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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

GRACE FLEMING, individually and on behalf of
all other similarly situated aggrieved employees,

Plaintiff,

vs.

TRUSTED HEALTH, INC. and DOES 1-50,
inclusive,

Defendants

CASE NO.: CGC-23-611120

[Assigned for all purposes to Judge Jeffrey
S. Ross, Department 606]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED
MOTION FOR APPROVAL OF
PAGA SETTLEMENT,
ATTORNEYS' FEES AND
EXPENSES, AND SERVICE AWARD**

Hearing Date: March 20, 2025

Time: 9:30 am

Dept.: 606

Judge: Hon. Jeffrey S. Ross

Hearing Date Set by November 14, 2024,
Court Order

Complaint Filed: December 15, 2023

Trial Date: August 25, 2025

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1 **I. INTRODUCTION**

2 Plaintiff Grace Fleming requests that the Court approve a proposed Private Attorneys General
3 Act of 2004 settlement with Defendant Trusted Health, Inc. (“Trusted Health”). The Settlement
4 Agreement¹ requires Trusted Health to deposit \$1,000,000 into a non-reversionary settlement fund,
5 which will resolve Trusted Health’s liability for Plaintiff’s representative PAGA claims as well as her
6 individual claims. The common fund will also pay Plaintiff’s counsel’s attorneys’ fees and expenses,
7 a service award, and the cost of settlement administration, in amounts to be approved by the Court.

8 Plaintiff and other PAGA Group Members are travel nurses who worked for Trusted Health
9 in California. These nurses typically work 13-week assignments at a healthcare facility to fill a short-
10 term need and are employed by the intermediary staffing company—here, Trusted Health. Plaintiff’s
11 PAGA claims are premised on two alleged Labor Code violations. First, Plaintiff alleged that Trusted
12 Health violated Labor Code § 510 (overtime) when it paid travel nurses like her stipends (nominally
13 for housing, meals and incidentals, *etc.*) that functioned as wages because they were tied to the
14 quantity of work performed. Plaintiff thus alleged that these stipends should have been included in
15 the regular rate of pay used for calculating the applicable overtime rate and because they were not,
16 she was underpaid for overtime worked. Second, Plaintiff alleged that Trusted Health engaged in a
17 pattern and practice of offering fixed-term assignments at a set rate of pay and other firm material
18 terms and, then, once the travel nurse accepted and traveled to the assignment, the company made a
19 take-it-or-leave it demand to accept less pay or be terminated. Plaintiff alleged this violated Labor
20 Code § 970’s prohibition on misrepresenting a worker’s terms of employment (“bait and switch”).

21 The proposed settlement covers 1,123 PAGA Group members who worked 25,286 pay periods
22 during the PAGA Period running between June 14, 2022 and January 31, 2025. The settlement thus
23 values each PAGA Pay Period at approximately \$40. Given the potential risks Plaintiff’s PAGA
24 claims faced, this is a fair and reasonable result that should be approved.

25
26
27 ¹ All referenced exhibits are attached to the supporting Declaration of Alexander T. Ricke (one of
28 Plaintiff’s counsel) (“Ricke Decl.”). All defined terms have the same meanings ascribed to them in
the Joint Stipulation of Private Attorneys General Act (Cal. Lab. Code §2698, et seq.) Settlement
and Release (the “Settlement Agreement”) attached as Exhibit A to the Ricke Declaration.

II. THE LITIGATION

Plaintiff brought a representative action under PAGA seeking civil penalties for herself and other aggrieved California travel clinicians and the State of California due to Trusted Health's alleged violations of the Labor Code. *See* Complaint (filed December 23, 2023). Plaintiff Fleming asserted various Labor Code violations premised on two practices: (1) Trusted Health's failure to include stipends in travel nurses' regular rate of pay when calculating the applicable overtime rate in violation Labor Code § 510; and (2) Trusted Health's misrepresentations about the terms and conditions of employment through the use of "bait-and-switch" contract practices in violation of Labor Code § 970.

