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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF EL DORADO**

APRIL THOMASON, on behalf of herself, and
all aggrieved employees,

Plaintiff,

v.

SEQUOIA SENIOR LIVING LLC, and DOES
1 through 50, inclusive,

Defendants.

Case No: 24CV0979

REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR AN ORDER APPROVING
SETTLEMENT OF PAGA ACTION AND
DISMISSING ACTION WITH PREJUDICE**

Date: TBD
Time: TBD
Dept. 9

Complaint Filed: May 10, 2024
Trial Date: TBD

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Representative PAGA Plaintiff April Thomason (“**Plaintiff**”) moves this Court for an order granting approval of the proposed settlement of this representative Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, (“**PAGA**”) action against Sequoia Senior Living LLC (“**Defendant**”).¹ This PAGA action alleges that Defendant violated certain California Labor Code provisions resulting from its pay, meal period, rest break, wage statement and expense reimbursement practices.² The proposed \$300,000 settlement will dispose of the PAGA claims asserted on behalf of the Plaintiff and all persons within the State of California who are or were employed by Defendant in the State of California as hourly or non-exempt employees at any time from March 5, 2023 through February 25, 2025, inclusive (the “**PAGA Release Period**”), (referred to as the “**PAGA Group**”).³

The proposed settlement embodies all the features of a settlement that is fair, reasonable, and adequate. It is the product of (1) arms-length negotiations, (2) negotiated by attorneys experienced in wage-and-hour issues, (3) subsequent to undertaking sufficient investigation necessary to evaluate the relative strength and value of the PAGA claims, and (4) it reflects a reasoned compromise based directly on the relative strength and value of the PAGA claims, as well as the risks, expense, complexity, and likely duration of further litigation.⁴

The settlement achieves a fair and reasonable benefit for the State of California’s Labor and Workforce Development Agency (“**LWDA**”) and the approximately 658 members of the PAGA Group.⁵ The Settlement Agreement allocates approximately \$167,884.74 to the settlement

¹ See Declaration of Robert W. Spencer submitted in support of Plaintiff’s Motion for Approval of PAGA Settlement (“**Spencer Decl.**”), at ¶ 6, Ex. 1 (the Labor Code Private Attorneys General Act Settlement Agreement (the “**Settlement Agreement**”). All “Ex.” references are to Spencer Declaration exhibits unless stated otherwise. Also, all capitalized terms shall have the same meaning as set forth in the Settlement Agreement unless noted otherwise.

² Spencer Decl. at ¶ 7, Ex. 3 (the operative Representative Action Complaint for Violations of the Labor Code, Penalties and Attorneys’ Fees (“**Complaint**”); Ex. 1 at § II.A.

³ Ex. 1 at §§ I.B, I.K, I.L, I.P, V.A. and V.B.

⁴ Spencer Decl. at ¶¶ 2-5, 18-30.

⁵ Spencer Decl. at ¶¶ 19, 21-23; *see* Ex. 1 at § I.K.

of the PAGA claims (referred to as the “**Net Settlement Amount**”).⁶ As required by the Labor Code, from the estimated \$167,884.74 Net Settlement Amount, 75% (\$125,913.56) will be distributed to the LWDA and 25% (\$41,971.19) will be paid to the PAGA Group (*i.e.*, the aggrieved employees).⁷ The \$41,971.19 to be paid to the PAGA Group members will be distributed according to the formula set forth in the Settlement Agreement.⁸

This is a reasonable recovery in light of the fact that Defendant has raised what it considers to be substantial defenses to Plaintiff’s claims on the merits and the Court’s inherent authority to set the amount of PAGA penalties at less than the statutory maximum. Plaintiff’s Counsel determined the risk to recovery to be significant and negotiated a settlement that they view as fair, reasonable and adequate for the LWDA and PAGA Group under the circumstances.⁹

For these reasons, as set forth more fully herein, Plaintiff requests that this Court enter an order approving the PAGA settlement. In a separate motion being filed today, Plaintiff seeks an order awarding attorneys’ fees and costs, an enhancement award for Plaintiff Thomason, and the approval of Simpluris, Inc. as the Settlement Administrator and approval for payment of the settlement administration fees.

