶ 6. In advance of the mediation, Defendant provided Plaintiff’s Counsel with
2 documents and data regarding the claims in the case. See id., ¶ 4. The Parties reached a
3 settlement at mediation, and over the course of the next two months, they negotiated the language
4 of a formal settlement agreement. See id., ¶¶ 6-7.

5 **III. THE PROPOSED SETTLEMENT**

6 The proposed Settlement is for a non-reversionary Gross Settlement Amount of
7 \$220,000.00. Per PAGA, 75% of the Net Settlement Amount shall be paid to the LWDA. Labor
8 Code §2699(i). The remaining 25% of the Net Settlement Amount will be distributed by a direct
9 mailing of checks by the Settlement Administrator to the Aggrieved Employees.

10 **A. Settlement Payout**

11 Subject to the terms and conditions of the Settlement Agreement, the Gross Settlement
12 Amount that Defendants are obligated to pay in connection with the Settlement is \$220,000.00.
13 This amount will cover (as approved by the Court) (i) all PAGA Settlement Proceeds paid to
14 Covered Employees; (ii) the Plaintiff’s Counsel’s fees and costs; (iii) the Plaintiff’s incentive
15 award; (iv) the LWDA payment; and (v) the Settlement Administrator’s fees and expenses. The
16 Gross Settlement Amount is non-reversionary.

17 **B. Calculation and Distribution of Settlement Payments**

18 Per the PAGA, 75% of the approximately \$121,667.00 Net Settlement Amount, or
19 approximately \$91,250.25, shall be paid to the LWDA. See Labor Code §2699(i). The remaining
20 25%, or approximately \$30,416.75, shall be distributed among the Covered Employees.
21 Defendants identified 342 Aggrieved Employees who worked during the Covered Period, from
22 February 19, 2022 through June 19, 2024. Per Defendant’s records and representations, Covered
23 Employees worked a total of approximately 7,316 pay periods from February 19, 2022 through
24 June 19, 2024. The Covered Employees Share of the \$30,416.75 will be divided by the total
25 number of pay periods (7,316) for a per-pay period amount of approximately \$4.16 per pay period,
26 which will be multiplied by the number of pay periods each Covered Employee worked in the
27 Covered Period to determine the amount he or she will receive. For example, a Covered
28

1 Employee who worked 40 pay periods during the Covered Period would receive \$166.40 (40 x
2 \$4.16). See Lofton Decl., Exhibit B. If all Covered Employees had worked the same number of
3 workweeks, the average recovery per Covered Employee would be approximately \$88.94.

4 Each Covered Employee's Share shall be allocated as one hundred percent (100%)
5 penalties, from which there will be no payroll tax withholdings and for which an IRS Form 1099
6 will be issued by the Settlement Administrator, as needed.

7 Defendant shall transfer to the Settlement Administrator the entire Gross Settlement
8 Amount of \$220,000.00 in three equal installments as follows: The first installment will be due
9 within 30 days after the Effective Date, second installment will be due within 60 days after the
10 Effective Date, and third installment will be due within 90 days after the Effective Date.

11 Upon receipt of the entire Gross Settlement Amount, the Settlement Administrator shall
12 release the Court-approved PAGA Representative Incentive Award to Plaintiff and the Court-
13 approved Plaintiff's Counsel attorney's fees and costs to Plaintiff's Counsel, and the LWDA
14 Payment to the LWDA, and pay itself its Court-approved reasonable fees and expenses.

15 Within ten calendar days after receipt of the Gross Settlement Amount, the Settlement
16 Administrator will confirm names and addresses for the Covered Employees and mail checks for
17 payment to the Covered Employees. Covered Employees will have 120 days to cash their checks.
18 After the last outstanding check becomes invalid, the Settlement Administrator will transfer any
19 amount remaining to the California DIR Unclaimed Property Fund.