Plaintiff Fleming's allegations as to her own experience are illustrative. With respect to the Labor Code § 510 claims for unpaid overtime, Plaintiff Fleming alleged that the payments of the stipends were tied to the amount of work performed, that the stipends would be reduced if she missed a shift, and that the stipends did not fluctuate based on the expenses she actually incurred. Compl., at ¶ 39. The failure to include stipends in the regular rate produced meaningful overtime underpayments. For example, in one workweek in November 2022, Plaintiff Fleming worked 5.8 hours of overtime at a rate that was nearly \$100 less than what she was owed—she was paid \$50 per hour for overtime when she should have been paid \$147 per hour. *Id.* at ¶ 38.

With respect to the Labor Code § 970 claims, Plaintiff alleged that Trusted Health engaged in a pattern and practice of offering contracts to travel clinicians for fixed-term travel nurse assignments, with guaranteed rates of pay, guaranteed hours, and protections against excessive call-offs, only to make "take-it-or-leave-it" demands to modify material employment terms or be terminated after the nurses had accepted the contract, secured short-term housing, traveled to California, and incurred other expenses. *Id.* at ¶¶ 15-31. For Plaintiff, upon accepting an extension that guaranteed her that she could only be called off six total shifts during the assignment, she was called off 14 total shifts without compensation for guaranteed hours. Plaintiff alleged this bait-and-switch conduct violated Labor Code § 970, which prohibits inducing an employee to change locations by misrepresentations relating to the existence, character, or kind of employment. *Id.* at ¶ 15. Plaintiff further alleged derivative violations of the Labor Code premised on these two theories, including: failure to indemnify employees for expenses and losses under § 2802 (*id.* at ¶ 51); failure to indemnify employees for want

of ordinary care under § 2800 (*id.* at ¶ 52); failure to furnish accurate wage statements under §§ 226, 1174, 1175 (*id.* at ¶¶ 46-49); and unlawful failure to make payment of all wages due upon termination under §§ 201, 202, and untimely payment of wages under § 204 (*id.* at ¶¶ 43-45).

On June 14, 2023, Plaintiff Fleming filed a notice with LWDA asserting these violations. Complaint at Ex. 1. As the LWDA did not indicate that it intended to investigate these claims after the requisite 65 days passed, on December 15, 2023, Plaintiff Fleming filed her initial PAGA Complaint in this Court. Ricke Decl. at ¶ 13-14.

Following the filing of the case, the Parties met and conferred regarding a proposed schedule for the case. Declaration of Eve H. Cervantez (“Cervantez Decl.”) at ¶ 13. Plaintiff also served written discovery on Trusted Health on August 5, 2024. Ricke Decl. at ¶ 15. While this discovery was pending, the parties determined that it was an appropriate time to explore settlement. Cervantez Decl. at ¶ 15.

On October 22, 2024, the Parties participated in an all-day mediation presided over by Jonathan D. Andrews, Esq., which led to the Settlement Agreement to settle the Action. In advance of the mediation, the parties conducted informal discovery so that Plaintiff could formulate a demand and also to understand Trusted Health’s defenses and their evidentiary support. Cervantez Decl. at ¶ 15-18. In response to Plaintiff’s informal discovery requests, Trusted Health provided Plaintiff data for travel nurses employed in California between, June 14, 2022 and June 22, 2024, which included: (1) the total number of employees and pay periods with overtime and/or double time and stipend payments; (2) the total number of employees and pay periods where a decreased rate was paid after an amended assignment; (3) and the total number of employees and pay periods without guaranteed hours. Cervantez Decl. at ¶ 16. Plaintiff also analyzed the key documents in the case like the form employment contracts and employee handbooks used by Trusted Health. *Id.* The Parties exchanged confidential mediation briefs in which each side carefully explained their view of the law and facts. Cervantez Decl. at ¶ 17. Settlement Agreement at §2(d)).

During the mediation on October 22, 2024, the parties eventually reached an impasse. Cervantez Decl. at ¶ 18. With the consent of all parties, the mediator made a double-blind mediator’s proposal to resolve the case in its entirety. *Id.* Both parties accepted. *Id.* Plaintiff’s Counsel then

1 worked to prepare, first a Memorandum of Understanding, and then the Settlement Agreement, which
2 was revised by the Parties multiple times during an extensive meet and confer process, culminating
3 in the Settlement Agreement now before the Court. Cervantez Decl. at ¶ 19-20.

