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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

JACQUELINE MEADOWS, an individual, and on behalf of the State of California, as a private attorney general, Plaintiff, v. AIR METHODS LLC., a Limited Liability Company; and DOES 1 through 50, inclusive,	Case No. **BCV-24-102271** **NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT;** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO APPROVE PAGA SETTLEMENT** Hearing Date: June 5, 2025 Hearing Time: 8:30 a.m. Judge: Hon. Gregory A.Pulskamp Dept.: J Action Filed: November 15, 2023 Trial Date: Not Set

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT at 8:30am on June 5, 2025, or as soon thereafter as the matter can be heard, in Department J of the above entitled Court located at 1215 Truxtunt Ave. Bakersfield, California 93301, before the Honorable Gregory A. Pulskamp, Plaintiff Jacqueline Meadows ("Plaintiff") will and hereby does move for an order approving the settlement of the PAGA claim alleged against Defendant Air Methods LLC, ("Defendant") in accordance with California Labor Code §2699(l) (2016) amended by Stats. 2024, c. 44 (A.B. 2288), § 1, eff. July 1, 2024.). 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 Sergio J. Puche, 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: May 9, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: */s/ Sergio J. Puche*
Sergio J. Puche

Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jacqueline Meadows ("Plaintiff") reached a settlement of the California Private Attorneys General Act, Cal. Labor Code §2699, *et seq*. ("PAGA") claim asserted in this action against Defendant Air Methods LLC, ("Defendant") (collectively, the "Parties") which provides for a "Gross PAGA Settlement Amount" payment in the amount of $225,000.00. In accordance with California Labor Code §2699(l) (2016), Plaintiff now asks this Court to review and approve the settlement of Plaintiff's PAGA claims.[1] This is only a settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the individual wage claims, if any, of the affected employees other than the Plaintiff herself. Cal. Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

The PAGA settlement is set forth in the accompanying PAGA Settlement Agreement ("Agreement") and the form used for the Agreement is the Los Angeles Superior Court's model form. A true and correct copy of the Agreement which sets forth the terms for the settlement of the PAGA claims is attached as Exhibit #1 to the Declaration of Sergio J. Puche, filed herewith. Capitalized terms shall have the same meaning as defined in the Agreement. The LWDA received notice of this Settlement, and this motion as set forth in the accompanying proof of service.

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

II. RELEVANT FACTS

PAGA Counsel sent the necessary correspondence to the California Labor and Workforce Development Agency ("LWDA") on January 22, 2024, on behalf of Plaintiff Jacqueline Meadows, requesting authorization from the LWDA to seek civil penalties as provided by the Private Attorney General Act of 2004 ("PAGA") for the wage and hour violations alleged in the PAGA Notice.

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[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." Cal. Lab. Code § 2699 (2016) (*amended by* Stats. 2024, c. 44 (A.B. 2288), § 1, eff. July 1, 2024.).

(Declaration of Sergio J. Puche ("Puche Decl."), at ¶3.) The 65-day notice period for the LWDA to notify of its intent to investigate expired on March 27. 2024. On July 8, 2024, Plaintiff Meadows filed a Representative Action Complaint in this Court against Defendant Air Methods LLC alleging a cause of action for recovery of civil penalties for Violation of the PAGA [Labor Code §§ 2698, *et seq*.]. (Puche Decl. at ¶3(a).)

Plaintiff and Defendant agreed to mediate with Tagore Subramaniam, 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. Plaintiff was provided 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).)

Plaintiff's theories of PAGA liability as argued at mediation alleged that Defendant is liable for uncompensated off the clock work, meal and rest period violations, regular rate violations, and a failure to reimburse. Throughout the PAGA Period, Employees were expected to be on call at all times during their 24 hour shifts, however, the only time employees could claim missed meal periods were when they were on an active flight at the 5 hour mark and could then claim a missed meal period at the end of the shift. Therefore, the majority of missed meal period were not recorded nor paid. Moreover, employees were stuck on premises during their 24-hour shift. Defendant underpaid meal premiums and sick pay at the hourly rate in pay periods where Defendant paid Plaintiff and the Aggrieved Employees non-discretionary shift incentive payments. The data analyzed demonstrated a 99.4% meal violation rate as most shifts did not have a recorded Meal. Despite this, only 50% of the meal violations had meal premiums paid. 58 shifts were analyzed from 5/3/2023 to 11/8/2023 for the Plaintiff. The violation rate was 100% or 49 unique meal violations, including 2 late first meals, 46 missed first meals, 1 short meal, and 46 missed second meals. Plaintiff and the Aggrieved Employees regularly used their personal cell phones to call and text management and co-workers. Calls and texts would be sent to Plaintiff and the Aggrieved Employees both on and off the clock regularly. Plaintiff had to take a Pilot in her personal vehicle to the base but was never reimbursed. Defendant's own policy 1) requires employees to obtain approval for mobile device reimbursement; 2) limited reimbursement to only $50.00 per month; and 3) refused to pay invoices older than 30 days. (Puche Decl. ¶3(b).)

