

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (SBN #068687)

Kyle R. Nordrehaug (SBN #205975)

Aparajit Bhowmik (SBN #248066)

Nicholas J. De Blouw (SBN #280922)

Sergio J. Puche (SBN #289437)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858) 551-1223

Facsimile: (858) 551-1232

Mayall Hurley, P.C.

JENNY D. BAYSINGER (SBN: 251014)

jbaysinger@mayalllaw.com

ROBERT J. WASSERMAN (SBN: 258538)

rwasserman@mayalllaw.com

2453 Grand Canal Boulevard

Stockton, California 95207-8253

Telephone: (209) 477-3833

Facsimile: (209) 473-4818

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

KADIE FREEMAN, FRANCISCO GARCIA
and MONICA BERBERY, and on behalf of the
State of California, as a private attorney generals,

Plaintiffs,

vs.

BON APPETIT MANAGEMENT CO., a
California Corporation; and DOES 1 through 50,
inclusive,

Defendant.

Case No. **23- CIV-01497**

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

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

Hearing Date: April 10, 2025

Hearing Time: 9:00 a.m.

Judge: Hon. Nina Shapirshteyn
Dept.: 7

Action Filed: September 15, 2023

Trial Date: Not Set

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

2 YOU ARE HEREBY NOTIFIED THAT at 9:00 a.m. on April 10, 2025, or as soon
3 thereafter as the matter can be heard, in Department 7 of the above entitled Court before the
4 Honorable Nina Shapirsteyn, Plaintiffs Kadie Freeman; Francisco Garcia; and Monica
5 Barbery (“Plaintiffs”) will and hereby do move for an order approving the settlement of the
6 PAGA claim alleged against Defendant Bon Appetit Management Co., (“Defendant”) in
7 accordance with Labor Code §2699(l). The proposed settlement is set forth in the
8 accompanying PAGA Settlement Agreement (“Agreement”).

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

13 Respectfully submitted,

14 Dated: March 14, 2025

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

16 By: /s/ Sergio J. Puche
17 Sergio J. Puche

18 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Kadie Freeman; Francisco Garcia; and Monica Barbary (“Plaintiffs”)
4 reached a settlement of the California Private Attorneys General Act, Cal. Labor Code
5 §2699, *et seq.* (“PAGA”) claim asserted in this action against Defendant Bon Appetit
6 Management Co (“Defendant”) (collectively, the “Parties”) which provides for a “Gross
7 PAGA Settlement Amount” payment in the amount of \$2,400,000.00. In accordance
8 with California Labor Code §2699(l), Plaintiffs now ask this Court to review and
9 approve the settlement of Plaintiffs’ PAGA claims.¹ This is only a settlement of the
10 PAGA claims for civil penalties and is not a class settlement and does not release the
11 individual wage claims, if any, of the affected employees other than the Plaintiffs
12 themselves. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th
13 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages
14 are not recoverable under PAGA).

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

22 A proposed order confirming review and approval of the PAGA settlement is
23 submitted herewith.

24
25 **II. RELEVANT FACTS**
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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 PAGA Counsel mailed the necessary correspondence to the California Labor and
2 Workforce Development Agency (“LWDA”) on March 29, 2023 on behalf of Plaintiff
3 Kadie Freeman; on May 22, 2023, on behalf of Plaintiff Francisco Garcia; and on
4 February 7, 2024 on behalf of Plaintiff Monica Barbery, all requesting authorization
5 from the LWDA to seek civil penalties as provided by the Private Attorney General Act
6 of 2004 (“PAGA”) for the wage and hour violations alleged in the PAGA Notice.
7 (Puche Decl., at ¶3). The 65-day notice period for the LWDA to notify of its intent to
8 investigate expired on for all Plaintiffs. On April 4, 2023, Plaintiff Kadie Freeman filed
9 a Representative Action Complaint in this Court against Defendant Bon Appetit
10 Management Co alleging a single cause of action for recovery of civil penalties for
11 Violation of the PAGA [Labor Code §§ 2698, *et seq.*]. On September 13, 2023, Plaintiff
12 Francisco Garcia filed a Representative Action Complaint in this Court against
13 Defendant Bon Appetit Management Co alleging a single cause of action for recovery
14 of civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*]. On
15 December 9, 2024, Plaintiffs Kadie Freeman, Francisco Garcia and Monica Barbery
16 filed a Second Amended Complaint in this Court against Defendant Bon Appetit
17 Management Co alleging a single cause of action for recovery of civil penalties for
18 Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