4 **III. THE SETTLEMENT**

5 The proposed Settlement Agreement provides that Trusted will pay a total of \$1,000,000 to
6 settle Plaintiff's claims.²

7 **Scope of the Settlement.** The relevant period for the Settlement Agreement is June 14, 2022
8 to January 31, 2025.³ The 1,123 individuals covered by the Settlement Agreement—PAGA Group
9 members—are any Trusted Health employees who were assigned to work at any facility in California
10 during the relevant period who experienced a pay period during which (1) they were entitled to
11 overtime or double time pay and were paid a per diem, (2) received a decreased rate of pay after an
12 amended assignment, and/or (3) were not paid for guaranteed hours. *Id.* at §1(m). Together, PAGA
13 Group members worked a total of 25,286 pay periods during the PAGA Period.

14 **The Release of Claims.** The release is narrowly tailored to the facts alleged in the Complaint,
15 and is expressly limited to PAGA penalties and corresponding attorneys' fees and costs "based on
16 facts and allegations in the PAGA Notice and Complaint . . . through the PAGA Period, including"
17 specified Labor Code sections, and does not include members of the PAGA Group's non-PAGA
18 claims under the California Labor Code. *Id.* at §1(v)). In other words, PAGA Group members are not
19 releasing claims outside of those claims for PAGA penalties based on the facts alleged in the
20 Complaint during the relevant period, and still retain their individual Labor Code claims.

21 ² Plaintiff also resolved her individual claims for damages under the Labor Code, which were not
22 asserted in this litigation but were based upon the allegations in the Complaint. This Court need not
23 review or approve this individual settlement. *See, e.g., Tenorio v. Gallardo*, No. 1:16-cv-00283-
24 DAD-JLT, 2019 WL 4747949, at *3 (E.D. Cal. Sep. 30, 2019) ("While California Labor Code
25 §2699(l)(2) requires this court to approve any settlement agreement with respect to plaintiffs' PAGA
26 claims, the court is aware of no corresponding provision that imposes any duty on this court to
supervise settlement of plaintiffs' non-PAGA claims."); *Ramirez v. Benito Valley Farms, LLC*, No.
16-cv-04708-LHK, 2017 WL 3670794, at *1 (N.D. Cal. Aug. 25, 2017) ("Under the PAGA ... the
Court is not required to approve settlement provisions resolving Plaintiff's individual claims.").

27 ³ The PAGA Period is "June 14, 2022 through the earlier of (1) the date when the number of PAGA
28 Group Pay Periods worked by the PAGA Group since June 14, 2022 reaches 29,000 aggregate pay
periods or (2) January 31, 2025." Settlement Agreement at § 1(r). Because the PAGA Group did not
reach 29,000 pay periods, the cut-off date of January 31, 2025 applies.

1 **Allocation of the Settlement Fund.** After deduction of Court-approved attorneys' fees and
2 costs, Plaintiff's service award, settlement administration costs, and the individual settlement payment
3 to Plaintiff, the Net Settlement Amount of at least \$621,666.67 will be distributed 75% to the LWDA,
4 and 25% to the 1,123 PAGA Group members, as required by Labor Code §2699(i). *Id.* at §3(b)(4)(i).

5 The Settlement Agreement provides that the PAGA Group members' share of the PAGA
6 Penalties will be allocated among members by dividing the amount of the PAGA Group members'
7 25% share of PAGA Penalties (at least \$155,416.67) by the total number of PAGA Group Pay Periods
8 worked by all PAGA Group members during the PAGA Period and (b) multiplying the result by each
9 PAGA Group member's PAGA Group Pay Periods. *Id.* In other words, the PAGA Group members'
10 settlement shares are calculated proportional to their respective Pay Periods. Each PAGA Group Pay
11 Period is valued at approximately \$40. The average payment per PAGA Group member is thus likely
12 to be approximately \$138 per person, though the amount paid to any individual will vary based on the
13 length of time they worked for Trusted Health. Cervantez Decl. at ¶ 22.

