John G. Yslas (SBN 187324)
john.yslas@wilshirelawifrm.com
John Brown (SBN 233605)
john.brown@wilshirelawfirm.com
Eugene Zinovyev (SBN 267245)
eugene.zinovyev@wilshirelawfirm.com
Emily Borman (SBN 303180)
emily.borman@wilshirelawfirm.com
Lisa B. Iturriaga (SBN 339678)
lisa.iturriaga@wilshirelawfirm.com
Gabriella Solé (SBN 346164)
gabriella.sole@wilshirelawfirm.com
WILSHIRE LAW FIRM, PLC
660 S. Figueroa St., Sky Lobby
Los Angeles, California 90017
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JENNIFER ORELLANA individually, and on behalf of the State of California and other aggrieved persons, Plaintiffs, vs. KF RINALDI, LLC, DBA RINALDI CONVALESCENT HOSPITAL, a California limited liability company; and DOES 1 through 10, inclusive, Defendants.	Case No. 24STCV07850 (Lead Case) Case No. 24CHCV02084 (Related Case) *Assigned for All Purposes To:* *Hon. Carolyn B. Kuhl, Dept. 12* **NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT** Motion for PAGA Approval Hearing: Date: February 19, 2026 Time: 1:45 p.m. Dept: 12 Complaint filed: March 27, 2024 Trial date: Not set

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT at 1:45 p.m. on February 19, 2026, or as soon thereafter as the matter can be heard, in Department 12 of the above entitled Court, located at 312 North Spring Street Los Angeles, CA 90012, Plaintiff Jennifer Orellana ("Plaintiff") will and hereby does move for an order approving the settlement of the PAGA claim alleged against Defendant KF Rinaldi, LLC dba Rinaldi Convalescent Hospital ("Defendant") in accordance with Labor Code §2699(l). The proposed settlement is set forth in the accompanying PAGA Settlement Agreement ("Settlement Agreement").

This Motion will be based on this notice, the accompanying points and authorities, the Declaration of John G. Yslas, the Declaration of Jennifer Orellana, the Declaration of Jodey Lawrence, and the complete files and records in this action. The Labor Workforce Development Agency has been served with this motion and the Settlement Agreement as set forth in the accompanying proof of service.

Respectfully submitted,

Dated: November 4, 2025 WILSHIRE LAW FIRM, PLC

By: ______________________________
Emily Borman
Attorneys for Plaintiffs Jennifer Orellana and Jessie Ramirez

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Treatises

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jennifer Orellana ("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 KF Rinaldi, LLC dba Rinaldi Convalescent Hospital ("Defendant," collectively with Plaintiff, the "Parties"). In accordance with California Labor Code §2699(l), Plaintiff now ask this Court to review and approve the settlement of Plaintiff's PAGA claim.[1] This is a PAGA Settlement 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. 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 ("Settlement Agreement"). A true and correct copy of the Settlement Agreement which sets forth the terms for the settlement of the PAGA claims is attached as Exhibit 1 to the Declaration of John G. Yslas in Support of Motion for Approval of PAGA Settlement ("Yslas Decl."), filed herewith. Capitalized terms shall have the same meaning as defined in the Settlement Agreement. The LWDA received notice of this Settlement on October 24, 2025. Yslas Decl. ¶ 31, Exhibit 3.

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

II. RELEVANT FACTS AND PRODCEDURAL HISTORY

On June 4, 2024, Plaintiff filed the present PAGA representative action against Defendant, on behalf of herself, the State of California, and other aggrieved persons for civil penalties pursuant to PAGA stemming from Defendant's (1) failure to pay for all hours worked, including minimum, straight time, and overtime wages; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) failure to pay all earned wages twice per month; (5) failure to maintain accurate records of hours worked and meal periods; (6) failure to timely pay all wages at termination; (7) failure

[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."

to furnish accurate wage statements; (8) failure to indemnify for necessary expenditures; and (9) failure to produce requested employment records ("PAGA Action"). Settlement Agreement, §§ 1.18, 2.1; Yslas Decl., ¶ 3.

Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice on June 11, 2024 (LWDA-CM-1033192-24). Settlement Agreement, § 2.1, Yslas Decl., ¶ 4. Pursuant to Labor Code section 2699.3, subdivision (a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice on March 28, 2024 (LWDA-CM-1019108-24). *Id*.

