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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

PATRICIA LIM, on behalf of herself and in
her representative capacity on behalf of the
State of California, and all other aggrieved
employees,

Plaintiff,

v.

WACHHORST LEIGH MEINSTER, a
California corporation, PETER CHANG
KONO, an individual, SHACHI BAHL, an
individual, MARTHA VANZINA, an
individual, ROBERT IVERSON, an individual,
and DOES 1-15

Defendants.

Case No: 24CV429909

**NOTICE OF MOTION AND MOTION
FOR APPROVAL OF CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 ("PAGA")
SETTLEMENT**

[Complaint Filed: January 26, 2024]

Hearing Date: April 3, 2025
Time: 9:00 a.m.
Dept: 06
Hon. Evette D. Pennypacker

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on April 3, 2025 at 9:00 a.m., or as soon thereafter as
the matter may be heard, in Department 06 of the above-entitled Court, Plaintiff PATRICIA LIM
will respectfully request the Court's approval of the proposed and unopposed settlement agreement
of Plaintiff's individual claims and civil penalty claims under the Labor Code Private Attorney
General Act (i.e., Labor Code section 2698 et seq., "PAGA").

The basis for this application is that the parties have reached and fully executed a settlement
of the above-entitled case that disposes of the matter entirely, and one aspect of Plaintiff's claims

1 included a demand for relief under PAGA. Pursuant to Labor Code §2699(1), the settlement of
2 PAGA claims requires court approval. Good cause exists for the Court to grant this unopposed
3 Motion, as the proposed settlement is fair, adequate, and reasonable and in the best interests of the
4 Aggrieved Employees as a whole. Thus, the parties seek court approval of the PAGA aspect of the
5 settlement so that the matter may be dismissed entirely pursuant to the settlement of the parties.

6 This application is based on this notice, the Declaration of Harris Emran, Esq., and all
7 exhibits attached thereto, the Declaration of Patricia Lim, the attached Memorandum of Points and
8 Authorities, the PAGA Settlement Agreement and Release, as well as all records on file with this
9 Court and such evidence or oral argument as may be presented at the hearing.

10 As this motion is unopposed, the Parties respectfully relief from the page limit requirement
11 set forth by California Rules of Court, Rule 3.1113(d).

12
13 DATED: December 23, 2024

EMRAN LAW

14
15 By: Harris Emran
16 Harris Emran
17 Attorney for PLAINTIFF
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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 On November 16, 2023, Plaintiff Patricia Lim provided the Labor Workforce and
5 Development Agency (“LWDA”) written notice by online filing and Defendants via certified
6 mailing of specific provisions of Lab. Code §§ 2699 et seq. alleged to be violated including the facts
7 and theories to support the alleged violation (the “PAGA Notice”). See Exhibit A to Declaration of
8 Harris Emran. Emran Decl. ¶ 4.

9 On January 26, 2024, after the LWDA declined to investigate Plaintiff’s alleged violations,
10 Plaintiff Patricia Lim (“Plaintiff”) brought an individual and PAGA action against Defendants
11 Wachhorst Leigh Meinster (“Wachhorst”), Peter Chang Kono, Shachi Bahl, Martha Vanzina, and
12 Robert Iverson (“Defendants”) alleging nine causes of action for (1) Misclassification of Non-
13 exempt employees (2) Failure to Pay Wages When Due (3) Failure to Pay Minimum Wages (4)
14 Failure to Pay Overtime Compensation (5) Failure to Provide Rest Periods, (6) Failure to Provide
15 Meal Periods, (7) Failure to Provide Wages Upon Termination, (8) Failure to Provide Accurate,
16 Itemized Wage Statements, and (9) Recovery of Civil Penalties under the Labor Code Private
17 Attorneys General Act. Emran Decl. ¶ 5-6.

18 Pursuant to Labor Code § 2699(1)(2), Plaintiff seeks the Court’s approval of the instantly
19 proposed Gross Settlement Amount of One Hundred Twenty Thousand Dollars (\$120,000.00) for
20 all inclusive, non-reversionary settlement of the Action including the PAGA Claim, payment to
21 Plaintiff for her individual claims, payment to Plaintiff as an aggrieved employee, attorneys’ fees,
22 litigation costs, administration costs, and a payment to the aggrieved employees and State of
23 California under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”). See
24 Exhibit B to Emran Decl.

25 Defendants deny all claims, deny that Plaintiff is entitled to any recovery, and asserts
26 affirmative defenses in response to Plaintiff’s claims. Nonetheless, having resolved the matter, the
27 Parties hereby submit their PAGA Settlement Agreement and Release (“Settlement” or “Settlement
28 Agreement”) to the Court for its approval.

1 By way of this settlement, Plaintiff seeks to fully and finally resolve alleged violations on
2 behalf of herself and all other Aggrieved Employees as defined in the Settlement Agreement. If
3 approved, the proposed Settlement will resolve this matter in its entirety. See Emran Decl. ¶ 18.