19 Plaintiffs and Defendant agreed to mediate with Lisa Klerman, Esq. Prior to the
20 mediation, the Parties conducted significant investigation and discovery of the facts and
21 law. Defendant produced hundreds of documents relating to its policies, practices, and
22 procedures regarding paying non-exempt employees for all hours worked, overtime,
23 meal and rest period policies, payroll and operations policies, and more. Plaintiffs were
24 provided with sufficient records and data to determine the number of Aggrieved
25 Employees and the number of pay periods in the PAGA Period. The Parties agree that
26 the above-described investigation and evaluation, as well as the information exchanged
27 during the settlement negotiations, are more than sufficient to assess the merits of the
28

1 Parties' positions and to compromise the issues on a fair and equitable basis. (Puche
2 Decl., at ¶3(a).)

3 Plaintiffs' theory of PAGA liability as argued at mediation alleged that Defendant
4 is liable for miscalculating overtime and sick pay as a result of not including certain
5 remunerations into the regular rate. For example, the following additional
6 remunerations were not fully incorporated into the regular rate for the purpose of paying
7 the correct overtime: as Housing Allowance (13,141 payments, \$1,775,938 total),
8 Transportation Allowance (13,168 payments, \$889,115 total), Commission (143
9 payments, \$97,148 total), Misc. Bonus (10 payments, \$7,615 total), Referral Bonus (15
10 payments, \$5,750 total), Shift Differential (1,046 payments, \$98,403 total). During each
11 pay period of her employment. Those amounts, however, were not properly factored
12 into the "regular rate of pay" provided for overtime purposes. Instead, daily overtime
13 was always paid at 1 ½ times Freeman's base hourly rate of \$23.70 (\$35.55). Overtime
14 was net underpaid from other remunerations. 23.5% of employees and 7.1% of pay
15 periods had unpaid overtime due to weighted average or additional remunerations.
16 PAGA penalties for L.C. 510 assume 7.1% of pay periods have an underpayment.
17 During employment, each of the Plaintiffs were required to use his/her personal cell
18 phone for work related purposes. Specifically, Plaintiff Barberly was expected to use
19 her phone to access recipes required to perform her job and also to make calculations
20 required for recipes. In addition, all three Plaintiffs were contacted by managers and
21 expected to be available on their personal cell phones during work hours for text
22 communications and other contact. There are also unpaid meal premiums and sick pay
23 due from weighted average or additional remunerations. 22.1% of employees and 5.4%
24 of pay periods had unpaid sick pay. 3% of employees and 1.1% of pay periods had
25 unpaid meal premiums. Large sick pay damages are from pay periods with minimal
26 work hours and many sick hours. PAGA penalties for unpaid sick pay and meal
27 premiums assume 5.4% or 1.1% of pay periods have unpaid sick or meal premiums,
28 respectively. (Puche Decl., at ¶3(b))

1 On June 12, 2024, the Parties engaged in an all-day mediation session before
2 Mediator Lisa Klerman, a respected and experienced mediator knowledgeable of both
3 the wage and hour laws and representative claims at issue in this action. Thereafter, the
4 Parties engaged in a second, half day mediation session on July 26, 2024. Through arms-
5 length negotiations with the assistance of the mediator, the Parties reached an agreement
6 to settle the PAGA claims in this action which led to the signing of a Memorandum of
7 Understanding memorializing the settlement. (Puche Decl., at ¶3(c).)

