

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (SBN #068687)

Kyle R. Nordrehaug (SBN #205975)

Aparajit Bhowmik (SBN #248066)

Nicholas J. De Blouw (SBN #280922)

Sergio J. Puche (SBN #289437)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858) 551-1223

Facsimile: (858) 551-1232

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

ARRIO CHE and CALVIN RIVERA, and on
behalf of the State of California, as private
attorney generals,

Plaintiffs,

vs.

COMCAST CABLE COMMUNICATIONS
MANAGEMENT, LLC a Limited Liability
Company; and DOES 1 through 50, inclusive,

Defendant.

Case No. **CGC-24-611923**

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

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

Hearing Date: July 2, 2025

Hearing Time: 9:00 a.m.

Judge: Hon. Christine Van Aken
Dept.: 301

Action Filed: January 11, 2024
Trial Date: Not Set

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT at 9:00 a.m. on July 2, 2025, or as soon
thereafter as the matter can be heard, in Department 301 of the above entitled Court before the
Honorable Christine Van Aken, Plaintiffs Arrio Che and Calvin Rivera ("Plaintiffs") will and
hereby do move for an order approving the settlement of the PAGA claim alleged against

1 Defendant Comcast Cable Communications Management, LLC (“Defendant”) in accordance
2 with Labor Code § 2699(l). The proposed settlement is set forth in the accompanying PAGA
3 Settlement Agreement (“Agreement”).

4 This Motion will be based on this notice, the accompanying memorandum of points
5 and authorities, the Declaration of Sergio J. Puche, the Agreement, and the complete files and
6 records in this action. Plaintiffs served the Labor and Workforce Development Agency with
7 this motion and the Agreement, as set forth in the accompanying proof of service.

8 Respectfully submitted,

9 Dated: June 5, 2025

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

11 By: /s/ Sergio J. Puche
12 Sergio J. Puche

13 *Attorneys for Plaintiffs*
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Arrio Che and Calvin Rivera (“Plaintiffs”) reached a settlement of the
4 California Private Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”)
5 cause of action asserted in this action against Defendant Comcast Cable
6 Communications Management, LLC (“Defendant”) (collectively, the “Parties”) which
7 provides for a “Gross PAGA Settlement Amount” payment in the amount of
8 \$1,085,000.00. In accordance with California Labor Code § 2699(1), Plaintiffs now ask
9 this Court to review and approve the settlement of Plaintiffs’ PAGA action.¹ This is
10 only a settlement of the PAGA claims for civil penalties and is not a class settlement
11 and does not release the individual wage claims, if any, of the affected employees other
12 than the Plaintiffs themselves. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS*
13 *Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175,
14 182 (2019) (unpaid wages are not recoverable under PAGA).

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

23 Plaintiffs submit herewith a proposed order for this Court to confirm review and
24 approval of the PAGA settlement.

25 ///

26 ///

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.”

II. RELEVANT FACTS

PAGA Counsel mailed the necessary correspondence to the California Labor and Workforce Development Agency (“LWDA”) on October 23, 2023 on behalf of Plaintiff Arrio Che and on April 21, 2025 on behalf of Plaintiffs Che and Rivera (the “PAGA Notice”), requesting authorization from the LWDA to seek civil penalties as set forth under the Private Attorneys General Act of 2004 (“PAGA”) for the wage and hour violations alleged in the PAGA Notice. (Puche Decl., at ¶3). On January 29, 2024, Plaintiff Che filed a Representative Action Complaint in this Court against Defendant Comcast Cable Communications Management, LLC alleging a single cause of action for recovery of civil penalties for alleged violation of the PAGA [Labor Code §§ 2698, *et seq.*]. On May 9, 2025, a First Amended Representative Action Complaint (“First Amended Complaint”) was filed adding Calvin Rivera as a plaintiff and clarifying the underlying alleged violations for which the Plaintiffs seek PAGA penalties on the allegedly aggrieved employees’ behalf.

Plaintiffs and Defendant agreed to mediate with Michael Dickstein, Esq. Prior to the mediation, the Parties conducted significant investigation and discovery of the facts and law. Defendant produced hundreds of pages of documents relating to its policies, practices, and procedures regarding paying non-exempt employees for all hours worked, overtime, meal and rest period policies, payroll and operations policies, and more. Defendant also produced a sample of 11.5% of the allegedly aggrieved employees’ time and pay records. Defendant also provided Plaintiffs with sufficient records and data to determine the number of Aggrieved Employees and the number of pay periods in the PAGA Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the Parties’ positions and to compromise the issues on a fair and equitable basis. (Puche Decl., at ¶3(a).)