4 A presumption of fairness exists as the Settlement was reached through extensive, mediated
5 arm's-length negotiations; sufficient investigation and discovery allowed Plaintiff's counsel to act
6 intelligently, and Plaintiff's counsel is experienced in similar wage-and-hour litigation. *Dunk v.*
7 *Ford Motor Company* (1996) 48 Cal. App 4th 1794, 1802. Additionally, settlement approval is
8 appropriate as the proposed Settlement is fair, adequate, and reasonable to Plaintiff and the
9 Aggrieved Employees. This settlement is a compromise by both parties and reached after a full day
10 of mediation with the highly regarded Mediator Todd Smith, Esq. through a mediator's proposal,
11 and reflects a reasonable assessment of the risks for each, as well as the recognition that continued
12 litigation will cause extensive and costly discovery for all parties and further litigation would cause
13 inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits
14 of litigation.

15 Accordingly, Plaintiff requests the Court enter an order (1) finding the Settlement is fair and
16 reasonable in light of the facts and evidence, (2) approving the form and method of settlement check
17 administration to the alleged Aggrieved Employees, (3) finding all procedural requirements for
18 PAGA settlement have been met, (4) dismissing the action with prejudice as to the named Plaintiff
19 and the State and all other Aggrieved Employees as approved by the Court.

20 **II. FACTS AND PROCEDURES**

21 **A. Plaintiff's Contentions**

22 Defendants own and operate a dentistry practice in the Northern California Wachhorst Leigh
23 Meinster. Defendants employed Plaintiff between approximately November 2006 and September
24 2023. Plaintiff contends Defendants committed numerous wage and hour violations against Plaintiff
25 and other Aggrieved Employees. Specifically, Plaintiff contends that Defendants failed to provide
26 Plaintiff and other Aggrieved Employees their legally mandated meal and rest periods, failure to
27 pay overtime and minimum wages, failed to pay all wages upon termination, and failed to provide
28 accurate, itemized wage statements.

B. Procedural History

On November 16, 2023, Plaintiff provided the Labor Workforce and Development Agency (“LWDA”) written notice by online filing and Defendants via certified mailing of specific provisions of Lab. Code §§ 2699 et seq. alleged to be violated including the facts and theories to support the alleged violation. See Emran Decl. ¶ 4, Ex. A. The LWDA did not provide any notice of its intent to investigate the alleged violation within 65 calendar days of the postmark date of the PAGA Notice. Emran Decl. ¶ 5.

On January 26, 2024, Plaintiff filed her individual and PAGA Complaint against Defendants Wachhorst Leigh Meinster (“Wachhorst”), Peter Chang Kono, Shachi Bahl, Martha Vanzina, and Robert Iverson (“Defendants”) alleging violations of California Labor Code including ((1) Misclassification of Non-Exempt Employee (2) Failure to Pay Wages When Due (3) Failure to Pay Minimum Wages (4) Failure to Pay Overtime Compensation (5) Failure to Provide Rest Periods (6) Failure to Provide Meal Periods, (7) Failure to Pay Wages Upon Termination (8) Failure to Provide Accurate, Itemized Wage Statements, and (9) Recovery of Civil Penalties under the Labor Code Private Attorneys General Act. Emran Decl. ¶ 6; Ex. B.

On February 13, 2024, the Parties met and conferred and agreed to extend outstanding discovery deadlines pending the Parties’ participation in mediation. Emran Decl. ¶ 7. In anticipation of mediation, the Parties met and conferred on the appropriate PAGA Period and agreed Plaintiff’s Notice to the LWDA and Defendants was dated November 16, 2023, but Plaintiff did not file her complaint until January 26, 2024. Emran Decl. ¶ 8. Accordingly, the Parties agreed the applicable PAGA Period is November 22, 2022, to present. Emran Decl. ¶ 8. In August 2024, the Parties met and conferred on the status of Defendants’ temporary employees as “Aggrieved Employees” and agreed that all individuals, including temporary employees staffed by a separate entity but performing work for Defendants, are included in the definition of Aggrieved Employees totaling 98 Aggrieved Employees. Emran Decl. ¶ 9.

On November 18, 2024, the Parties participated in a full day mediation with Todd Smith, Esq., an experienced mediator of wage and hour and PAGA actions. Emran Decl. ¶ 10. The parties

1 agreed to a mediator's proposal which subsequently was memorialized in a long form settlement
2 agreement. Emran Decl. ¶ 10; Ex. C.

3 **C. Investigation and Settlement Discussions**

4 Between November 2023 and October 2024, Plaintiff's Counsel conducted a thorough
5 investigation into the claims and defenses of each party. Emran Decl. ¶ 14. Plaintiff expend
6 considerable time and effort advocating on behalf of herself and the alleged PAGA Aggrieved
7 Employees. Emran Decl. ¶ 14. Plaintiff provided all documents and evidence in her possession
8 which included work schedules, communications from Defendants during her employment
9 regarding pay and policies and provided a list of six (6) current and former employees to serve as
10 witnesses and/or corroborate Plaintiff's testimony. Emran Decl. ¶ 14. In preparation for mediation,
11 Defendants provided the following: 1) Plaintiff's time records for the PAGA period; 2) Plaintiff's
12 wage statements; 3) Plaintiff's W2's; 4) Plaintiff's personnel file; 5) Defendant's Employee
13 Handbook in effect during Plaintiff's employment, which included all pertinent and requested
14 employment policies; 6) A 50% sampling of Aggrieved Employee's time records for the PAGA
15 period; 7) A corresponding 50% sampling of Aggrieved Employee's time records for the PAGA
16 period; and 8) any premiums paid for non-compliant meal or ret periods. Emran Decl. ¶ 15.
17 Defendants confirmed they did not have any meal period waivers for the Aggrieved Employees and
18 there was no applicable collective bargaining agreement in existence. Emran Decl. ¶ 15.