Defendant, for its part, presented evidence that Aggrieved Employees complete an online questionnaire at the end of each shift, wherein they confirm whether or not they were "permitted and authorized to take a first meal period prior to the conclusion of the fifth hour of work and a second meal period prior to the conclusion of the tenth hour of work, if applicable, that was a continuous and uninterrupted meal break of at least 30 minutes," and that they were "afforded the opportunity to take all of my paid rest breaks" for that day. Defendant's policy holds that when an Aggrieved Employee does <u>not</u> attest to having received the meal or rest period, a premium paid, and such premiums are reflected in the payroll records provided to Plaintiff's counsel. As for Plaintiff's reimbursement claim Defendants maintain that the Aggrieved Employees, as Clinicians, have very little need to use their personal cell phones for business purposes, as when they are on duty, they are either on-base (which typically consists of a single building with company-owned landline phones) or in the helicopter (where mobile phones are not permitted to be used). Moreover, Defendant's records are devoid of any request by Plaintiff for business expense reimbursement.

On November 19, 2024, the Parties engaged in an all-day mediation session before Mediator Subramaniam, a respected and experienced mediator knowledgeable of both the wage and hour laws and representative claims at issue in this action. Through arms-length negotiations with the assistance of the mediator, the Parties reached an agreement to settle the PAGA claims in this action which led to the signing of a Memorandum of Understanding memorializing the settlement.[2] (Puche Decl., at ¶3.)

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[2] In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle Plaintiff's individual claims arising out of her employment with Defendant, and release of all known and unknown claims against Defendant and the Released Parties under Civil Code § 1542, pursuant to separate confidential Individual Settlement Agreement ("Individual Settlement") (Puche Decl, ¶3(d); Agreement at ¶5.1.1). 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

The settlement was negotiated in light of all known facts and circumstances and the uncertainty associated with litigation – including the risk of Plaintiff not being able to maintain representative claims, the difficulty of proving Plaintiff's claims in a manageable trial, the merits of Defendant's potential defenses, and the significant delay and potential appellate issues inherent to litigation – and was reached after extensive arm's length negotiations, with the assistance of Mediator Subramaniam. (Puche Decl., at ¶¶3,6.)

III. TERMS OF THE PAGA SETTLEMENT

The PAGA settlement is subject to Court approval consistent with Labor Code §2699(1)(2) (2016). (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a "Gross PAGA Settlement Amount" payment in the amount of $225,000 to resolve the Released PAGA Claims (hereinafter referred to as the "PAGA Settlement"). From this PAGA Gross PAGA Settlement Amount of $225,000, there is a deduction of attorneys' fees ("PAGA Counsel Fees Payment") up to $75,000 (which is one-third of the PAGA Settlement), reimbursement of incurred costs ("PAGA Counsel Litigation Expenses Payment") in an amount not to exceed $30,000, a service award of $10,000 ("Service Award") and Settlement Administration Costs ("Administration Expenses Payment") not to exceed $4,350. (Agreement at ¶¶3.2.1-3.2.4).[3] After these deductions, the amount remaining is the "PAGA Payment", which is estimated to be no less than $105,650.

Of the PAGA Payment amount, seventy-five percent (75%) (no less than $79,237.50) will be paid to the LWDA and the remaining twenty-five percent (25%) (no less than $25,412.50) will be paid

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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.).

[3] If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder of these amounts to the PAGA Payment. (Agreement at ¶ 3.2.1). To the extent the Administration Expenses are less, or the Court approves payment less than $4,350, the Administrator will allocate the remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2). 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 Defendant. (*Id.* at ¶3.2.4).

to the Aggrieved Employees (Agreement at ¶ 3.2.3).[4] This 75/25 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019), and the prior 75/25 split still applies because Plaintiff's PAGA Notice was submitted before June 2024. *See* Cal. Lab Code § 2699 (v) (2024).