8 The settlement was negotiated in light of all known facts and circumstances and
9 the uncertainty associated with litigation – including the risk of Plaintiffs not being able
10 to maintain representative claims, the difficulty of proving Plaintiffs’ claims in a
11 manageable trial, the merits of Defendant’s potential defenses, and the significant delay
12 and potential appellate issues inherent to litigation – and was reached after extensive
13 arm’s length negotiations, with the assistance of Mediator Klerman. (Puche Decl., at
14 ¶3(c).)

15 16 **III. TERMS OF THE PAGA SETTLEMENT**

17 The PAGA settlement is subject to Court approval consistent with Labor Code
18 §2699(1)(2). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides
19 for a “Gross Settlement Amount” payment in the amount of \$2,400,000.00 to resolve
20 the Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From
21 this PAGA Settlement of \$2,400,000.00, there is a deduction of attorneys’ fees (“PAGA
22 Counsel Fees Payment”) in the amount of \$800,000.00 (which is one-third of the PAGA
23 Settlement), reimbursement of incurred costs (“PAGA Counsel Litigation Expenses
24 Payment”) in an amount not to exceed \$35,000, Service Awards to the Plaintiffs in the
25 amount of \$15,000.00 each, for a cumulative total of \$45,000, (“Service Award”) and
26 Settlement Administration Costs (“Administration Expenses Payment”) not to exceed
27
28

1 \$27,500.00. (Agreement at ¶¶ 3.2.1-3.2.4).² After these deductions, the amount
2 remaining is the “PAGA Payment”, which is estimated to be no less than \$1,492,500.

3 Of the PAGA Payment amount, seventy-five percent (75%) (no less than
4 \$1,119,375) will be paid to the LWDA and the remaining twenty-five percent (25%)
5 (no less than \$373,375) will be paid to the Aggrieved Employees (Agreement at ¶
6 3.2.3).³ This 75/25 allocation is required by the earlier Labor Code §2699 as explained
7 by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019) because the Action was filed before
8 June 2024, which is the operative date of the amended PAGA statute.

9 The Individual PAGA Payment for each Aggrieved Employee shall be based on
10 the number of pay periods each Aggrieved Employee worked during the PAGA Period
11 as an Aggrieved Employee, as a percentage of the total pay periods worked by all
12 Aggrieved Employees during the PAGA Period.⁴ The PAGA Period is the time period
13 from August 28, 2022 through August 28, 2024. (Agreement at ¶ 1.23).

14 For mediation, Defendant represented that there are approximately 12,050
15 Aggrieved Employees who collectively worked approximately 400,000 pay periods
16 during the PAGA Period. (Agreement at ¶ 4.1).

17 Upon full funding of the Gross PAGA Settlement Amount, the State of
18 California, and all Aggrieved Employees, on behalf of themselves and their respective
19

20 ² If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
21 Payment less than the amounts requested, the Administrator will allocate the remainder of these
22 amounts to the PAGA Payment. (Settlement Agreement at ¶ 3.2.1). To the extent the Administration
23 Expenses are less, or the Court approves payment less than \$27,500, the Administrator will allocate
the remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

24 ³ “Aggrieved Employee” means all individuals who are or were previously employed by Defendant
25 Bon Appétit Management Co in California and classified as a non-exempt at any time during the
26 PAGA Period but excluding those who performed work at Chase Center and/or Oracle Park. The
PAGA Period is the period from August 28, 2022, through August 28, 2024. (Settlement Agreement
at ¶¶ 1.4, 1.23).

27 ⁴ See Settlement Agreement at ¶ 3.2.3 (“The Administrator will calculate each Individual PAGA
28 Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Payment by
the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA
Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods.”)

