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

VICTOR BARCENAS, on behalf of the State of
California, as a private attorney general,

Plaintiff,

v.

BESHAY FOODS, INC., a California
Corporation; and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: CVRI2301510

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

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

Hearing Date: April 4, 2025

Hearing Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp
Dept.: 1

Complaint Filed: March 24, 2023

Trial Date: Not Set

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

2 YOU ARE HEREBY NOTIFIED THAT at 8:30 a.m. on April 4, 2025, or as soon thereafter
3 as the matter can be heard, in Department 1 of the above entitled Court before the Honorable Harold
4 W. Hopp, Plaintiff Victor Barcenas (“Plaintiff”) will and hereby does move for an order approving
5 the settlement of the PAGA claim alleged against Defendant Beshay Foods, Inc. (“Defendant”) in
6 accordance with Labor Code §2699(l). The proposed settlement is set forth in the accompanying
7 PAGA Settlement Agreement (“Agreement”).

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

12 Respectfully submitted,

13 Dated: March 10, 2025

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

15 By: /s/ Kyle Nordrehaug
16 Kyle R. Nordrehaug

17 Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Victor Barcenas (“Plaintiff”) reached a settlement of the California Private Attorneys
4 General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this action against Defendant
5 Beshay Foods, Inc. (“Defendant”) (collectively, the “Parties”) which provides for a “Gross PAGA
6 Settlement Amount” payment in the amount of \$385,000. In accordance with California Labor Code
7 §2699(l), Plaintiff now asks this Court to review and approve the settlement of Plaintiff’s PAGA
8 claims.¹ This is only a settlement of the PAGA claims for civil penalties and is not a class settlement
9 and does not release the individual wage claims, if any, of the affected employees. Cal. Labor Code
10 § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal.4th 348, 381 (2014); *ZB, N.A. v. Superior Court*,
11 8 Cal.5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

12 The PAGA settlement is set forth in the accompanying PAGA Settlement Agreement
13 (“Agreement”) and the form used for the Agreement is the Los Angeles Superior Court’s model form.
14 A true and correct copy of the Agreement which sets forth the terms for the settlement of the PAGA
15 claims is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug, filed herewith. Capitalized
16 terms shall have the same meaning as defined in the Agreement. The LWDA received notice of this
17 settlement, and this motion as set forth in the accompanying proof of service.

18 A proposed order confirming review and approval of the PAGA settlement is submitted
19 herewith.

20 **II. RELEVANT FACTS**

21 PAGA Counsel mailed the necessary correspondence to the California Labor and Workforce
22 Development Agency (“LWDA”) on January 3, 2023, on behalf of Plaintiff, requesting authorization
23 from the LWDA to seek civil penalties as provided by the Private Attorney General Act of 2004
24 (“PAGA”) for the wage and hour violations alleged in the PAGA Notice. (Declaration of Kyle
25 Nordrehaug, at ¶3). A true and correct copy of this PAGA Notice served by Plaintiff is attached to the
26 Declaration of Kyle Nordrehaug as Exhibit #5. The 65-day notice period for the LWDA to notify of
27

28 ¹ Section 2699(1)(2) provides as follows: “The superior court shall review and approve any settlement
of any civil action pursuant to this part.”

1 its intent to investigate expired on March 9, 2023. On March 24, 2023, Plaintiff filed a Representative
2 Action Complaint in this Court against Defendant, alleging a single cause of action for recovery of
3 civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

4 Plaintiff and Defendant agreed to private mediation with Steve Mehta, Esq. Prior to the
5 mediation, the Parties conducted significant investigation and discovery of the facts and law.
6 Defendant produced documents relating to its policies, practices, and procedures regarding paying
7 non-exempt employees for all hours worked, overtime, meal and rest period policies, payroll and
8 operations policies, and more. Plaintiff was provided with sufficient records and data to determine the
9 number of Aggrieved Employees and the number of pay periods in the PAGA Period. The Parties
10 agree that the above-described investigation and evaluation, as well as the information exchanged
11 during the settlement negotiations, are more than sufficient to assess the merits of the Parties' positions
12 and to compromise the issues on a fair and equitable basis. (Declaration of Kyle Nordrehaug, at ¶3).