14 **Settlement Administration.** No PAGA Group member is required to file a claim in order to
15 receive their settlement payment. Settlement Agreement at §3(a). The payments will be calculated by
16 the Administrator based on data provided by Trusted Health. *Id.* at §3(c)(3)(i). The Administrator will
17 issue checks for the Individual PAGA Payments to all PAGA members via regular First Class U.S.
18 Mail. *Id.* at §3(5)(i). If a check is returned undeliverable, the Administrator will conduct an Address
19 Search for all PAGA Group members and remail the check. *Id.* at §3(5)(ii)). Because no funds under
20 the Settlement Agreement revert to Trusted Health, any checks remaining uncashed for more than
21 180 days will be cancelled and the funds transmitted by the Administrator to the California
22 Controller's Unclaimed Property Fund for that PAGA Group member. *Id.* at §§3(5)(i)-(iii).

23 **Attorneys' Fees, Expenses, and Service Award.** Consistent with the Settlement Agreement,
24 Plaintiff's Counsel are seeking attorneys' fees totaling one-third of the settlement fund, or
25 \$333,333.33, plus expenses of \$12,819.52 (to be updated with Plaintiff's reply brief). *Id.* at §3(b)(1)).
26 Likewise, Plaintiff Fleming seeks a service payment of \$1,000. *Id.* at §3(b)(3)(i). Plaintiff Fleming
27 will also be paid an individual settlement amount of \$9,000 based on her agreement to a general
28 release, including her individual Labor Code claims based on the same facts alleged. Any amount of

attorneys' fees, expenses, or service payment, not awarded by the Court will be added to the Net Settlement Fund and distributed to PAGA Group members and the State of California consistent with the allocation formula above. *Id.* at §§3(b)(1), (3)(b)(3)(i). The Settlement Agreement also provides for the payment of the Administrator's fees, estimated not to exceed \$15,000. *Id.* at §3(b)(2).

IV. THE SETTLEMENT SHOULD BE APPROVED

Plaintiff's PAGA claim is not a class claim; it is a representative claim for civil penalties brought by Plaintiff as a proxy for the State of California. Therefore, the two-step procedure for obtaining judicial approval and providing notice to a class does not apply. *See Arias v. Superior Court*, 46 Cal.4th 969, 986 (2009); *Iskanian v. CLS Trans. Los Angeles, LLC* 59 Cal.4th 348, 380 (2014). However, PAGA provides that the LWDA must be notified of a PAGA settlement (which Plaintiff has done, Cervantez Decl. ¶ 21) and that the court "shall review and approve" any PAGA settlement. (Labor Code, § 2699(1)(2)). The court reviews a PAGA settlement to "determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.* 72 Cal.App.5th 56, 77 (2021); *see also O'Connor v. Uber Techs., Inc.* 201 F.Supp.3d 1110, 1133 (N.D. Cal. 2016) (California trial courts will generally approve PAGA settlements that provide "genuine and meaningful" relief "consistent with the underlying purpose" of PAGA) (quoting amicus brief of LWDA Resp. at 2-3). The proposed Settlement Agreement satisfies these criteria.

The Settlement Agreement provides significant monetary compensation under the circumstances of this case. This litigation encompasses approximately 25,286 total pay periods from the beginning of the PAGA Period (June 14, 2022) through the earlier of (1) the date when the number of PAGA Group Pay Periods worked by the PAGA Group since June 14, 2022 reaches 29,000 aggregate pay periods or (2) January 31, 2025. Settlement Agreement at §1(r). Here, the PAGA Group worked 25,286 pay periods, so the January 31, 2025 cut-off date applies. *Id.*

PAGA establishes a default civil penalty of "one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation" for all provisions of the Labor Code in which no other civil penalty is specified. Cal. Labor Code, § 2699(f)(2). The Settlement Agreement provides

1 for approximately \$40 per pay period for each pay period worked by PAGA Group members. This
2 compares favorably to settlements of other PAGA cases and to the proportional recovery approved in
3 class action cases. *See, e.g., Sharp v. Safeway Inc.*, Case No. 2011-1-cv-202901, Santa Clara County
4 Superior Court, Oct. 21, 2019 (order approving PAGA settlement for approximately \$5 per pay
5 period); *cf. Custom LED, LLC v. eBay, Inc.*, No. 12-cv-00350-JST, 2014 WL 2916871, at *4 (N.D.
6 Cal. June 24, 2014) (in class action context, “courts have held that a recovery of only 3% of the
7 maximum potential recovery is fair and reasonable when the Plaintiff face a real possibility of
8 recovering nothing absent the settlement.”). Here, of course, PAGA Group members are recovering
9 far more—40% of the \$100 baseline PAGA penalty per pay period.