19 Plaintiff's Counsel then retained the statisticians and economists at Berger Consulting
20 Group ("BCG") to evaluate the Aggrieved Employee payroll and time data. Emran Decl. ¶ 16. BCG
21 provides data analysis and damages modeling consulting services, specializing in PAGA and wage
22 and hour class actions. Emran Decl. ¶ 16. BCG's team of financial and data analysts are credentialed
23 and experienced experts in their fields and have provided their expertise on thousands of cases.
24 Emran Decl. ¶ 16. BCG analyzed Defendant's time and payroll data to assist in the development of
25 various damages models. Emran Decl. ¶ 17. Defendants maintained a portion of the Aggrieved
26 Employees' data on paper records and a portion electronically. Emran Decl. ¶ 17. After Plaintiff's
27 damage expert analyzed Defendant's data, BCG concluded it did not have usable data from the
28 sample that could be extrapolated to the class of Aggrieved Employees. Emran Decl. ¶ 17. As a

1 result, Plaintiff's expert used a flexible damage model and creating assumptions from the data
2 Defendants provided. Emran Decl. ¶ 17. Among other things, BCG's model determined the
3 approximate civil penalties for the amount of unpaid wages, amount of unpaid overtime wages,
4 amount of meal period violations, amount of rest period violations, number of workweeks, and
5 number of pay periods. Emran Decl. ¶ 18. Plaintiff's Counsel reviewed Plaintiff's payroll records
6 and calculated Plaintiff's estimated damages based on her oral testimony, documents, and evidence
7 in her possession. Emran Decl. ¶ 19. Plaintiff's Counsel interviewed and met with three (3) of the
8 current and former employees who each corroborated Plaintiff's claims. Emran Decl. ¶ 19. I closely
9 reviewed the documents and data and documents provided by Defendants to determine the amount
10 of potential PAGA penalties, individual wages owed to Plaintiff, and other remedies potentially
11 available to Plaintiff and the aggrieved individuals based on the claims in the Action. Emran Decl.
12 ¶ 20. Defendants maintained written policies regarding meal and rest periods that are consistent
13 with the law. Emran Decl. ¶ 21. Defendants' employee handbook encourages employees to notify
14 management if they are in any way discouraged or impeded from taking their breaks. Emran Decl.
15 ¶ 21.

16 Overall, Plaintiff's Counsel thoroughly investigated the claims at issue, including: (1)
17 determining Plaintiff's suitability as a representative through interviews, background investigations,
18 and analysis of her employment files; (2) evaluating all of Plaintiff's potential claims; (3)
19 researching similar wage and hour PAGA actions as to the claims brought, the nature of the
20 positions, and the type of employer; (4) analyzing the Aggrieved Employees' time and payroll
21 records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in
22 similar cases as well as outstanding issues which could affect PAGA approval; (7) evaluating
23 Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the
24 mediation brief; and (9) participating in the mediation. Emran Decl. ¶ 22. This investigation allowed
25 Plaintiff's Counsel to fully assess the nature and magnitude of the claims being settled, as well as
26 the impediments to recovery, such as to make an independent assessment of the reasonableness of
27 the terms to which the Parties have agreed. Emran Decl. ¶ 22.

1 The Parties then engaged in a full day mediation negotiating the individual and PAGA
2 settlement. Emran Decl. ¶ 23. The Agreement is the final product of the mediated negotiations.
3 Objectively, the Settlement terms are fair, adequate and represent a reasonable compromise of the
4 claims at issue. Emran Decl. ¶ 23. As set forth in greater detail above, Plaintiff's Counsel conducted
5 a very thorough investigation into the factual and legal issues in dispute. Emran Decl. ¶ 24. In
6 addition to informal discovery, document review, interviewing Aggrieved Employees, data analysis
7 and legal research, Plaintiff's Counsel also researched similar wage and hour PAGA actions. Emran
8 Decl. ¶ 24. Although no two cases are identical, this research provided Plaintiff's Counsel with a
9 marker to inform settlement discussions and, ultimately, to measure this settlement against. Emran
10 Decl. ¶ 24. The investigation allowed Plaintiff's Counsel to realistically assess the value of
11 Plaintiff's claims and intelligently engage defense counsel in settlement discussions that culminated
12 in the proposed settlement now before the Court. Emran Decl. ¶ 24.

13 Counsel in this action is of opinion that Settlement for the consideration and on the terms
14 set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of
15 Plaintiff and other Aggrieved Employees in light of all known facts and circumstances. Emran Decl.
16 ¶ 25. The settlement is a compromise by both parties and reached after a full day of informed, non-
17 collusive, arms-length negotiation led by an experienced and highly regarded Mediator Todd Smith,
18 Esq. through a mediator's proposal, and reflects a reasonable assessment of the risks for each, as
19 well as the recognition that continued litigation will cause extensive and costly discovery for all
20 parties and further litigation would cause inconvenience, distraction, disruption, delay and expense
21 disproportionate to the potential benefits of litigation. Emran Decl. ¶ 13.