Plaintiffs’ PAGA allegations are detailed in the PAGA Notice dated April 21, 2025, and in the First Amended Complaint. Plaintiffs’ theory of PAGA liability includes

1 allegations that Aggrieved Employees were not paid wages for off-the-clock work. For
2 example, Plaintiffs alleged that Aggrieved Employees were instructed to download and
3 use the Kronos Iphone application or clock in on desktop computers to record their time.
4 However, those Aggrieved Employees who did not clock in on their phone regularly
5 waited several minutes for open computers because computers are not dedicated to
6 employees. Moreover, logging-in to the computers via the username and pass codes
7 known as "NT" and logging into the Kronos application each required a 2-factor
8 authentication process which sent a key code to an Aggrieved Employee's personal cell
9 phone when logging in each day. Plaintiffs alleged that at least once per week,
10 Aggrieved Employees had to completely shut down computers and run updates which
11 would cause a delay of 5-10 minutes prior to clocking in at the start of their shifts.
12 Moreover, cell phones needed to be connected to Wi-Fi in order to record the proper
13 time, which was an issue for Aggrieved Employees several times a week causing them
14 to clock in several minutes after beginning their workday.

15 In addition, Plaintiffs allege that Defendant further failed to compensate allegedly
16 aggrieved employees for "off-the-clock" work that they performed before they clocked
17 in at the beginning of their work shifts and after they clocked out at the end of their
18 work shifts. This included technician employees who used software called Tech 360
19 that tracked their daily jobs, and who logged in through Tech 360 as active for work
20 before clocking in to enter their time in the Payroll timekeeping system, Kronos. Rather
21 than using the Tech 360 time data to accurately capture and record all hours worked,
22 Defendant required the allegedly aggrieved employees to separately enter their time
23 manually into the Kronos timekeeping system. When the allegedly aggrieved
24 employees entered their time in Kronos, they input the scheduled start time for their
25 work shifts, not the actual time that they began working, which was the moment that
26 they logged into Tech 360. Defendant then used the truncated time recorded in Kronos
27 when calculating and paying compensation to the allegedly aggrieved employees.
28

1 Plaintiffs also have contended that the allegedly aggrieved employees also were
2 required to keep company cellular phones on during meal breaks, and they were often
3 interrupted, leading to uncompensated off-the-clock work time. Plaintiffs' further have
4 asserted that the allegedly aggrieved employees were required to use work phones for
5 work-related activities, including before and after clocking in and clocking out, leading
6 to additional uncompensated off-the-clock work, and that the allegedly aggrieved
7 employees were required to help sales representatives after clocking out, and attend
8 morning meetings before clocking in, leading to more uncompensated off-the-clock
9 work.

10 With regard to meal breaks, Plaintiffs alleged that Defendant did not adequately
11 inform Plaintiffs or the allegedly aggrieved employees of their right to take a meal
12 period by the end of the fifth hour of work, or, for shifts greater than 10 hours, by the
13 end of the tenth hour of work. Further, that Defendant did not have adequate written
14 policies or practices providing meal periods, and that Defendant did not have adequate
15 policies or practices to verify whether Plaintiffs or the allegedly aggrieved employees
16 were taking their required meal periods. Plaintiffs further alleged that as a result of their
17 rigorous work schedules, they and the allegedly aggrieved employees were from time
18 to time unable to take thirty (30) minute off-duty meal breaks and were not fully relieved
19 of duty for their meal periods, and that Defendant from time to time failed to provide
20 Plaintiffs and the allegedly aggrieved employees with a second off-duty meal period for
21 some workdays in which these employees were required to work ten (10) hours.
22 Plaintiffs further contend that Defendant engaged in the practice of rounding the meal
23 period times to avoid paying premiums to Plaintiffs and the allegedly aggrieved
24 employees.

25 Plaintiffs make similar allegations regarding Defendant's practices regarding rest
26 periods for Plaintiffs and the allegedly aggrieved employees. (See FAC, ¶¶20-21).
27 In addition, Plaintiffs alleged at mediation that while first breaks were easier to take,
28 typically there was more traffic in the afternoons, and employees needed to be on the

1 floor assisting customers. As a result, the allegedly aggrieved employees often missed
2 second rest breaks in the retail stores.