The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of pay periods each Aggrieved Employee worked during the PAGA Period as an Aggrieved Employee, as a percentage of the total pay periods worked by all Aggrieved Employees during the PAGA Period.[5] The PAGA Period is the time period from May 4, 2023 to January 21, 2025 (Agreement at ¶1.24).

For mediation, Defendant represented that there are approximately 196 Aggrieved Employees who worked approximately 6,408 pay periods PAGA Period through September 13, 2024. (Puche Decl. ¶¶4,14(b)(c)); Agreement at ¶4.1).

Upon entry of final judgment, the Released Parties shall be entitled to a release from the Aggrieved Employees for any "Released PAGA Claims", which means all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, and the PAGA Notice submitted by Plaintiff to the LWDA, which occurred during the PAGA Period (collectively the "Released PAGA Claims"). (Agreement at ¶5.3). The Released PAGA Claims expressly excludes all other claims, including Plaintiff's individual claims, claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, and PAGA claims outside of the PAGA period. (*Id.*)

Upon full funding of the Gross Settlement Amount, the State of California, LWDA and all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released

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[4] "Aggrieved Employee" means all individuals who are or previously were employed by defendant Air Methods LLC as a non-exempt employee at any time during the PAGA Period. The PAGA Period is the period from May 4, 2023 to January 21, 2025. (Agreement at ¶¶1.4, 1.23).

[5] See Agreement at ¶ 3.2.3 ("The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Payment by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.")

Parties from all "Released PAGA Claims." (Agreement ¶ 5.3). "Released PAGA Claims" means all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, and the PAGA Notices submitted by Plaintiff to the LWDA, which occurred during the PAGA Period, including claims under California Labor Code §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s). (*Id.*) In no event shall the release of the Released PAGA Claims in the Agreement release any individual claims of any individuals. (*Id.*)

Within fourteen (14) days after Defendant funds the Gross PAGA Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Service Award, the PAGA Counsel Fees Payment, and the PAGA Counsel Expenses Payment. (Agreement at ¶4.4).[6] The face of each check shall prominently state the void date, which is 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. (*Id.* at ¶4.4.1) For any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the State Controller Unclaimed Property Fund in the name of the individual who failed to cash their check. (*Id.* at ¶4.4.3)

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

IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS

[6] Disbursement of the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, the Administration Expenses Payment, and the Service Award shall not precede disbursement of Individual PAGA Payments. (Agreement at ¶4.4).

The claim before this Court on this motion is solely the representative claim under PAGA on behalf of the State of California for civil penalties pursuant to the PAGA. The Parties have agreed to settle this PAGA claim in its entirety after investigation and an arm's length mediation session. (Puche Decl., at ¶¶2, 3.) The settlement is intended to fully and finally resolve the Released PAGA Claims asserted by Plaintiff on behalf of the State of California. This is only a settlement of the PAGA claims for civil penalties and is not a class settlement and does not release the individual claims, if any, of the Aggrieved Employees, other than any claims under PAGA. This settlement does not release any claim that is not a PAGA claim.[7] PAGA Counsel Fees equal to one-third of the Gross PAGA Settlement amount ($75,000), and PAGA Counsel Litigation Expenses in an amount not to exceed $30,000 will also be paid to PAGA Counsel as part of the settlement in accordance with California Labor Code § 2699(g)(1), as set forth in the Agreement.[8] Additionally, a Service Award in the amount of $10,000 has been allocated to for payment to Plaintiff. Lastly, payment to the Administrator in an amount not to exceed $4,350 to perform the administrative duties to distribute the settlement money shall also be paid. (Puche Decl., at ¶4.)

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

Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." Cal. Lab. Code § 2699 (1) (2016). Consequently, the Parties respectfully ask the Court to review and approve the settlement of the PAGA claims and the PAGA Payment to be paid as part of the proposed settlement.

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

[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."

[8] As set forth in the accompanying Declaration of Sergio J. Puche, PAGA Counsel incurred costs in the current amount of $19,806.05, which is less than the cost allocation in the Agreement. See Declaration of Puche at ¶8.

The Parties believe that the PAGA Settlement amount is fair and reasonable and therefore "shall" be reviewed and approved. Here, the Gross PAGA Settlement Amount of $225,000 is more than other PAGA settlements as it constitutes approximately $35.11 per pay period. (Declaration of Puche, at ¶5.)