1 former and present representatives, agents, attorneys, heirs, administrators, successors,
2 and assigns, will be deemed to release the Released Parties from all “Released PAGA
3 Claims”. (Agreement at ¶5.2). “Released PAGA Claims” means all claims for PAGA
4 Penalties that were alleged, or reasonably could have been alleged, based on the facts
5 stated in the Operative Complaint, and the PAGA Notices submitted by Plaintiffs to the
6 LWDA, which occurred during the PAGA Period, including claims under California
7 Labor Code Sections 201, 202, 203, 204, 210, 216, 218, 222, 225.5, 226, 226.3, 226.7,
8 227.3, 233, 234, 246, 246.5, 432, 510, 512, 516, 551, 552, 558, 558.1, 1174, 1182.12,
9 1193, 1193.6, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and 2810.5.
10 The Released PAGA Claims expressly excludes all other claims, including Plaintiffs’
11 individual claims, claims for vested benefits, wrongful termination, violation of the Fair
12 Employment and Housing Act, unemployment insurance, disability, social security,
13 workers’ compensation, and PAGA claims outside of the PAGA period. In no event
14 shall the release of the Released PAGA Claims in this Settlement Agreement release
15 any individual claims of any individuals. (*Id.*)

16 Within fourteen (14) days after Defendant funds the Gross PAGA Settlement
17 Amount, the Administrator will mail checks for all Individual PAGA Payments, the
18 LWDA PAGA Payment, the Administration Expenses Payment, the Service Award and
19 the PAGA Counsel Fees Payment and PAGA Counsel Expenses Payment. (Agreement
20 at ¶ 4.4).⁵ Checks will remain negotiable for one hundred eighty (180) days. (*Id.* at ¶
21 4.4.1) For any Individual PAGA Payment check that is uncashed and cancelled after
22 the void date, the Administrator shall transmit the funds represented by such checks to
23 the Casa San Mateo in the name of the individual who failed to cash their check pursuant
24 to the California Code of Civil Procedure section 384(b). (*Id.* at ¶ 4.4.3).

25 Pursuant to California Labor Code Section 2699(1), Plaintiffs are providing a
26 copy of the Agreement and this motion to the LWDA concurrently with the filing of the
27

28 ⁵ Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement
of the Individual PAGA Payments. (*Id.*).

1 instant motion for settlement approval as set forth in the accompanying proof of service
2 in compliance with Labor Code section 2699(1). In addition, Plaintiffs shall submit to
3 the LWDA a copy of the Court's judgment and order approving the Agreement within
4 ten (10) days after entry of judgment or order.

6 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

7 The claim before this Court is solely the representative claim under PAGA on
8 behalf of the State of California for civil penalties pursuant to the PAGA. The parties
9 have agreed to settle this PAGA claim in its entirety after investigation and an arm's
10 length mediation session. (Puche Decl., at ¶4.) The settlement is intended to fully and
11 finally resolve the Released PAGA Claims asserted by Plaintiffs on behalf of the State
12 of California. This is only a settlement of the PAGA claims for civil penalties and is
13 not a class settlement and does not release the individual claims, if any, of the Aggrieved
14 Employees, other than any claims under PAGA. This settlement does not release any
15 claim that is not a PAGA claim.⁶ PAGA Counsel Fees equal to one-third of the Gross
16 PAGA Settlement amount (\$800,000.00), Service Awards of \$15,000 to each Plaintiff⁷,
17 and PAGA Counsel Litigation Expenses in an amount not to exceed \$35,000.00 will
18 also be paid to PAGA Counsel as part of the settlement in accordance with California
19 Labor Code § 2699(g)(1), as set forth in the Agreement.⁸ Lastly, payment to the
20 Administrator in an amount not to exceed \$27,500.00 to perform the administrative
21 duties to distribute the settlement money shall also be paid. (Puche Decl., at ¶¶4-5.)

24 ⁶ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: "Nonparty employees are bound
25 by the judgment in an action under the PAGA, but only with respect to recovery of civil penalties."

26 ⁷ As explained in the Puche Decl. at ¶18, the service awards are reasonable compensation not only for
27 their service as the representatives of the PAGA claims, but also as compensation for their general
28 release, which includes the underlying wage and hour claims.

⁸ As set forth in the accompanying Puche Decl., and Declaration of Jenny D. Baysinger PAGA
Counsel incurred costs in the total amount of \$359,761.85, which is less than the cost allocation in the
Settlement Agreement. See Puche Decl. at ¶9 and Declaration of Jenny D. Baysinger at ¶59.