20 **C. PAGA Notice and Release of Claims**

21 Within fifteen calendar days after the Effective Date, Defendant will provide the
22 Settlement Administrator a list setting forth the names, last known addresses, Social Security
23 number, and number of pay periods worked by each Covered Employee during the Covered
24 Period.

25 Within fifteen calendar days after receipt of the entire Gross Settlement Amount, the
26 Settlement Administrator shall mail via U.S. First Class mail each Cover Employee's settlement
27 check to their last known address with directions to the Postmaster to forward the payment checks
28

1 and return all undeliverable payment checks to the Settlement Administrator. A letter approved by
2 the Parties explaining this Settlement will be included in the mailing of each Covered Employee's
3 individual settlement check.

4 **D. Incentive Award to PAGA Representative**

5 Plaintiff requests that the Court award her an Incentive Award in the amount of \$10,000.00
6 in consideration of Plaintiff's efforts herein, which include initiating and pursuing this lawsuit,
7 assisting in discovery and participating in the all-day mediation of the matter, undertaking the risk
8 of liability for attorney's fees and expenses in the event they were unsuccessful in the prosecution
9 of this lawsuit, having her names forever part of a public record of her suing her employer, and
10 agreeing to a general release as part of the Settlement. See Lofton Decl., ¶¶ 13-15. The
11 Settlement Administrator will pay the PAGA Representative Incentive Awards approved by the
12 Court of up to \$10,000.00 each out of the Gross Settlement Amount.

13
14 Awarding an incentive to a PAGA representative follows the same principle that applies in
15 the class action context. "[T]he rationale for making enhancement or incentive awards to named
16 plaintiffs is that they should be compensated for the expense or risk they have incurred in
17 conferring a benefit on other members of the class. An incentive award is appropriate if it is
18 necessary to induce an individual to participate in the suit." Cellphone Termination Fee Cases,
19 186 Cal.App.4th 1380, 1395 (2010) (quoting Clark v. Am. Residential Servs. LLC, 175
20 Cal.App.4th 785, 804-806 (2009)). An award of \$10,000 falls well below the average
21 enhancement award according to one study. See, Theodore Eisenberg & Geoffrey P. Miller,
22 INCENTIVE AWARDS TO CLASS ACTION PLAINTIFFS: AN EMPIRICAL STUDY (2006) 53 UCLA L.
23 Rev. 1303, 1308 (concluding the average award per class representative was \$15,992).

24 An incentive award in a PAGA case is especially important where the Plaintiff has filed
25 suit on behalf of the LWDA and is thus providing a vital service for the State. As a result of
26 Plaintiff's efforts, the LWDA will receive approximately \$91,250.25.

27 Ms. Alonzo-Galeana spent time helping Counsel with the prosecution of this action and
28 performing the following tasks: (1) meeting with and communicating with her attorney on

multiple occasions; (2) detailing her experiences and producing copies of documents; (3) assisting in preparing the PAGA claim notices and complaints; (4) reviewing the mediation documents prepared; and (5) reviewing the terms of and signing the Settlement Agreement. See Lofton Decl. ¶ 13.

In light of the work that Plaintiff performed on behalf of the LWDA and Covered Employees, the requested PAGA Representative Incentive Award of \$10,000.00 is reasonable and appropriate.

E. Settlement Administrator Costs

The Settlement Administrator will pay out of the Gross Settlement Amount to itself its reasonable fees and expenses, not to exceed \$5,000.00, after such payment has been approved by the Court. Atticus Administration has submitted a quote for its costs for administration at \$4,500.00. See Lofton Decl., ¶ 26, Exhibit D. Atticus Administration is a well-known and respected Settlement Administrator. Plaintiff's Counsel has used Atticus Administration in other matters, and knows its rates to be fair and competitive. See id. Plaintiff requests that Atticus Administration be approved as Settlement Administrator by the Court.