Thereafter, the Parties met and conferred and agreed to mediate the PAGA Action with Steve Mehta, a well-respected and experienced mediator in wage and hour class and representative actions. Settlement Agreement, § 2.3, Yslas Decl., ¶ 5. In advance of mediation, PAGA Counsel conducted a thorough investigation into the facts of, and applicable law to, the PAGA Action. Yslas Decl., ¶ 5. Prior to mediation, Plaintiff obtained through informal discovery a representative sampling of time and payroll data for Aggrieved Employees and the necessary policy documents to properly evaluate the strengths and weaknesses of the claims and engage in meaningful settlement discussions. Settlement Agreement, § 2.4, Yslas Decl., ¶ 5.

On February 19, 2025, the Parties engaged in an all-day mediation session before Mr. Mehta. Settlement Agreement, § 2.3, Yslas Decl., ¶ 6. With the help of Mr. Mehta, while the Parties were not able to reach a settlement at mediation, they continued to work with Mr. Mehta and ultimately accepted a mediator's proposal. *Id*. 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 Mr. Mehta. *Id*.

///

///

///

III. TERMS OF THE PAGA SETTLEMENT

A. Aggrieved Employees

"Aggrieved Employees" means all persons who worked for KF Rinaldi as an employee at any time during the PAGA Period (March 28, 2023 to May 1, 2025). Settlement Agreement, §§ 1.3. Defendant has represented that there are 260 Aggrieved Employees that worked a total of 5,600 PAGA Pay Periods. *Id*. at § 4.1.

B. Settlement Terms

The Settlement Agreement negotiated by the Parties provides for a Gross Settlement Amount ("GSA") payment in the amount of $200,000.00 to resolve the PAGA Action. Settlement Agreement, § 3.1. The Gross Settlement Amount will be used to pay Individual PAGA Payments, PAGA Counsel Fees, PAGA Counsel Expenses, the PAGA Representative Service Payment and the Administrator's Expenses. *Id*. at §§ 3.2.1-3.2.4. After these deductions (PAGA Counsel Fees, PAGA Counsel Expenses, the PAGA Representative Service Payment and the Administrator's Expenses), the amount remaining is the Net Settlement Amount or "NSA," is estimated to be $101,399.41. *Id*. at § 1.16; Yslas Decl., ¶ 7. The NSA will be distributed to the LWDA and Aggrieved Employees as PAGA Penalties. Settlement Agreement, § 3.2.4.

1. <u>PAGA Penalties:</u> The NSA will be distributed as PAGA Penalties with seventy-five percent (75%) allocated to the LWDA PAGA Payment and the remaining twenty-five percent (25%) allocated to the Individual PAGA Payments for Aggrieved Employees. *Id*. at § 3.2.4. This 75/25 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

2. <u>Individual PAGA Payments:</u> The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties 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. *Id*. at § 3.2.4. The PAGA Period is the time period from March 28, 2023 through May 1, 2025. *Id*. at §1.25.

3. PAGA Representative Service Payment: Subject to Court approval, Plaintiff shall be paid a Representative Service Payment not to exceed $7,500.00, for her time and effort in bringing and presenting the Action. *Id*. at § 3.2.1.

4. PAGA Counsel Fees Payment: Subject to Court approval, PAGA Counsel shall be entitled to receive an award of reasonable attorneys' fees of not more than one-third (1/3) which is currently estimated to be $66,666.66. *Id*. at § 3.2.2.

5. PAGA Counsel Litigation Expenses Payment: Subject to Court approval, PAGA Counsel shall be entitled to receive reimbursement of actual costs and seeks reimbursement of actual costs incurred in the amount of $20,108.93. Settlement Agreement, §3.2.2; Yslas Decl. ¶ 29.

6. Administrator Expenses Payment: The Parties agreed to appoint Phoenix Class Action Administration Solutions ("Pheonix") as the Administrator for the Settlement. Settlement Agreement, § 8.1; *see generally* Declaration of Jodey Lawrence. The Settlement Administration Expenses, which are estimated not to exceed $4,250.00 shall be paid from the Gross Settlement Amount. Settlement Agreement, § 3.2.3.