22 **III. SUMMARY OF SETTLEMENT AGREEMENT**

23 **A. The Proposed Settlement Terms**

24 The Parties have agreed, upon the Effective Date of this Settlement, Defendants will jointly
25 and severally pay a Gross Settlement Amount of One Hundred Twenty Thousand Dollars and Zero
26 Cents (\$120,000.00). Ex. C §II(C)(a) to Emran Decl. The Settlement Administrator will make and
27 deduct the following payments from the Gross Settlement Amount, in the amounts specified by the
28

1 Court in the Final Approval, to determine the Net Settlement Amount available for the LWDA
2 Payment and PAGA Settlement Member Payment:

3 1) To Plaintiff's Counsel: A Plaintiff's Counsel Fees Payment at the Court's discretion
4 of one-third of the total Gross Settlement Amount which is currently estimated to be
5 Thirty Nine Thousand Six Hundred Dollars and Zero Cents \$39,600.00) ("Fee
6 Amount") as attorneys' fees and will request up to Fourteen Thousand Dollars and
7 Zero Cents (\$14,000.00), currently totaling Twelve Thousand Four Hundred Eighty
8 Three Dollars and Thirty Six Cents in actual costs ("Actual Costs") pursuant to
9 PAGA, which provides for the recovery of attorneys' fees and costs. Defendants do
10 not oppose Plaintiff's counsel's requests for Court approval of these payments
11 provided that they do not exceed these amounts. Any modification of such
12 application by the Court shall not (i) affect the enforceability of the Agreement, (ii)
13 provide any of the Parties with the right to terminate the Agreement, or (iii) impose
14 any obligation on Defendants to increase the consideration paid in connection with
15 the Settlement. Plaintiff's Counsel's entitlement to fees and costs is a material
16 condition of this Settlement, but the Fee Amount awarded is not. If Plaintiff's
17 Counsel's requests for the Fee Amount or Actual Cost are not approved and/or
18 reduced by the Court, any amount not approved and/or reduced by the Court will be
19 distributed amongst the PAGA Settlement Members pursuant to the allocation
20 formula set forth in Section II(C)(a)(4).

21 2) To the Settlement Administrator: An Administrator Expenses Payment not to exceed
22 Two Thousand Nine Hundred Eighty Dollars and Zero Cents (\$2,980.00) except for
23 a showing of good cause and as approved by the Court. If the Settlement
24 Administration Fees are less than the estimated amount of \$2,980.00, the remainder
25 will be distributed amongst the PAGA Settlement Members pursuant to the
26 allocation formula set forth in Section II(C)(a)(4).

27 3) Plaintiff's Enhancement Payment: Defendants agree not to oppose Plaintiff's request
28 for an enhancement payment of Three Thousand Dollars (\$3,000.00) in recognition

1 for the work Plaintiff has done on behalf of the State of California and the aggrieved
2 employees. If Plaintiff's request for an enhancement payment is not approved and/or
3 reduced by the Court, any amount not approved and/or reduced by the Court will be
4 distributed amongst the PAGA Settlement Members pursuant to the allocation
5 formula set forth in Section II(C)(a)(4).

6 4) Plaintiff's Individual Settlement Payment: Defendants agree to pay Forty-Five
7 Thousand Dollars and Zero Cents (\$45,000.00) to Plaintiff in exchange for a
8 settlement of Plaintiff's individual claims, and a comprehensive release of known
9 and unknown claims including a Section 1542 release. The Individual Settlement
10 shall be allocated as follows: Fifteen Thousand Seven Hundred Fifty Dollars and
11 Zero Cents (\$15,750.00) to Plaintiff's Counsel, and Twenty-Nine Thousand Two
12 Hundred Fifty Dollars and Zero Cents (\$29,250.00) to Plaintiff.

13 5) Payment of PAGA Penalties: The total sum available for payment of PAGA
14 penalties shall be calculated by deducting the Fee Amount, Actual Costs, Settlement
15 Administration Fees, Plaintiff's Enhancement Payment from the Gross Settlement
16 Amount, and Plaintiff's Individual Settlement Payment (this will yield the "Net
17 Settlement Amount"). Thereafter, seventy-five percent (75%) of the Net Settlement
18 Amount shall be distributed to the LWDA ("LWDA Payment") and the remaining
19 twenty-five percent (25%) shall be distributed to the PAGA Settlement Members
20 ("PAGA Settlement Member Payment").

21 i. The "PAGA Settlement Member Payment" for each PAGA
22 Settlement Member shall be determined based on a formula taking
23 into account the number of each PAGA Settlement Member's
24 "Qualifying Pay Periods." A "Qualifying Pay Period" shall be
25 defined as any pay period in which a PAGA Settlement Member was
26 employed as a non-exempt employee during the PAGA Claim Period,
27 as determined by Defendant's records.
28

1 ii. The amount paid to each PAGA Settlement Member will be
2 determined as follows: The 25% amount to be distributed to PAGA
3 Settlement Members will be divided by the total number of
4 Qualifying Pay Periods for all PAGA Settlement Members during the
5 PAGA Claim Period (“Qualifying Pay Period Amount”). Each
6 PAGA Settlement Member will then be paid an amount equal to the
7 Qualifying Pay Period Amount multiplied by that PAGA Settlement
8 Member’s total number of Qualifying Pay Periods.

