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

SOPHIA RUIZ, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

LULULEMON USA INC., a corporation;
LULULEMON ATHLETICA USA INC; a
corporation; and DOES 1 through 50, Inclusive,

Defendants.

CASE NO.: CVRI2306367

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

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

Hearing Date: October 16, 2024

Hearing Time: 8:30 a.m.

Reservation ID: 952650224366

Judge: Hon. Harold W. Hopp

Dept.: 1

Complaint Filed: November 27, 2023

Trial Date: Not Set

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT at 8:30 a.m. on October 16, 2024, or as soon thereafter as the matter can be heard, in Department 1 of the above entitled Court before the Honorable Harold W. Hopp, Plaintiff Sophia Ruiz (“Plaintiff”) will and hereby does move for an order approving the settlement of the PAGA claim alleged against Defendants lululemon usa inc. and lululemon athletica inc. (erroneously sued as Lululemon Athletica USA, Inc.) (“Defendants”) in accordance with Labor Code §2699(l). The proposed settlement is set forth in the accompanying PAGA Settlement Agreement (“Agreement”).

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

Respectfully submitted,

Dated: September 12, 2024

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

By: /s/ Kyle Nordrehaug
Kyle R. Nordrehaug

Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Sophia Ruiz (“Plaintiff”) reached a settlement of the California Private Attorneys
4 General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claim asserted in this action against
5 Defendants lululemon usa inc. and lululemon athletica inc. (erroneously sued as Lululemon Athletica
6 USA, Inc.) (“Defendants”) (collectively, the “Parties”) which provides for a “Gross PAGA Settlement
7 Amount” payment in the amount of \$1,050,000. In accordance with California Labor Code §2699(1),
8 Plaintiff now asks this Court to review and approve the settlement of Plaintiff’s PAGA claims.¹ This
9 is only a settlement of the PAGA claims for civil penalties and is not a class settlement and does not
10 release the individual wage claims, if any, of the affected employees. Cal. Labor Code § 2699(g)(1);
11 *Iskanian v. CLS Transportation*, 59 Cal.4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal.5th
12 175, 182 (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 the Agreement is the Los Angeles Superior Court’s model form.
15 A true and correct copy of the Agreement which sets forth the terms for the settlement of the PAGA
16 claims is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug, filed herewith. Capitalized
17 terms shall have the same meaning as defined in the Agreement. The LWDA received notice of this
18 settlement, and this motion as set forth in the accompanying proof of service.

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

21
22 **II. RELEVANT FACTS**

23 PAGA Counsel mailed the necessary correspondence to the California Labor and Workforce
24 Development Agency (“LWDA”) on August 7, 2023, on behalf of Plaintiff, requesting authorization
25 from the LWDA to seek civil penalties as provided by the Private Attorney General Act of 2004
26 (“PAGA”) for the wage and hour violations alleged in the PAGA Notice. (Declaration of Kyle
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 Nordrehaug, at ¶3). A true and correct copy of this PAGA Notice served by Plaintiff is attached to the
2 Declaration of Kyle Nordrehaug as Exhibit #5. The 65-day notice period for the LWDA to notify of
3 its intent to investigate expired on October 11, 2023. On November 27, 2023, Plaintiff filed a
4 Representative Action Complaint in this Court against Defendants, alleging a single cause of action
5 for recovery of civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq.*].

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

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

22 Plaintiff's theory of PAGA liability as argued at mediation alleged that Defendants are liable
23 for miscalculating meal period premiums and sick pay as a result of not including certain
24 remunerations into the regular rate, and for requiring off-the-clock work without compensation. For
25 example, the following additional remunerations were not fully incorporated into the regular rate for
26 the purpose of paying meal/rest premiums and sick pay: Shift Premium Amount, Yoga Benefit
27 Amount, \$Discrbonus \$Discr Bonus Amount, \$Retailperiodbonus Retail Period Bonus Amount,
28 Shiftprem Shift Premium Amount, \$Quarterlybonus Quarterly Bonus Amount (Quarterly). Plaintiff's

1 expert determined that 29.9% of Aggrieved Employees and 3.1% of pay periods had meal premiums
2 and additional remunerations earned or had weighted average rate issues, and 45.1% of Aggrieved
3 Employees and 6.0% of pay periods had sick pay and additional remunerations earned or had weighted
4 average rate issues. Plaintiff's expert also identified 179,414 hours of unpaid wages due to off-the-
5 clock work as a result of daily communications in a Merchandise Text Chain and Operations Text
6 Chain, along with off-the-clock calls and text messages with management and co-workers.
7 (Declaration of Kyle Nordrehaug, at ¶3).

