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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION

KODY HORNBURG, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

PACIFICA COMPANIES, LLC ;
PROSPECT HOSPITALITY LP ; and
DOES 1 through 50, inclusive

Defendants.

Lead Case No. 37-2023-00002433-CU-OE-CTL
[Consolidated with Case No. 37-2023-
00020893-CU-OE-CTL] [Related to Case No.
37-2023-00023685]

**NOTICE OF MOTION AND MOTION OF
PLAINTIFF FOR APPROVAL OF PAGA
SETTLEMENT;**

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

Date: January 10, 2025
Time: 9:30 a.m.
Dept: C-66
Judge: Hon. Wendy H. Behan

Complaint Filed: January 19, 2023
Trial Date: Not Set

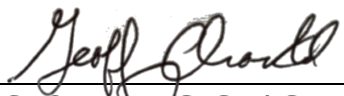
1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD; PLEASE TAKE**
2 **NOTICE THAT ON JANUARY 10, 2025, AT 9:30 A.M.,** or as soon thereafter as the matter may
3 be heard in Department C-66 of the Superior Court of California, County of San Diego, 330 West
4 Broadway, San Diego, California 92101, the Hon. Wendy H. Behan presiding, Plaintiff MINA
5 LALLY ("Plaintiff") will and hereby does move this Court for an order approving the parties'
6 proposed settlement of \$333,334 pursuant to the Private Attorney General Act of 2004, Labor Code
7 section 2699(s)(2) and for entry of judgment thereon, including approval of the parties' allocation
8 of the settlement amount as follows:

- 9 (1) \$139,709.31 as penalties payable to the LWDA;
10 (2) \$46,569.77 as penalties allocated to the alleged aggrieved employees;
11 (3) \$10,000.00 to Plaintiff Mina Lally as a PAGA service award;
12 (4) \$111,100.22 towards Plaintiff's attorneys' fees;
13 (5) \$18,454.70 towards Plaintiff's litigation costs; and
14 (6) \$7,500 maximum towards claims administration.

15 This motion is unopposed. This motion is based upon this Notice of Motion, the below
16 Memorandum of Points and Authorities, the Declaration of Geoffrey C. Chackel, the Declaration
17 of Robert S. Blumberg, the Declaration of Nicholas Ferraro, the Notice of Lodgment of Exhibits
18 and all lodged Exhibits therewith and upon such other evidence and argument as may be presented
19 at the hearing.

20
21
22 DATED: December 12, 2024

CHACKEL LAW, PC

23
24 By: 
25 GEOFFREY C. CHACKEL
26 Attorney for Plaintiff
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a wage and hour dispute brought by Plaintiff Mina Lally seeking to recover civil
4 penalties pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The parties
5 recently resolved their disputes through mediation and executed a PAGA Settlement Agreement,
6 which requires Defendants to pay \$333,334.00 to resolve the PAGA claim brought by Mina Lally
7 on behalf of the LWDA (see PAGA Settlement attached as Exhibit 1 to the Notice of Lodgment of
8 Exhibits (“NOL”)).

9 To facilitate this Court’s review and approval of the PAGA Settlement, the Parties entered
10 a Joint Stipulation Requesting PAGA Settlement Approval; [Proposed] Order Approving PAGA
11 Settlement and Entering Judgment (the “Joint Stipulation,” Exhibit 2 to the NOL). Through this
12 motion, Plaintiff seeks Court approval of the settlement agreement including execution of the Joint
13 Stipulation and Proposed Order pursuant to California Labor Code section 2699(s)(2) and for the
14 entry of judgment.

15 As further detailed in this motion and the Joint Stipulation and supporting declarations, the
16 PAGA claim is based upon alleged meal / rest period violations, unpaid “off the clock” wages, the
17 failure to pay overtime, the failure to pay overtime at the correct rate of pay, and the failure to
18 provide accurate itemized paystubs. The PAGA settlement covers approximately 364 aggrieved
19 employees who worked for Defendants from January 19, 2022 to November 10, 2024, over the
20 course of approximately 9,561 pay periods. Plaintiff was granted access to relevant wage and hour
21 records for 35% of randomly selected aggrieved employees. The parties conducted a thorough
22 review of the relevant information, including data regarding the total number of employees (current
23 and former) during the PAGA period, total number of pay periods, and a review of workplace
24 policies, waivers, new hire packets, time records and paystubs. After conducting a full-day
25 mediation before Tagore Subramaniam, the parties reached a proposed settlement agreement that
26 requires payment of \$333,334.00 which represents a penalty of \$34.86 per pay period, which is
27 fair, just and reasonable in light of the merits of the case.
28