II. STATEMENT OF THE CASE AND PROCEDURAL HISTORY

A. The Parties

Defendant operates assisted living facilities throughout California.¹⁰ Plaintiff Thomason worked for Defendant as an hourly caregiver from approximately April 27, 2023 through September 2023.¹¹ The PAGA Group is defined as: “All persons within the State of California who are or were employed by Defendant in the State of California as hourly or non-exempt

⁶ Ex. 1 at § I.J; *see also*, §§ I.P, VI, X, XI. The remaining \$125,662.99 of the \$300,000 Settlement Amount is allocated to attorneys’ fees (\$100,000) and litigation costs (estimated to be \$19,615.26), enhancement award to Plaintiff (\$7,500), and settlement administration costs (estimated to be \$5,000). Spencer Decl. at ¶ 21, Ex. 1 at §§ VI, X, XI.

⁷ *See* Lab. Code § 2699(i); Ex. 1 at §§ I.G, I.I, I.J, I.K.

⁸ Ex. 1 at § VIII.A.

⁹ Spencer Decl. at ¶¶ 18-30.

¹⁰ Ex. 3, Complaint at ¶¶ 5, 10.

¹¹ Ex. 3, Complaint at ¶ 5.

employees at any time within the PAGA Release Period.”¹² The “PAGA Release Period” is defined as the period from and including March 5, 2023, through February 25, 2025, inclusive.¹³

B. Plaintiff’s exhaustion of administrative remedies and filing of the Complaint.

On March 5, 2024, pursuant to Labor Code § 2699.3’s exhaustion requirements, Plaintiff gave written notice of her PAGA claims to the LWDA and Defendant.¹⁴ After satisfying the administrative requirements of Labor Code § 2699.3(a), Plaintiff filed the operative complaint on May 10, 2025 in El Dorado County Superior Court against Defendant alleging PAGA claims under Labor Code §§ 2698, *et seq.*, based on alleged violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 and seeking penalties pursuant to Labor Code §§ 2699(f) and attorneys’ fees pursuant to Labor Code § 2699(g)(1).¹⁵

C. Summary of the litigation and settlement process.

After engaging in discovery, the Parties discussed the potential for settlement and agreed to engage in private mediation. In advance of the mediation, the Parties agreed to exchange informal discovery.¹⁶ Defendant produced information and documents relevant to the PAGA claims, including that there are approximately 658 individuals who meet the PAGA Group definition who worked approximately 12,000 pay periods during the PAGA Release Period.¹⁷ That documentation along with other relevant data obtained during discovery enabled Plaintiff to evaluate the PAGA claims in preparation for mediation.¹⁸

On February 25, 2025, the Parties participated in a formal mediation session with Steve G. Pearl, Esq., during which the Parties engaged in good faith, arm’s-length negotiations. With the mediator’s assistance, the Parties were able to resolve the PAGA claims, subject to the Court’s

¹² Ex. 1 at § I.K.

¹³ *Id.* at § I.L.

¹⁴ Spencer Decl. at ¶ 7, Ex. 2 (Plaintiff’s PAGA exhaustion letter).

¹⁵ Spencer Decl. at ¶ 7, Ex. 3 (Complaint); Ex. 1 at § II.A.

¹⁶ Spencer Decl. at ¶¶ 8-10, 13-16; Ex. 1 at § II.A.

¹⁷ Spencer Decl. at ¶¶ 8, 19; *see also*, Ex. 1 at §§ I.G, I.K, I.L, II.A and II.B.

¹⁸ Spencer Decl. at ¶ 12-14; *see also*, Ex. 1 at §§ I.G, I.K, I.L, II.A and II.B.

1 approval.¹⁹

2 Through their counsel, the Parties have set forth all terms of the PAGA settlement in a
3 more detailed, formalized Settlement Agreement,²⁰ which Plaintiff now submits to the Court for
4 approval.

5 **D. The Proposed Settlement**

6 **1) The benefits to the LWDA and the PAGA Group.**

7 The Settlement Agreement provides that, to settle this matter, Defendant will pay \$300,000
8 (the “**Settlement Amount**”).²¹ The Settlement Amount shall be all inclusive, encompassing (a) all
9 payments to the LWDA and the PAGA Group, (b) all costs of third-party administration of the
10 settlement, (c) Plaintiff’s Counsel’s attorneys’ fees and costs of suit, and (d) the enhancement
11 payment to the named Plaintiff.²²