13 The alleged violations in this matter are premised on the Defendant's alleged failure to pay all
14 wages owed at the correct rate of pay that accounts for certain non-discretionary remuneration;
15 Defendant's alleged failure to pay wages for all time Aggrieved Employees' were under Defendant's
16 control, including all time they were suffered or permitted to work; Defendant's alleged failure to
17 provide California-compliant meal periods and rest breaks; Defendant's alleged failure to reimburse
18 for reasonable business expenses; and Defendant's alleged failure to furnish complete and accurate
19 wage statements. Defendant denies that it failed to pay all wages owed, that it failed to provide
20 compliant meal and rest breaks, that it failed to reimburse for reasonable business expenses, and that
21 it failed to furnish complete and accurate wage statements.

22 Plaintiff's theory of PAGA liability as argued at mediation alleged that Plaintiff allegedly
23 worked off the clock at the direction of his supervisors and managers which included both working
24 through his lunch periods and/or after his shifts ended to stock the restaurant, finish making cash
25 deposits, finish assisting customers at the cash register or drive-through, and ensuring safety and
26 cleanliness standards were met. Additionally, as a result of alleged understaffing, Plaintiff and his
27 coworkers were allegedly required to work through his lunch periods and rest periods on a regular
28 basis. Although Defendant kept records of meal and rest break compliance, Defendant's system was

1 allegedly deficient. Finally, Defendant allegedly failed to provide reimbursement for required
2 business expenses in that Plaintiff was required to use his personal cell phone in order to respond to
3 Defendant and for scheduling purposes.

4 Defendant denies these allegations made by Plaintiff. (Declaration of Kyle Nordrehaug,
5 at ¶3). Defendant disputes liability and disputes that any allegedly aggrieved employees were likely to
6 receive any recovery. The settlement negotiations were always at arm’s length and adversarial. The
7 material terms of the Agreement were only reached after extensive settlement discussions, including
8 a full day of mediation with a highly respected mediator. Once an agreement was reached, the Parties
9 also engaged in extensive negotiations before finalizing the Agreement.

10 On July 22, 2024, the Parties engaged in an all-day mediation session before mediator, Steve
11 Mehta, Esq., a respected and experienced mediator knowledgeable of both the wage and hour laws
12 and representative claims at issue in this action. Through arms-length negotiations with the assistance
13 of the mediator, the Parties reached an agreement to settle the PAGA claims in this action which led
14 to the signing of a Memorandum of Understanding memorializing the settlement.² (Declaration of
15 Kyle Nordrehaug, at ¶3).

16 The settlement was negotiated in light of all known facts and circumstances and the uncertainty
17 associated with litigation – including the risk of Plaintiff not being able to maintain representative
18 claims, the difficulty of proving Plaintiff’s claims in a manageable trial, the merits of Defendant’s
19 potential defenses and expert findings, and the significant delay and potential appellate issues inherent
20 to litigation – and was reached after extensive arm’s length negotiations, with the assistance of
21 mediator, Steve Mehta, Esq. (Declaration of Kyle Nordrehaug, at ¶3).

22 **III. TERMS OF THE PAGA SETTLEMENT**

23 The PAGA settlement is subject to Court approval consistent with Labor Code §2699(1)(2).

25 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
26 Plaintiff’s individual claims pursuant to separate confidential Individual Settlement Agreement
27 (“Individual Settlement”) (Agreement at ¶ III(E)(3)). The individual claims were not at issue in this
28 action and exist independent and apart from the PAGA claims at issue before the Court. *See Kim v.*
Reins Int’l Cal., Inc., 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does not strip an
Aggrieved Employee of standing, as the state’s authorized representative, to pursue PAGA remedies”
nor resolve the PAGA claims.).