C. Release

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff, Aggrieved Employees, LWDA and PAGA Counsel will release claims against all Released Parties as follows:

> Release by Aggrieved Employees: The claims released by Aggrieved Employees (the "Released PAGA Claims") are all claims for PAGA civil penalties that are alleged or reasonably could have been alleged based on the facts alleged in the operative Complaint and the PAGA letter. The Released PAGA Claims are those that accrued during the PAGA Period.

Settlement Agreement, § 5.2.

D. Settlement Administration

Defendant will provide the Aggrieved Employee Data to the Administrator, Phoenix Class Action Administration Solutions, in the form of a Microsoft Excel spreadsheet no later than seven (7) Court days after the Court grants PAGA Approval. *Id*. at § 4.2. Defendant has a continuing duty to immediately notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted

Aggrieved Employee identifying information and to provide corrected or updated Aggrieved Employee Data as soon as reasonably feasible. *Id*.

Defendant shall fully fund the Gross Settlement Amount and the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than thirty (30) calendar days after the Effective Date. *Id*. at §§ 4.3. Within fourteen (14) days after Defendant fully fund the GSA, the Settlement Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment, and the PAGA Representative Service Payment. Disbursement of the PAGA Counsel Fees Payment, the PAGA Counsel Litigation Expenses Payment and the PAGA Representative Service Payment shall not precede disbursement of Individual PAGA Payments.[2] *Id*. at § 4.4. The Administrator will issue checks for the Individual PAGA Payments and send them to Aggrieved Employees via First Class U.S. Mail, postage prepaid. *Id*. at § 4.4.1. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. *Id*. The Individual PAGA payments will expire one hundred eighty (180) calendar days from the date they are issued by the Administrator. *Id*. The Administrator will cancel all checks not cashed by the void date. *Id*. The Administrator will send checks for Individual PAGA Payment to all Aggrieved Employees along with the PAGA Settlement Notice. *Id*. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database. *Id*. The Administrator must conduct an Aggrieved Employee Address Search for all other Aggrieved Employees whose checks are returned undelivered without United States Postal Service ("USPS") forwarding address. *Id*. at § 4.4.2. Within seven (7) calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Aggrieved Employee Address Search. *Id*. The Administrator need not take further steps to deliver checks to Aggrieved Employees whose re-mailed checks are returned as undelivered. *Id*. The Administrator

[2] The form of the notice to accompany the checks is attached as **Exhibit A** to the Settlement Agreement.

shall promptly send a replacement check to any Aggrieved Employee whose original check was lost or misplaced, requested by the Aggrieved Employee prior to the void date. *Id.*

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 California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. *Id*. at § 4.4.3. The Individual PAGA Payments are 100% penalties and shall be reported using IRS tax form 1099. *Id*. at § 3.2.4.

Within ten (10) calendar days after the Administrator disburses all funds in the GSA, the Administrator will provide PAGA Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under the Settlement Agreement. *Id*. at § 8.4.1. At least fourteen (14) days before any deadline set by the Court, the Administrator will prepare, and submit to PAGA Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under the Settlement Agreement, the number of checks and total amount that remains uncashed, and the date (or expected date) when the total amount that remains uncashed is remitted to the California State Controller's Office in the name of the Aggrieved Employee. *Id*.

Pursuant to California Labor Code Section 2699(1), Plaintiffs provided a copy of the Settlement Agreement to the LWDA. Yslas Decl., ¶ 31, Exhibit 3. In addition, Plaintiffs will submit to the LWDA a copy of the Court's judgment and order approving the Settlement Agreement within ten (10) days after entry of judgment or order. *Id*.

IV. THE COURT SHOULD GRANT APPROVAL OF THE PAGA SETTLEMENT

A. Legal Standard

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." In doing so, the trial court must consider whether the settlement is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA,* Inc., 72 Cal. App. 5th 56, 77-78 (Cal. Ct. App. Nov. 30, 2021) (overruled in part on other grounds); see also *O'Connor v. Uber Technologies, Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016) (adopting guidance from the LWDA providing that "when a PAGA claim is settled, the relief provided for under the PAGA [must] be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public").