12 If all requests are approved, the estimated total sum available for payment of PAGA
13 penalties (*i.e.*, the “**Net Settlement Amount**”) is calculated by deducting \$100,000 for the
14 payment of Plaintiff’s Counsel’s fees and \$19,615.26 in actual litigation costs, a \$7,500
15 enhancement payment to the Plaintiff, and administration costs of up to \$5,000 from the Settlement
16 Amount, leaving an estimated \$167,884.74 Net Settlement Amount to be distributed to the LWDA
17 and the PAGA Group members.²³

18 As required by Labor Code § 2699(i), the Net Settlement Amount will be paid 75%
19 (approximately \$125,913.56) to the LWDA and 25% (approximately \$41,971.19) to the PAGA
20 Group members.²⁴ The \$125,913.56 that the LWDA will receive will be used for labor law
21 enforcement and education.²⁵

22 The PAGA Group members will divide their portion based on the formula set forth in the

23 ¹⁹ Ex. 1 at § II.B; Spencer Decl. at ¶¶ 14-15.

24 ²⁰ Spencer Decl. at ¶ 15, Ex. 1.

25 ²¹ Ex. 1 at §§ I.P, VIII.B.

26 ²² Ex. 1 at § I.P.

27 ²³ Ex. 1 at § I.J, *see also*, §§ I.P, VI, X, XI; Spencer Decl. at ¶ 21.

28 ²⁴ Ex. 1 at §§ I.G, I.I, I.J, I.K, *see also*, §§ I.L, VIII.A; Spencer Decl. at ¶¶ 21-22; *see also*, Lab.
Code § 2699(c) (PAGA defines “aggrieved employee” as “any person who was employed by the
alleged violator and against whom one or more of the alleged violations was committed.”).

²⁵ Lab. Code § 2699(i); Ex. 1 at § I.I; Spencer Decl. at ¶ 22.

Settlement Agreement, which, in summary, provides that the portion of the Net Settlement Amount to be distributed to the PAGA Group shall be divided by the total number of full pay periods, with partial pay periods rounded up to the next whole number, as determined by Defendant's records, for all times during the PAGA Release Period which the PAGA Group worked for Defendant ("Pay Period Value"). Each member of the PAGA Group shall be paid an amount equal to the number of individual pay periods he or she worked for Defendant during the PAGA Release Period multiplied by the Pay Period Value.²⁶ On average, each PAGA Group member will receive approximately \$63.79.²⁷ PAGA Group members do not need to submit a claim to receive a settlement payment.²⁸

2) The PAGA Release.

All PAGA claims alleged in the Complaint are released as part of the settlement.²⁹ In exchange for the above-described settlement consideration, Defendant shall be entitled to the following release from the Plaintiff on behalf of the LWDA.³⁰

Upon approval of this settlement by the Court, Plaintiff, individually and as a representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, in this Litigation, agrees to release Defendant and Defendant's partners, parents, subsidiaries, affiliates, attorneys, and all agents thereof (collectively, the "Released Parties"), of and from any and all claims under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*, that were or could have been alleged on behalf of non-exempt employees based on the factual allegations and identified Labor Code sections in the LWDA Letter and/or operative pleading for the Litigation, including, but not limited to, any claim for failure to pay wages (including minimum wage and overtime), claims regarding failure to pay for off-the-clock work, including but not limited to time spent working through meal periods, reducing time actually worked in Defendant's timekeeping system, and/or deducting time for meal periods that were not actually taken, failure to timely pay wages during employment, failure to timely pay wages upon separation of employment, failure to provide meal periods including first and subsequent meal periods, short, late, and/or interrupted meal

²⁶ Ex. 1 at §§ I.G, VIII.A.

²⁷ Spencer Decl. at ¶ 23 (\$41,971.19/658= \$63.79); *see also*, Ex. 1 at §§ I.G, I.J, VIII.A.

²⁸ *See* Ex. 1 at § VIII.A; Spencer Decl. at ¶ 25.

²⁹ Ex. 1 at § V, *see also*, §§ I.B, I.H, II.A.