3 Additionally, Plaintiffs alleged in the First Amended Complaint and at mediation
4 that Defendant miscalculated the regular rate. For example, Plaintiff Che's final
5 paycheck indicates that Defendant failed to pay vacation and incentive pay at the regular
6 rate of pay. Also, Defendant's non-discretionary incentive program paid Plaintiffs and
7 the allegedly aggrieved employees incentive wages based on their performance. The
8 non-discretionary incentive program provided certain non-exempt employees paid on
9 an hourly basis with incentive compensation when the employees met the various
10 performance goals Defendant set. However, Plaintiffs allege that when calculating the
11 regular rate of pay in order to pay overtime, meal and rest break premiums and sick
12 leave pay to Plaintiffs and the allegedly aggrieved employees, Defendant failed to
13 include the incentive compensation as part of the employees' "regular rate of pay" for
14 purposes of calculating overtime pay, meal and rest break premium pay or sick leave
15 pay. Plaintiffs assert that Defendant's alleged failure to pay at the regular rate resulted
16 in Defendant's underpayment of overtime compensation, meal and rest break premiums
17 and sick leave pay to Plaintiffs and the allegedly aggrieved employees. Furthermore,
18 Plaintiffs alleged at mediation that Defendant failed to provide Aggrieved Employees
19 with reimbursements for business expenses. Specifically, cell phones were needed by
20 the Aggrieved Employees for communicating via call and text in individual and group
21 threads in messenger and the Microsoft teams application, for setting alarms, taking
22 photos of schedules, calculating prices for customers, and for clocking in and out.(Puche
23 Decl., at ¶3(b)). Plaintiffs also allege wage statement violations and Labor Code section
24 203 violations for late final pay.

25 Defendant denies all of these allegations, as summarized in section V.A., below,
26 and presented substantial evidence for the mediation that called the allegations into
27 question.
28

1 On March 13, 2025, the Parties engaged in an all-day mediation session before
2 Mediator Dickstein, a respected and experienced mediator knowledgeable of both the
3 wage and hour laws and representative claims at issue in this action. Through arms-
4 length negotiations with Mr. Dickstein’s assistance, the Parties reached an agreement
5 to settle the PAGA claims in this action which led to the signing of a Memorandum of
6 Understanding memorializing the settlement and of the final PAGA Settlement
7 Agreement.² (Puche Decl., at ¶3(c).)

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

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

17 The PAGA settlement is subject to Court approval consistent with Labor Code
18 §2699(1)(2). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides
19 for a “Gross Settlement Amount” payment in the amount of \$1,085,000.00 to resolve
20 the Released PAGA Claims (hereinafter referred to as the “PAGA Settlement”). From
21 this PAGA Settlement of \$1,085,000.00, there is a deduction of attorneys’ fees (“PAGA
22

23 ² In addition to the Gross PAGA Settlement Amount, Defendant agreed to pay each Plaintiff an
24 Individual Settlement Amount to Plaintiffs in exchange for a settlement of Plaintiffs’ individual
25 claims arising out of their employment and a release of all known and unknown claims against
26 Defendant and the Released Parties under Civil Code § 1542. (Agreement at ¶ 5.1.1). Defendant has
27 agreed to separately pay each plaintiff an Individual Settlement to resolve all of their individual
28 claims. (*Id.*). The individual claims are 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.).
(Puche Decl. ¶ 15).

1 Counsel Fees Payment”) in the amount of \$361,666.00 (which is one-third of the PAGA
2 Settlement), reimbursement of incurred costs (“PAGA Counsel Litigation Expenses
3 Payment”) in an amount not to exceed \$40,000, and Settlement Administration Costs
4 (“Administration Expenses Payment”) not to exceed \$16,000. (Agreement at ¶¶ 3.2.1-
5 3.2.4).³ After these deductions, the amount remaining is the “PAGA Payment”, which
6 is estimated to be no less than \$667,334.

7 Of the PAGA Payment amount, seventy-five percent (75%) (no less than
8 \$500,500.50) will be paid to the LWDA and the remaining twenty-five percent (25%)
9 (no less than \$166,833.50) will be paid to the Aggrieved Employees (Agreement at ¶
10 3.2.3).⁴ This 75/25 allocation is required by the earlier Labor Code § 2699 as explained
11 by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019), because the Action was filed before
12 June 2024, which is the operative date of the amended PAGA statute.

13 The Individual PAGA Payment for each Aggrieved Employee shall be based on
14 the number of pay periods each Aggrieved Employee worked during the PAGA Period
15 as an Aggrieved Employee, as a percentage of the total pay periods worked by all
16 Aggrieved Employees during the PAGA Period.⁵ The PAGA Period is the time period
17 from October 23, 2022 through the earlier of the date the Court grants approval of the
18 PAGA settlement or July 13, 2025. (Agreement at ¶ 1.23).

