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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF FRESNO

10 ANGELIQUE TELLY, an individual,

11 Plaintiff,

12 v.

13 CENTURY COMMUNITIES, INC.;
14 JAMES MOORE; and DOES 1-20,
15 inclusive,

16 Defendants.

CASE NO: 23CEG00112

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION FOR AN ORDER
APPROVING SETTLEMENT OF CLAIMS
BROUGHT PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
AWARDING REIMBURSEMENT OF
SETTLEMENT ADMINISTRATION
EXPENSES, AND DISMISSING EIGHTH
CAUSE OF ACTION WITH PREJUDICE

Date: February 29, 2024
Time: 3:30 p.m.
Dept.: 503

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1
2 **I. INTRODUCTION**

3 Plaintiff Angelique Telly (“Plaintiff”) respectfully moves this Court for an Order granting
4 approval of the proposed Settlement of the above-captioned Action against Defendants Century
5 Communities, Inc. (“CCI”) and James Moore. (“Moore”, collectively “Defendants”). The
6 proposed Settlement will dispose of the Released Claims for civil penalties under the PAGA
7 asserted in the eighth cause of action in Plaintiff’s First Amended Complaint, on behalf of Plaintiff
8 and approximately 58 non-exempt employees who worked for Defendant in California and were
9 paid a bonus during a pay period in which the employee also earned overtime, sick time, or
10 meal/rest period premiums from January 11, 2022 through September 22, 2023 (the “PAGA
11 Period”) (the “Aggrieved Employees”¹).

12 The PAGA portion of this case addresses alleged violations of Labor Code Sections 201,
13 202, 203, 218, 218.5, 226, 226.3, 226.7, 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1,
14 1197.5, and 1198.5. Plaintiff primarily alleges that Defendant failed to incorporate certain bonuses
15 into its non-exempt employees’ regular rate of pay for purposes of overtime, sick pay, and meal
16 and rest period premium compensation. Plaintiff alleges that Defendant’s failure to incorporate
17 these bonuses into the regular rate of pay resulted in an underpayment to employees, and therefore
18 those non-exempt employees who were paid a bonus during a pay period in which the employee
19 also earned overtime, sick time, or meal/rest period premiums were also not paid all wages earned
20 at the time of termination or within 72 hours of resignation, in violation of Labor Code sections
21 201, 202 and 203. Plaintiff also alleged that Defendant failed to furnish accurate itemized wage
22 statements in violation Labor Code section 226(a) by failing to accurately identify the gross wages
23 earned and correct rate of pay earned by non-exempt employees when they received bonuses and
24 worked overtime, used paid sick leave, or were paid meal or rest period premiums in the same pay
25 period. Finally, Plaintiff alleged that Defendants failed to furnish compliant meal and/or rest

26 ¹ The individuals identified as “Aggrieved Employees” are “Aggrieved” solely for the purposes of this settlement
27 only. Defendants do not admit liability by way of this settlement.

1 periods and failed to timely provide employment records she requested in violation of Labor Code
2 sections 226(b) and 1198.5.

3 As set forth herein, the proposed Settlement embodies all of the features of an appropriate
4 settlement as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys
5 experienced in wage and hour issues and with an experienced mediator (Russ J. Wunderli, Esq. at
6 Judicate West), and (3) it reflects a reasoned compromise based directly on the relative strength
7 and value of the PAGA claim, as well as the risks, expense, complexity and likely duration of
8 further litigation.

9 The value achieved by the Settlement Agreement may be gleaned from the fact that the
10 LWDA and the Aggrieved Employees encompassed by the Settlement Agreement will receive a
11 penalty that is well within the range regularly approved by courts for PAGA settlements.

12 It is also important to underscore that all penalty amounts paid to Aggrieved Employees
13 will be an unexpected windfall, as civil penalties are normally collected solely by the Labor
14 Commissioner and are not distributed to employees, serve as a penalty against the employer and
15 are not designed to compensate employees, and do not impact any Aggrieved Employees' potential
16 individual claims.