³⁰ This comports with settled California Supreme Court authority. *See Arias v. Superior Court* (2009) 46 Cal.4th 969, 987 ("[W]ith respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act...."). The PAGA Group members do not individually release any claims as part of the settlement.

periods, failure to pay meal period premium payments including failure to pay meal period premiums at the proper rate of pay, failure to authorize and permit rest periods including first and subsequent rest periods, short, late, and/or interrupted rest periods, failure to pay rest period premium payments including failure to pay rest period premium payments at the proper rate of pay, failure to issue accurate wage statements, and/or failure to reimburse business expenses. This Release shall include all claims and theories arising under California Labor Code sections §§ 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, as well as all applicable Industrial Welfare Commission (“IWC”) Wage Orders during the PAGA Release Period (the “Released Claims”). The Parties further agree to release all claims for costs, fees, and interest related to the Released Claims. The Parties further agree that this Agreement and judgment to be entered by the Court following approval of this settlement forever bars Plaintiff and the LWDA, directly or through any other proxy or agent, from any future prosecution of any of the Released Claims against any of the Released Parties.³¹

In addition, Plaintiff is providing a General Release of her individual claims against Defendant.³²

The General Release applies only to Plaintiff Thomason and not to other PAGA Group members.³³

3) PAGA Notice.

Under the settlement, the Parties have agreed to provide a Notice of Settlement (“Notice”) notifying the PAGA Group members about the settlement terms.³⁴ The settlement requires Defendant to provide the Settlement Administrator with the following information for each PAGA Group member: name, last known home address, number of pay periods as a PAGA Group member during the PAGA Release Period, and social security number (collectively referred to as the “PAGA List”) no later than 21 calendar days after the Effective Date.³⁵ After updating the PAGA List, the Settlement Administrator will mail the Notice and the Individual Settlement Payment check to each member of the PAGA Group no later than 28 calendar days

³¹ See Ex. 1 at § V.A. See *Arias, supra*, 46 Cal.4th at 987 (“[T]he nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.”) This stands in contrast to the scope of release permitted in the class action context, where class members have a right to notice and the right to exclude themselves from the action. See *Villacres v. ABM Industries Inc.* (2010) 189 Cal.App.4th 562, 586 (“[A] court may release not only those claims alleged in the complaint and before the court, but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set forth or referred to in’ the complaint.”).

³² Ex. 1 at § V.B.

³³ Ex. 1 at § V.B.

³⁴ Ex. 1 at § VII, Exhibit A (the Notice).

³⁵ Ex. 1 at § VII, *see also*, §§ I.K, I.L.

after the Settlement Administrator receives the complete Settlement Amount.³⁶

Under the settlement terms, for any Individual Settlement Payment check that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the PAGA Group member by performing an additional skip-trace and shall remail the Individual Settlement Payment check.³⁷ If the Settlement Administrator is unable to obtain a valid mailing address for a returned check through this process, after the check void date, the Settlement Administrator will send the monies represented by the check to the LWDA.³⁸

4) Residual from uncashed checks.

The Settlement Administrator shall void any settlement checks that remain uncashed more than 180 days after issuance and the Settlement Administrator will remit the entire amount of each PAGA Group member's uncashed Individual Settlement Payment to the LWDA.³⁹

5) The Settlement Agreement selects Simpluris, Inc. as the settlement administrator.

The Settlement Agreement provides that Simpluris, Inc. will administer the settlement.⁴⁰

6) Settlement administration, attorneys' fees and costs, and the Plaintiff's enhancement payment.

The Settlement Agreement also provides for the payment of settlement administration fees, award of attorneys' fees and costs, and enhancement payment for Plaintiff.⁴¹ Those terms are discussed in the memorandum accompanying the Motion for Award of Attorneys' Fees and Costs, Plaintiff's Enhancement Award and Settlement Administration Fees that is being filed concurrently with this motion.

7) Notification to the LWDA of the Settlement.

As detailed in the Declaration of Robert W. Spencer, filed concurrently with the submission of the Settlement Agreement to the Court, Plaintiff is submitting the settlement to the LWDA as

³⁶ Ex. 1 at §§ VII, VIII.B.

³⁷ Ex. 1 at § VII, *see also*, § I.G.

³⁸ Ex. 1 at § VII.

³⁹ Ex. 1 at § VIII.B.

⁴⁰ Ex. 1 at §§ I.O, VI.

⁴¹ Ex. 1 at §§ VI, X, XI; *see also*, §§ I.A, I.M, I.O.

required by Labor Code § 2699(1)(2).⁴²

III. LEGAL ARGUMENT

A. Standards for approval of a PAGA settlement.

The settlement of a PAGA claim requires court approval pursuant to the operative PAGA statute. Section 2699(1)(2) provides that the court must “review and approve any settlement of any civil action filed pursuant to [PAGA].” The California Supreme Court has noted that the trial court’s review and approval of PAGA settlements ensures “that any negotiated resolution is fair to those affected.”⁴³

As with any settlement, the court conducts its inquiry staying mindful that “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent in litigating further.”⁴⁴ Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes and an abandoning of highest hopes,’”⁴⁵ as “it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.”⁴⁶ As such, “the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits” or “judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.”⁴⁷

Although Section 2699(1) does not set forth the criteria on which a PAGA settlement is to be judged, controlling California case law has held that “a trial court should evaluate a PAGA settlement to determine whether it 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.”⁴⁸ PAGA is intended to incentivize private parties to recover civil penalties on behalf

⁴² Spencer Decl. at ¶ 17.