The court's role in reviewing PAGA settlements differs from its gatekeeping function in the class action context. In class actions, courts have a fiduciary duty to protect the interests of absent class members, whose individual claims will be discharged. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129 (2008). In this role, courts conduct an "independent assessment of the adequacy of the settlement terms," which requires them to have sufficient data and information about the amount in controversy and the realistic range of outcomes. *Id.* at 132. Courts consider a variety of factors in conducting this analysis, including whether the settlement is negotiated at an arm's length, whether there is sufficient discovery and information to permit parties and the court to act intelligently, whether the attorneys have experience with the type of issues, and whether the number of objectors is small. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1800-1801 (1996).

However, a PAGA representative action is "not akin to a class action;" it "is a species of *qui tam* action." *Flores v. Starwood Hotels & Resorts Worldwide, Inc.,* 253 F.Supp.3d 1074, 1076 (C.D. Cal. 2017). When reviewing a PAGA-only settlement, courts do not consider the value of individuals' claims for damages because a PAGA settlement does not release those claims. *See Kim v. Reins Int'l California, Inc.*, 9 Cal.5th 73, 87 (2020) (PAGA claims differ from individual claims); *ZB, N.A. v. Superior Court*, 8 Cal.5th 175, 188 (2019) (noting that PAGA penalties do not seek damages that are compensatory in nature). "The state's interest in such an action is to enforce its laws, not to recover damages on behalf of a particular individual." *Huff v. Securitas Sec. Servs., USA, Inc.*, 23 Cal.App.5th 745, 760 (2018). Instead of focusing on fair recovery for individual claims, the goal of PAGA enforcement is to achieve "maximum compliance with state labor laws." *Id*. at 756; *see also Iskanian*, 59 Cal.4th at 383 (noting that the goal of PAGA is to impose civil penalties for Labor Code violations "significant enough to deter violations"); *McKenzie v. Federal Exp. Corp.*, 765 F.Supp.2d 1222, 1233 (C.D. Cal. 2011)("Unlike a class action seeking damages… for injured employees, the purpose of

PAGA is to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies.”).

B. The PAGA Penalties Secured by the Settlement Are Genuine and Meaningful and Fulfill PAGA’s Underlying Purpose to Benefit the Public

The Settlement of $200,000.00 penalizes Defendant for the alleged violations of California’s labor laws in an amount that is significant enough to deter violations and provide genuine and meaningful relief—approximately $101,399.41 in PAGA Penalties to the State and the Aggrieved Employees—thus fulfilling the underlying purpose of PAGA to benefit the public. Yslas Decl., ¶¶ 7 – 12; *see Jordan v. NCI Grp., Inc.*, No. EDCV161701JVSSPX, 2018 WL 1409590, at *3 (C.D. Cal. Jan. 5, 2018) (“The proposed settlement imposes a substantial penalty payment of $150,000.00, paid in exchange for a release of only those claims pled in the notice to the LWDA and the Complaint. This penalty has a substantial deterrent effect on NCI and other California employers. Furthermore, the proposed settlement encourages compliance with the specific requirements of the Labor Code, which has the effect of protecting workers from unlawful employment practices and working conditions.”); *EOrellana v. Abercrombie & Fitch Co.*, No. CV 11-09754-GAF, 2017 WL 3669607, at *3 (C.D. Cal. Mar. 23, 2017) (finding that “[t]he primary purpose of PAGA, i.e., the empowerment of aggrieved employees to act as private attorneys general to collect civil penalties from their employers for Labor Code violations, [was] served by the proposed PAGA penalty in the parties’ settlement agreement,” where $340,000 of $700,000 settlement was allocated to PAGA penalties which were divided 75% to the LWDA and 25% to an estimated 10,000 aggrieved employees).

This PAGA Settlement amount compares favorably to the estimated amount of PAGA penalties. Plaintiff calculated that the maximum amount of statutory PAGA civil penalties was potentially $560,000.00 for 260 employees based on 5,600 pay periods.[3] Yslas Decl., ¶ 8. Importantly, however, these calculations were performed at the maximum statutory rate for the penalties, when in fact, it is

[3] The valuation of $560,000.00 is the civil penalty amount calculated at the maximum statutory rate and without stacking, which is not usually permitted. If stacking is permitted, then the valuation increases with each additional penalty added to each pay period. Plaintiff, however, is not aware of any PAGA award that permitted stacking and, in the cases cited herein, only one penalty per pay period was assessed. Yslas Decl., ¶ 8.