17 For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this
18 Court enter the Order submitted herewith.

19 **II. STATEMENT OF THE CASE AND THE SETTLEMENT**

20 **A. Pertinent Facts and Procedural History.**

21 Plaintiff Telly worked as an hourly, non-exempt Assistant Construction Manager for
22 Defendant CCI. During her employment, she, and other employees, were paid quarterly or other
23 bonuses of an amount determined by CCI. As to non-exempt employees who also were paid for
24 overtime, or sick time, or meal/rest period premiums, during a pay period in which a quarterly
25 bonus was paid, the amount of the bonus was not included into the applicable regular rate.
26 Defendant contended in this action, and continues to contend, that the bonuses were discretionary,
27

1 and that employees were made so aware in their offers of employment. Attached as Exhibit 3 to
2 the Declaration of William J. Gorham III (“WJG Decl.”) is the offer letter received by Plaintiff
3 Telly, which provides that the bonuses were discretionary.

4 Plaintiff Telly filed a Notice of Violation letters to the Labor and Workforce Development
5 Agency (“LWDA”), one on January 11, 2023. The LWDA Notice and complaint include potential
6 PAGA claims under Labor Code sections 201, 202, 203, 218, 218.5, 226, 226.3, 226.7, 246, 256,
7 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5, and the applicable Wage Order. WJG
8 Decl., ¶6, Exhibit 2. Plaintiff Telly also alleged individual causes of action against Defendants
9 CCI and Moore for sexual harassment, retaliation, wrongful termination, and various Labor Code
10 violations, in Causes of Action One through Seven of her First Amended Complaint.

11 Defendants and Plaintiff informally exchanged discovery and conducted early mediation
12 of this dispute before Russ J. Wunderli, Esq., of Judicate West, on September 22, 2023. WJG
13 Decl., ¶¶ 5, & 7.c. This mediation resulted in settlements of Plaintiff’s individual claims and the
14 PAGA claim. WJG Decl., Exhibit 1.

15 Plaintiff submitted a copy of the settlement agreement and these moving papers to the
16 LWDA concurrently with the filing of this motion. WJG Decl., ¶ 5, Exhibit 2.

17 **B. The Proposed Settlement**

18 The Parties jointly prepared and executed the Private Attorneys General Act (Labor Code
19 § 2698 Et Seq.) Settlement Agreement (“PAGA Settlement Agreement”). WJG Decl., Exhibit 1.

20 The PAGA Settlement Agreement sets forth the terms of the Settlement reached by the Parties,
21 including the following key points:

22 1. Defendant agrees to settle the PAGA claim for the payment of seven thousand-five
23 hundred dollars (\$7,500) (hereinafter the “Gross Settlement Amount”), which shall be all inclusive,
24 encompassing (i) all payments to the Labor and Workforce Development Agency and Aggrieved
25 Employees, and (ii) any and all costs of third-party administration of the settlement. *See* PAGA
26 Settlement Agreement, at § 1.10. Plaintiff’s counsel is not seeking attorneys’ fees and costs.

1 2. The total sum available for payment of PAGA penalties shall be calculated by
2 deducting the costs of administration (up to \$2,950) from the Settlement Sum, yielding
3 approximately \$4,550.00. Seventy-five percent (75%) of this amount, or \$3,412.50, shall be
4 distributed to the LWDA and the remaining twenty-five percent (25%) of this amount, or \$1,137.50,
5 shall be distributed to the Aggrieved Employees. *See* PAGA Settlement Agreement, at §§ 1.11,
6 1.14, 3.2.2.

7 3. All Aggrieved Employees will receive a pro rata share of the \$1,137.50 allocated to
8 them, based on the number of pay periods that he or she was paid a bonus by CCI and also earned
9 overtime, sick time, or meal/rest period premiums during the PAGA Period relative to the sum of
10 the total number of such pay periods worked by all Aggrieved Employees during that same period.
11 *See* PAGA Settlement Agreement, at §§ 1.16, 3.2.2.1.