9 **B. Settlement/Release of Claims**

10 The Parties have agreed, upon the Effective Date, in exchange for the consideration set forth in
11 this Agreement, Plaintiff, the LWDA and the Aggrieved Employees will release claims against all
12 Released Parties as follows:

13 A. Plaintiff’s Release. For purposes of Plaintiff’s Release, Plaintiff expressly waives and
14 relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California
15 Civil Code, which reads: A general release does not extend to claims that the creditor or
16 releasing party does not know or suspect to exist in his or her favor at the time of executing
17 the release, and that if known by him or her would have materially affected his or her
18 settlement with the debtor or Released Party. Ex. C §IV(B) to Emran Decl.

19 B. Release by LWDA and Aggrieved Employees: Plaintiff, the LWDA, all PAGA Settlement
20 Members, and the State of California shall be deemed to have fully, finally, and forever
21 waived, released, relinquished, and discharged Defendants and each and all of the Released
22 Parties from the PAGA Claims, including, demands, liabilities, damages, attorneys’ fees,
23 costs and penalties that could have been recovered. PAGA Settlement Members will not be
24 provided the opportunity to opt out of this release. It is understood and agreed that this
25 Agreement neither releases the Released Parties from liability, if any, to PAGA Settlement
26 Members for violations of any predicate statutes other than PAGA, nor constitutes a waiver
27 of claims by PAGA Settlement Members against the Released Parties for any individual
28 non-PAGA wage and hour claims. Ex. C §IV(A) to Emran Decl.

1 **IV. LEGAL ANALYSIS**

2 Under PAGA, an aggrieved employee may bring a civil action personally and on behalf of
3 other current or former employees to recover civil penalties for Labor Code violations. *Iskanian v.*
4 *CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. Seventy-five percent of any penalties
5 recovered go to the LWDA, leaving the remaining twenty-five percent for the employees. *Id.* PAGA
6 is intended “to augment the limited enforcement capability of [the LWDA] by empowering
7 employees to enforce the Labor Code as representatives of the Agency.” *Id.* at 59 Cal. 4th 383. A
8 judgment [or Court-approved settlement] in a PAGA action binds all those, including nonparty
9 aggrieved employees, who would be bound by a judgment in an action brought by the government.
10 *Id.* at 381.

11 Based on the California Supreme Court's holdings in *Arias v. Superior Court* (2009) 46
12 Cal.4th 969 and *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, there is
13 no requirement under PAGA for Plaintiff to establish the requirements of class certification (i.e.,
14 numerosity, typicality, commonality, and adequacy) nor is there the usual two-step preliminary and
15 final approval process as found in class actions. Rather, a PAGA settlement merely requires a one-
16 step review and approval by the Court. *Id.*

17 The California Supreme Court has said in this context that “any negotiated resolution [must
18 be] fair to those affected.” *Williams v. Superior Ct.* (2017) 3 Cal. 5th 531, 549. However, it may be
19 substantially discounted given that courts often exercise their discretion to award PAGA penalties
20 below the statutory maximum even where a claim succeeds at trial. *Amaral v. Cintas Corp. No. 2*
21 (2008) 163 Cal. App. 4th 1157, 1213, (“Section 2699, subdivision (e)(2) provides that in an action
22 by an aggrieved employee to recover PAGA penalties, the court ‘may award a lesser amount than
23 the maximum civil penalty amount specified by this part if, based on the facts and circumstances of
24 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive,
25 or confiscatory.’”) See also, *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th 773, 787,
26 (recognizing the trial court’s discretion to reduce PAGA penalties).

27 Under Labor Code § 2699 (1)(2), the Parties must obtain approval of their PAGA settlement
28 from the Court and hereby seek the Court’s approval. Pursuant to Labor Code Section 2699(3)(2),

1 the Court has wide discretion regarding the amount of the PAGA penalty (See also *Thurman v.*
2 *Bayshore Transit Management* (2012) 203 Cal.App.4th 1112, 1136 [standard of review is abuse of
3 discretion].) The primary objective of a PAGA action “is to supplement enforcement actions by
4 public agencies, which lack adequate resources to bring all such actions themselves.” *Arias v.*
5 *Superior Court* (2009) 46 Cal.4th 969, 980-981, 986. “Restitution is not the primary object of a
6 PAGA action, as it is in most class actions.” *Franco v. Athens Disposal Co., Inc.* (2009) 171
7 Cal.App.4th 1277,1300 (emphasis added). Rather, a PAGA action is “fundamentally a law
8 enforcement action designed to protect the public and penalize the employer for past illegal
9 conduct.” *Id.* Prior to the enactment of PAGA, the California Legislature determined that it lacked
10 adequate financing to enforce California labor laws and in order “to achieve maximum compliance
11 with state labor laws,” it declared that it was in the public interest to allow employees, acting as
12 private attorneys general, to recover civil penalties that otherwise would have been assessed and
13 collected by the LWDA. *Arias*, 46 Cal.4th at 980-981.