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." *See Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018) (affirming a judgment after trial that only provided for a PAGA penalty of $5 per pay period). Therefore, at trial, any PAGA penalties awarded could be significantly less than Plaintiffs' calculation even where Plaintiffs prevailed on the PAGA claim. *See Fleming v. Covidien*, No. ED CV 10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011) (a federal court reduced PAGA penalties from $2,800,000.00 to $500,000.00, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries).

C. <u>The Settlement Is Reasonable Given the Risks of Further Litigation</u>

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.*, No. BCV-23-102915, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. Jan. 31, 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 (1) failure to pay for all hours worked, including minimum, straight time, and overtime wages; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) failure to pay all earned wages twice per month; (5) failure to maintain accurate records of hours worked and meal periods; (6) failure to timely pay all wages at termination; (7) failure to furnish accurate wage statements; (8) failure to indemnify for necessary expenditures; and (9) failure to produce requested employment records. Yslas Decl., ¶ 9.

Defendant maintains that Plaintiff and the Aggrieved Employees were properly compensated, and that they did not violate the Labor Code as to any of them. *Id*. at ¶ 10. Accordingly, Defendant disputes and denies Plaintiff's allegations and claims asserted in the operative complaint which are resolved by the Settlement Agreement. *Id*. Defendant asserted additional defenses to the PAGA claim, not only as to liability but also as to the amount of the penalties. *Id*. 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. *Id*. These defenses present a risk to the PAGA claim and the potential that some or all of the PAGA penalties sought may not be awarded. *Id*.

While Plaintiff is confident in the merits of the case, a legitimate controversy exists as to each cause of action for penalties, the factual allegations, the evidentiary basis, and the underlying claims. *Id*. at ¶ 11. Plaintiff also took into account the fact that continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and potentially reduce any recovery to the state and the Aggrieved Employees. *Id.* Assuming Plaintiff could prove at least one violation per pay period and the Court awarded $100.00 in PAGA penalties for each of the 5,600 pay periods during the PAGA Period, the total penalties would be approximately $560,000.00. *Id*. As such, the Gross Settlement Amount of $200,000.00 is approximately 35.71% of the maximum realistic liability in this case. *Id*.

Thus, when the risks of litigation, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are considered, it is clear that the settlement amount of $200,000.00 is reasonable and in the best interest of the state and the public. *Id.* at ¶ 12. Plaintiff and her counsel objectively and knowledgably balanced the strengths and weaknesses of their claims against the risk of continued litigation and were able to determine a realistic range of settlement recovery for PAGA penalties. *Id.* The Settlement therefore accomplishes PAGA's objectives by imposing sufficient civil penalties "to punish and deter" Defendant from future alleged Labor Code violations, while also ensuring that the penalties are not "unjust, arbitrary and oppressive, or confiscatory." Lab. Code § 2699(e)(2); *Iskanian,* 59 Cal. 4th at 384.

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

PAGA Counsel seeks approval of attorneys' fees from the PAGA settlement in the amount of $66,666.66 representing one-third (1/3) of the GSA and a PAGA Counsel Litigation Expenses Payment for actual costs ($20,108.93), not to exceed $21,000. Settlement Agreement, § 3.2.2; Yslas Decl. at ¶29 . Plaintiff is entitled to attorneys' fees under Labor Code section 2699(g)(l), which provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." Lab. Code § 2699(g)(1); *see also Gouskos v. Aptos Village Garage, Inc.*, 94 Cal.App.4th 754, 765 (2001)(holding that attorneys' fees to prevailing party are mandatory when the statute uses the word "shall"). It is undisputed that Plaintiff is the prevailing party. *See Graciano v. Robinson Ford Sales, Inc.*, 144 Cal. App. 4th 140, 153 (2006)("[P]laintiffs may be considered 'prevailing parties' for attorney's fee purposes if they succeed on any significant issue in the litigation that achieves some of the benefit the parties sought in bringing suit.") (internal citation omitted).