1 With this Court's approval, the \$333,334 settlement payment will be allocated as follows:

2 (1) \$139,709.31 as penalties payable to the LWDA;

3 (2) \$46,569.77 as penalties allocated to the alleged aggrieved employees;

4 (3) \$10,000.00 to Plaintiff Mina Lally as a PAGA service award;

5 (4) \$111,100.22 towards Plaintiff's attorneys' fees;

6 (5) \$18,454.70 towards litigation costs; and

7 (6) \$7,500 maximum towards claims administration.

8 (Ex. 1, to NOL.)

9 Plaintiff's requested attorneys' fees are fair and reasonable as the requested award of
10 \$111,100.22 represents 33.33% of the total PAGA settlement does not include a *lodestar multiplier*
11 and is appropriate in light of the time and effort incurred by the attorneys along with the results
12 achieved in the litigation. Similarly, the requested litigation cost award should be approved as these
13 expenses were reasonable and necessary to prosecute this action to a successful conclusion. Finally,
14 the requested service award for Ms. Lally of \$10,000 should be approved because it is reasonable
15 and consistent with other service awards.

16 II. FACTUAL AND PROCEDURAL HISTORY

17 A. The Parties And The Pleadings.

18 On January 19, 2023, Kody Hornburg filed a Class Action Complaint against Defendants
19 alleging eight claims for: (1) Failure to Pay All Overtime, (2) Meal Period Violations, (3) Rest
20 Period Violations, (4) Failure to Pay All Sick Leave Wages, (5) Untimely Payment of Wages, (6)
21 Wage Statement Violations, (7) Waiting Time Penalties, and (8) Unfair Competition. (Declaration
22 of Geoffrey C. Chackel, ¶¶ 4-5, in Support Of The Motion for Approval of PAGA Settlement, Ex.
23 7 to NOL.)

24 On March 22, 2023, after expiration of the 65-day statutorily prescribed LWDA waiting
25 period under Labor Code section 2699.3, Plaintiff Hornburg filed and served his First Amended
26 Class Action Complaint, adding a Ninth Cause of Action under for Civil Penalties under PAGA.
27 (Chackel Decl., ¶¶ 6-7, Ex. 8 to NOL.)
28

1 Plaintiff Hornburg and Plaintiff Mina Lally were employed with Defendants in various non-
2 exempt positions such as bartender, host, server, or busser from 2016 through July 15, 2022—thus
3 their employment overlapped to the day. (*Id.*, at ¶ 8.)

4 On May 16, 2023, Plaintiff Lally filed an individual Complaint against Defendants entitled
5 *Mina Lally v. Pacifica Companies, LLC, et. al.*, San Diego County Superior Court Case No. 37-
6 2023-00020893-CU-OE-CTL (the “Lally Action”). (Chackel Decl., ¶¶ 9-10, Ex. 9 to NOL.) The
7 Lally Action asserted claims against Defendants for: (1) Failure to Provide Meal and Rest Periods,
8 (2) Failure to Pay Overtime, (3) Failure to Pay Minimum Wage, (4) Failure to Provide Accurate
9 Itemized Wage Statements, (5) Failure to Pay Timely Wages under Labor Code sections 202 and
10 203, (6) Violation of Business & Professions Code section 17200.

11 On May 18, 2023, Plaintiff Hornburg died in a tragic motorcycle accident. In late July or
12 early August, 2023, Plaintiffs’ counsel discovered that Mr. Hornburg had died. It took several
13 months to identify individuals with authority to act on Mr. Hornburg’s behalf. (Chackel Decl., ¶
14 13.) Plaintiff’s counsel filed a Notice of Death in this Action.

15 On July 20, 2023, Defendants filed a Notice of Related Case, deeming the Hornburg Action
16 and the Lally Action as “related.” (*Id.*, at ¶¶ 11-12, Ex. 10 to NOL.)