F. Attorneys' Fees and Litigation Costs

In considering the overall fairness of the Settlement, the Court may look to the reasonableness of the Attorneys' Fees and Costs allocated in the Settlement Agreement. Plaintiff's Counsel's litigation costs were all reasonable and necessary expenses in litigating and resolving this action. A copy of the itemized list of out-of-pocket costs, in the amount of \$9,307.69 is attached to the Declaration of John A. Lofton as Exhibit C.

Plaintiff also seek one-third of the Gross Settlement Amount, or \$73,333.00, in attorney's fees. The attorneys' fees sought will compensate Plaintiff's Counsel for work performed in recovering a significant benefit for the LWDA and Covered Employees. In reviewing attorneys' fees in the class action context, one court explained: "The fee was negotiated at arm's-length with sophisticated defendants by the attorneys who were intimately familiar with the case, the risks, the amount and value of their time, and the nature of the result obtained for the class." In Re First

1 Capital Holdings Corp. Fin. Prods. Securities Litig. 1992 U.S. Dist. LEXIS 14337, at *4 (C.D.
2 Cal. June 10, 1992) (awarding attorney’s fees of \$8 million).

3 Courts have long recognized the “common fund” or “common benefit” doctrine, under
4 which attorneys who create a common fund or benefit for a group of persons may be awarded their
5 fees and costs to be paid out of the fund. See Laffitte v. Robert Half Internat. Inc., 1 Cal.5th 480,
6 504 (2016); See also, Serrano v. Priest (“Serrano III”), 20 Cal.3d 25, 34 (1977); Glendale City
7 Employees’ Assoc. v. City of Glendale, 15 Cal.3d 328, 341, fn. 19 (1975); In re Consumer Privacy
8 Cases, 175 Cal.App.4th 545, 557 (2009); In re Sumitomo Copper Litig., 74 F.Supp.2d 393, 396-
9 398 (S.D.N.Y. 1999) (describing the overwhelming weight of federal authority in favor of the
10 percentage fee method); Mills v. Electric Auto-Lite Co., 396 U.S. 375, 391-392 (1970) (United
11 States Supreme Court endorsing the common fund approach to class actions.)

12 The California Practice Guide: Civil Trials and Evidence (The Rutter Group) at §7.172.3
13 explains the common fund doctrine as follows:

14 Where the lawsuit results in the recovery of a fund or property benefiting others as
15 well as plaintiff (*e.g.*, a class action), the court has inherent equitable power to order
16 plaintiff’s attorney fees paid out of the common fund or property [citations]. Such
17 fee spreading assures that all of those benefited by the litigation pay their fair share
of obtaining the recovery.

18 Numerous appellate courts have similarly endorsed the “percentage fee” method for determining
19 reasonable attorney’s fees in common benefit cases.¹

20 In the Laffitte decision, the California Supreme Court held that, “when class action
21 litigation establishes a monetary recovery fund for the benefit of the class members, and the trial
22

23
24 ¹ See, e.g., Knoff v. City and County of San Francisco, 1 Cal.App.3d 184, 203-204 (1969) (court
25 upheld a “contingent percentage” award of attorneys’ fees in a representative action as the proper
26 exercise of the court’s equitable powers); Rider v. County of San Diego, 11 Cal.App.4th 1410,
27 1423 (1992) (attorneys’ fees and expenses properly awarded from common benefit composed of
28 illegally imposed sales and use tax); Bank of America v. Cory, 164 Cal.App.3d 66, 89-92 (1985)
(fees awarded from common benefit created by action compelling state to claim dormant bank
accounts); Parker v. Los Angeles, 44 Cal.App.3d 556, 567-568 (1974) (court upheld fee award
equal to one-third of the damages to owners of residential property in an inverse condemnation
action.)