Accordingly, Plaintiff is entitled to recover attorneys' fees and costs.

A. <u>Plaintiff's Counsel's Requested Attorneys' Fees Are Reasonable under the Common Fund Method</u>

The request for attorneys' fees as a percentage of the Gross Settlement Amount is supported by the "common fund theory," where "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest*, 20 Cal.3d 25, 35 (1977).

The purpose of the common fund approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Thus, the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet*, 12 Cal.4th 105, 110 (1995); *see Quinn v. State of California*, 15 Cal.3d 162, 167 (1975)("[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.").

A number of other courts have recognized the advantages of awarding fees as a percentage of the common fund over the alternative lodestar approach, which usually involves wading through voluminous and often indecipherable time records. *See*, e.g., *In re Activision Securities Litigation*, 723 F.Supp. 1373, 1375 (N.D. Cal. 1989). The percentage approach is preferable to the lodestar method because: (1) it provides predictability to counsel; (2) encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the demands on judicial records. *Id*. at 1378-79; *see also Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 28 (2000) (discussing findings of task force commissioned by the Third Circuit, which "concluded that the lodestar approach (1) increases the workload of an already overtaxed judicial system, (2) is insufficiently objective and produces results that are far from homogenous, (3) creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, (4) is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the Claimants or of an overall dollar amount, (5) encourages lawyers to expend excessive hours, and engage in duplicative and unjustified work, (6) creates a disservice for the early settlement of cases, (7) deprives trial courts of flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered, (8) works to the particular disadvantage of the public interest bar, and (9) results in confusion and lack of predictability.").

The percentage of attorneys' fees set forth in the Settlement Agreement—33 1/3% of the Gross Settlement Amount—is reasonable. Historically, courts have awarded percentage fees in the range of 20% to 50% in common fund cases. Newberg on Class Actions, 4th Ed. 2002, § 14: 6. Newberg notes that achievement of a substantial recovery with modest hours expended should not be penalized but should be rewarded for considerations of time saved by superior services performed. *Id*. Furthermore, California and federal courts have long recognized that a percentage of recovery for attorneys' fees is properly awarded on the basis of the total value. *Boeing v. Van Gemert*, 444 U.S. 472, 480-481 (1980); *see also In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558 n.13 (2009)("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.")

The Court should also consider that Plaintiff's counsel's efforts have resulted in substantial benefits to the State of California and the Aggrieved Employees, in the form of a significant, non-reversionary settlement fund established to compensate the State and the Aggrieved Employees and to punish Defendant for the alleged PAGA violations. Without the efforts of Plaintiff's Counsel, the claims alleged in the complaint would likely have gone without remedy. Yslas Decl., ¶ 28.

///

///

///

///

B. A Lodestar Cross-Check with a Modest Multiplier Confirms the Reasonableness of the Requested Fee

While it is not necessary to substantiate the fee award with a lodestar in this PAGA Action, it should be noted that PAGA Counsel has invested approximately 138.7 hours in the litigation of this matter, resulting in a lodestar of $123,570.00. Yslas Decl., ¶ 26.

"The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided." *Id*. In doing so, Courts utilize "multipliers" to account for the risk of taking on cases where there is no guarantee of recovery, uncertainties as the amount that will be recovered, uncertainty as to the cost of litigating the case (both in effort and expenses), and uncertainty about how much time will pass before the recovery is obtained. *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-33, 1138 (2001); *see also Serrano v. Priest,* 20 Cal. 3d 25, 48-49 (1977) (approving the adjustment of the lodestar figure based on factors specific to the case to ensure fair market value for legal services provided on a contingency basis). Application of that rule is particularly appropriate where the case is brought to redress important rights of vulnerable persons. *Ketchum*, 24 Cal.4th at 1133.