17 On September 14, 2023, Plaintiff Mina Lally and The Estate of Kody Hornburg filed and
18 served on Defendants an Amended Notice Of Labor Code Violations with the LWDA. The 65-day
19 LWDA statutory waiting period expired on November 18, 2024, therefore allowing Ms. Lally to
20 become deputized as a PAGA representative on behalf of the LWDA. (Chackel Decl., ¶¶ 14-16,
21 Ex. 11 to the NOL.)

22 Also on September 14, 2023, Defendants filed another Notice of Related Case in the Lally
23 Action, repeating the same factual basis underpinning the near identical nature of the Hornburg and
24 Lally Actions. (Chackel Decl., ¶¶ 17-18, Ex. 12 to NOL.)

25 On November 30, 2023, this Court duly appointed Kayla Saycocie to act as the Guardian
26 Ad Litem of Julian Saycocie, a minor child and the lawful successor-in-interest to the *individual*
27 *claims* of the decedent, Kody Hornburg. At the same time, this Court entered an order duly granting
28

1 Kayla Saycocie authority to prosecute any *individual* claims against the Defendants that Mr.
2 Hornburg owned at the time of death. (Chackel Decl., ¶ 19.)

3 On December 13, 2023, Plaintiff Mina Lally filed a First Amended Complaint in the Lally
4 Action (then pending before Judge Katz in Department C-74). The Lally FAC added a Seventh
5 Cause of Action for Civil Penalties under PAGA. (*Id.*, at ¶¶ 20-21, Ex.13 to the NOL.)

6 In the Lally FAC, it alleged the same claims against Defendants in a PAGA representative
7 capacity that were alleged in the Hornburg FAC. In addition, the Lally FAC incorporated the same
8 PAGA class definition and LWDA Notice letter of January 9, 2023 and the same Amended LWDA
9 Notice Letter of September 14, 2023, that was jointly filed in her representative capacity as an
10 aggrieved employee. Thus, Ms. Lally was acting as a PAGA representative in the Lally Action
11 based upon the identical general facts, circumstances, last day of employment, injuries and claims
12 under PAGA that were originally asserted by the decedent Kody Hornburg on behalf of the LWDA
13 and putative class members. (Chackel Decl., ¶ 22.)

14 On February 23, 2024, this Court granted the motion of Plaintiff Lally to intervene in the
15 Hornburg Action as the Class and PAGA Representative Action in place of the decedent Kody
16 Hornburg and to prosecute the representative claims in the Hornburg Action in his place. On
17 February 23, 2024, this Court also granted the motion of Plaintiff Mina Lally to consolidate the
18 Hornburg Action formally with the Lally Action, with the Hornburg Action designated as the Lead
19 Action and granted Plaintiff Lally leave to file a Second Amended Class and Representative Action
20 which related back to the original Hornburg filing date of January 19, 2023. (Chackel Decl., ¶¶ 23-
21 24.)

22 On March 4, 2023, Mina Lally, filed a Second Amended Class and Representative Action
23 Complaint as the duly appointed substitute PAGA representative in the Hornburg Action.¹ (*Id.*, at
24 ¶¶ 25-26, Ex. 14 to the NOL.)

25
26
27 ¹ Plaintiff made numerous unsuccessful attempts to file the SAC commencing on March 4, 2024. The SAC was not
28 accepted for filing until October 10, 2024, due to the Clerk's error of designating the Lally Action as the "lead
action" rather than correctly designating the Hornburg Action as the "lead action," which caused all Hornburg Action
filings to be temporarily rejected.

1 Subsequently on April 19, 2024, this Court issued an Amended Order that reaffirmed the
2 February 23, 2024, rulings as stated above, ordered the individual claims of Hornburg and Lally to
3 private binding arbitration before AAA and stayed the PAGA representative claims now being
4 prosecuted by Mina Lally pending completion of the arbitration process. (*Id.*, at ¶¶ 27-28, Ex. 15
5 to the NOL.)

6 **B. Plaintiff Conducted A Thorough Analysis And Evaluation Of 35% Of The PAGA**
7 **Aggrieved Employees.**

8 In early May, 2024, all Parties agreed to mediate their disputes with Tagore Subramaniam,
9 a respected wage and hour mediator with Signature Resolution. On May 28, 2024, Plaintiff issued
10 Defendants an extensive demand for documents and information necessary to fully evaluate all
11 PAGA and individual claims, including random sampling of time and pay records for 35% of the
12 total PAGA aggrieved employees. In response, Defendants identified the total putative PAGA
13 aggrieved employees as approximately 364 employees and produced numerous documents,
14 including personnel files, time records and wage statements, employment policies, and
15 comprehensive time and payroll records for Plaintiff and the other randomly selected employees.