12 4. In exchange for the above settlement consideration, Defendants shall be entitled to
13 the following release from each Aggrieved Employee, including Plaintiff²:

14 [A]ll claims for PAGA penalties that were alleged, or reasonably
15 could have been alleged, based on the PAGA Period facts stated in
16 the Operative Complaint, and the PAGA Notice, for claims under
17 Labor Code sections 201, 202, 203, 218, 218.5, 226, 226.3, 226.7,
18 246, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198.5,
and the applicable Wage Order.

19 *See* PAGA Settlement Agreement, § 5.2.

20 5. Settlement administration, which is to be paid from the Settlement Sum, will not
21 exceed \$2,950. *See* PAGA Settlement Agreement, at § 1.3. ILYM Group, Inc., a reputable
22 settlement administration company, has agreed to administer the settlement within this amount.

23 6. Finally, under the terms of Settlement, any checks remaining uncashed more than
24 180 days after issuance shall be transmitted to the California Controller's Unclaimed Property
25 Fund in the name of the Aggrieved Employee. *See* PAGA Settlement Agreement, at § 4.4.3.

26 ² This comports with settled California Supreme Court authority. *See Arias v. Superior Court* (2009) 46 Cal. 4th 969,
27 986 (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government
are bound by the judgment in an action brought under the act . . .").

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3 **III. LEGAL ARGUMENT**

4 **A. Standards for Approval of a PAGA Settlement**

5 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
6 statute, which states that the “[t]he superior court shall review and approve any settlement of any
7 civil action filed pursuant to this part.” *See Labor Code* § 2699(1)(2). This involves a review of
8 whether the settlement is “fair, adequate, and reasonable under all the circumstances.” *Moniz v.*
9 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77. This is not the same standard in the PAGA
10 context as it is with class actions, because the trial court need not “act as a fiduciary for aggrieved
11 employees.” *Ibid.* However, the Court is to use a standard of review for settlements that “prevents
12 fraud, collusion or unfairness [citation], and protects the interests of the public and the LWDA in
13 the enforcement of state labor laws.” *Ibid.* (internal quotations and citations omitted).

14 In general, courts have determined that a settlement which serves the deterrent and punitive
15 functions of the PAGA statute is appropriately approved. E.g. *Moniz, supra*, 72 Cal.App.5th at 77;
16 *Hernandez v. Best Buy Stores, LP*, 2017 WL 2445438 *2 (S.D. Cal. 2017); *Gutilla v. Aerotek, Inc.*,
17 2017 WL 2729864 * 3 (E.D. Cal. 2017). Here, the purposes of the PAGA are being well-served
18 by the resolution.

19 As with any settlement, the Court must be mindful in conducting its inquiry that
20 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in
21 litigating further.” *See In re TD Ameritrade Account Holder Litig.*, 2011 U.S. Dist. LEXIS 103222,
22 24 (N.D. Cal. Sept. 12, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding of
23 absolutes and an abandoning of highest hopes’” [*Officers for Justice v. Civil Service Com.*, 688
24 F.2d 615, 624 (9th Cir., 1982)], as “it is the very uncertainty of outcome in litigation and avoidance
25 of wasteful and expensive litigation that induce consensual settlements.” *Id.*, at 625. As such, “the
26 settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits” or
27 “judged against a hypothetical or speculative measure of what might have been achieved by the

negotiators.” *Id.*

When evaluating the fairness, adequacy, and reasonableness of a PAGA penalty, courts compare the potential penalty amount (its verdict value, as some courts refer to it) with the actual recovery under the settlement. [Citations]. There is no express or even baseline percentage of recovery required. Under the express terms of the PAGA, a verdict value is not guaranteed even if the plaintiff prevails, as courts have discretion to lower the amount of penalties based on the circumstances of a particular case. Citation.] *Manzo v. McDonald’s Restaurants of California, Inc.* (E.D. Cal., Sep. 29, 2022) 2022 WL 4586236, *6 (approving settlement of less than 1% of “verdict value” of PAGA claims). Further, while “[a PAGA] action is ... designed to protect the public and penalize the employer for past illegal conduct” [*Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010), at 11], a reviewing Court must take into account the fact that settlement of a PAGA claim – like any settlement – involves a “compromise” that stops short of rendering findings of liability and damages. Moreover, the Court must not lose sight of the fact that “[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.” *See Ochoa-Hernandez v. CAJDER Foods, Inc.* (N.D. Cal. Apr. 2, 2010) 2010 U.S. Dist. LEXIS 32774, at 12.