1 court in its equitable powers awards class counsel a fee out of that fund, the court may determine
2 the amount of a reasonable fee by choosing an appropriate percentage of the fund created.”
3 Laffitte, supra, 1 Cal.5th at 503. The California Supreme Court also noted that the percentage of
4 the fund method “more accurately reflects the results achieved” than the lodestar method, serves
5 as a “better approximation of market conditions in a contingency case,” and encourages “counsel
6 to seek an early settlement and avoid unnecessarily prolonging the litigation.” Id. at 503-504.

7 Courts have recognized that a one-third fee is appropriate in common fund cases. See, e.g.,
8 Chavez v. Netflix, Inc., 162 Cal.App.4th 43, 66, fn.11 (2008) (“Empirical studies show that,
9 regardless of whether the percentage method or the lodestar method is used, fee awards in class
10 actions average around one-third of the total recovery.”)

11 The attorney’s fees requested here are in line with other fee awards in California wage and
12 hour cases. For example, in Smiles v. Walgreens Co., Alameda Superior Court Case Number
13 RG17862495, Judge Seligman awarded attorney’s fees of 35% of the \$15,000,000 settlement in a
14 PAGA case, plus costs; in Pearce v. Linens ‘N Things, Inc., Orange County Superior Court Case
15 No. 00CC04830, Judge McDonald awarded attorney’s fees equal to 33 1/3% of the settlement
16 fund, plus costs; in Albrecht v. Rite Aid Corp., San Diego Superior Court Case No. 729129, Judge
17 Haden awarded attorney’s fees equal to 35% of the settlement fund, plus costs; in Crandall v. U-
18 Haul International, L.A. Superior Court Case No. BC 178775, Judge Czuleger awarded plaintiffs’
19 counsel attorney’s fees equal to 40% of the settlement fund; in Graubard v. Goodyear Tire Rubber
20 Company, LA Superior Court Case No. BC 230520, Judge Mohr awarded attorney’s fees equal to
21 32.1% of the settlement fund, plus costs. These cases illustrate that California courts recognize
22 that a one-third fee is appropriate in a wage and hour common fund case.

23 Given the results achieved under the circumstances of this litigation, the requested fee
24 award is reasonable. As discussed in In re Sumitomo Copper Litigation, supra, 74 F.Supp.2d at
25 396:

26 No one expects a lawyer whose compensation is contingent on the success of his
27 services to charge, when successful, as little as he would charge a client who in
28 advance of the litigation has agreed to pay for his services, regardless of success.
Nor, particularly in complicated cases producing large recoveries, is it just to make

1 a fee depend solely on the reasonable amount of time expended.

2 A lodestar cross-check confirms the requested fees are fair and reasonable. The trial court
3 may use an abbreviated lodestar “cross-check” for common fund awards if the court considers it
4 useful. See Laffitte, supra, 1 Cal.5th at 504-05. However, under Laffitte, this is not meant to
5 displace the percentage analysis, but rather to act as a backstop. Indeed, the Supreme Court
6 expressly instructed that “the lodestar calculation, when used in this manner, does not override the
7 trial court’s primary determination of the fee as a percentage of the common fund and thus does
8 not impose an absolute maximum or minimum on the fee award.” See id. at 505.

9 Critically, the Court in Laffitte emphasized that only where the “multiplier calculated by
10 means of a lodestar cross-check is **extraordinarily high or low**” should the court “consider
11 whether the percentage should be adjusted so as to bring the imputed multiplier within a justifiable
12 range.” See id. (emphasis added). Accordingly, when the cross-check multiplier is within a
13 normal range, the lodestar-cross check does not provide a basis for a court to reduce the fee award.
14 Furthermore, in conducting a lodestar cross-check, the court is not “required to closely scrutinize
15 each claimed attorney-hour.” See id. at 505. An evaluation may be done by reviewing “counsel
16 declarations summarizing overall time spent.” See id.