16 In advance of the mediation, Plaintiff retained the services of a damages consultant who
17 conducted a detailed analysis of the documents and information produced by Defendants and
18 provided a range of possible outcomes depending upon available proof. Plaintiff's counsel duly
19 considered this information when valuing this matter along with the available evidence and
20 potential recovery, including that the Court has discretion to award a lesser amount of penalties
21 (see Labor Code § 2699(e)(2)) and that it is unclear whether an employer is liable for the \$200
22 double-penalty per "subsequent violation" unless it is on notice of the violation (See, e.g., *Amaral*
23 *v Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209).

24 **C. The Parties' Settlement And Second Amended Notice Of PAGA Violations.**

25 On September 11, 2024, the parties participated in an arms-length mediation before Tagore
26 Subramaniam. After a full day mediation, the parties' reached a settlement of the PAGA action that
27 includes a total payment of \$333,334.00. (Ferraro Decl., ¶¶ 14-20, Ex. B to the NOL.) The recovery
28

1 encompasses current and former nonexempt employees employed between January 19, 2022 and
2 November 10, 2024, which is estimated to be approximately 364 individuals.

3 As set forth in Paragraph 1.17 of the Settlement Agreement, Plaintiff's Counsel seeks
4 approval as appointment of PAGA Counsel. The Parties seek approval the term "Released PAGA
5 Claims" shall mean the claims being released by Plaintiff, PAGA Counsel, Aggrieved Employees,
6 the LWDA and the State of California and as described in Paragraph 5 of the Settlement Agreement.
7 "Released Parties" shall have the same meaning as set forth in Paragraph 1.28 of the Settlement
8 Agreement. The terms "Plaintiff's Release" and "Release by the State of California, LWDA and
9 Aggrieved Employees" shall have the same meanings as set forth in Paragraphs 5.1 and 5.2 of the
10 Settlement Agreement. In addition, the Parties seek approval of the appointment of Phoenix Class
11 Action Administration Solutions, as set forth in Paragraph 1.2 of the Settlement Agreement. .

12 Upon funding of the settlement in accordance with the terms of the Settlement Agreement
13 and this Order, the Released Parties shall be entitled to the releases of Released PAGA Claims as
14 set forth in Plaintiff's Release and the Release by the State of California, LWDA and Aggrieved
15 Employees. In accordance with the provisions of Paragraph 3.1 of the Settlement Agreement, the
16 Gross Settlement Amount shall be \$333,334.00. After the attorneys' fees, individual representative
17 service payment, costs, and administrator's expenses are deducted from the Gross Settlement
18 Amount, the Net Settlement Amount is \$186,279.08, of which 75% (\$139,709.31) shall be
19 distributed to the LWDA and the remaining 25% (\$46,569.77) shall be distributed to the aggrieved
20 employees as their share of PAGA penalties in accordance with the provisions of Paragraph 3.2.4
21 of the Settlement Agreement.

22 Accordingly, the parties have agreed the \$333,334 gross settlement shall be distributed as
23 follows:

- 24 1. \$139,709.31 to the Labor and Workforce Development Agency for the LWDA
25 PAGA Payment, as set forth in Paragraphs 1.15 and 3.2.4 of the Settlement
26 Agreement;
- 27 2. \$46,569.77 distributed to the Aggrieved Employees, for the Individual PAGA
28 Payments, as defined in Paragraphs 1.4, 1.12 and 3.2.4 of the Settlement Agreement;

3. \$10,000 to Plaintiff Lally as the PAGA Representative Plaintiff Enhancement payment, as defined in Paragraphs 1.24 and 3.2.3 of the Settlement Agreement;
4. \$111,100.22 to PAGA Counsel for PAGA Counsel Fees Payment, as defined in Paragraphs 1.18 and 3.2.1 of the Settlement Agreement
5. \$18,454.70 to PAGA Counsel for PAGA Counsel Litigation Expenses Payment as defined in Paragraphs 1.18 and 3.2.1 of the Settlement Agreement
6. \$7,500 to the Administrator for the Administrator Expenses Payment, as defined in Paragraphs 1.3 and 3.2.2 of the Settlement Agreement.