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

3 Labor Code § 2699(l) requires that the Court “shall review and approve any
4 settlement of any civil [PAGA] action filed pursuant to this part. The proposed
5 settlement shall be submitted to the agency at the same time that it is submitted to the
6 court.” Consequently, the parties respectfully ask the Court to review and approve the
7 settlement of the PAGA claims and the PAGA Payment to be paid as part of the
8 proposed settlement.

9
10 **A. The PAGA Settlement Amount To Be Paid Is Fair And Reasonable**

11 The Parties believe that the PAGA Settlement amount is fair and reasonable and
12 therefore "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount
13 of \$2,400,000.00 is a fair PAGA settlement as it constitutes \$6 per pay period. (Puche
14 Decl., at ¶6.)

15 This PAGA Settlement amount compares favorably to the estimated amount of
16 PAGA penalties. With the assistance of an expert, Plaintiffs calculated that the
17 maximum amount of statutory PAGA civil penalties was potentially \$40,000,000
18 without stacking based on 400,000 pay periods applicable to the Aggrieved Employees
19 during the PAGA Period.⁹ (Puche Decl., at ¶6.) Importantly, however, these
20 calculations were performed at the maximum statutory rate for the penalties, when in
21 fact, it is likely that any penalties awarded would be at a lower rate. California Labor
22 Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum
23
24

25 _____
26 ⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The
27 valuation of \$40,000,000 is the civil penalty amount without stacking. If stacking is permitted, then
28 the valuation increases with each additional penalty added to each pay period. Plaintiffs, 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. In addition, the recent amendment of PAGA casts further doubt on the
availability of stacking penalties.

1 civil penalty if based on the facts and circumstances to do otherwise would result in an
2 award that is "unjust, arbitrary and oppressive or confiscatory."

3 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of
4 Appeal affirmed a judgment after trial which only provided for a PAGA penalty of \$5
5 per pay period. Therefore, at trial, any PAGA penalties awarded could be significantly
6 less than Plaintiffs' calculation even where Plaintiffs prevailed on the PAGA claim. If
7 the amount of \$5 per pay period from *Carrington v. Starbucks* is used, the potential
8 recovery of civil penalties would be only \$2,000,000, which is less than the recovery
9 this settlement provides. (Puche Decl., at ¶6.)

10 Under PAGA, Courts have considerable discretion to reduce the penalty award.
11 In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court
12 reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because
13 the court found maximum penalties "unjust" because the employees had suffered no
14 injuries. Some trial courts have actually awarded no civil penalties, even when Labor
15 Code violations are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489,
16 *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los
17 Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour*
18 *Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA
19 penalties denied after trial).

20 In order to recover any PAGA penalties, Plaintiffs would be required at trial to
21 prove each of the underlying Labor Code violations. See *Cardenas v. McLane*
22 *Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the
23 statutory language [of PAGA], a plaintiffs cannot recover on behalf of individuals
24 whom the plaintiffs have not proven suffered a violation of the Labor Code by the
25 defendant."). Here, Plaintiffs would need to prove that each Aggrieved Employee
26 suffered a violation for each period the employee worked in relation to meal or rest
27 period violations, failure to pay minimum wages, failure to pay overtime and sick pay
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1 wages, failure to provide accurate itemized wage statements, failure to reimburse
2 employees for required expenses, and failure to pay wages when due.

3 Defendant maintains that Plaintiffs and the Aggrieved Employees were properly
4 compensated, and that it did not violate the Labor Code. Accordingly, Defendant
5 disputes and denies Plaintiffs' allegations and claims asserted in both the PAGA Notice
6 and the Operative Complaint, which are resolved by the Agreement. Defendant asserted
7 additional defenses to the PAGA claim, not only as to liability but also as to the amount
8 of the penalties. Defendant could argue that no penalties prior to the PAGA notification
9 should be awarded because the violations were not intentional, and at least one Court
10 has so ruled. These defenses present a risk to the PAGA claims and the potential that
11 some or all of the PAGA penalties sought may not be awarded. (Puche Decl., at ¶7.)