This PAGA Settlement amount compares favorably to the estimated amount of PAGA penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of statutory PAGA civil penalties was potentially $640,800 based on 6,408 pay periods applicable to the Aggrieved Employees during the PAGA Period.[9] (Declaration of Puche, at ¶¶5,14(b)-(c)). Importantly, however, these calculations were performed at the maximum statutory rate for the penalties, when in fact, it is likely that any penalties awarded would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if based on the facts and circumstances to do otherwise would result in an award that is "unjust, arbitrary and oppressive or confiscatory."

In *Carrington v. Starbucks Corp*., 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of $5 per pay period. Therefore, at trial, any PAGA penalties awarded could be significantly less than Plaintiff's calculation even where Plaintiff prevailed on the PAGA claim. If the amount of $5 per pay period from *Carrington v. Starbucks* is used, the potential recovery of civil penalties would be only $32,040, which is far less than this settlement provides. (Declaration of Puche, at ¶¶5,14(d).)

Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no

[9] Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The valuation of $640,800 is the civil penalty amount without stacking. If stacking is permitted, then the valuation increases with each additional penalty added to each pay period. Plaintiffs, 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. In addition, the recent amendment of PAGA casts further doubt on the availability of stacking penalties.

civil penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

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

Defendant maintains that Plaintiff and the Aggrieved Employees were properly compensated, and that it did not violate the Labor Code. Accordingly, Defendant disputes and denies Plaintiff's allegations and claims asserted in both the PAGA Notice and the Operative Complaint, which are resolved by the Agreement. Defendant asserted additional defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties. Defendant could argue that no penalties prior to the PAGA notification should be awarded because the violations were not intentional, and at least one Court has so ruled. These defenses present a risk to the PAGA claims and the potential that some or all of the PAGA penalties sought may not be awarded. (Declaration of Puche, at ¶¶6,14(g).)

Given Defendant's potential defenses to the violations at issue, the risks and costs of continued litigation, Plaintiff and her attorneys believe that the PAGA Settlement is fair and reasonable. (Declaration of Puche, at ¶¶5,6,14(g).) Defendant has similarly concluded that it is desirable that the action is settled in the manner and upon the terms and conditions set forth in the Agreement in order to avoid further expense, inconvenience and distraction of further legal proceedings, as well as the uncertainty of litigation. Defendant has determined that it is desirable and beneficial to put to rest the claims in this action and Defendant agrees that the PAGA Settlement is fair, reasonable, and adequate.

PAGA Counsel have significant experience litigating wage and hour claims including claims for PAGA penalties, and the PAGA Settlement here is similar to or greater than similar settlements that courts have approved. (Declaration of Puche, at ¶ 6.) The PAGA Settlement, along with the other terms of the proposed settlement, were negotiated by experienced counsel at arm's length with the assistance of a private mediator, Tagore Subramaniam, Esq. (Declaration of Puche, at ¶¶2,3,6.)

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

B. The Remaining Settlement Terms Are Fair And Reasonable

Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code § 2699 does not require that a court approve any other elements of the proposed settlement. See Cal. Lab. Code § 2699 (2016). Because there are no class allegations for which Plaintiff seeks approval, the approval provisions applicable to class settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless, as explained herein, the settlement terms for attorneys' fees and costs are reasonable.

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

PAGA Counsel seek approval of attorneys' fees from the PAGA settlement in the amount of $103,333 representing one-third of the $225,000 Gross PAGA Settlement Amount. PAGA does not have any requirements for reviewing attorneys' fees, and Plaintiff's position is that the payment of attorneys' fees and costs in this settlement is a matter of contract for contingent representation.

Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees and costs are reasonable.

First, the requested fees are justified by the result achieved. PAGA Counsel negotiated a recovery of $225,000 and this result justifies the requested fees equal to one third of this recovery. This percentage is within the standard contingent recovery percentage of one-third, and this percentage is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021) (recognizing that "'fee awards in class actions average around one-third of the recovery'" regardless of "'whether the percentage method or the lodestar method is used.'" (*quoting Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008)).

Second, the fee award is justified by the work performed and contributions to the case. As detailed in the accompanying Puche Decl. at ¶ 7, the fee award is less than PAGA Counsel's current lodestar of $74,551.34 representing just a 1.006 multiplier, with significant additional work to be performed.[10]

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

[10] A true and correct copy of PAGA Counsel's billing records are attached as <u>Exhibit #2</u> to the Declaration of Sergio J. Puche, filed herewith.