On September 26, 2024, Plaintiff filed a Second Amended Notice of Labor Code Violations, which was submitted to the LWDA, incorporating claims and entities subject to dismissal and release by virtue of the Settlement Agreement. (Chackel Decl., ¶¶ 29-32, Ex. 16 to the NOL.)

IV. ARGUMENT

“The superior court shall review and approve any settlement of any civil action filed pursuant to this part.” (Labor Code § 2699(s)(2).) A party seeking approval of a PAGA settlement must simultaneously submit the proposed settlement to the LWDA, which has been accomplished.

Although PAGA does not provide a standard of review for PAGA settlements and no Court of Appeal has published a decision on the issue, Plaintiff proposes the Court consider the following factors in determining whether to approve the settlement: (1) whether the settlement is “fair, reasonable and adequate” and (2) the extent to which the settlement deters violations of the state labor laws and acts as a public benefit.

These factors are appropriate for several reasons. First, the California Supreme Court noted (in dicta) that PAGA settlements “are subject to trial court review and approval, ensuring that any negotiated resolution is fair to those affected.” (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549, *citing* Lab. Code, § 2699, subd. (s)(2) (formerly subd. (l)(2)). Thus, the overall fairness of the proposed settlement is an appropriate factor.

Second, a PAGA case is in the nature of a qui tam proceeding (*Iskanian v. CLS Transp. Los Angeles LLC* (2014) 59 Cal.4th 348, 394) and, in a similar statutory scheme under The California False Claims Act requiring court approval of settlements, a qui tam court must take into account

1 “the best interests of the parties involved and the public purposes behind the act.” (Gov’t Code §
2 12652(c)(1)). If a qui tam plaintiff objects to a settlement between the government and a defendant,
3 the court can only approve the settlement after finding it is “fair, adequate, and reasonable under
4 all the circumstances.” (Gov’t Code § 12652(e)(2)(B)).

5 Finally, federal courts have interpreted PAGA settlements to require it be “genuine and
6 meaningful” and “consistent with the underlying purpose of the statute to benefit the public.” (See
7 *Viceral v. Minstras Group, Inc.* (N.D.Cal. Oct. 11, 2016) 2016 WL 5907869 * 9; *Ferreri v. Bask*
8 *Technology, Inc.* (S.D. Cal Nov. 21, 2016) 2016 WL 6833927 [evaluating PAGA settlement in light
9 of purposes and policies of PAGA].)

10 Notably, when considering the fairness of the settlement amount, the Court’s focus is not
11 concerned with the amount aggrieved employees are to receive, but rather, must focus on the total
12 settlement amount in achieving PAGA’s objective which is to recover civil penalties. (*Mendez v.*
13 *Tween Brands, Inc.*, 2010 U.S. Dist. LEXIS 66454 at *11 (E.D. Cal. June 30, 2010) [holding “[t]he
14 remedy sought in a PAGA suit consists of civil penalties, not individual or class damages”].)
15 “Unlike class actions, these civil penalties are not meant to compensate unnamed employees
16 because the action is fundamentally a law enforcement action.” (*Ochoa-Hernandez v. Cjaders*
17 *Foods, Inc.*, 2010 U.S. Dist. LEXIS 32774 at *12 (Apr. 2, 2010)). The Court should not lose sight
18 of the fact that, “[u]nlike a class action seeking damages or injunctive relief for injured employees,
19 the purpose of PAGA is to incentivize private parties to recover civil penalties for the government
20 that otherwise may not have been assessed and collected by overburdened state enforcement
21 agencies.” (*Ibid*).

22 PAGA was passed because the Legislature believed it necessary “to achieve maximum
23 compliance with state labor laws” and “to ensure an effective disincentive for employers to engage
24 in unlawful and anticompetitive business practices.” (2003 Cal. Legis. Serv. Ch. 906 § 1(a).) The
25 Legislature further found that, while self-policing efforts have had some success, “in other cases
26 the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil
27 penalties as provided in the Labor Code.” (*Id.* at § 1(b).) Through PAGA, the Legislature sought
28 to deputize aggrieved employees “as the proxy or agent of the state labor enforcement agencies,

1 representing the same legal right and interest as those agencies” (*Iskanian v. CLS Transp. Los*
2 *Angeles, LLC* (2014) 59 Cal.4th 348, 394.)

