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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

KENNETH HUNTER, on behalf of the State
of California, as a private attorney general,

Plaintiff,

vs.

K & N ENGINEERING, INC., a
California Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. **CVRI2302487**

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

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

Hearing Date: October 17, 2024

Hearing Time: 8:30 a.m.

Judge: Hon. Harold Hopp

Dept.: 1

Reservation ID: 167956849032

Action Filed: May 12, 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 October 17, 2024, or as
3 soon thereafter as the matter can be heard, in Department 1 of the above entitled Court
4 before the Honorable Harold Hopp, Plaintiff Kenneth Hunter (“Plaintiff”) will and hereby
5 does move for an order approving the settlement of the PAGA claim alleged against
6 Defendant K&N Engineering, Inc. (“Defendant”) in accordance with Labor Code §2699(1).
7 The proposed settlement is set forth in the accompanying PAGA Settlement Agreement
8 (“Agreement”).

9 This Motion will be based on this notice, the accompanying points and authorities, the
10 Declaration of Kyle Nordrehaug, 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: September 20, 2024

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

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

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

2 **I. INTRODUCTION**

3 Plaintiff Kenneth Hunter (“Plaintiff”) reached a settlement of the California Private
4 Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this action
5 against Defendant K&N Engineering, Inc. (“Defendant”) (collectively, the “Parties”) which
6 provides for a “Gross PAGA Settlement Amount” payment in the amount of \$270,000.00. In
7 accordance with California Labor Code §2699(l), Plaintiff now asks this Court to review and
8 approve the settlement of Plaintiff’s PAGA claims.¹ This is only a settlement of the PAGA
9 claims for civil penalties and is not a class settlement and does not release the individual wage
10 claims, if any, of the affected employees. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS*
11 *Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182
12 (2019) (unpaid wages are not recoverable under PAGA).

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

20 A proposed order confirming review and approval of the PAGA settlement is submitted
21 herewith.

22
23 **II. RELEVANT FACTS**

24 PAGA Counsel mailed the necessary correspondence to the California Labor and
25 Workforce Development Agency (“LWDA”) on March 2, 2023, on behalf of Plaintiff Hunter,
26 requesting authorization from the LWDA to seek civil penalties as provided by the Private
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 Attorney General Act of 2004 (“PAGA”) for the wage and hour violations alleged in the
2 PAGA Notice. (Declaration of Kyle Nordrehaug, at ¶3). A true and correct copy of this PAGA
3 Notice served by Plaintiff is attached to the Declaration of Kyle Nordrehaug as Exhibit #5. The 65-
4 day notice period for the LWDA to notify of its intent to investigate expired on May 7, 2023.
5 On May 12, 2023, Plaintiff Hunter filed a Representative Action Complaint in this Court
6 against Defendant K&N Engineering, Inc. alleging a single cause of action for recovery of
7 civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

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

18 Plaintiff’s theory of PAGA liability as argued at mediation alleged that Defendant did
19 not include all non-discretionary bonus payments into the regular rate for purposes of
20 calculating the correct overtime rate. Plaintiff alleged at mediation that the Aggrieved
21 Employees were underpaid as a result. Specifically, Plaintiff alleged that 8.5% of Aggrieved
22 Employees and 2.3% of pay periods had underpaid overtime (at 1.5x hourly rate) and bonuses
23 were not included in the regular rate in those pay periods. Plaintiff also alleged at mediation
24 that Defendant failed to include bonus payments into the regular rate for purposes of
25 calculating sick pay and that this failure by Defendant affected 19.9% of Aggrieved Employees
26 and 1.2% of pay periods. Plaintiff further alleged that Defendant failed to provide the
27 Aggrieved Employees with complaint meal breaks. The 53,481 unique meal break violations
28 include 294 late (after 5th hour), 50 missed (for shifts greater than 6 hours), 141 short (under

30 minutes), 4 missed 2nd meal breaks (for shifts greater than 12 hours), and 53,509 shifts were exactly 30 minutes in length, which were included as violations. Notably, Defendant never paid the Aggrieved Employees any meal penalty payments. (Declaration of Kyle Nordrehaug, at ¶3).