14 Labor Code § 2699(1)(2) provides that the Superior Court shall review and approve any
15 settlement of any civil action filed pursuant to the PAGA. Although PAGA actions bear a superficial
16 resemblance to a type of class action, there are several factors distinguishing representative PAGA
17 actions and class actions. First a representative action under PAGA is fundamentally a law
18 enforcement action designed to protect the public and penalize the employer for past illegal conduct.
19 See *Franco v. Athens Disposal Co., Inc.*, (2009) 171 Cal. App. 4th 1277, 1300. The purpose is not
20 to collect damages on behalf of other employees or provide restitution to victims of Labor Code
21 violations. *Id.* (“Restitution is not the primary object of a PAGA action, as it is in most class
22 actions.”). Moreover, there is no requirement that the Court apply the same level of scrutiny in
23 approving a PAGA settlement as it does with class actions. Indeed, the California Supreme Court
24 has held that an employee who sues an employer under the PAGA need not satisfy class action
25 requirements. *Arias*, 46 Cal. 4th at 974. For example, “PAGA has no notice requirements for
26 unnamed aggrieved employees, nor may such employees opt out of a PAGA action.” *Baumann v.*
27 *Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1122 (9th Cir. 2014).

1 **A. Plaintiff Submitted a Copy of the Settlement to the LWDA**

2 Labor Code § 2699(1)(2) requires that any proposed settlement of a PAGA action be
3 submitted to the LWDA. Plaintiff completed this requirement by submitting a copy of the PAGA
4 Settlement to the LWDA through its online submission at the same time this was submitted to the
5 court. Emran Decl. ¶ 11; Ex D to Emran Decl.

6 **B. The LWDA Did Not Investigate Plaintiff's PAGA Claims**

7 The Labor Code requires that a proposed PAGA settlement be sent to the LWDA at the
8 same time that it is submitted to the Superior Court for review and approval. Lab. Code § 2699(1)(2).
9 However, the Labor Code does not authorize the LWDA to interfere with, obstruct, object, or
10 otherwise impede a request for approval of a PAGA settlement. Indeed, the time for the LWDA to
11 comment on a settlement is during the short window in which it must inform the aggrieved
12 employee that it declines to investigate. Lab. Code § 2699.3(a)(2)(B). Once that window shuts, the
13 aggrieved employee is deputized to act on behalf of the LWDA in a civil action.

14 The Labor Code is clear that all that is required to obtain court approval of a PAGA
15 settlement is for the proposed settlement to be sent to the LWDA. Lab. Code § 2699(1)(2). Here,
16 the LWDA had opportunity to investigate and obtain civil penalties by citation after Plaintiff
17 submitted her PAGA notice to the LWDA. Emran Decl. ¶ 3, Ex. A. "If the [LWDA] intends to
18 investigate the alleged violation, it shall notify the employer and the aggrieved employee or
19 representative by certified mail of its decision within 65 calendar days of the postmark date of the
20 notice." Lab. Code § 2699.3(a)(2)(B). "Within 120 calendar days of that decision, the [LWDA] may
21 investigate the alleged violation and issue any appropriate citation." *Id.* All that is required now
22 regarding LWDA involvement is for the requisite documentation to be submitted to the LWDA
23 pursuant to Labor Code § 2699(1)(2) which Plaintiff's counsel has completed. Emran Decl. ¶ 11;
24 Ex D to Emran Decl.

25 **C. This Settlement is Fair, Adequate, and Reasonable**

26 A plaintiff suing under PAGA does so as the proxy or agent of the State of California to
27 enforce labor laws on behalf of the state's law enforcement agencies. *Iskanian v. CLS*
28 *Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380-381. As a result of Plaintiff's

1 Counsel's efforts, Plaintiff's PAGA action undoubtedly achieved the primary objective of a PAGA
2 action when Plaintiff's Counsel supplemented the State of California's enforcement action by filing
3 the PAGA complaint on the behalf of Plaintiff and the State of California and utilizing its law firm's
4 resources to litigate the action against the Defendants in an effort to compel maximum compliance
5 with California labor laws. See *Arias*, supra, 46 Cal.4th at 980-981.

6 The Parties participated in mediation the highly respected Mediator Todd Smith, Esq. who
7 managed the Parties' expectations and provided a useful, neutral analysis of the issues and risks to
8 both sides. Emran Decl. ¶ 13. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF
9 (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs
10 considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank* (2d. Cir.
11 2001) 236 F.3d 78, 85 (a "mediator's involvement in pre-certification settlement negotiations helps
12 to ensure that the proceedings were free of collusion and undue pressure.")) After a full day of
13 mediated negotiations, the mediation concluded with a settlement later memorialized in a long form
14 PAGA Settlement Agreement and Release. Ex. C to Emran Decl.

15 Plaintiff conducted a thorough investigation into the facts of the Action, including by
16 informal discovery exchange which requested information from Defendants in order to evaluate the
17 potential damages and for respective counsel to engage in meaningful mediation with the assistance
18 of Mr. Todd Smith, Esq. ¶ 10, 13-33. Plaintiff's counsel received, among other things, the following
19 information and evidence with which to properly evaluate both Plaintiff's individual claim and the
20 PAGA claim: 1) Plaintiff's time records for the PAGA period; 2) Plaintiff's pay statements for the
21 PAGA period; 3) Plaintiff's W2's for the PAGA period; 4) Plaintiff's signed policies and
22 agreements; 5) Defendant's Employee Handbook in effect during Plaintiff's employment, which
23 includes all pertinent and requested employment policies; 6) A 50% of Aggrieved Employee's time
24 records for the PAGA period and; 7) A corresponding 50% sampling of Aggrieved Employee's
25 time records for the PAGA period. Emran Decl. ¶ 15. Plaintiff's damage expert analyzed
26 Defendant's data and created a flexible damage model based on assumptions created from
27 Defendants' data. Emran Decl. ¶ 16-17. Defendants maintained written policies regarding meal
28 and rest periods that are consistent with the law. Defendants' employee handbook encourages

1 employees to notify management if they are in any way discouraged or impeded from taking their
2 breaks. Emran Decl. ¶ 21.