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21 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
22 Payment less than the amounts requested, the Administrator will allocate the remainder of these
23 amounts to the PAGA Payment. (Settlement Agreement at ¶ 3.2.1). To the extent the Administration
Expenses are less, or the Court approves payment less than \$16,000, the Administrator will allocate
the remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

24 ⁴ “Aggrieved Employee” means all individuals who are or were previously employed by Defendant
Comcast Cable Communications Management, LLC in California and classified as a non-exempt
25 employee at any time during the PAGA Period. The PAGA Period is the period from October 23,
2022 through the earlier of the date the Court grants approval of the PAGA settlement or July 13,
26 2025. (Settlement Agreement at ¶¶ 1.4, 1.23).

27 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
28 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 For mediation, Defendant represented that there are approximately 3,061
2 Aggrieved Employees who collectively worked approximately 111,373 pay periods
3 during the PAGA Period. (Agreement at ¶ 4.1).

4 Upon full funding of the Gross PAGA Settlement Amount, all Aggrieved
5 Employees, on behalf of themselves and their respective former and present
6 representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be
7 deemed to release the Released Parties from all “Released PAGA Claims”. (Agreement
8 at ¶¶ 1.25, 5.2). “Released PAGA Claims” means any and all claims, demands, rights,
9 liabilities, legal theories, and causes of action for civil penalties under PAGA that
10 accrued during the PAGA Period that are based on the facts alleged and that involve the
11 same primary rights as those placed at issue in the First Amended Complaint (defined
12 in the Agreement as the “Operative Complaint”) or by any notice letters to the LWDA.
13 The Released PAGA Claims expressly exclude all other non-PAGA claims, including
14 Plaintiffs’ individual settlements which are subject to separate releases, claims for
15 vested benefits, wrongful termination, violation of the Fair Employment and Housing
16 Act, unemployment insurance, disability, social security, workers’ compensation,
17 California class claims, and PAGA claims outside of the PAGA period. (*Id.*)

18 Within fourteen (14) days after Defendant funds the Gross PAGA Settlement
19 Amount, the Administrator will mail checks for all Individual PAGA Payments, the
20 LWDA PAGA Payment, the Administration Expenses Payment, and the PAGA
21 Counsel Fees Payment and PAGA Counsel Expenses Payment. (Agreement at ¶ 4.4).⁶
22 Checks will remain negotiable for one hundred eighty (180) days. (*Id.* at ¶ 4.4.1) For
23 any Individual PAGA Payment check that is uncashed and cancelled after the void date,
24 the Administrator shall transmit the funds represented by such checks to the State
25 Controller Unclaimed Property Fund in the name of the individual who failed to cash
26 their check (*Id.* at ¶ 4.4.3).

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

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

7 8 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

9 The claim before this Court is solely the representative claim under PAGA on
10 behalf of the State of California for civil penalties pursuant to the PAGA. The Parties
11 have agreed to settle this PAGA claim in its entirety after investigation and an arm's
12 length mediation session. (Puche Decl., at ¶4.) The settlement is intended to fully and
13 finally resolve the Released PAGA Claims asserted by Plaintiffs on behalf of the State
14 of California. This is only a settlement of the PAGA claims for civil penalties and is
15 not a class settlement and does not release the individual claims, if any, of the Aggrieved
16 Employees, other than any claims under PAGA. This settlement does not release any
17 claim that is not a PAGA claim.⁷ PAGA Counsel Fees equal to one-third of the Gross
18 PAGA Settlement amount (\$361,666.00), and PAGA Counsel Litigation Expenses in
19 an amount not to exceed \$40,000 will also be paid to PAGA Counsel as part of the
20 settlement in accordance with California Labor Code § 2699(g)(1), as set forth in the
21 Agreement.⁸ Lastly, payment to the Administrator in an amount not to exceed \$16,000
22 to perform the administrative duties to distribute the settlement money shall also be
23 paid. (Puche Decl., at ¶¶4-5.)

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27 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."

28 ⁸ As set forth in the accompanying Puche Decl., PAGA Counsel incurred costs in the total amount of
\$36,293.61, which is less than the cost allocation in the Settlement Agreement. See Puche Decl. 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
4 settlement of any civil [PAGA] action filed pursuant to this part. The proposed
5 settlement shall be submitted to the agency at the same time that it is submitted to the
6 court.” Consequently, the Parties respectfully ask the Court to review and approve the
7 settlement of the PAGA claims and the PAGA Payment to be paid as part of the
8 proposed settlement.