⁴³ *Williams v. Superior Court* (2017) 3 Cal.5th 531, 549, citing Lab. Code § 2699 (1)(2).

⁴⁴ *See In re TD Ameritrade Account Holder Litig.* (N.D. Cal. Sept. 12, 2011) No. C 07-2852 SBA and C 07-4903 SBA, 2011 U.S. Dist. LEXIS 103222, at *24.

⁴⁵ *Officers for Justice v. Civil Service Com.* (9th Cir. 1982) 688 F.2d 615, 624.

⁴⁶ *See id.* at 625.

⁴⁷ *See id.*

⁴⁸ *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 (“*Moniz*”), citing *Williams, supra*, 3 Cal.5th at 546 (finding that PAGA seeks “to remediate present violations and deter future ones”)

(*Cont’d*)

1 of the overburdened state enforcement agencies who otherwise would have assessed and collected
2 the civil penalties themselves.⁴⁹

3 When assessing a PAGA settlement, courts utilize some of the factors used to evaluate the
4 fairness of a class action settlement, which can include the strength of the plaintiff's case, the risk,
5 expense, complexity and likely duration of further litigation, and the experience and views of
6 counsel.⁵⁰ It, however, is important to underscore that the California Supreme Court has found
7 that, "[a]lthough representative in nature, a PAGA claim is not simply a collection of individual
8 claims for relief, and so is different from a class action."⁵¹ A PAGA action "is fundamentally a
9 law enforcement action designed to protect the public and not to benefit private parties."⁵² In a
10 PAGA action, the plaintiff employee serves as a proxy for the LWDA.⁵³ As a result, certain factors
11 relevant to a class action settlement do not apply when assessing the fairness of a PAGA
12 settlement.

13
14 and *Arias*, *supra*, 46 Cal.4th at 980 (recognizing that PAGA's declared purpose is to augment state
15 enforcement efforts to achieve maximum compliance with labor laws.); *see also*, e.g., *Petitt v.*
16 *Exigency Healthcare Servs.* (E.D. Cal. Mar. 2, 2023) No. 21-cv-07639-VKD, 2023 U.S. Dist.
17 LEXIS 35869, at *9 (applying that standard when evaluating the PAGA portion of a settlement,
18 citing *Moniz* and other cases); *Chamberlain v. Hughes* (July 29, 2020) No. 1:19-cv-00831-DAD-
19 JLT, 2020 U.S. Dist. LEXIS 134582, at *15 (applying same standard when approving PAGA
20 settlement), cited with approval in *Moniz*. Plaintiff cites federal authorities for guidance. *See In re*
21 *Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1392 ("California courts may
22 look to federal authority for guidance on matters involving class action procedures.").

23 ⁴⁹ *See e.g.*, *Kim v. Reins Int'l California, Inc.* (2020) 9 Cal.5th 73, 81; *Arias*, *supra*, 46 Cal.4th at
24 986; *Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 710-11 (also finding that
25 "[t]he civil penalties recovered in a PAGA action are 'recovered on the state's behalf [and] are
26 intended to 'remediate present violations and deter future ones,' not to redress employees'
27 injuries,'" quoting *Kim*, *supra*, 9 Cal.5th at 86-87.

28 ⁵⁰ *Moniz*, *supra*, 72 Cal.App.5th at 77; *see also*, e.g., *Chamberlain*, *supra*, 2020 U.S. Dist. LEXIS
134582, at *12, n.5 (noting that the assessment of fairness, adequacy and reasonableness of a PAGA
settlement may involve balancing some of the factors used to assess class action settlements), citing
Officers for Justice, *supra*, 688 F.2d at 625; *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. Aug.
25, 2017) No. 16-CV-04708-LHK, 2017 U.S. Dist. LEXIS 137272, at *8 (same), citing *Hanlon v.*
Chrysler Corp. (9th Cir. 1998) 150 F.3d 1011, 1026.