B. The Settlement Meets the Criteria For Approval

1. The Factors Giving Rise to a Presumption of Fairness Exist

In conducting a review of a settlement, it is generally recognized that an “agreement ... reached through arms-length negotiation between experienced parties . . . is entitled to a presumption of fairness.” *See Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377, 44 (C.D. Cal. Apr. 12, 2010). A presumption of fairness exists here, as the proposed Settlement (1) is the product of arms-length negotiations [WJG Decl., ¶ 5], (2) that was negotiated by Counsel with significant experience in similar wage and hour litigation [*Id.*, ¶¶ 9-10], (3) which occurred

1 after Counsel had conducted sufficient investigation to evaluate the strength and potential value of
2 the PAGA claims, as well as evaluating the risks of litigating this claim through trial, and with the
3 assistance of an experienced mediator. *Id.*, at ¶¶ 4, 7. Based thereon, the court should give
4 considerable weight to the competency and integrity of counsel in assuring itself that the Settlement
5 Agreement represents an arm's-length transaction entered without self-dealing or other potential
6 misconduct.

7
8 **2. The Proposed Settlement Furthers the Purposes of the PAGA, Taking into**
9 **Consideration Defendant's Defenses and Mitigating Factors, and Should Be**
10 **Approved.**

11 **i. Overtime, Sick Pay, Meal/Rest Period Premium Claims**

12 Plaintiff's overtime, sick pay, and meal/rest period premium claims are premised on the
13 allegation that Defendant issued allegedly non-discretionary bonuses to non-exempt employees that
14 had to be included in the regular rate of pay, but were not included in overtime, sick pay, or
15 meal/rest premium pay paid to these employees during the same pay period in which they earned
16 the bonus. Defendant contended throughout that these bonuses were, in fact, discretionary. In
17 support of this, Defendant pointed to Plaintiff's offer letter, making employees aware of the
18 discretionary nature of these bonuses. WJG Decl., Exhibit 3. If the court ultimately determined
19 that these bonuses were discretionary, then all of Plaintiff's PAGA claims based on her regular rate
20 theory fail—including her overtime claim, sick pay claim, majority of her meal period claim, wage
21 statement claims, and waiting time penalty claims.

22 Through informal discovery and the mediation process, Plaintiff learned that 61
23 employees, including Plaintiff, were issued at least 1 quarterly bonus during the PAGA Period.
24 Of these 61 employees, 58 also were paid for overtime, sick time, and/or meal/rest period
25 premiums during the pay period in which the bonus was paid, and this occurred over a total of
approximately 375 pay periods in the PAGA Period. WJG Decl., ¶7.c.

26 The civil penalty for failure to pay overtime, sick pay, or meal/rest period premiums at the
27 legally required rate is found at Labor Code section 558(a), but is exclusive of the underpaid wage

1 portion of the penalty. *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 193-194. Thus, Defendant
2 was potentially liable for \$50 per employee per pay period in which a violation occurred. For the
3 375 potential violations, Defendant faced \$18,750 in maximum possible penalties (375 x \$50).

4 ii. Waiting Time Penalty Claim

5 Under Labor Code sections 201 and 202, Defendant was required to pay employees for all
6 wages earned and unpaid at termination or within 72 hours of resignation. As set forth above, this
7 claim is predicated on the allegation that former employees who did not have bonuses incorporated
8 into their rates of pay for overtime, sick pay, and/or meal/rest premium penalties left employment
9 with earned but unpaid wages. The civil penalty for violation of Labor Code sections 201 and/or
10 202 is found at Labor Code section 2699(f), and is \$100 per employee per pay period, as there is
11 no civil penalty defined for violations of these code sections³. Based on the data provided to
12 Plaintiff in discovery, Plaintiff determined that there were 21 former employees who may have
13 suffered violations. WJG Decl., ¶ 7.c. Accordingly, Defendant faced a maximum potential penalty
14 liability of \$2,100 (21 * \$100).