10 Moreover, the Settlement Agreement was the product of extensive, arm’s-length negotiation,
11 including participating in a mediation session with Jonathan D. Andrews, a highly experienced
12 mediator with experience in employment class actions and PAGA cases. In fact, the case only settled
13 after the parties reached an impasse and the mediator made a double-blind mediator’s proposal. This
14 supports the presumption of fairness in the class action approval context. *See Clark v. American*
15 *Residential Services LLC* 175 Cal.App.4th 785, 800 (2009) (“The court undoubtedly should give
16 considerable weight to the competency and integrity of counsel and the involvement of a neutral
17 mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered
18 without self-dealing or other potential misconduct.”). The Settlement Agreement is fair and
19 reasonable, and well-designed to further the purposes of PAGA “to remediate present labor law
20 violations, deter future ones, and to maximize enforcement of state labor laws.” *Moniz*, 72
21 Cal.App.5th at 77.

22 **A. Litigation Risks**

23 Absent settlement, Plaintiff’s claims faced risks. Those risks must be measured against the
24 material payments provided by the Settlement Agreement to the State of California and PAGA Group
25 members. First, given the early stage of this litigation, resolution of this case on the merits and through
26 any potential appeal is likely years away. Plaintiff would have to conduct extensive fact discovery,
27 brief and resolve motions for summary judgment, win at trial, and possibly brief an appeal.
28 Consequently, the State of California and the PAGA Group members benefit from the timely relief

provided by this Settlement Agreement. Second, the proposed settlement avoids the risk to the State of California and PAGA Group members of an unfavorable judgment, particularly in light of the defenses asserted by Trusted Health. In addition, Plaintiff's underlying case theories, while strong as evidenced by the settlement, faced uncertainty that must be taken into account.

1. Bait-and-Switch Claims

Trusted has raised several possible defenses to Plaintiff's bait-and-switch claim under Labor Code § 970 that increase the uncertainty of litigation. First, Trusted Health has indicated that it would likely assert that some or all of Plaintiff's purported causes of action are barred, in whole or in part, by applicable statutes of limitations. Cervantez Decl. ¶ 23. Plaintiff believes that this argument is incorrect, given the California Supreme Court's recent approval of *Johnson v. Maxim Healthcare Services, Inc.* 66 Cal.App.5th 924 (2021) for the proposition that "[t]he fact that the plaintiff's 'individual claim may be time-barred does not nullify the alleged Labor Code violations nor strip [the plaintiff] of her standing to pursue PAGA remedies.'" *Adolph v. Uber Techs., Inc.* 14 Cal. 5th 1104, 1121 (2023) (quoting *Johnson*, 66 Cal.App.5th at 930). But Plaintiff acknowledges that there is at least some risk that this Court could distinguish *Johnson* and rule that some claims are untimely.

Second, and more fundamentally, a claim under Section 970 requires Plaintiff to show that Trusted "influence[d], persuade[d], or engage[d] any person to change from one place to another in this State or from any place outside to any place within the State," and did so "through or by means of knowingly false representations." Cal. Labor Code § 970. Plaintiff alleged and believes the evidence will demonstrate that Trusted Health's representations about the work it initially offered to Plaintiff were knowingly false. However, there is a risk that, if the PAGA bait-and-switch claim went to trial, the Court could find that Trusted Health did not knowingly misrepresent the compensation offered to its employees (for example, that Trusted Health lowered the compensation paid to travel clinicians for reasons beyond the company's control that were not foreseeable). *Id.*

Finally, Plaintiff was unable to locate any litigated PAGA claim based on Section 970 violations that would demonstrate the correct way to calculate affected pay periods. If Trusted Health is correct that the number of pay periods at issue on such a claim is only the pay period where the reduction occurs, as opposed to all pay periods after a reduction, that would also limit the scope of

1 the available PAGA penalties.