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

11 The Parties believe that the PAGA Settlement amount is fair and reasonable and
12 therefore "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount
13 of \$1,085,000.00 is a fair PAGA settlement as it constitutes \$9.74 per pay period.
14 (Puche Decl., at ¶6.)

15 This PAGA Settlement amount compares favorably to the estimated amount of
16 PAGA penalties. With the assistance of an expert, Plaintiffs calculated that the
17 maximum amount of statutory PAGA civil penalties was potentially \$11,137,300
18 without stacking based on 111,373 pay periods applicable to the Aggrieved Employees
19 during the PAGA Period.⁹ (Puche Decl., at ¶6.) Importantly, however, these
20 calculations were performed at the maximum statutory rate for the penalties, when in
21 fact, it is likely that any penalties awarded would be at a lower rate. California Labor
22 Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum
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26 ⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The
27 valuation of \$11,137,300 is the civil penalty amount without stacking. If stacking is permitted, then
28 the valuation increases with each additional penalty added to each pay period. Plaintiffs, however, are
not aware of any PAGA award which permitted stacking and in the cases cited herein, only one penalty
per pay period was assessed. In addition, the recent 2024 amendment of PAGA casts further doubt on
the availability of stacking penalties.

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

3 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of
4 Appeal affirmed a judgment after trial which only provided for a PAGA penalty of \$5
5 per pay period. Therefore, at trial, any PAGA penalties awarded could be significantly
6 less than Plaintiffs' calculation even where Plaintiffs prevailed on the PAGA claim. If
7 the amount of \$5 per pay period from *Carrington v. Starbucks* is used, the potential
8 recovery of civil penalties would be only \$556,865, which is less than the recovery this
9 settlement provides. (Puche Decl., at ¶6.)

10 In this case, settling at a significant reduction from the maximum exposure was
11 justified for a number of reasons. First and foremost, Defendant presented substantial
12 evidence – in part through the production of its policies, training materials, and a
13 voluminous time and pay data sample – that it trains and requires all non-exempt
14 employees to clock in on Kronos before performing any work-related functions and
15 therefore that it did not require non-exempt employees to work off-the clock; that it
16 provides employees opportunities for compliant meal and rest breaks; that all of its
17 relevant policies are compliant; that it correctly calculates and has paid the regular rate
18 of pay including for sick leave (as reflected in the time and pay records; that it timely
19 pays employees upon termination (as reflected in the pay records); that it issues cell
20 phones to its employees and that the non-exempt employees did not incur reasonable
21 and necessary business expenses that were not reimbursed; and that its wage statements
22 comply with Labor Code section 226. As a result, it was possible that after protracted
23 litigation Plaintiffs could have recovered less than the settlement amount or even no
24 recovery.

25 In addition, under PAGA, courts have considerable discretion to reduce the
26 penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal.
27 2011), a federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a
28 reduction of 82.2%, because the court found maximum penalties "unjust" because the

1 employees had suffered no injuries. Some trial courts have actually awarded no civil
2 penalties, even when Labor Code violations are established. *See Makabi v. Gedalia*,
3 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA
4 penalties were awarded by the Los Angeles County Superior Court) (unpublished
5 decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-
6 43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial). Plaintiffs faced the risk
7 here of reduced penalties in addition to overcoming Defendant's evidence and defenses.

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

19 As referenced above, Plaintiffs faced formidable risks and challenges to meet
20 their burden of proof. As described above, Defendant maintains and provided evidence
21 to support its position that Plaintiffs and the Aggrieved Employees were properly
22 compensated, and that it did not violate the Labor Code. Defendant also maintains and
23 presented evidence that it trains and requires all non-exempt employees to clock in on
24 Kronos before performing any work-related functions, that it provides employees
25 opportunities for compliant meal and rest breaks, that all of its relevant policies are
26 compliant, that it correctly calculates and has paid the regular rate of pay including for
27 sick leave, that it timely pays employees upon termination, that it issues cell phones to
28 its employees and that the non-exempt employees did not incur reasonable and

1 necessary business expenses that were not reimbursed, and that its wage statements
2 comply with Labor Code section 226. Accordingly, Defendant disputes and denies
3 Plaintiffs' allegations and claims asserted in both the PAGA Notice and the First
4 Amended Complaint, which are resolved by the Agreement. Defendant asserted
5 additional defenses to the PAGA claim, not only as to liability but also as to the amount
6 of the penalties. Defendant could argue that no penalties prior to the PAGA notification
7 should be awarded because the violations were not intentional, and at least one Court
8 has so ruled. These defenses present a risk to the PAGA claims and the potential that
9 some or all of the PAGA penalties sought may not be awarded. (Puche Decl., at ¶7.)