15 iii. Wage Statement Claim

16 The wage statement allegations in this claim are derivative of the above facts. In short,
17 Plaintiff alleged that in every pay period in which an employee was underpaid due to a regular rate
18 issue, that employee's wage statement was also inaccurate in that pay period.

19 With respect to the maximum penalty exposure on this claim, it should first be noted that
20 California courts have not clearly determined whether the applicable penalty for noncompliant
21 wage statements is found under Labor Code section 226.3 or Labor Code section 2699(f). *See*
22 *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 673-674 (indicating
23 the \$250 penalty under Labor Code section 226.3 applies in all instances); *but see, Noori v.*
24 *Countrywide Payroll & HR Solutions, Inc.* (2019) 43 Cal.App.5th 957, 971 fn. 13 (indicating civil
25

26 ³ *See Culley v. Lincare, Inc.* (E.D. Cal 2017), 236 F.Supp.3d 1184, 1191 (Holding that Labor Code section 256 does
27 not apply to claims of violations of Labor Code sections 201/202 for employees other than seasonal workers);
Raziano v. Albertsons LLC (C.D. Cal. Dec. 13, 2019) 2019 WL 9464279, *8 (same).

1 penalties for noncompliant wage statements are available pursuant to 2699(f)). Given the lack of
2 clarity among the courts, and the explicit language of Labor Code section 226.3 stating that its
3 penalty applies where “the employer fails to provide the employee a wage deduction statement or
4 fails to keep the records required in subdivision (a) of Section 226,” the appropriate measure of
5 maximum exposure should be the \$100 “default” penalty set forth in Labor Code section 2699(f).
6 Using that amount, the maximum exposure faced by Defendant was \$37,500 (375 pay periods x
7 \$100).

8 iv. Meal Period/Minimum Wage Claims

9 Plaintiff learned through informal discovery and the mediation process that Defendant
10 relied upon time data input by Plaintiff and other employees through a phone application. It was
11 determined that Plaintiff was also in control of when and whether she took lunch, and when she
12 took breaks. With respect to these breaks, CCI had compliant written policies, and Plaintiff
13 acknowledged that no supervisor suggested or requested that she work through or not take a break.
14 Based on this, the allegations regarding non-compliant meal or rest were not considered viable.
15 Further, establishing meal and rest period violations in this case will likely require a substantial
16 number of individualized assessments. The law is uncertain whether a trial court can dismiss a
17 PAGA claim on the basis it is unmanageable, i.e.—requires unwieldy individualized assessment.
18 This issue is currently before the California Supreme Court in the case *Estrada v. Royalty Carpet*
19 *Mills, Inc.* (2002) 76 Cal.App.5th 685. Because of these factors, Plaintiff concluded that these
20 claims faced too many hurdles to succeed.

21 v. Records Claim

22 The Labor Code claims regarding the untimely provision of records were determined to be
23 a one-time violation to Plaintiff alone during the PAGA Period, and therefore of insignificant value
24 (specifically, \$200 for violations of the two records-related Labor Code sections, per Labor Code
25 section 2699(f)).
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vi. Total PAGA Exposure and Settlement Value

Based on the facts set forth above, the maximum exposure for the regular rate PAGA violations would be \$58,550 for all potential Labor Code sections. WJG Decl., ¶7.c. The PAGA settlement amount of \$7,500 represents approximately 12.8% of the maximum PAGA exposure in this case.