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

Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses in the total amount of $21,368.84 which is less than the $30,000 allocation for costs in the Agreement, so the difference of $8,631.16 will be added to the PAGA Payment amount. These expenses are documented in the accompanying Declaration of Puche at ¶8.

VII. THE SERVICE AWARD IS REASONABLE

In the Agreement at paragraph 1.27, “Service Award” means the service payment made to the Plaintiff in order to compensate her for initiating the Action, performing work in support of the Action, undertaking the risk of liability for Defendant’s expenses, and for the release of individual PAGA claims by the Plaintiff. Plaintiffs request from the Service Award of $10,000, as recognition for Plaintiff’s efforts in securing this Settlement for the benefit of the Aggrieved Employees and the LWDA. (Puche Decl. ¶15). The Agreement provides for service awards as the named Plaintiff not only served as the representative for these claims, but also is justified in light of the reputational risk that Plaintiff assumed by litigating claims against a former employer. *See Billinghausen v. Tractor Supply Co.,* 306 F.R.D. 245, 267-68 (N.D. Cal. 2015) (finding “personal detriment” upon testimony that future employers can easily learn that a prospective employee served as a plaintiff through the internet); *see also Guippone v. BH S&B Holdings LLC*, No. 09 Civ. 1029, 2011 U.S. Dist. LEXIS 126026, at **4, 20 (S.D.N.Y. Oct. 28, 2011) (“[T]he fact that a plaintiff has filed a federal lawsuit is searchable on the internet and may become known to prospective employers when evaluating the person . . . Even where there is not a record of actual retaliation, notoriety, or personal difficulties, [representative Plaintiffs] merit recognition for assuming the risk of such for the sake of absent [parties].”). (Puche Decl. ¶15.)

Employers commonly screen employee candidates to determine whether they have ever filed suit, and employee candidates who might be branded "litigious" are likely to be screened out of the process. In fact, an entire industry has developed for providing employers with background information on employee candidates. By bringing this action against an employer, Plaintiff has assumed considerable reputational risk that may impact her ability to find employment in the future. *La Fleur v. Medical Management Intern, Inc.*, No. 13-00398-VAP, 2014 WL 2967475, *8 (C.D. Cal. June 25, 2014) (awarding $15,000 to each named plaintiff in part for attesting to their fear that the lawsuit will harm their future job prospects in the industry). (*Id.*)

Moreover, the separate settlement payment is reasonable because Plaintiffs "remained fully involved and expended considerable time and energy during the course of the litigation." *See In re Toys 'R' Us-Del FACTA Litig.*, 295 F.R.D. at 471 (citation omitted). Plaintiff devoted her time and effort toward assisting her attorneys with the prosecution of the claims, and assisted counsel with finalizing the settlement. Service awards are regularly awarded in this amount. See e.g. *Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the requested service awards of $15,000 each are appropriate). (*Id.*)

Lastly, because PAGA is a "type of qui tam action," it is appropriate for the Plaintiffs to receive a modest additional payment from the settlement as a "bounty" for her special effort in vindicating the State's interests by enforcing its labor laws. *See Iskanian*, 59 Cal. 4th at 382 ("A PAGA representative action is therefore a type of qui tam action."); *see also People ex rel. Strathmann v. Acacia Research Corp.*, 210 Cal. App. 4th 487, 500 (2012) ("The person who brings the qui tam action, called the 'relator,' stands in the shoes of the People of the State of California, who are deemed to be the real party in interest . . . The relator in a qui tam action under section 1871.7 does not personally recover damages but, if successful, receives [a portion] of the recovery as a bounty.") (internal citations omitted). (*Id.*)

Such a payment incentivizes employees to step forward to enforce the Labor Code. *See MMM Holdings, Inc. v. Reich*, 21 Cal. App. 5th 167, 180 (2018) ("The bounty advances the public purpose and benefit by encouraging private qui tam actions; indeed, this prospect of reward may be the only means of inducing such private parties to come forward with their information.") (internal quotations omitted). This is especially important in this context, as "the lack of government resources to enforce the Labor Code led to a legislative choice to deputize and incentivize employees uniquely positioned to detect and prosecute such violations through the PAGA." *Iskanian*, 59 Cal. 4th at 390. Absent the incentive payment, fewer employees would be willing to step forward, and PAGA's primary purpose—enforcement of the Labor Code—would be substantially undermined. (*Id.*)

VIII. CONCLUSION

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

Dated: May 9, 2025

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: *_/s/ Sergio J. Puche_*

Sergio J. Puche

Attorney for Plaintiff