17 In this case, Plaintiff’s Counsel has spent approximately 61 hours working on this matter,
18 at an hourly rate of \$825, for a lodestar total of \$50,325.00. See Lofton Decl., ¶ 24; In re
19 Consumer Privacy Cases, 175 Cal. App. 4th 545, 556-57 (2009). Applying a **1.45** multiplier to
20 that lodestar would yield the requested fees of \$73,333.00. See Lofton Decl., 24. Plaintiff’s
21 Counsel expects to incur additional time appearing at the hearing on this motion, supervising the
22 administration of the Settlement, answering questions from and assisting Covered Employees with
23 their checks, and the like. See id.

24 A 1.45 multiplier is not “extraordinarily high” – to the contrary, the normal range for a
25 multiplier on a lodestar cross-check “can range from 2 to 4 or even higher.” See Wershba v.
26 Apple Computer, Inc., 91 Cal.App.4th 224, 255 (2001); see also Vizcaino v. Microsoft Corp., 290
27 F.3d 1043, 1047 (9th Cir. 2002) (multipliers “ranging from one to four are frequently awarded ...
28 when the lodestar method is applied”; affirming fees where the crosscheck multiplier is 3.65).

1 Courts routinely accept multipliers ranging from 2 to 4 on a lodestar cross-check. See, e.g.,
2 Sutter Health Uninsured Pricing Cases, 171 Cal.App.4th 495, 512 (2009) (applying a 2.52
3 multiplier on a lodestar cross-check); Chavez v. Netflix, Inc., 162 Cal.App.4th 43, 66 (2008)
4 (applying a 2.5 multiplier in a consumer class action); Willner v. Manpower Inc., No. 11-CV-
5 02846-JST, 2015 WL 3863625, at *7 (N.D. Cal. June 22, 2015) (approving a 2.10 multiplier on
6 settlement of California Labor Code violations); Dyer v. Wells Fargo Bank, N.A., 303 F.R.D. 326,
7 334 (N.D. Cal. 2014) (approving attorneys’ fees that resulted in lodestar multiplier of 2.83);
8 Hopkins v. Stryker Sales Corp., No. 11-CV-02786-LHK, 2013 WL 496358, at *5 (N.D. Cal. Feb.
9 6, 2013) (approving a multiplier of 2.76 in settlement of Labor Code violations).

10 Indeed, courts following Laffitte have reaffirmed that a multiplier between 2 and 4 to be
11 reasonable and not so “extraordinarily high” as to require greater judicial scrutiny. See Spann v.
12 J.C. Penney Corp., 211 F. Supp. 3d 1244, 1265 (C.D. Cal. Sept. 30, 2016) (finding that a 3.07
13 multiplier is “well within the range for reasonable multipliers” under Laffitte)

14 With the above factors in mind, this Court should consider the contingent nature of this
15 case, the uncertainty of the outcome, the quality of the counsel, and the preclusion from other
16 employment.

17 1. The Contingent Nature

18 From the outset of the case to the present, prosecution of this action has involved
19 significant financial risk for Plaintiff’s Counsel. Plaintiff’s Counsel undertook this matter solely
20 on a contingent basis, with no guarantee of recovery. Plaintiff’s Counsel have placed their own
21 resources at risk to prosecute this action with no guarantee of success. See, Lofton Decl., ¶¶ 18-
22 19. If Defendant prevailed on any one of the affirmative defenses raised, ***it could substantially***
23 ***reduce, if not wholly defeat, recovery.*** See id. Despite such challenges, Plaintiff’s Counsel was
24 able to secure a settlement resolving the PAGA claims on behalf of Plaintiff, Covered Employees,
25 and the LWDA. See id.

1 **2. The Experience, Reputation, and Ability of Counsel, and the Skill**
2 **Displayed in Litigation**

3 Plaintiff's Counsel has substantial experience in complex and representative action
4 litigation, including many wage and hour cases. See Lofton Decl., ¶ 17.