8 Plaintiff also alleged that Defendants did not provide Aggrieved Employees with all compliant
9 meal periods and rest breaks to which they were entitled, identifying a meal break violation rate among
10 Aggrieved Employees of 77.5% of all shifts (192,220 unique violations out of 591,656 shifts
11 analyzed). The Aggrieved Employees' pay data reflected meal break premiums paid for only 7,522
12 instances, imputing that only roughly 3.9% of facial violations have had a premium paid. The 192,220
13 unique meal break violations include 9,421 late (after 5th hour), 1,490 missed (for shifts greater than
14 6 hours), 350 short (under 30 minutes), and 187,915 shifts with exactly 30-minute meals (for shifts
15 greater than 6 hours) due to Defendants' unlawful failure to allow employees to record their shortened
16 meal periods. The Aggrieved Employees' time data also reflected recorded rest breaks with a violation
17 rate is 37.9% (198,255 unique violations out of 522,639 shifts 3.5 hours or longer), with rest break
18 premiums paid for 841 instances, imputing that a mere 0.4% of facial violations had a premium paid.
19 Lastly, Plaintiff also alleged at mediation that Defendants failed to reimburse Plaintiff and the
20 Aggrieved Employees for reasonable business expenses incurred as a result of using Defendants'
21 required timekeeping application as well as for participating in mandatory off the clock work calls and
22 responding to text messages. Defendants denied these allegations and retained an expert that rebutted
23 such findings. (Declaration of Kyle Nordrehaug, at ¶3).

24 On May 2, 2024, the Parties engaged in an all-day mediation session before mediator, David
25 Rotman, Esq., a respected and experienced mediator knowledgeable of both the wage and hour laws
26 and representative claims at issue in this action. Through arms-length negotiations with the assistance
27 of the mediator, the Parties reached an agreement to settle the PAGA claims in this action which led
28

1 to the signing of a Memorandum of Understanding memorializing the settlement.² (Declaration of
2 Kyle Nordrehaug, at ¶3).

3 The settlement was negotiated in light of all known facts and circumstances and the uncertainty
4 associated with litigation – including the risk of Plaintiff not being able to maintain representative
5 claims, the difficulty of proving Plaintiff’s claims in a manageable trial, the merits of Defendants’
6 potential defenses and differing expert findings, and the significant delay and potential appellate issues
7 inherent to litigation – and was reached after extensive arm’s length negotiations, with the assistance
8 of mediator, David A. Rotman, Esq. (Declaration of Kyle Nordrehaug, at ¶3).

9 10 **III. TERMS OF THE PAGA SETTLEMENT**

11 The PAGA settlement is subject to Court approval consistent with Labor Code §2699(1)(2).
12 (Agreement at ¶ III(D)(I)-(J)). The Agreement negotiated by the Parties provides for a “Gross PAGA
13 Settlement Amount” payment in the amount of \$1,050,000 to resolve the Released PAGA Claims
14 (hereinafter referred to as the “PAGA Settlement”). From this PAGA Settlement of \$1,050,000, there
15 is a deduction of attorneys’ fees (“PAGA Counsel Fees Payment”) in the amount of \$350,000 (which
16 is one-third of the PAGA Settlement), reimbursement of incurred costs (“PAGA Counsel Litigation
17 Expenses Payment”) in an amount not to exceed \$35,000, a service award of \$10,000 (“Service
18 Award”) and Administration Costs not to exceed \$30,000. (Agreement at ¶¶ III(D)(1)-(4)).³ After
19
20

21 ² In addition to the Gross PAGA Settlement Amount, Defendants has agreed to separately settle
22 Plaintiff’s individual claims pursuant to separate confidential Individual Settlement Agreement
23 (“Individual Settlement”) (Agreement at ¶ III(E)(2)). The individual claims were not at issue in this
24 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.).