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

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

III. TERMS OF THE PAGA SETTLEMENT

The PAGA settlement is subject to Court approval consistent with Labor Code §2699(1)(2). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a “Gross PAGA Settlement Amount” payment in the amount of \$270,000 to resolve the Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From this PAGA

² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle Plaintiff’s individual claims pursuant to separate confidential Individual Settlement Agreement (“Individual Settlement”) (Settlement Agreement at ¶ 2.3). The individual claims were not at issue in this 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 Settlement of \$270,000, there is a deduction of attorneys' fees ("PAGA Counsel Fees
2 Payment") in the amount of \$90,000 (which is one-third of the PAGA Settlement),
3 reimbursement of incurred costs ("PAGA Counsel Litigation Expenses Payment") in an
4 amount not to exceed \$18,000 and Administration Costs ("Administration Expenses
5 Payment") not to exceed \$6,000. (Agreement at ¶¶ 3.2.1-3.2.2).³ After these deductions, the
6 amount remaining is the "PAGA Payment", which is estimated to be no less than \$156,000.

7 Of the PAGA Payment amount which is no less than \$156,000, seventy-five percent
8 (75%) (no less than \$117,000) will be paid to the LWDA and the remaining twenty-five
9 percent (25%) (no less than \$39,000) will be paid to the Aggrieved Employees (Agreement at
10 ¶ 3.2.3).⁴ This 75/25 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v.*
11 *Superior Court*, 8 Cal.5th 175 (2019).

12 The Individual PAGA Payment for each Aggrieved Employee shall be based on the
13 number of pay periods each Aggrieved Employee worked during the PAGA Period as an
14 Aggrieved Employee, as a percentage of the total pay periods worked by all Aggrieved
15 Employees during the PAGA Period.⁵ The PAGA Period is the time period from March 2,
16 2022 through May 15, 2024. (Agreement at ¶ 1.23). For mediation, Defendant represented
17 that there are approximately 285 Aggrieved Employees who collectively worked
18 approximately 7,972 pay periods during the PAGA Period. (Agreement at ¶ 4.1). The final
19 number of pay periods is 8,518.

21
22 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
23 Payment less than the amounts requested, the Administrator will allocate the remainder of these
24 amounts to the PAGA Payment. (Settlement Agreement at ¶ 3.2.1). To the extent the Administration
25 Expenses are less, or the Court approves payment less than \$6,000, the Administrator will allocate the
26 remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

27 ⁴ "Aggrieved Employee" means all individuals who are or previously were employed by Defendant as
28 non-exempt employees in California at any time during the PAGA Period. The PAGA Period means
the period from March 2, 2022 through May 15, 2024. (Settlement Agreement at ¶¶ 1.4, 1.23)

⁵ See Settlement Agreement at ¶ 3.2.3 ("The Administrator will calculate each Individual PAGA
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 Effective on the date when Defendant fully funds the entire Gross PAGA Settlement
2 Amount Plaintiff and PAGA Counsel will release the Released Parties from all Released
3 PAGA Claims. “Released PAGA Claims” are all claims for PAGA penalties that were alleged,
4 or reasonably could have been alleged, based on the facts stated in the Operative Complaint
5 and the PAGA Notice submitted by Plaintiff to the LWDA, which occurred during the PAGA
6 Period, including, e.g., claims for civil penalties pursuant to the California Labor Code section
7 2698, *et seq.*, including: (a) failure to provide accurate itemized wage statements, (b) failure
8 to properly record and provide legally required meal and rest periods, (c) failure to pay
9 minimum wages, (d) failure to pay overtime wages and sick pay wages, (e) failure to reimburse
10 employees for required expenses, (f) failure to provide suitable seating, and (g) violations of
11 California Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 225.5, 226(a), 226.3, 226.7,
12 227.3, 246, 248.5, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
13 Regulations, Title 8, Section 1 1070(14)(Failure to Provide Seating), and the applicable Wage
14 Order(s). (Agreement at ¶5.2). The Released PAGA Claims expressly excludes all other
15 claims, including Plaintiff’s individual claims, claims for vested benefits, wrongful
16 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
17 disability, social security, workers’ compensation, California class claims, and PAGA claims
18 outside of the PAGA period. (*Id.*) The Agreement expressly states, “In no event shall the
19 release of the Released PAGA Claims in this Settlement Agreement release any individual
20 claims of any individuals.” (*Id.*)