1 (Agreement at ¶ III(D)(I)-(J)). The Agreement negotiated by the Parties provides for a “Gross PAGA
2 Settlement Amount” payment in the amount of \$385,000 to resolve the Released PAGA Claims
3 (hereinafter referred to as the “PAGA Settlement”). From this PAGA Settlement of \$385,000, there is
4 a deduction of attorneys’ fees (“PAGA Counsel Fees Payment”) in the amount of \$128,333 (which is
5 one-third of the PAGA Settlement), reimbursement of incurred costs (“PAGA Counsel Litigation
6 Expenses Payment”) in an amount not to exceed \$25,000, and Administration Costs not to exceed
7 \$13,500. (Agreement at ¶¶ III(D)(1)-(3)).³ After these deductions, the amount remaining is the
8 “PAGA Payment”, which is estimated to be no less than \$218,167. Of the PAGA Payment amount,
9 seventy-five percent (75%) (no less than \$163,625.25) will be paid to the LWDA, and the remaining
10 twenty-five percent (25%) (no less than \$54,541.75) will be paid to the Aggrieved Employees
11 (Agreement at ¶ III(D)(1)).⁴ This 75/25 allocation is required by Labor Code §2699 as explained by
12 *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019) and the amendment to Section 2699 does not apply
13 to this action filed before June 2024..

14 The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of
15 pay periods each Aggrieved Employee worked during the PAGA Period as an Aggrieved Employee,
16 as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period.
17 (Agreement at ¶ III(D)(1)(a).) The PAGA Period is the time period from January 3, 2022 to July 22,
18 2024 unless otherwise defined in Section III(C). (Agreement at ¶ I(K)). For mediation, Defendant
19 represented that there are approximately 1,964 Aggrieved Employees who collectively worked
20 approximately 38,100 pay periods during the PAGA Period. (Agreement at ¶ III(C)).

21 Upon full funding of the Gross PAGA Settlement Amount, the Released Parties shall be
22

23
24 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
25 Payment less than the amounts requested, the Administrator will allocate the remainder of these
26 amounts to the PAGA Payment. (Agreement at ¶¶ III(D)(2)). To the extent the Administration
Expenses are less, or the Court approves payment less than \$13,500, the Administrator will allocate
the remainder of this amount to the PAGA Payment (*Id.* at ¶ III(D)(3)).

27 ⁴ “Aggrieved Employee” means all individuals who are or previously were employed by Defendant in
28 California and classified as a non-exempt employee at any time during the PAGA Period. The PAGA
Period is the period from January 3, 2022 to July 22, 2024 unless otherwise defined in Section III(C).
(Agreement at ¶¶ I(B), I(K).)

entitled to a release from the State of California for any “PAGA Released Claims”. “Released PAGA Claims” means all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, and/or the PAGA Notices submitted by Plaintiff to the LWDA, which occurred during the PAGA Period, including failure to pay minimum wages, rounding, failure to pay overtime, failure to pay sick and vacation wages, failure to provide compliant meal and rest periods, failure to pay premiums for non-compliant meal and rest breaks, waiting time penalties, failure to keep accurate records, inaccurate wage statements, failure to timely pay wages, failure to reimburse expenses, failure to provide suitable seating, and penalties pursuant to the Private Attorneys General Act of 2004, Labor Code sections 201, 202, 203, 204 et seq., 210, 218, 221, 226, 226.7, 227.3, 246 et seq., 510, 512, 558, 1194, 1197, 1197.1, 1198, 2698, 2699 et seq., 2699.3, 2699.5, 2802, the applicable Industrial Welfare Commission Orders and California Code of Regulations, Title 8, sections 11040, 11050 and 1070, and all other claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff’s pre-filing letter to the LWDA. (Agreement at ¶III(E)(1)). Plaintiff does not release any aggrieved employee’s claim for wages or damages. The PAGA release shall bind only Plaintiff and the State of California as to the PAGA Released Claims and shall not include claims outside of the PAGA Period, unrelated PAGA claims, or PAGA claims related to wrongful termination, unemployment insurance, disability, social security, or workers’ compensation. With the exception of the named Plaintiff, in no event shall the release in the Agreement release any individual claims of any individuals outside of the PAGA Released Claims. (*Id.*)