25 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
26 Payment less than the amounts requested, the Administrator will allocate the remainder of these
27 amounts to the PAGA Payment. (Agreement at ¶¶ III(D)(2)). To the extent the Administration
28 Expenses are less, or the Court approves payment less than \$30,000, the Administrator will allocate
the remainder of this amount to the PAGA Payment (*Id.* at ¶ III(D)(3)). In the event the Service Award
is approved for less than \$10,000.00 to Plaintiff, the unawarded difference will be added to the PAGA
Payment for distribution and not paid to Plaintiff, PAGA Counsel, or Defendants. (*Id.* at ¶ III(D)(4)).

1 these deductions, the amount remaining is the “PAGA Payment”, which is estimated to be no less than
2 \$625,000.

3 Of the PAGA Payment amount which is no less than \$625,000, seventy-five percent (75%) (no
4 less than \$468,750) will be paid to the LWDA, and the remaining twenty-five percent (25%) (no less
5 than \$156,250) will be paid to the Aggrieved Employees (Agreement at ¶ III(D)(1)).⁴ This 75/25
6 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175
7 (2019).

8 The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of
9 pay periods each Aggrieved Employee worked during the PAGA Period as an Aggrieved Employee,
10 as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period.
11 (Agreement at ¶ III(D)(1)(a).) The PAGA Period is the time period from August 7, 2022 to August
12 30, 2024. (Agreement at ¶ I(K)). For mediation, Defendants represented that there are approximately
13 5,359 Aggrieved Employees who collectively worked approximately 100,000 pay periods during the
14 PAGA Period. (Agreement at ¶ III(C)).

15 Upon the Effective Date, the Released Parties shall be entitled to a release from Plaintiff and
16 the State of California for any “PAGA Released Claims”, which shall mean all claims for PAGA
17 penalties that could have been obtained by the Labor Commissioner for the violations identified in
18 Plaintiff’s pre-filing letter to the LWDA that were alleged, or reasonably could have been alleged,
19 based on the facts stated in the Operative Complaint, which occurred during the PAGA Period,
20 including all civil penalty claims for violations of the California Labor Code sections 201, 202, 203,
21 204, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, and
22 2802, California Code of Regulations, Title 8, Section 11040, Subdivisions 5(A)-(B), California Code
23 of Regulations, Title 8, Section 1 1070(14), and the applicable provision of the relevant IWC Wage
24 Orders and all subsections described in the notice sent by Plaintiff to the LWDA, and only to the
25 extent that they were alleged in the Operative Complaint. (Agreement at ¶III(E)(1)). Plaintiff does

26
27 ⁴ “Aggrieved Employee” means all individuals at retail locations who are or were employed by
28 Defendants in California and classified as a non-exempt employee at any time during the PAGA
Period. The PAGA Period is the period from August 7, 2022 to August 30, 2024. (Agreement at ¶¶
I(B), I(K).)

1 not release any aggrieved employee's claim for wages or damages. The PAGA release shall bind only
2 Plaintiff and the State of California as to the PAGA Released Claims and shall not include claims
3 outside of the PAGA Period, unrelated PAGA claims, or PAGA claims related to wrongful
4 termination, unemployment insurance, disability, social security, or workers' compensation. With the
5 exception of the named Plaintiff, in no event shall the release in the Agreement release any individual
6 claims of any individuals outside of the PAGA Released Claims. (*Id.*)

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

15 Pursuant to California Labor Code Section 2699(1), Plaintiff is providing a copy of the
16 Agreement and this motion to the LWDA concurrently with the filing of the instant motion for
17 settlement approval as set forth in the accompanying proof of service in compliance with Labor Code
18 section 2699(1). In addition, Plaintiff shall submit to the LWDA a copy of the Court's judgment and
19 order approving the Agreement within ten (10) days after entry of judgment or order.
20