2 **2. Overtime Wages**

3 Plaintiff's overtime claim is based on a theory that Trusted Health failed to include per diem
4 stipends in calculating employees' regular rate of pay (and hence the applicable overtime rate) as
5 required by *Clarke v. AMN Services, LLC*, 987 F.3d 848 (9th Cir. 2021). In *Clarke*, the Ninth Circuit
6 held that per diem payments made by a similar nursing staffing agency that varied depending on how
7 much the nurses worked were part of the workers' regular rate of pay under the FLSA and California
8 law. The parties here dispute the extent to which Trusted Health's policy is similar to the policy
9 described in *Clarke*, and thus whether the per diem stipends the company offers must be treated as
10 part of the regular rate for the purpose of calculating the overtime rate. *Id.*

11 Plaintiff believes that the allegations of overtime violations here are strong, as Trusted
12 Health's policy meets the crucial factors of the Ninth Circuit's test: (1) "the tie of the per diem
13 deductions to shifts not worked regardless of the reason for not working"; and (2) "the default payment
14 of per diem on a weekly basis, including for days not worked away from home, without regard to
15 whether any expenses were actually incurred on a given day." (*Id.* at 858). But Plaintiff acknowledges
16 that this Court could determine that the distinctions between the policies, such as Trusted Health's
17 lack of a system for "banking hours," are sufficient to distinguish this case from *Clarke*, in which case
18 there would be no recovery.

19 Given these uncertainties, that the settlement values each pay period at approximately \$40
20 makes this a substantial settlement for the State of California and PAGA Group members.

21 **3. Derivative claims**

22 Plaintiff also asserted claims under multiple other Labor Code statutes based on the same legal
23 theories described above. Plaintiff alleges that Trusted Health is subject to civil penalties under PAGA
24 for violations of §§ 201, 202, and/or 204 for failure to timely pay wages due at regular pay periods
25 and upon termination, because the wages paid did not properly reflect employees' pre-bait-and-switch
26 rates and required overtime pay. Plaintiff also alleges violations of § 226 by provision of improper
27 wage statements with every paycheck listing regular, overtime, and double time rates. Moreover,
28 Plaintiff alleges that the misclassification of wages as stipends not dependent on actual expenses

1 means that Trusted Health has not indemnified or reimbursed employees for the costs of necessary
2 business expenses in violation of § 2802. These claims will rise or fall based on the same strengths
3 and weaknesses described above given that they are derivative of the Labor Code §§ 510 and 970
4 claims.

5 That said, the derivative claims face a further challenge as to whether they increase Trusted
6 Health's exposure—a key dispute among the parties during settlement negotiations. Plaintiff believes
7 that these penalties for different violations can be “stacked,” such that each pay period is subject to
8 multiple penalties. *See Hernandez v. Towne Park, Ltd.*, 2012 WL 2373372, at *17 n.77 (C.D. Cal.
9 June 22, 2012). But Plaintiff also recognizes the discretion afforded to judges “to award a lesser
10 amount than the maximum civil penalty amount specified . . . if, based on the facts and circumstances
11 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
12 or confiscatory.” (Cal. Lab. Code, § 2699(e)(2)). Plaintiff also recognizes that many of these theories
13 of derivative claims have not been previously litigated in PAGA cases. As a result, the Settlement
14 Agreement does not distinguish between the derivative claims and the predicate bait-and-switch and
15 overtime claims and instead considers them to be part of the total \$40 per-pay-period recovery.

16 **V. PLAINTIFF'S COUNSEL SHOULD BE AWARDED ATTORNEYS' FEES AND COSTS**

17 The Parties' Agreement provides for a fee award, subject to this Court's approval, of an
18 amount up to one-third (33.33%) of the Gross Settlement Fund, totaling \$333,333.33, for attorneys'
19 fees, and an amount of up to \$20,000 for reimbursement of actual litigation costs and expenses.
20 Settlement Agreement at §3(b)(1)). The proposed settlement provides a substantial benefit to PAGA
21 Group members and to the State of California, both monetarily and in promoting the enforcement of
22 the California Labor Code.⁴ This fee request is thus appropriate and reasonable under both the
23 common fund and lodestar methods.