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

19 PAGA Counsel have significant experience litigating wage and hour claims
20 including claims for PAGA penalties, and the PAGA Settlement here is similar to or
21 greater than similar settlements that courts have approved. (Puche Decl. at ¶¶7, 10).
22 The PAGA Settlement, along with the other terms of the proposed settlement, were
23 negotiated by experienced counsel at arm's length with Mr. Dickstein's assistance.
24 (Puche Decl., at ¶7.)

25 As set forth in the accompanying proof of service, the LWDA
26 contemporaneously has been provided notice of this motion and the PAGA settlement.
27 Assuming the LWDA does not object to the PAGA Settlement, its decision to accept
28 the PAGA Settlement and not oppose the motion should be given considerable weight.

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

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

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

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

16 PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in
17 the amount of \$361,666.00 representing one-third of the \$1,085,000.00 Gross PAGA
18 Settlement Amount. PAGA does not have any requirements for reviewing attorneys'
19 fees, and Plaintiffs' position is that the payment of attorneys' fees and costs in this
20 settlement is a matter of contract for contingent representation. Nevertheless, should
21 this Court review the requested attorneys' fees, it is clear that the requested fees and
22 costs are reasonable.

23 First, the requested fees are justified by the result achieved. PAGA Counsel
24 negotiated a recovery of \$1,085,000.00 and this result justifies the requested fees equal
25 to one third of this recovery. This percentage is within the standard contingent recovery
26 percentage of one-third, and this percentage is what was expressly approved by the
27 Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro*
28 *v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that “fee

1 awards in class actions average around one-third of the recovery” regardless of
2 “whether the percentage method or the lodestar method is used.” (*quoting Chavez v.*
3 *Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008)).

4 Second, the fee award is justified by the work performed and contributions to the
5 case. As detailed in the accompanying Puche Decl. at ¶8, the fee award represents
6 PAGA Counsel’s current lodestar of \$170,303.75 with a reasonable multiplier of less
7 than 2.2, with significant additional work to be performed such that the multiplier will
8 ultimately be even less.¹⁰

9 Generally, the Ninth Circuit and California Courts award positive multipliers
10 between 2 to 4 times the lodestar to reward counsel for accepting the contingent risks
11 of the litigation or obtaining good results. *See, e.g., Laffitte*, 1 Cal. 5th at 506 (approving
12 one-third fee award with multiplier between 2.03 and 2.13); *Pellegrino v. Robert Half*
13 *Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting reasonable multipliers of 2.0 to 4.0
14 are often applied and affirming 1.75 multiplier); *Wershba v. Apple Computer, Inc.*, 91
15 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4 or higher);
16 *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014)
17 (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of*
18 *America*, 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund,
19 which was a 2.58 multiplier of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-
20 02786-LHK, 2013 WL 496358, at *6 (N.D. Cal. Feb. 6, 2013) (approving fee award
21 that represented a multiplier of 2.76 as falling within the "majority" range for risk
22 multipliers).

23 Third, consideration of the service factors justify the service of the lodestar.
24 Courts multiply the lodestar by a factor to account for the risk of non-payment, delay in
25 payment, the quality of work, and the novelty and difficulty of the issues involved. *See*
26 *Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in
27

28 ¹⁰ A true and correct copy of PAGA Counsel’s billing records are attached as Exhibit #2 to the Puche
Decl., filed herewith.

1 cases that meet these criteria is an abuse of discretion. *Stetson v. Grissom*, 821 F.3d
2 1157, 1166 (9th Cir. 2016).

3 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation
4 expenses in the total amount of \$36,293.61 which is less than the \$40,000 allocation for
5 costs in the Agreement, so the difference of \$3,706.39 will be added to the PAGA
6 Payment amount. These expenses are documented in the accompanying Puche Decl. at
7 ¶9.

8 9 **VII. CONCLUSION**

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

13 Dated: June 5, 2025

**BLUMENTHALNORDREHAUG BHOWMIK
DE BLOUW LLP**

15 By: /s/ Sergio J. Puche
16 Sergio J. Puche
17 Attorney for Plaintiffs
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