Generally, "[m]ultipliers can range from 2 to 4 or even higher." *Wershba v. Apple Computers, Inc.*, 91 Cal.App.4th at p. 255 (2001); *see also Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52 multiplier on a cross-check in an antitrust class action); *Orellana v. Netflix, Inc.,* 162 Cal. App. 4th, 60 (2008) (applying a 2.5 multiplier on a lodestar cross-check); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002) ("most" common fund cases apply a multiplier of 1.0-4.0); *Laffitte v. Robert Half Int'l*, 231 Cal. App. 4th 860, 881-82 (2004) (affirming a 2.13 multiplier after finding that "2 to 4" is a reasonable range for multipliers on a cross-check). Here, the application of a modest 1.50 multiplier supports PAGA Counsels' fee request of $566,666.67. Yslas Decl., ¶ 28.

Here, PAGA Counsel's lodestar surpasses the requested fee award of $66,666.66, resulting in a negative multiplier. Yslas Decl., ¶ 27. This amount does not include the time Class Counsel will spend at the final approval hearing and assisting the Settlement Administrator following final approval. *Id*. PAGA Counsel dedicated significant resources to this case by dividing the tasks required according to skill level. *Id*. The hours expended by each attorney were not duplicative and reflect the extensive investigation and analysis that was required to achieve this Settlement. *Id*. This time could have been spent on other potentially lucrative cases. *Id*. PAGA Counsel's lodestar reflects the efficiencies achieved by attorneys experienced in this field. *Id*.

The Court should also consider that PAGA Counsel's efforts have resulted in substantial benefits to the State of California and the Aggrieved Employees, in the form of a significant, non-reversionary settlement fund established to compensate the State and the Aggrieved Employees and to punish Defendant for the alleged PAGA violations. Yslas Decl., ¶ 28. Without the efforts of PAGA Counsel, the claims alleged in the complaint would likely have gone without remedy. *Id*.

Considered against the risks of continued litigation, and the importance of advocating for employment rights and a speedy recovery, the relief provided under the Settlement represents a very strong result for the Aggrieved Employees. PAGA Counsel's fee request is fair and reasonable and should be approved.

C. <u>PAGA Counsel's Costs Are Reasonable</u>

PAGA Counsel is entitled to reimbursement of its litigation costs under PAGA. *See* Lab. Code § 2699(k)(l) ("Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."). The Settlement provides for reimbursement of actual costs, not to exceed $21,000.00. Settlement Agreement, § 3.2.2. To date, PAGA Counsel has incurred actual costs in the amount of $20,108.93. Yslas Decl., ¶ 29, Exhibit 2. These costs were reasonably incurred in prosecuting this Action on behalf of the Aggrieved Employees and should be approved by the Court. *Id*. Accordingly, PAGA Counsel respectfully requests the Court approve costs in the amount of $20,108.93.

VI. THE REQUESTED PAGA REPRESENTATIVE SERVICE PAYMENT TO PLAINTIFFS IS REASONABLE

Both the State of California and the Aggrieved Employees are beneficiaries of a settlement that would not have been made possible but for the effort and commitment of Plaintiff. The Settlement provides that Plaintiff shall be paid a PAGA Representative Service Payment not to exceed $7,500.00 in recognition of her efforts in bringing and presenting the Action. Settlement Agreement §

3.2.1. The requested payment is intended to recognize Plaintiff's effort in bringing the Action, serving as private attorney general under PAGA, assisting counsel with the investigation, litigation, and settlement, regularly conferring with counsel on the status of the case, and reviewing the proposed settlement to ensure that its terms are fair and achieve PAGA's objectives.

Plaintiff has provided declarations detailing the risk they faced in bringing the suit, the notoriety and personal difficulties they encountered, the amount of time and effort they spent on this litigation, the duration of this litigation, and the personal benefit they will receive as a result of the litigation. *See generally* Declaration of Plaintiff in Support of Motion for Approval of PAGA Settlement ("Orellana Decl.").Plaintiff also faced the real risk that future employers in the skilled nursing industry may not hire her because she lent her name as PAGA representatives in this case, and she could have been liable for Defendant's litigation costs if the case went to trial and then lost. *Id.* at ¶¶ 4, 6.

Accordingly, Plaintiff respectfully request that the Court approve the PAGA Representative Service Payment in the amount of $7,500.00 to Plaintiff , which represents less than 1% of the GSA.

VII. CONCLUSION

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

Dated: November 4, 2025 WILSHIRE LAW FIRM, PLC

By: ______________________________
Emily Borman
Attorneys for Plaintiff Jennifer Orellana