21 Within fourteen (14) days after Defendant funds the Gross PAGA Settlement Amount,
22 the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA
23 Payment, the Administration Expenses Payment and the PAGA Counsel Fees Payment and
24 PAGA Counsel Expenses Payment. (Agreement at ¶ 4.4).⁶ Checks will remain negotiable for
25 one hundred eighty (180) days. (*Id.* at ¶ 4.4.1) For any Individual PAGA Payment check that
26 is uncashed and cancelled after the void date, the Administrator shall transmit the funds
27

28 ⁶ Disbursement of the PAGA Counsel Litigation Expenses Payment shall not precede disbursement
of the Individual PAGA Payments. (*Id.*).

1 represented by such checks to the State Controller Unclaimed Property Fund in the name of
2 the individual who failed to cash their check, subject to Court approval. (*Id.* at ¶ 4.4.3).

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

9 10 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

11 The claim before this Court is solely the representative claim under PAGA on behalf of
12 the State of California for civil penalties pursuant to the PAGA. The parties have agreed to
13 settle this PAGA claim in its entirety after investigation and an arm's length mediation session.
14 (Declaration of Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and finally resolve
15 the Released PAGA Claims asserted by Plaintiff on behalf of the State of California. This is
16 only a settlement of the PAGA claims for civil penalties and is not a class settlement and does
17 not release the individual claims, if any, of the Aggrieved Employees, other than any claims
18 under PAGA. This settlement does not release any claim that is not a PAGA claim.⁷ PAGA
19 Counsel Fees equal to one-third of the Gross PAGA Settlement amount (\$90,000) and PAGA
20 Counsel Litigation Expenses in an amount not to exceed \$18,000 will also be paid to PAGA
21 Counsel as part of the settlement in accordance with California Labor Code § 2699(g)(1), as
22 set forth in the Agreement.⁸ Lastly, payment to the Administrator in an amount not to exceed
23 \$6,000 to perform the administrative duties to distribute the settlement money shall also be
24 paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)

25
26 ⁷ 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."

27 ⁸ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
28 in the current amount of \$14,735.23, which is less than the cost allocation in the Settlement Agreement.
See Declaration of Nordrehaug at ¶ 9.

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

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

9 Plaintiff believes that the PAGA Settlement amount is fair and reasonable and therefore
10 "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount of \$270,000
11 constitutes approximately \$31.69 per pay period. (Declaration of Nordrehaug, at ¶6.)

12 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
13 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of
14 statutory PAGA civil penalties was potentially \$797,200 based on 7,972 pay periods
15 applicable to the Aggrieved Employees during the PAGA Period.⁹ (Declaration of
16 Nordrehaug, at ¶6.) Importantly, however, these calculations were performed at the maximum
17 statutory rate for the penalties, when in fact, it is likely that any penalties awarded would be at
18 a lower rate. California Labor Code Section 2699(e)(1) permits a Court to award a lesser
19 amount than the maximum civil penalty if based on the facts and circumstances to do otherwise
20 would result in an award that is "unjust, arbitrary and oppressive or confiscatory."

21 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal
22 affirmed a judgment after trial which only provided for a PAGA penalty of \$5 per pay period.
23 Therefore, at trial, any PAGA penalties awarded could be significantly less than Plaintiff's
24 calculation even where Plaintiff prevailed on the PAGA claim. If the amount of \$5 per pay

25 ⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The
26 valuation of \$797,200 is the civil penalty amount without stacking. If stacking is permitted, then the
27 valuation increases with each additional penalty added to each pay period. Plaintiff, however, is not
28 aware of any PAGA award which permitted stacking and in the cases cited herein, only one penalty
per pay period was assessed. The recent amendments to PAGA cast further doubt as to the availability
of stacking penalties.