24 A percentage of a common fund is a reasonable basis to support a request for attorney's fees.
25 *See, e.g., Laffitte v. Robert Half Int'l, Inc.* 1 Cal.5th 480, 503 (2016) (“We join the overwhelming
26 majority of federal and state courts in holding that when class action litigation establishes a monetary

27 ⁴ Pursuant to Labor Code § 2699(g)(1), “[a]ny employee who prevails in any [PAGA] action shall
28 be entitled to an award of reasonable attorney's fees and costs.”

1 fund for the benefit of the class members, and the trial court in its equitable powers awards class
2 counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing
3 an appropriate percentage of the fund created.”). Moreover, one-third of the common fund is standard
4 in class action settlements, and is routinely granted by California Superior Courts in PAGA-only
5 settlements like this one. *See, e.g., id.* at 506 (approving fees of one-third of the common fund); *In re*
6 *Consumer Privacy Cases*, 175 Cal.App.4th 545, 558 n.13 (2009) (“Empirical studies show that,
7 regardless whether the percentage method or the lodestar method is used, fee awards in class actions
8 average around one-third of the recovery.”); *Martin v. Aircraft Service Intern., Inc.*, No. CGC-18-
9 566072, 2020 WL 5649943, at *1 (Cal. Super. July 16, 2020) (approving fees of one-third of
10 \$1,100,000 Gross Settlement Amount in PAGA-only case); *Navarro v. Tire Staffing* No. CIVDS
11 2016343, 2022 WL 17482794, at *2 (Cal. Super. Apr. 28, 2022) (likewise granting fees of one-third
12 of gross PAGA settlement fund). In fact, courts also regularly approve fee awards in excess of one-
13 third of the fund. *See, e.g., Cubillas v. Dav-El Los Angeles*, 2018 WL 3760657, at *3-4 (Cal. Super.
14 June 14, 2018) (awarding \$1.12 million in attorneys’ fees, equivalent to 40% of the common fund,
15 where lodestar-multiplier exceeded the fee request).

16 The requested attorney’s fees here represent one-third of the Gross Settlement Amount. That
17 is appropriate given that this proposed settlement establishes a true common fund, in which there is
18 no claims process required to receive a settlement payment and there is no reversion to Trusted Health.
19 Settlement Agreement at §3(a); *see Laffitte*, 1 Cal.5th at 503). Finally, the overall fee in this case is
20 consistent with the purpose of PAGA, which is to incentivize employees and their attorneys to bring
21 private actions to enforce the Labor Code, thereby supplementing the State of California’s limited
22 enforcement resources. This proportion of the fund is entirely appropriate based on the contingent
23 risk incurred by counsel and the benefits conferred on Plaintiff, the PAGA Group members, and the
24 State of California, which include substantial per-pay-period penalties for the primary claims in this
25 case.

26 This fee is also reasonable under the lodestar-multiplier method. The lodestar-multiplier
27 method calculates attorneys’ fees by multiplying the number of hours reasonably expended by counsel
28 by a reasonable hourly rate. The court may then increase or decrease the amount by applying a

multiplier to take into account such factors as the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented. *See, e.g., PLCM Group v. Drexler* 22 Cal.4th 1084, 1095 (2000), citation omitted [the ‘lodestar,’ i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. . . . may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided.”; *Ramirez*, 2017 at *6-7 (N.D. Cal. Aug. 25, 2017) (calculating attorneys’ fees in PAGA settlement on lodestar method). In common-fund cases, the lodestar is typically used as a cross-check to determine whether the percentage is reasonable, and courts retain discretion to forgo a lodestar cross-check altogether. *Laffitte*, 1 Cal.5th at 505-506.