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

22 The claim before this Court is solely the representative claim under PAGA on behalf of the
23 State of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this
24 PAGA claim in its entirety after investigation and an arm's length mediation session. (Declaration of
25 Kyle Nordrehaug, at ¶4.) The settlement is intended to fully and finally resolve the Released PAGA
26 Claims asserted by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA
27 claims for civil penalties and is not a class settlement and does not release the individual claims, if
28 any, of the Aggrieved Employees, other than any claims under PAGA. This settlement does not release

1 any claim that is not a PAGA claim.⁵ PAGA Counsel Fees equal to one-third of the Gross PAGA
2 Settlement amount (\$350,000), a Service Award of \$10,000 and PAGA Counsel Litigation Expenses
3 in an amount not to exceed \$35,000 will also be paid to PAGA Counsel as part of the settlement in
4 accordance with California Labor Code § 2699(g)(1), as set forth in the Agreement.⁶ Lastly, payment
5 to the Administrator in an amount not to exceed \$30,000 to perform the administrative duties to
6 distribute the settlement money shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)
7

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

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

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

16 The Parties believe that the PAGA Settlement amount is fair and reasonable and therefore
17 "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount of \$1,050,000
18 constitutes approximately \$10.50 per pay period. (Declaration of Nordrehaug, at ¶6.)

19 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
20 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of statutory
21 PAGA civil penalties was potentially \$10,000,000 without stacking based on 100,000 pay periods
22 applicable to the 5,359 Aggrieved Employees during the PAGA Period.⁷ (Declaration of Nordrehaug,

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

25 ⁶ As set forth in the accompanying Declaration of Kyle Nordrehaug, PAGA Counsel incurred costs
26 in the current amount of \$27,085.80, which is less than the cost allocation in the Settlement Agreement.
27 See Declaration of Nordrehaug at ¶ 9.

28 ⁷ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The
valuation of \$10,000,000 is the civil penalty amount without stacking. If stacking is permitted, then
the valuation increases with each additional penalty added to each pay period. Plaintiff, however, is
not aware of any PAGA award which permitted stacking and in the cases cited herein, only one penalty
per pay period was assessed.

1 at ¶6.) Importantly, however, these calculations were performed at the maximum statutory rate for the
2 penalties, when in fact, it is likely that any penalties awarded would be at a lower rate. California
3 Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil
4 penalty if based on the facts and circumstances to do otherwise would result in an award that is "unjust,
5 arbitrary and oppressive or confiscatory."

6 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed
7 a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at
8 trial, any PAGA penalties awarded could be significantly less than Plaintiff's calculation even where
9 Plaintiff prevailed on the PAGA claim. If the amount of \$5 per pay period from *Carrington v.*
10 *Starbucks* is used, the potential recovery of civil penalties would be only \$500,000, which is far less
11 than this settlement provides. (Declaration of Nordrehaug, at ¶6.)

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

21 In order to recover any PAGA penalties, Plaintiff would be required at trial to prove each of
22 the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
23 LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff cannot
24 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
25 Code by the defendant."). Here, Plaintiff would need to prove that each Aggrieved Employee suffered
26 a violation for each period the employee worked in relation to meal or rest period violations, failure
27 to pay minimum wages, failure to pay overtime and sick pay wages, failure to provide accurate
28

1 itemized wage statements, failure to reimburse employees for required expenses, and failure to pay
2 wages when due.

3 Defendants maintain that Plaintiff and the Aggrieved Employees were properly compensated,
4 and that it did not violate the Labor Code. Accordingly, Defendants dispute and deny Plaintiff's
5 allegations and claims asserted in both the PAGA Notice and the Operative Complaint, which are
6 resolved by the Agreement. Defendants have maintained and offered expert information supporting
7 that it pays employees all wages, provides compliant meal and rest breaks, reimburses for all
8 reasonably incurred business expenses, and prohibits off-the-clock work. Defendants asserted
9 additional defenses to the PAGA claim, not only as to liability but also as to the amount of the
10 penalties. Defendants asserted that no penalties prior to the PAGA notification should be awarded
11 because the violations were not intentional, and at least one Court has so ruled. These defenses present
12 a risk to the PAGA claims and the potential that some or all of the PAGA penalties sought may not be
13 awarded. (Declaration of Nordrehaug, at ¶7.)