3 The Gross Settlement Amount is fair and reasonable considering the probability of recovery
4 in this matter and the role of judicial discretion. Approval of the Parties' Settlement Agreement is
5 warranted because counsel for all Parties agree that the amount allocated for civil penalties under
6 PAGA is fair and reasonable considering Defendants' compliant employment policies and practices
7 PAGA period, the settlement was negotiated as part of an informed, non-collusive, arms-length
8 negotiation following mediation with Mr. Todd Smith, Esq., an exchange of information, the
9 uniqueness of Plaintiff's injuries which may have undermined this claim, the ability for alleged
10 "aggrieved employees" to bring their own claims for non-PAGA claims, and Plaintiff's counsel risk
11 of obtaining full recovery of claimed PAGA penalties in light of Defendant's disclosures. Emran
12 Decl. ¶ 25-27.

13 The settlement commits Defendants to jointly and severally pay the considerable sum of
14 approximately Sixteen Thousand Nine Hundred Thirty Six Dollars and Sixty-Four Cents
15 (\$16,936.64) in PAGA penalties, which is large enough to punish Defendants for alleged previous
16 violations and to deter such alleged conduct in the future and still allows Aggrieved Employees to
17 seek recovery of any individual claims they may have. Ex. C §(C)(a) to Emran Decl.

18 Here, both Parties' counsel has experience in employment litigation, specifically PAGA
19 litigation, and conducted an extensive investigation of the factual allegations involved in this case.
20 Each side has apprised the other, informally of their respective factual contentions, legal theories
21 and defenses, resulting in extensive arms-length negotiations taking place among the Parties. Emran
22 Decl. ¶ 26.

23 **D. Plaintiff's Enhancement Award Should be Granted.**

24 The Settlement provides for a Service Award of \$3,00.00 to Plaintiff. Ex. C §(C)(a)(3) to
25 Emran Decl. The service award is fair and reasonable compensation for the Plaintiff's efforts
26 bringing the action, assisting Plaintiff's Counsel with the litigation and settlement, regularly
27 conferring with Plaintiff's Counsel on the status of her case and the strategies for prosecuting the
28 claims, finding and providing former and current employees to serve as witnesses for her case,

1 sending all documents and evidence in her possession, reviewing the proposed Settlement to ensure
2 that its terms are fair and provide adequate relief, and agreeing to provide Defendant a general
3 release of all claims arising out of their employment. Emran Decl. ¶ 29.

4 Plaintiff expended considerable time and effort advocating on behalf of herself and the
5 alleged PAGA Aggrieved Employees; her role in achieving this potential settlement was
6 indispensable. Emran Decl. ¶ 30. Plaintiff initially sought counsel in part because she was frustrated
7 by the rest and meal period violations. Emran Decl. ¶ 30. After learning a representative action was
8 an option considering the nature of her claims, Plaintiff chose to fight on behalf of the state and her
9 co-workers. Emran Decl. ¶ 30. Plaintiff hoped to achieve justice for more than just herself. Emran
10 Decl. ¶ 30. Plaintiff completed a detailed intake and follow-up intake process with Plaintiff's
11 Counsel. Emran Decl. ¶ 31. Plaintiff provided key factual details including witness names and
12 phone numbers, tracking sheets of scheduled patients, and pay stubs. Emran Decl. ¶ 31. Plaintiff's
13 work and dedication bolstered Plaintiff's Counsel's own efforts. Emran Decl. ¶ 31.

14 **E. The Requested Attorneys' Fees and Costs are also Reasonable.**

15 **1. Legal Standard for Attorneys' Fee Awards in Representative Actions**

16 PAGA allows a prevailing plaintiff to obtain attorneys' fees and costs. Cal. Lab. Code §
17 2699(g). The U.S. Supreme Court has recognized that "a lawyer who recovers a common fund for
18 the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from
19 the fund as a whole." *Boeing Co. v. Van Gemert* (U.S. 1980) 444 U.S. 472, 478. *Accord, Serrano*
20 *v. Priest [Serrano III]* (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to award attorneys'
21 fees and costs when a litigation proceeding in a representative capacity secures a substantial
22 benefit). The purpose of the "common fund doctrine" is not only to reward effective legal advocacy
23 but to "spread litigation costs proportionally among all of the beneficiaries" preventing unjust
24 enrichment. *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. Both state and
25 federal courts in California have embraced the common fund doctrine. *E.g., Roos v. Honeywell*
26 *Internat., Inc.* (2015) 241 Cal.App.4th 1472, 1490.