Here, Plaintiff’s Counsel’s lodestar through January 31, 2025 is approximately 174,834.00. As set forth in the accompanying Declarations, Plaintiff’s Counsel devoted more than 192 hours to the prosecution of this case, resulting in a total lodestar of more than 174,000.00 at Plaintiff’s Counsel’s 2025 commercial hourly rates. Cervantez Decl. ¶¶ 27-29; Ricke Decl. ¶¶ 25-26. With the requested fee award of \$333,333.33, the multiplier is 1.90. Ricke Decl. ¶¶ 25-26.

The hours incurred were reasonably and necessarily devoted to the litigation. Plaintiff’s Counsel engaged in fact investigation, including interviews with Plaintiff and review of documents; preparation and filing of pleadings; legal research regarding the alleged Labor Code violations; formal written discovery; preparation of a mediation brief; mediation; and drafting, negotiation, and revision of the proposed Settlement. Cervantez Decl. ¶¶ 12-20; Ricke Decl. 13-17. Counsel has worked additional hours in February finalizing the settlement and these motion papers which is not included in the hours as calculated through January 2025, and will continue to work additional hours preparing for the hearing and working with the Administrator to ensure prompt payment to PAGA Group members. The rates charged are also reasonable, representing the actual rates Plaintiff’s Counsel charges to commercial market rate clients. Cervantez Decl. ¶¶ 30; Ricke Decl. ¶ 33. Numerous California courts have approved Plaintiff’s counsel’s rates. Cervantez Decl. ¶¶ 34; Ricke Decl. ¶ 34.

Moreover, the contingent nature of the litigation, the novelty and complexity of many of the issues, and the results ultimately obtained fully justify a multiplier on the lodestar. *See, e.g., Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1217 (2008) (affirming 1.65 multiplier awarded to

Altshuler Berzon LLP based on contingent risk, skill, and results obtained); *see also Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 255 (2001) (“multipliers can range from 2 to 4 or even higher”), *disapproved of on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th 260 (2018). And here, one reason for the multiplier is that counsel was able to swiftly resolve the case, to the great benefit of PAGA Group members and the State, who did not have to wait years for a recovery. In this case, the multiplier of 1.90 is reasonable.

Finally, both Labor Code §2699(g)(1) and the common fund doctrine provide for the reimbursement of Plaintiff’s litigation expenses. *See Laffitte*, 1 Cal.5th at 486, 503. The proposed settlement accordingly provides for the reimbursement of Plaintiff’s Counsel’s reasonable expenses. In the present case, Plaintiff’s Counsel spent \$12,819.52 through January 31, 2025 in out-of-pocket expenses (the vast majority of which represent mediator’s fees and filing fees) of the type that are normally and customarily compensated in common fund and representative litigation. Ricke Decl. at ¶¶ 25-26; Cervantez Decl. at ¶ 36. Counsel will continue to incur costs, such as filing fees for this Motion. These amounts should be awarded to Plaintiff’s Counsel as set forth in the proposed Settlement.

VI. PLAINTIFF’S MODEST SERVICE PAYMENT

The proposed settlement also provides for a service payment of \$1,000 to Plaintiff Fleming. Service awards are typical in both class action cases and PAGA cases, and the requested service award is eminently reasonable. *E.g., In re Yahoo Mail Litig.* No. 13-CV-4980-LHK, 2016 WL 4474612, at *11 (N.D. Cal. Aug. 25, 2016) (“Ninth Circuit has established \$5,000 as a reasonable benchmark [for service awards].”); *Abelar v. American Residential Services, L.L.C.*, No. ED CV19-00726 JAK (JPRx), 2019 WL 6054607, at *6 (C.D. Cal. Nov. 14, 2019) (approving PAGA only settlement and holding “[t]he service award of \$5000 is reasonable compensation for the time and acceptance of adverse employment risk by Plaintiff”). This Settlement Agreement would not have been possible without the efforts of Plaintiff Fleming, who undertook significant risk bringing this case against a former employer. The modest service payment requested is reasonable compensation for that risk.

VII. CONCLUSION

For the foregoing reasons, the Court should approve the proposed settlement, the award of

1 attorneys' fees and expenses, and the service payment.

2
3 Dated: February 20, 2025

/s/ Eve H. Cervantez

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