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

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

IV. THE PARTIES HAVE SETTLED THE PAGA CLAIM

The claim before this Court is solely the representative claim under PAGA on behalf of the State of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this PAGA claim in its entirety after investigation and an arm's length mediation session. (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the individual claims, if any, of the Aggrieved Employees, other than any claims under PAGA. This settlement does not release any claim that is not a PAGA claim.⁵ PAGA Counsel Fees equal to one-third of the Gross PAGA Settlement amount (\$128,333), and PAGA Counsel Litigation Expenses in an amount not to exceed \$25,000 will also be paid to PAGA Counsel as part of the settlement in accordance with California Labor Code § 2699(g)(1), as set forth in the Agreement.⁶ Lastly, payment to the Administrator in an amount not to exceed \$13,500 to perform the administrative duties to distribute the settlement money shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)

V. THE PARTIES REQUEST REVIEW AND APPROVAL OF THE SETTLEMENT OF THE PAGA CLAIM

Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any

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

⁶ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs in the current amount of \$20,082.76, which is less than the cost allocation in the Agreement. See Declaration of Nordrehaug at ¶ 9.

1 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
2 agency at the same time that it is submitted to the court.” Consequently, the parties respectfully ask
3 the Court to review and approve the settlement of the PAGA claims and the PAGA Payment to be
4 paid as part of the proposed settlement.

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

6 The Parties believe that the PAGA Settlement amount is fair and reasonable and therefore
7 "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount of \$385,000 constitutes
8 approximately \$10.10 per pay period. (Declaration of Nordrehaug, at ¶6.)

9 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
10 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of statutory
11 PAGA civil penalties was potentially \$3,810,000 without stacking based on 38,100 pay periods
12 applicable to the 1,864 Aggrieved Employees during the PAGA Period.⁷ (Declaration of Nordrehaug,
13 at ¶6.) Importantly, however, these calculations were performed at the maximum statutory rate for the
14 penalties, when in fact, it is likely that any penalties awarded would be at a lower rate. California
15 Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil
16 penalty if based on the facts and circumstances to do otherwise would result in an award that is "unjust,
17 arbitrary and oppressive or confiscatory."

18 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed
19 a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at
20 trial, any PAGA penalties awarded could be significantly less than Plaintiff's calculation even where
21 Plaintiff prevailed on the PAGA claim. If the amount of \$5 per pay period from *Carrington v.*
22 *Starbucks* is used, the potential recovery of civil penalties would be only \$190,500, which is far less
23 than this settlement provides. (Declaration of Nordrehaug, at ¶6.)

24 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
25 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties

26 ⁷ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The
27 valuation of \$3,810,000 is the civil penalty amount without stacking. If stacking is permitted, then the
28 valuation increases with each additional penalty added to each pay period. Plaintiff, however, is not
aware of any PAGA award which permitted stacking and in the cases cited herein, only one penalty
per pay period was assessed.

1 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
2 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no
3 civil penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal.
4 App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by
5 the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour*
6 *Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after
7 trial).

8 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of
9 the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
10 LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot
11 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
12 Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered
13 a violation for each period the employee worked in relation to meal or rest period violations, failure
14 to pay minimum wages, failure to pay overtime and sick pay wages, failure to provide accurate
15 itemized wage statements, failure to reimburse employees for required expenses, and failure to pay
16 wages when due.

17 Defendant maintains that Plaintiff and the Aggrieved Employees were properly compensated,
18 and that it did not violate the Labor Code. Accordingly, Defendant disputes and denies Plaintiff's
19 allegations and claims asserted in both the PAGA Notice and the Operative Complaint, which are
20 resolved by the Agreement. Defendant has maintained and offered information supporting that it pays
21 employees all wages, provides compliant meal and rest breaks, reimburses for all reasonably incurred
22 business expenses, and prohibits off-the-clock work. Defendant asserted additional defenses to the
23 PAGA claim, not only as to liability but also as to the amount of the penalties. Defendant asserted that
24 no penalties prior to the PAGA notification should be awarded because the violations were not
25 intentional. These defenses present a risk to the PAGA claims and the potential that some or all of the
26 PAGA penalties sought may not be awarded. (Declaration of Nordrehaug, at ¶7.)