Even without examining Defendant's defenses, the settlement amount is well within the range of PAGA settlements approved by courts. Courts have regularly approved PAGA settlements representing less than 5% of the maximum exposure. *See Bowen v. Jea Senior Living Health and Welfare Benefit Plan, LLC* (E.D. Cal, Dec. 8, 2023) 2023 WL 8527732 at *9-10 (approving PAGA settlement of approximately 3% of maximum liability); *Manzo v. McDonald's Restaurants of California, Inc.* (E.D. Cal. Sep. 29, 2022) at *7 (approving PAGA settlement of less than 1% of maximum liability); *Rodriguez v. Danell Custom Harvesting, LLC* (E.D. Cal. 2018) 293 F.Supp.3d 1117, 1133 (approving PAGA settlement representing 0.6% of maximum liability); Indeed, as low as 0.2 percent of total value has been approved. *Carrington v. Starbucks* (2018) 30 Cal.App.5th 504, 517 (\$150,000 approved where maximum value was \$75,000,000).

vii. Defendant's Defenses

As said, Defendant CCI's primary defense to the regular rate related claims is that the bonus did not need to be accounted for because it was discretionary, and that employees were advised of this in offers of employment. While Plaintiff disagrees with Defendant CCI's contention that the bonuses were discretionary, Plaintiff believes a discounted value is appropriate because Defendant's position could prevail, and, at a minimum, Defendant's conduct was not egregious, and the Court likely would take that into account in exercising its discretion to reduce any award.

Second, PAGA claims never carry full value, as the Legislature has empowered courts to reduce PAGA awards while there is no required formula for the discount of PAGA awards that

1 are “unjust, arbitrary, and oppressive, or confiscatory.” Labor Code §2699(e)(2). Because the
2 regular rate issue stems from the payment of a bonus, and not some form of “wage theft,” it is
3 anticipated that a significant reduction would be imposed. In this regard, significant punishment
4 could provide incentive to end the bonus program, which would not be to the benefit of
5 employees.

6 Third, the claims regarding meal and rest breaks, which commonly are speculative, are
7 further undercut because non-exempt employees were providing the time at work information that
8 was relied upon by Defendant CCI. Further, in the context of compliant written policies, proving
9 meal and rest violations presents an overwhelming challenge that very well may require obtaining
10 statements or deposition testimony from each non-exempt employee. Again, this type of
11 individualized analysis creates manageability issues. Judicial authority to dismiss unmanageable
12 PAGA claims is currently before the California Supreme Court in *Estrada v. Royalty Carpet*
13 *Mills, Inc.* (2002) 76 Cal.App.5th 685. Consequently, the undersigned concluded that these claims
14 are of no meaningful value.

15 Fourth, the \$7,500 is worth more to the employees and LWDA as Plaintiff’s counsel is not
16 seeking any compensation for fees. WJG Decl., ¶ 7.g.

17 For these reasons, Plaintiff concluded the \$7,500.00 PAGA settlement is fair, reasonable,
18 and just. WJG Decl., ¶ 8.

19 **3. The Scope of the Release is Appropriately Tailored**

20 The California Supreme Court has concluded that in the context of PAGA “the nonparty
21 employees, because they were not given notice of the action or afforded any opportunity to be
22 heard, would not be bound by the judgment as to remedies other than civil penalties.” *Arias v.*
23 *Superior Court* (2009), 46 Cal. 4th 969, 987. Thus, the scope of the release provided in exchange
24 for the foregoing consideration is limited to the claims for civil penalties that were alleged, or
25 reasonably could have been alleged, based on the facts stated in the Complaint and Plaintiff’s
26 PAGA Notice under Labor Code §§ 2698 *et seq.* See Settlement Agreement, at § 5.2. This
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1 settlement has no impact on any individual claims other nonparty aggrieved employees may have
2 against Defendant. *Id.* at § 5.01.
3

4 **IV. CONCLUSION**

5 For all the reasons set forth above, Plaintiff respectfully requests that this Court grant the
6 instant motion and approve the PAGA Settlement as fair, reasonable, and adequate.
7

8 Dated: January 10, 2024

Respectfully submitted,

9 MAYALL HURLEY, P.C.

10 By: 

11 WILLIAM V. GORHAM, III
12 VLADIMIR J. KOZINA
13 Attorneys for Plaintiff
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