14 Given Defendants' potential defenses to the violations at issue, the risks and costs of continued
15 litigation, Plaintiff and her attorneys believe that the PAGA Settlement is fair and reasonable.
16 (Declaration of Nordrehaug, at ¶7.) Defendants have similarly concluded that it is desirable that the
17 action is settled in the manner and upon the terms and conditions set forth in the Agreement in order
18 to avoid further expense, inconvenience for its employees and distraction of further legal proceedings,
19 as well as the uncertainty of litigation. Defendants have determined that it is desirable and beneficial
20 to put to rest the claims in this action and Defendants agree that the PAGA Settlement is fair,
21 reasonable, and adequate.

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

27 As set forth in the accompanying proof of service, the LWDA has been provided with notice
28 of this motion and the PAGA settlement. The decision of the LWDA to accept the PAGA Settlement

1 and not oppose the motion should be given considerable weight. This is not a situation where the
2 Court needs to be concerned about the rights of absent employees as in a class settlement, as this
3 PAGA-only settlement does not release the individual claims of absent employees other than PAGA
4 claims, and the LWDA is a sophisticated government entity that is more than able to look out for its
5 own rights.

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

7 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
8 2699(1) does not require that a court approve any other elements of the proposed settlement. Because
9 there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to
10 class settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs
11 to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained
12 herein, the settlement terms for attorneys' fees and costs are reasonable.

13
14 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

15 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the amount of
16 \$350,000 representing one-third of the \$1,050,000 Gross PAGA Settlement Amount. PAGA does not
17 have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of
18 attorneys' fees and costs in this settlement is a matter of contract for contingent representation.
19 Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees
20 and costs are reasonable.

21 First, the requested fees are justified by the result achieved. PAGA Counsel negotiated a
22 recovery of \$1,050,000.00, and this result justifies the requested fees equal to one third of this
23 recovery. This percentage is within the standard contingent recovery percentage of one-third, and this
24 percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*,
25 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021)
26 (recognizing that “fee awards in class actions average around one-third of the recovery” regardless
27 of “whether the percentage method or the lodestar method is used.” (quoting *Chavez v. Netflix, Inc.*,
28 162 Cal.App.4th 43, 66, fn. 11 (2008))).

1 Second, the fee award is justified by the work performed and contributions to the case. As
2 detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8, the fee award represents PAGA
3 Counsel's current lodestar of \$202,147.50 with a reasonable multiplier of 1.7, with significant
4 additional work to be performed such that the multiplier will ultimately be even less.⁸

5 Generally, the Ninth Circuit and California Courts award positive multipliers between 2 to 4
6 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining
7 good results. See, e.g., *Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier
8 between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting
9 reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v. Apple*
10 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or
11 higher); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding
12 one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*, 2014 WL
13 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier of
14 lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D. Cal.
15 Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the "majority"
16 range for risk multipliers).

17 Third, consideration of the service factors justifies the service of the lodestar. Courts multiply
18 the lodestar by a factor to account for the risk of non-payment, delay in payment, the quality of work,
19 and the novelty and difficulty of the issues involved. See *Ketchum v. Moses*, 24 Cal.4th 1122, 1132
20 (2001). Failure to apply a risk multiplier in cases that meet these criteria is an abuse of discretion.
21 *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016).

22 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses in the
23 total amount of \$27,085.80 which is less than the \$35,000 allocation for costs in the Agreement, so
24 the difference of \$7,914.20 will be added to the PAGA Payment amount. These expenses are
25 documented in the accompanying Declaration of Nordrehaug at ¶9.

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

1 **VII. CONCLUSION**

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

4 Dated: September 12, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

5
6 By: /s/ Kyle Nordrehaug
7 Kyle Nordrehaug
8 Attorney for Plaintiff
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