⁵¹ *Kim*, *supra*, 9 Cal.5th at 86, citing *Arias*, *supra*, 46 Cal.4th at 986.

⁵² *Arias*, *supra*, 46 Cal.4th at 986.

⁵³ *Id.*; *see also*, e.g., *Kim*, *supra*, 9 Cal.5th at 86, quoting *Arias*, *supra*, 46 Cal.4th at 986 ("[a]n
employee suing under PAGA 'does so as the proxy or agent of the state's labor law enforcement
agencies.'").

1 In addition, other factors that are not relevant in the class action context are relevant in the
2 PAGA settlement context.⁵⁴ First, as noted, a court assesses a PAGA settlement’s adequacy based
3 on whether the total settlement achieves PAGA’s objective,⁵⁵ which is “to protect the public” with
4 “the potential impact on remedies other than civil penalties [being] ancillary to the action’s primary
5 objective.”⁵⁶ That said, a PAGA settlement – like any settlement – involves a compromise that
6 stops short of rendering findings of liability and damages.

7 Second, because they have no property interest in a PAGA claim,⁵⁷ “PAGA has no notice
8 requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA
9 action.”⁵⁸ The California Supreme Court has explained that “absent employees do not own a
10 personal claim for PAGA civil penalties and whatever personal claims the absent employees might
11 have for relief are not at stake.”⁵⁹ This renders the approval process of a PAGA settlement distinct
12 from a class action settlement, as there is no need for the Court to employ the “two-step approval
13 process” required under California Rule of Court 3.769 and FRCP Rule 23(e).⁶⁰

14 Finally, unlike in a class action settlement, the scope of release permitted in a PAGA
15 settlement is limited. While “judgment in [a PAGA] action is binding not only on the named
16 employee plaintiff but also on government agencies and any aggrieved employee not a party to the

17 ⁵⁴ See *Ramirez, supra*, 2017 U.S. Dist. LEXIS 137272, at *8-9.

18 ⁵⁵ See *Nordstrom Com’n Cases* (2010) 186 Cal.App.4th 576, 589 (finding that the trial court
19 properly considered the overall circumstances of the settlement when determine whether the PAGA
20 settlement was appropriate).

21 ⁵⁶ *Arias, supra*, 46 Cal.4th at 987.

22 ⁵⁷ See *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993,
1003 (PAGA “does not create property rights or any other substantive rights” as “[i]t is simply a
23 procedural statute allowing an aggrieved employee to recover civil penalties—for Labor Code
24 violations—that otherwise would be sought by state labor law enforcement agencies.”).

25 ⁵⁸ See e.g., *Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 974 (“PAGA has no notice
26 requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA
27 action.”); *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122 (same).

28 ⁵⁹ *Williams, supra*, 3 Cal.5th at 547, fn. 4, citing other California Supreme Court cases; see also,
Turrieta, supra, 69 Cal.App.5th at 973, quoting same.

⁶⁰ The Rule 23(e) two-step process facilitates “notice” to absent class members by requiring “(1)
preliminary approval of the settlement; and (2) final approval of the settlement at a fairness hearing
following notice to the class.” See, e.g., *In re TD Ameritrade, supra*, 2011 U.S. Dist. LEXIS
103222, at *10; see F.R.C.P. 23(e). Cal. Rule of Court 3.769 contains similar rules for state court
class actions.

proceeding,”⁶¹ “the nonparty employees, because they were not given notice of the action or afforded any opportunity to be heard, would not be bound by the judgment as to remedies other than civil penalties.”⁶² Thus, the scope of a release in a PAGA settlement is necessarily limited to PAGA claims.

B. The settlement meets all the criteria for approval.

The proposed settlement embodies all the key features of a settlement that is fair, reasonable, adequate and, as such, meets all the criteria necessary for approval.

1) The factors giving rise to a presumption of fairness exist.

When reviewing a settlement, “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; [and] (3) counsel is experienced in similar litigation.”⁶³ In this case, the proposed Settlement (1) is the product of arms-length negotiations,⁶⁴ (2) occurred after Plaintiff’s Counsel had conducted sufficient investigation to evaluate the strength and potential value of the PAGA claims, as well as evaluating the risks of litigating these claims through trial,⁶⁵ and (3) was negotiated by Plaintiff’s Counsel with significant experience in similar wage and hour litigation.⁶⁶ As a result, the proposed PAGA settlement warrants a presumption of fairness.

2) The risk, expense, and complexity of further litigation balances strongly in favor of approval of the Settlement.