27 In *Laffitte v. Robert Half Internat., Inc.*, the California Supreme Court "join[ed] the
28 overwhelming majority of federal and state courts in holding that when class action litigation

1 establishes a monetary fund for the benefit of the class members, and the trial court in its equitable
2 powers awards class counsel a fee out of that fund, the court may determine the amount of a
3 reasonable fee by choosing an appropriate percentage of the fund created.” *Laffitte v. Robert Half*
4 *Internat., Inc.* (2016) 1 Cal. 5th 480, 503. Plaintiff submits that this guidance should equally apply
5 to representative actions under PAGA.

6 The Supreme Court highlighted some of the many advantages of the percentage method:
7 “relative ease of calculation, alignment of incentives between counsel and the class, a better
8 approximation of market conditions in a contingency case, and the encouragement it provides
9 counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.” *Id.* In
10 addition to its apparent endorsement of the percentage fee method, the *Laffitte* Court clarified that
11 it does not “perceive an abuse of discretion in [a] court’s decision to double check the reasonableness
12 of the percentage fee through a lodestar calculation.” *Id.* at 504. The *Laffitte* Court regards the
13 lodestar cross-check as “a mechanism for bringing an objective measure of the work performed into
14 the calculation of a reasonable attorney fee.” *Id.*

15 In Plaintiff’s view, *Lafitte* stands for the proposition that a trial judge may rely on his or her
16 discretion and utilize either the percentage method, the lodestar method, or both to calculate a
17 reasonable attorney’s fee. Furthermore, should a lodestar crosscheck be elected, the trial court does
18 not abuse its discretion whether it chooses to “perform[] the cross-check using counsel declarations
19 summarizing overall time spent” or opts to do a more detailed analysis of daily time sheets. *Id.* at
20 505. Indeed, “[t]he choice of a fee calculation method is generally one within the discretion of the
21 trial court, the goal...being the award of a reasonable fee to compensate counsel for their efforts.”
22 *Id.* at 504. *Laffitte* affirmed a fee award representing 33 and 1/3 percent of the fund. *Laffitte. Id.* at
23 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id.* at 487. As the
24 Court held, only when the multiplier is “extraordinarily high or low [should] the trial court []
25 consider whether the percentage method should be adjusted so as to bring the imputed multiplier
26 within a justifiable range.” *Id.* at 505.

2. 33.33% of the Net Settlement Amount and the Request Costs Reimbursement Are Appropriate and Should be Awarded.

The requested percentage fee is reasonable and should be awarded as confirmed by relevant case law and when compared with counsel's lodestar. Plaintiff's counsel requests just less than the standard 33.33% fee and instead requests an even Twenty-Nine Thousand Seven Hundred Dollars (\$29,700.00). This is not an "extraordinarily high or low" multiplier, so the Court is not compelled to adjust the percentage fee request in order to get the multiplier to a "justifiable range." *Laffitte* 1 Cal. 5th at 505.

Plaintiff's Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff's claims. Emran Decl. ¶ 32. Considering the positive outcome for the Aggrieved Employees, and in light of the supporting authority, the proposed Attorneys' Fees and Expenses are fair and reasonable. Emran Decl. ¶ 32. Plaintiff's Counsel and supporting staff must be extremely familiar and knowledgeable with wage and hour laws, litigation practices, case law, policy, statutory construction, employer practices, employee needs, employee working conditions, and more. Emran Decl. ¶ 36. With learned knowledge, Plaintiff's Counsel must strategize which cases to settle pre-litigation or post-litigation, which to mediate, and which cases to take to trial. Emran Decl. ¶ 36. The experience in this type of litigation serves Plaintiff, the State of California, and other Aggrieved Employees well because it gives context and historical knowledge as to relevant common practices and recordkeeping. Emran Decl. ¶ 36. Plaintiff's Counsel filed in the Superior Court because Plaintiffs are entitled to broader remedies for our clients. Emran Decl. ¶ 37. For example, the Labor Commissioner does not award damages for wage statement violations, nor does it award attorney fees. Emran Decl. ¶ 37. This case, like all of our wage and hour cases, undertaken on pure contingency. Plaintiffs are not asked or required to pay Emran Law any money unless there is a recovery on their behalf. Furthermore, we have incurred \$30,851.00 in attorneys' fees and \$12,483.36 in litigation costs. All costs were directly incurred in the prosecution of this action. Ex. E to Emran Decl. The matter was undertaken by Plaintiff's Counsel purely as a contingency fee case. Emran Decl. ¶ 37.

1 Considering the guidance provided by our state’s Supreme Court, the positive result achieved
2 by Plaintiff, and the fact that counsel undertook this matter on pure contingency, Plaintiff submits
3 that the fee request should be granted. Plaintiff’s counsel’s cost reimbursement request in the
4 amount of Twelve Thousand Four Hundred Eighty-Three Dollars and Thirty-Six Cents
5 (\$12,483.36) is also reasonable. As set forth by declaration, costs accrued in this case were all
6 incurred in direct prosecution of this action. Ex. E to Emran Decl. As such, the requested costs
7 should be awarded as fair and reasonable.

8 **V. CONCLUSION**

9 Based on the foregoing, the Parties respectfully request the Court grant this motion and
10 approve the Parties’ Settlement Agreement.

11 DATED: December 23, 2024

EMRAN LAW

14 By: Harris Emran
15 Harris Emran
16 Attorney for Plaintiff
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