5 The quality of opposing counsel is also important to evaluating the quality of the work
6 done by Plaintiff's Counsel. Here, Grace Horoupian of Fisher & Phillips, LLP, an experienced
7 employment litigator, represented Defendant. Thus, the complexity and potential duration of the
8 case, and that in the face of experienced and resourceful opposition, weigh in favor of awarding
9 the requested attorney's fees. See id. ¶ 20.

10 **3. The Results Achieved**

11 The results achieved by the Settlement support Plaintiff's Counsel's request for attorney's
12 fees. As noted, the Settlement will result in payments of \$91,250.25 to the LWDA and
13 \$30,416.75 to Covered Employees. See id., ¶ 21.

14 Moreover, the efficiency with which this litigation was conducted and resolved should be
15 rewarded. See Lofton Decl., ¶ 22. Plaintiff and Defendant moved promptly from the initial filing
16 in April 2023 to settlement in July 2024. The parties were able to minimize use of the Court's
17 resources and avoid significant motion practice. The LWDA and Covered Employees will directly
18 benefit from the prompt and fair resolution of their claims. They will be receiving a significant
19 award in a short period of time as opposed to waiting years to recover some undetermined amount
20 if they succeeded at trial, which is an uncertainty in itself. See id.

21 **4. Preclusion of Other Employment**

22 As California law recognizes, Plaintiff's Counsel's commitment to this litigation should
23 not be assessed in a vacuum. See, Serrano, supra, 20 Cal.3d at 49. A relevant factor in
24 determining attorney's fees is whether the litigation required Plaintiff's Counsel to forego other
25 employment. See id. Additional work was available that Plaintiff's Counsel had to forgo to
26 devote the time necessary to pursue this litigation. See Lofton Decl. ¶ 23.

1 Accordingly, attorney's fees in the amount of \$73,333.00, which is approximately one-
2 third of the Gross Settlement Amount, is fair and reasonable under the circumstances, and under
3 California precedent, along with \$9,307.69 in litigation costs.

4 **IV. THE STANDARD FOR APPROVAL OF PAGA SETTLEMENTS.**

5 Labor Code §2699(1)(2) provides: "[t]he superior court shall review and approve any
6 settlement of any civil action filed pursuant to this part." However, because PAGA claims are not
7 class actions, the usual rules or various findings required by Rule 23 or CCP §382 do not apply.
8 See, e.g., Navarro v. Ordaz Cultured Marble & Onyx, Inc. 2015 U.S. Dist. LEXIS 21374, at *2
9 (N.D. Cal. Feb. 23, 2015). There is no requirement to provide notice to the Covered Employees,
10 the Covered Employees do not have the right to object to or opt out of the Settlement, and there is
11 no need for separate preliminary and final hearings. See Amalgamated Transit Union, Local 1756
12 v. Superior Court, 46 Cal.4th 993, 1003 (2009); Urbino v. Orkin Services of California 726 F.3d
13 1118, 1122-23 (9th Cir. 2013).

14 The requirements for a settlement under the PAGA are that the settling parties are to
15 submit the proposed settlement to the LWDA at the same time it is filed with the Court, and then,
16 if the settlement is approved, to submit the judgment to the LWDA within 10 days after entry. See
17 Labor Code §2699(1)(3). The PAGA statutory language does not contain any standards for
18 evaluating a settlement. Id.

19 The only potential objector is the LWDA itself, whose comments, if any, will be submitted
20 to the Court in advance of the approval hearing. The PAGA does not give absent employees any
21 substantive right to bring their own PAGA claim. See Sakkab v. Luxottica Retail North
22 American, Inc., 803 F.3d 425, 436 (9th Cir. 2015). Rather, "[a]n employee bringing a PAGA
23 action does so 'as the proxy or agent of the state's labor law enforcement agencies,' who are the
24 real parties in interest ... However, by obtaining such penalties, the employee-plaintiff does not
25 vindicate absent employees' claims, for the PAGA does not give absent employees any
26 substantive right to bring their 'own' PAGA claims." (internal citations omitted). Id. at 435-436.
27 Therefore, the "bulk of any recovery goes to the LWDA, not to the aggrieved employees ... A
28 PAGA action is at heart a civil enforcement action filed on behalf of and for the benefit of the

1 state, not a claim for class relief.” Baumann v. Chase Investment Servs. Corp., 747 F.3d 1117,
2 1123-24 (9th Cir. 2014).