The proposed settlement takes into consideration the risks that this action faces in establishing Defendant’s liability. Defendant has raised what it considers to be substantial defenses to Plaintiff’s claims and continued litigation posed the risk of diminishing any possible recovery

⁶¹ *Arias, supra*, 46 Cal.4th at 986.

⁶² *See id.* at 987.

⁶³ *Nordstrom Com. Cases, supra*, 186 Cal.App.4th at 581 (internal quotations and alterations omitted), citing *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1117–1118 (also listing as a factor relevant only to class actions that percentage of objectors is small).

⁶⁴ Spencer Decl. at ¶¶ 8-10, 13-14.

⁶⁵ *Id.* at ¶¶ 12-14, 18-30.

⁶⁶ *Id.* at ¶¶ 2-5, 8-10, 12-14.

1 by increasing litigation expenses.⁶⁷ Those combined risks, balanced with the fact that the
2 settlement achieved a significant recovery, as demonstrated below, weigh strongly in favor of
3 settlement approval.

4 **3) The benefits conferred by the settlement balance in favor of approval.**

5 The proposed settlement provides a significant monetary benefit for the LWDA and a
6 reasonable monetary benefit for the PAGA Group. As the Ninth Circuit has held, a settlement may
7 be fair and reasonable even where it only provides a fraction of what could have been obtained at
8 trial:

9 The proposed settlement is not to be judged against a hypothetical or
10 speculative measure of what might have been achieved by the negotiators. Thus,
11 the very essence of a settlement is compromise, a yielding of absolutes and an
12 abandoning of highest hopes. ... The fact that a proposed settlement may only
13 amount to a fraction of the potential recovery does not, in and of itself, mean
14 that the proposed settlement is grossly inadequate and should be disapproved.⁶⁸

15 There are 658 PAGA Group members who worked approximately 12,000 pay periods
16 during the PAGA Release Period.⁶⁹ At \$100 per pay period, a PAGA award would amount to
17 \$12,000,000.⁷⁰ However, Labor Code § 2699(e)(2) however allows a court to reduce the amount
18 of a PAGA penalty at the court's discretion. And, as a number of reported cases demonstrate, many
19 courts end up awarding substantially less than the full amount in PAGA penalties.⁷¹

20 Under the Settlement Agreement, after all deductions are made for settlement
21 administration, service payment to the Plaintiff, and attorneys' fees and costs, approximately
22

23 ⁶⁷ *Id.* at ¶¶ 28, 29.

24 ⁶⁸ *See Linney v. Cellular Alaska P'ship* (9th Cir. 1998) 151 F.3d 1234, 1242 (internal quotations
25 and citations omitted), citing *Officers for Justice, supra*, 688 F.2d at 625, among other cases).

26 ⁶⁹ Ex. 1 at §§ I.G, I.K, I.L; Spencer Decl. at ¶ 8.

27 ⁷⁰ *See* Lab. Code § 2699(f)(2).

28 ⁷¹ *See e.g., Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (affirming the trial
court's \$150,000 PAGA penalty award out of \$75 million in penalties sought, based on 30,000
violations, which reduced the penalty rate to \$5 per violation); *Thurman v. Bayshore Transit Mgmt.,
Inc.* (2012) 203 Cal.App.4th 1112, 1125, 1135-36 (affirming the trial court's award of \$358,588, a
30% reduction of the \$512,000 PAGA penalties requested), *disapproved on another ground* at *ZB,
N.A. v. Superior Court* (2019) 8 Cal.5th 175, 196; *Magadia v Wal-Mart Assocs.* (N.D. Cal. 2019)
384 F. Supp. 3d 1058, 1073, 1080, 1101, 1103-04, 1111 (awarding \$70,000 of requested \$821,400
PAGA penalties for Labor Code § 226.7 meal period violations, among other PAGA penalty
reductions); *see* Spencer Decl. at ¶ 29 (listing additional examples).

1 \$125,913.56 of the settlement funds will be paid out to the LWDA.⁷² PAGA requires that the
2 LWDA use the funds for education and enforcement purposes.⁷³ That is a substantial benefit to
3 the State.

4 The remaining \$41,971.19 will be distributed to the PAGA Group based on the formula set
5 forth in the Settlement Agreement.⁷⁴ The amount is reasonable and fair in light of the PAGA claims
6 here and Defendant's asserted defenses.