12 Given Defendant's potential defenses to the violations at issue, the risks and costs
13 of continued litigation, Plaintiffs and their attorneys believe that the PAGA Settlement
14 is fair and reasonable. (Puche Decl., at ¶7.) Defendant has similarly concluded that it
15 is desirable that the action is settled in the manner and upon the terms and conditions
16 set forth in the Agreement in order to avoid further expense, inconvenience and
17 distraction of further legal proceedings, as well as the uncertainty of litigation.
18 Defendant has determined that it is desirable and beneficial to put to rest the claims in
19 this action and Defendant agrees that the PAGA Settlement is fair, reasonable, and
20 adequate.

21 PAGA Counsel have significant experience litigating wage and hour claims
22 including claims for PAGA penalties, and the PAGA Settlement here is similar to or
23 greater than similar settlements that courts have approved. (Puche Decl. at ¶¶7, 10;
24 Declaration of Jenny D. Basinger "Baysinger Decl." at ¶42). The PAGA Settlement,
25 along with the other terms of the proposed settlement, were negotiated by experienced
26 counsel at arm's length with the assistance of a private mediator, Lisa Klerman, Esq.
27 (Puche Decl., at ¶7. Baysinger Decl., at ¶¶12, 17-18.)
28

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

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

9 Although PAGA requires that a court approve the proposed PAGA settlement,
10 Labor Code § 2699(1) does not require that a court approve any other elements of the
11 proposed settlement. Because there are no class allegations for which Plaintiffs seek
12 approval, the approval provisions applicable to class settlements under Cal. Code Civil
13 Proc. §382 do not apply. Accordingly, the Court only needs to approve the settlement
14 of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the
15 settlement terms for attorneys' fees and costs are reasonable.

16
17 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND**
18 **REASONABLE**

19 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in
20 the amount of \$800,000.00 representing one-third of the \$2,400,000.00 Gross PAGA
21 Settlement Amount. PAGA does not have any requirements for reviewing attorneys'
22 fees, and Plaintiffs' position is that the payment of attorneys' fees and costs in this
23 settlement is a matter of contract for contingent representation. Nevertheless, should
24 this Court review the requested attorneys' fees, it is clear that the requested fees and
25 costs are reasonable.

26 First, the requested fees are justified by the result achieved. PAGA Counsel
27 negotiated a recovery of \$2,400,000.00 and this result justifies the requested fees equal
28 to one third of this recovery. This percentage is within the standard contingent recovery

percentage of one-third, and this percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that “fee awards in class actions average around one-third of the recovery” regardless of “whether the percentage method or the lodestar method is used.” (quoting *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008))).

Second, the fee award is justified by the work performed and contributions to the case. As detailed in the accompanying Puche Decl. at ¶8 [lodestar of \$191,350.27], and the Baysinger Decl. at ¶54 [lodestar of \$189,315.60], the fee award represents PAGA Counsel’s current lodestar of \$359,761.85 with a reasonable multiplier of 2.2, with significant additional work to be performed such that the multiplier will ultimately be even less.¹⁰

Generally, the Ninth Circuit and California Courts award positive multipliers between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk multipliers).

¹⁰ A true and correct copy of PAGA Counsel’s billing records are attached as Exhibit #2 to the Puche Decl., and Exhibit #6 in the Declaration of Jenny D. Baysinger, filed herewith.

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

7 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation
8 expenses in the total amount of \$34,155.86 which is less than the \$35,000 allocation for
9 costs in the Agreement, so the difference of \$844.14 will be added to the PAGA
10 Payment amount. These expenses are documented in the accompanying Puche Decl. at
11 ¶9 [expenses of \$20,904.02]; and the Baysinger Decl. at ¶59 [expenses of \$13,251.89].
12

13 VII. CONCLUSION

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

17 Dated: March 14, 2025

**BLUMENTHALNORDREHAUG BHOWMIK
DE BLOUW LLP**

19 By: /s/ Sergio J. Puche
20 Sergio J. Puche
21 Attorney for Plaintiffs
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