3 Although the PAGA does not provide instruction on how courts are to evaluate a
4 settlement under the Act, California law provides some general guidance concerning judicial
5 approval of any settlement. First, California courts recognize a strong public policy in favor of
6 settlements. See Kaufman v. Goldman, 195 Cal.App.4th 734, 735 (2011) (“We note there is well-
7 established policy in the law to discourage litigation and favor settlement. Pretrial settlements are
8 highly favored because they diminish the expense of litigation.”) Here, the Settlement not only
9 avoids the complexities and legal uncertainties discussed above, but also the delay, expense, and
10 drain on judicial resources that would result from a lengthy trial. Second, in all circumstances, the
11 decision to approve or reject a settlement is committed to the trial court’s sound discretion. See
12 Wershba v. Apple Computer, Inc., 91 Cal.App.4th 224, 234-235 (2001). This basic principle
13 coincides with the discretion the Legislature specifically afforded courts under sections 2699(e)(1)
14 and (2) of the PAGA, granting to the courts the same discretion as that held by the LWDA in
15 assessing civil penalties and specifically authorizing courts the ability to award lesser amounts
16 than the maximum civil penalties set forth in section 2699. Third, although the court possesses
17 discretion in approving a PAGA settlement, it seems logical that the court’s role “must be limited
18 to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud
19 or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as
20 a whole, is fair, reasonable and adequate to all concerned.” In re Microsoft I-V Cases, 135
21 Cal.App.4th 706, 723 (2006) (quoting Officers for Justice v. Civil Service Com., 688 F.2d 615,
22 625 (9th Cir. 1982)). Here, the parties agreed that settlement, on the terms set forth in the
23 Settlement Agreement, is fair, reasonable, and adequate to the LWDA and Covered Employees.

24 **V. THE PAGA SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.**

25 The Settlement was reached only after arm’s-length and good faith negotiations. See
26 Lofton Decl., ¶ 9. Prior to mediation, the parties engaged in a significant exchange of data,
27 including wage records, time sheets, and related documents. See id. Counsel and the parties
28 attended a full-day mediation on June 19, 2024. Both parties provided detailed mediation briefs

1 and Plaintiff's counsel prepared an extensive analysis of the potential exposure. See id. The risks
2 of continued litigation had to be considered and a compromise of the claims was settled upon.

3 Based on Plaintiff's analysis, the potential penalties available under PAGA made
4 Defendant's likely maximum exposure could be as high as several million dollars, but more
5 realistically was likely in the range of \$731,600 (7,316 pay periods x \$100 penalty per pay period).
6 See id., ¶ 10.

7 PAGA carries a maximum penalty of \$100 per pay period for initial violations and \$200
8 for subsequent violations. Many courts "stack" violations so that the per-pay-period penalty is
9 combined into one number that is applied to the total of pay periods, regardless of the variety of
10 violations. Here, there were approximately 7,316 pay periods during the Covered Period. See id.
11 At \$100 per each of the 7,316 pay periods, the maximum exposure at trial could be \$731,600.

12 However, there was a substantial question of fact as to whether the Covered Employees
13 were in fact denied meal and rest periods to the extent claimed, and whether and to what extent it
14 could be proved. Moreover, the PAGA grants trial courts discretion to reduce the amount of civil
15 penalties to be imposed. See Labor Code §2699(e)(2); See also, Bernstein v. Virgin Am., Inc.,
16 365 F.Supp.3d 980, 985, 992 (N.D.Cal. 2019) (judgment reducing PAGA penalties from
17 \$33,300,000 to \$24,981,150).