27 Given Defendant's potential defenses to the violations at issue, the risks and costs of continued
28 litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and reasonable.

1 (Declaration of Nordrehaug, at ¶7.) Defendant has similarly concluded that it is desirable that the
2 action is settled in the manner and upon the terms and conditions set forth in the Agreement in order
3 to avoid further expense, inconvenience for its employees and distraction of further legal proceedings,
4 as well as the uncertainty of litigation. Defendant has determined that it is desirable and beneficial to
5 put to rest the claims in this action and Defendant agrees that the PAGA Settlement is fair, reasonable,
6 and adequate.

7 PAGA Counsel have significant experience litigating wage and hour claims including claims
8 for PAGA penalties, and the PAGA Settlement here is similar to or greater than similar settlements
9 that courts have approved. (Declaration of Nordrehaug, at ¶¶ 7, 10.) The PAGA Settlement, along with
10 the other terms of the proposed settlement, were negotiated by experienced counsel at arm's length
11 with the assistance of a private mediator, Steve Mehta, Esq. (Declaration of Nordrehaug, at ¶7.)

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

18 **B. The Remaining Settlement Terms Are Fair And Reasonable**

19 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
20 2699(1) does not require that a court approve any other elements of the proposed settlement. Because
21 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to
22 class settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs
23 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
24 herein, the settlement terms for attorneys' fees and costs are reasonable.

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

26 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the amount of
27 \$128,333 representing one-third of the \$385,000 Gross PAGA Settlement Amount. PAGA does not
28 have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of

1 attorneys' fees and costs in this settlement is a matter of contract for contingent representation.
2 Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees
3 and costs are reasonable.

4 First, the requested fees are justified by the result achieved. PAGA Counsel negotiated a
5 recovery of \$385,000, and this result justifies the requested fees equal to one third of this recovery.
6 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
7 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
8 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021)
9 (recognizing that “fee awards in class actions average around one-third of the recovery” regardless
10 of “whether the percentage method or the lodestar method is used.” (quoting *Chavez v. Netflix, Inc.*,
11 162 Cal.App.4th 43, 66, fn. 11 (2008))).

12 Second, the fee award is justified by the work performed and contributions to the case. As
13 detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the requested fee award
14 represents an amount less than PAGA Counsel’s current lodestar of \$147,525.75 (i.e. a negative
15 multiplier), with significant additional work to be performed such that the multiplier will ultimately
16 be even less.⁸

17 Generally, the Ninth Circuit and California Courts award positive multipliers between 2 to 4
18 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining
19 good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier
20 between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting
21 reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple*
22 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or
23 higher); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding
24 one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL
25 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of
26 lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal.
27

28 ⁸ A true and correct copy of PAGA Counsel’s billing records are attached as Exhibit #2 to the Declaration of Kyle Nordrehaug, filed herewith.

1 Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority"
2 range for risk multipliers).

3 Third, consideration of the service factors justifies the service of the lodestar. Courts multiply
4 the lodestar by a factor to account for the risk of non-payment, delay in payment, the quality of work,
5 and the novelty and difficulty of the issues involved. See *Ketchum v. Moses*, 24 Cal.4th 1122, 1132
6 (2001). Failure to apply a risk multiplier in cases that meet these criteria is an abuse of discretion.
7 *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016).

8 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses in the
9 total amount of \$20,082.76 which is less than the \$25,000 allocation for costs in the Agreement, so
10 the difference of \$4,917.24 will be added to the PAGA Payment amount. These expenses are
11 documented in the accompanying Declaration of Nordrehaug at ¶9.

12 13 **VII. CONCLUSION**

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

16 Dated: March 10, 2025

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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18 By: /s/ Kyle Nordrehaug
19 Kyle Nordrehaug
20 Attorney for Plaintiff
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