1 period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties would be
2 only \$42,590, which is far less than this settlement provides. (Declaration of Nordrehaug, at
3 ¶6.)

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

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

22 Defendant maintains that Plaintiff and the Aggrieved Employees were properly
23 compensated, and that it did not violate the Labor Code. Accordingly, Defendant disputes and
24 denies Plaintiff's allegations and claims asserted in both the PAGA Notice and the Operative
25 Complaint, which are resolved by the Agreement. Defendant asserted additional defenses to
26 the PAGA claim, not only as to liability but also as to the amount of the penalties. Defendant
27 could argue that no penalties prior to the PAGA notification should be awarded because the
28 violations were not intentional, and at least one Court has so ruled. These defenses present a

1 risk to the PAGA claims and the potential that some or all of the PAGA penalties sought may
2 not be awarded. (Declaration of Nordrehaug, at ¶7.)

3 Given Defendant's potential defenses to the violations at issue, the risks and costs of
4 continued litigation, Plaintiff and his attorneys believe that the PAGA Settlement is fair and
5 reasonable. (Declaration of Nordrehaug, at ¶7.) Defendant has similarly concluded that it is
6 desirable that the action is settled in the manner and upon the terms and conditions set forth in
7 the Agreement in order to avoid further expense, inconvenience and distraction of further legal
8 proceedings, as well as the uncertainty of litigation. Defendant has determined that it is
9 desirable and beneficial to put to rest the claims in this action.

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

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

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

24 Although PAGA requires that a court approve the proposed PAGA settlement, Labor
25 Code § 2699(1) does not require that a court approve any other elements of the proposed
26 settlement. Because there are no class allegations for which Plaintiff seeks approval, the
27 approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not
28 apply. Accordingly, the Court only needs to approve the settlement of the civil penalties

sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.

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

PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the amount of \$90,000 representing one-third of the \$270,000 Gross PAGA Settlement Amount. PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a matter of contract for contingent representation. Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

First, the requested fees are justified by the result achieved. PAGA Counsel negotiated a recovery of \$270,000.00, and this result justifies the requested fees equal 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 Declaration of Kyle Nordrehaug at ¶8, PAGA Counsel's current lodestar is \$130,678.75, which means the requested award is less than the lodestar incurred by PAGA Counsel (i.e a negative multiplier).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

¹⁰ 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 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0 are often applied and
2 affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001)
3 (noting that multipliers can range from 2 to 4 or higher); *Vandervort v. Balboa Capital Corp.*,
4 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.52
5 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014)
6 (awarding one-third of fund, which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales*
7 *Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving
8 fee award that represented a multiplier of 2.76 as falling within the "majority" range for risk
9 multipliers). Here, where the fee award is less than the lodestar, representing a negative
10 multiplier, there can be no dispute that the fee award is reasonable.¹¹

11 Third, consideration of the service factors justify the service of the lodestar. Courts
12 multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the
13 quality of work, and the novelty and difficulty of the issues involved. See *Ketchum v. Moses*,
14 24 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in cases that meet these criteria
15 is an abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016).

16 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses
17 in the total amount of \$14,735.23, which is less than the \$18,000 allocation for costs in the
18 Agreement, so the difference of \$3,264.77 will be added to the PAGA Payment amount. These
19 expenses are documented in the accompanying Declaration of Nordrehaug at ¶9.

20 VII. CONCLUSION

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

24 Dated: September 20, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

25 By: /s/ Kyle Nordrehaug

26 Kyle Nordrehaug, Attorney for Plaintiff

27 ¹¹ "The lodestar amount is presumptively the reasonable fee amount." *Topete v. Ramos Furniture*, 2018
28 U.S. Dist. LEXIS 142033 (E.D. Cal. 2018), citing *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F. 3d
1041, 1045 (9th Cir. 2000).