18 Here, the Gross Settlement Amount results in an award of \$4.16 per pay period, and an
19 average of \$88.94 per employee. This compromised amount compares favorably to other PAGA
20 settlements and court awards. For example, in Garrett v. Bank of America, Alameda Superior
21 Court Case Number RG13699027, involving almost one million pay periods, the Alameda
22 Superior Court, on October 28, 2016, approved a \$15 million PAGA settlement, which would be a
23 penalty of \$15 per pay period.

24 In Carrington v. Starbucks Corp., 30 Cal.App.5th 504 (2018), the trial Court reduced the
25 PAGA penalty amount to only \$5 per pay period. In Carrington, the plaintiff requested penalties
26 in excess of \$70 million, which was based on a \$25 to \$75 penalty per violation. The trial court
27 instead awarded a \$5 penalty per pay period and stated this reduction was warranted because
28 imposing the maximum penalty would be unjust, arbitrary, and oppressive based on Starbucks's

1 “good faith attempts” to comply with meal period obligations and because the court found the
2 violations were minimal. Similarly, here, Defendant argued that it had a good faith belief that it
3 was complying with the law and providing appropriate meal and rest periods. Plaintiff has strong
4 arguments against these defenses, but even if Defendant was held liable for the PAGA violations,
5 it was highly possible that this Court would give deference to their “good faith attempt to comply
6 with the law” argument and reduce the penalty amount.

7 Other courts have also reduced PAGA civil penalties, often dramatically. For example, in
8 Thurman v. Bayshore Transit Mgmt., Inc., 203 Cal.App.4th 1112, 1136 (2012), the Court of
9 Appeal affirmed the trial court’s reduction of PAGA civil penalties by 30 percent, finding that
10 awarding the full penalties would have been “unjust” because the “evidence showed...defendants
11 took their obligations...seriously and attempted to comply with the law,” and that the defendants’
12 financial condition “rendered them unable to pay penalties from ongoing revenues.” Similarly, in
13 Fleming v. Covidien, Inc. 2011 U.S. Dist. LEXIS 154590, at *8-9 (C.D.Cal. Aug. 12, 2011), the
14 court reduced PAGA civil penalties for wage statement violations from \$2,800,000 to \$500,000.
15 Accordingly, while courts cannot deny PAGA civil penalties outright if liability is found, they can
16 and do reduce the awarded penalties based on such considerations as the egregiousness of the
17 violations, the employer’s efforts at compliance, and the employer’s ability to pay.

18 Finally, the fact that the total amount potentially available, assuming a full recovery on all
19 claims is greater than the value of a settlement, this does not militate against approval of this
20 Settlement. As the court in Shames v. Hertz Corp., 2012 U.S. Dist. LEXIS 158577, at *6
21 (N.D.Cal. Nov. 5, 2012) (citing Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.), 213 F.3d
22 454 (2000) (court approved a settlement constituting one-sixth of the potential recovery) held:
23 “While settlement amounts that are close to the plaintiff’s estimate of damages provide strong
24 support for approval of the settlement, settlement offers that constitute only a fraction of the
25 potential recovery do not preclude a court from finding the settlement offer is fair.”

26 Here, the Settlement reflects a compromise of the maximum likely potential exposure, but
27 a reasonable return per pay period. See Lofton Decl., ¶ 11. This result is excellent given
28

1 Defendant's defenses as well as the Court's discretion to discount any penalty awarded down to
2 the proverbial peppercorn.

3 **VI. CONCLUSION**

4 Because the Settlement is fair, reasonable, and adequate, Plaintiff respectfully requests that
5 the Court grant approval of all terms of the Settlement, as set forth in the Settlement Agreement,
6 attached to Lofton Decl., Exhibit B.

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9 DATED: October 17, 2024

AIMAN-SMITH & MARCY, P.C.

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