3 As for the interests of the LWDA (in whose shoes Plaintiff stands), its top enforcement
4 priorities are “to vigorously enforce minimum labor standards in order to ensure employers are not
5 required or permitted to work under substandard unlawful conditions . . .” and to “protect employers
6 who comply with the law from those who attempt to gain a competitive advantage at the expense
7 of their workers by failing to comply with minimum labor standards.” (Labor Code §90.5(a).)
8 Under PAGA, civil penalties are primarily intended as a deterrent, and not as a financing
9 mechanism for the LWDA and the State’s general fund. While the State clearly has an interest “in
10 receiving the proceeds of civil penalties,” the penalties are “used to deter violations.” (*Iskanian*, 59
11 Cal.4th at 313.)

12 Consistent with this underlying purpose, “[u]nnamed employees need not be given notice
13 of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim.”
14 (Ochoa-Hernandez, 2010 U.S. Dist. LEXIS 32774 at *13). Indeed, “[PAGA] does not create
15 property rights or any other substantive rights” as “[i]t is simply a procedural statute allowing an
16 aggrieved employees to recover civil penalties – for Labor Code violations – that otherwise would
17 be sought by state labor law enforcement agencies.”(*Amalgamated Transit Union, Local 1756,*
18 *AFL-CIO v. Sup. Ct.* (2009) 46 Cal.4th 993, 1003). Based upon the recent California Supreme Court
19 authority in *Turrieta v. Lyft, Inc., Cal. S. Ct. August 1, 2024*), other allegedly aggrieved employees
20 lack standing to intervene or object to this settlement, although they may be entitled to receive a
21 portion of the settlement as an aggrieved employee.² This renders the approval process of a PAGA
22 settlement distinct from a class action settlement, as there is no need for the Court to employ the
23 “two-step approval process” required under California Rules of Court Rule 3.769.

24 Here, the parties request approval of a \$333,334.00 PAGA settlement. As further detailed
25

26 ² The parties are aware of the existence of the representative PAGA action *Rogers v. Pacifica*
27 *Companies, LLC et al.*, Case No. 37-2023-00023685, which was filed on June 6, 2023, and which
28 has been deemed related to the Action. It is Defendants’ understanding and intention in seeking the
Court’s approval of this PAGA settlement that such approval will result in the release and dismissal
of the pending claims in the *Rogers Action*. Settlement Agreement ¶12.7.

1 in the Declaration of Nicholas Ferraro (at ¶¶ 17-20), the settlement is fair and reasonable to those
2 affected because it will act as a deterrent to future violations thus achieving the underlying goals of
3 PAGA. The settlement also represents just compensation to the LWDA and aggrieved employees
4 in light of the merits of the claims, the challenges Plaintiff faced establishing significant violations
5 beyond the “regular rate of pay” miscalculations and other factors including court discretion to
6 award lesser penalties than proven by Plaintiff. (See, e.g., *Ramirez v Benito Valley Farms,*
7 *LLC* 2017 US Dist Lexis 137272, *17 (ND Cal Aug. 27, 2017) [approving PAGA settlement
8 amounting to 4.5 percent of total estimated possible recovery, considering early stages of litigation
9 and defendant's financial condition]; *Nordstrom Com’n Cases* (2010) 186 Cal.App.4th 576, 589
10 [holding allocation of zero dollars to resolve PAGA claims may be appropriate].) The PAGA
11 settlement agreement is fair, reasonable and in furtherance of the statute’s underlying purpose.

12 With regard to Plaintiff’s \$10,000 PAGA service award, California courts regularly approve
13 PAGA settlements that allow a similar service payment to the representative plaintiff, or a general
14 release fee to the plaintiff in exchange for a full waiver of all potential claims. (See, e.g., *Garcia v*
15 *Macys’ W. Stores, Inc.*, San Bernardino Super Ct, Sept. 13, 2017, No. CIVDS1516007, (order
16 granting service enhancement award of \$10,000); *Resendez v Bridgestone Retail Operations, LLC*,
17 Los Angeles County Super Ct, June 13, 2016, No. BC596892 (same); *Bennett v Alorica, Inc.*,
18 Orange County Super Ct, No. 2018-00997257 (approving \$15,000 general release fee separate from
19 general settlement fund).

20 With regard to Plaintiffs’ request for attorneys’ fees, it is appropriate to approve requests
21 based on either a percentage of the total settlement or on counsel's lodestar submission of hours
22 worked, even if the hours exceed the total penalties. (See, e.g., *Patel v Nike Retail Servs.* (ND Cal,
23 May 8, 2019, No. 14-cv-04781-RS) 2019 US Dist 77988 (awarding \$80,000 in fees representing
24 18 percent of counsel's lodestar and \$60,000 in costs out of \$160,000 total PAGA settlement). Here,
25 Plaintiff is not seeking a lodestar enhancement but is instead requesting attorneys’ fees based upon
26 a percentage of the recovery, which amounts to \$111,100.22 or 33.33% of the recovery.

27 To date, Plaintiff’s counsel has incurred a total of at least \$112,000.00 in attorneys’ fees
28 prosecuting this action (the “Lodestar Amount”) plus an additional \$18,454.70 in costs. (Chackel

Decl., ¶¶ 33-36; Ferraro Decl., ¶¶ 21-28.) Plaintiff is not requesting a Lodestar enhancement. Based upon the results achieved, the total fees and costs allocated to the PAGA claims is reasonable and justified under these circumstances. (*Ramirez v Benito Valley Farms, LLC* (ND Cal, Aug. 27, 2017, No. 16-CV-04708-LHK) 2017 US Dist Lexis 137272 (awarding \$41,800 lodestar requested on penalty settlement of \$27,500 plus injunctive relief).

V. CONCLUSION

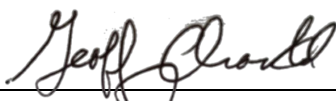
Plaintiff respectfully requests the Court approve the terms and conditions of the Settlement Agreement, and proposed settlement of \$333,334.00, which allocates the funds as follows:

- (1) \$139,709.31 as penalties payable to the LWDA;
- (2) \$46,569.77 as penalties allocated to the alleged aggrieved employees;
- (3) \$10,000.00 to Plaintiff Mina Lally as a PAGA service award;
- (4) \$111,100.22 towards Plaintiff's attorneys' fees;
- (5) \$18,454.70 towards litigation costs; and
- (6) \$7,500 maximum towards claims administration.

Plaintiff further requests the Court execute the Joint Stipulation and [Proposed] Order (Exhibit 2 to the NOL) and that judgment be entered incorporating all of the terms and conditions of the Settlement Agreement set forth therein in this amount in favor of Plaintiff on behalf of the LWDA.

DATED: December 12, 2024

CHACKEL LAW, PC

By: 

GEOFFREY C. CHACKEL
Attorney for Plaintiff

Kody Hornburg v. Pacific Companies, LLC, et. al.
Superior Court of San Diego—Central Division
LEAD CASE NO. 37-2023-00002433-CU-OE-CTL

Consolidated for all purposes with: Mina Lally v. Pacifica Companies, LLC, et. al.
Superior Court of San Diego – Central Division
CASE NO. 37-2023-00020893-CU-OE-CTL

Related to: Amanda Rogers v. Pacifica Companies LLC, et. al.
Superior Court of San Diego – Central Division
CASE NO. 37-2023-00023685-CU-OE-CTL

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within-entitled action. My business address is 11440 West Bernardo Court, Suite 300, San Diego, California 92127. On December 12, 2024, I served the within documents, with all exhibits (if any):

**NOTICE OF MOTION AND MOTION OF PLAINTIFF FOR APPROVAL OF
PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Bend, Oregon on this day and addressed to parties listed below.

☐ BY ELECTRONIC COURT FILING AND SERVICE: via One Legal Online Court Services: I served upon the designated recipients via electronic transmission through the One Legal system. Upon completion of said transmission of said documents, a certified receipt is issued to the filing party acknowledging receipt of One Legal's system. Once One Legal has served all designated recipients, proof of electronic service is returned to the filing party

☒ by transmitting via e-mail or electronic transmission the document(s) listed above to the individual(s) below at the e-mail address(es) set forth below.

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 6:00 p.m. A copy of the transmission report issued by the transmitting facsimile machine is attached hereto.

☐ by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill for standard overnight delivery to, and causing the envelope to be delivered to an agent for delivery.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in this affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 12, 2024, at San Diego, California.


Geoffrey Chackel