7 **4) The scope of the release is narrowly tailored.**

8 The release bars the Plaintiff and the LWDA from prosecuting any claims covered by the
9 Settlement Agreement through the PAGA Release Period.⁷⁵ Under *Arias*, that precludes any other
10 member of the PAGA Group from asserting such claims on behalf of the LWDA in a future action
11 but does not impact any other claims that any member of the PAGA Group may have.⁷⁶ The
12 California Supreme Court has concluded that, in the context of PAGA, "the nonparty employees,
13 because they were not given notice of the action or afforded any opportunity to be heard, would
14 not be bound by the judgment as to remedies other than civil penalties."⁷⁷ Thus, the scope of the
15 release provided in exchange for the foregoing consideration is limited to the civil penalties
16 asserted in this action under Labor Code §§ 2698 *et seq.*⁷⁸ As such, this factor balances strongly
17 in favor of approval of the proposed settlement.

18 **5) The experience and views of Plaintiff's Counsel favor approval of the settlement.**

19 Plaintiff's Counsel has significant experience in complex wage and hour litigation.⁷⁹ In the
20 view of Plaintiff's Counsel, the benefit conferred by the proposed settlement is fair, reasonable,
21 and adequate under the circumstances, as it reflects a reasoned compromise which takes into
22

23
24 ⁷² Ex. 1 at §§ I.I, I.J, VIII, *see also* §§ I.P, VI, X, XI; Spencer Decl. at ¶¶ 21-22.

25 ⁷³ Lab. Code § 2699(i).

26 ⁷⁴ Ex. 1 at § VIII.A, *see also* I.G, I.J, I.P, VI, X, XI; *see* Spencer Decl. at ¶ 21.

27 ⁷⁵ Ex. 1 at §§ V.A, V.B, *see also* § I.L.

28 ⁷⁶ *Arias*, *supra*, 46 Cal.4th at 986.

⁷⁷ *See id.* at 987.

⁷⁸ Ex. 1 at § V.A.

⁷⁹ *See* Spencer Decl. at ¶¶ 2-5, 18-30.

consideration the risks inherent in this case which have the potential to eliminate recovery.⁸⁰ As such, this factor weighs in favor of approval of the proposed settlement.

6) The extent of completed discovery and the stage of the proceedings favor approval of the proposed settlement.

In evaluating this element, the relevant consideration is whether “the parties have sufficient information to make an informed decision about settlement.”⁸¹ And as the Ninth Circuit has noted, ““formal discovery is not a necessary ticket to the bargaining table.””⁸²

Here, the extent of discovery was sufficient to enable Plaintiff’s Counsel to evaluate the strength and value of the claims for purposes of settlement.⁸³ The information obtained in this case in preparation for trial and, ultimately, mediation, enabled Plaintiff’s Counsel to make a realistic assessment of the strength of the PAGA claims.⁸⁴

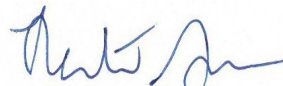
Based on Plaintiff’s Counsel’s experience litigating wage and hour claims, such investigation was sufficient to determine the potential value of the PAGA claims, and to evaluate the strength of these claims for purposes of settlement.

IV. CONCLUSION

As shown herein, the Settlement Agreement is fair, adequate, and reasonable as it represents a reasoned compromise obtained through arm’s-length negotiations. For all the reasons set forth above, Plaintiff respectfully requests that this Court approve the settlement.

Dated: April 24, 2025

KELLER GROVER LLP

By: 
ERIC A. GROVER
ROBERT SPENCER
Counsel for Plaintiff
APRIL THOMASON

⁸⁰ *Id.* at ¶¶ 18-30.

⁸¹ *Linney, supra*, 151 F.3d at 1239.

⁸² *Id.*

⁸³ Spencer Decl. at ¶¶ 8, 12-14.

⁸⁴ *Id.*

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **April 24, 2025**, in the case of *April Thomason v. Sequoia Senior Living LLC*, El Dorado Superior Court Case Number 24CV0979, I served the foregoing document(s):

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN ORDER APPROVING SETTLEMENT OF PAGA ACTION AND DISMISSING ACTION WITH PREJUDICE

on the interested party(ies) below, using the following means:

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Angelea Day

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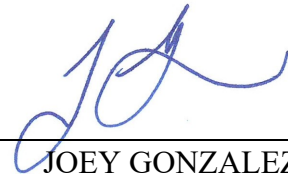
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☒	(BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the parties.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


JOEY GONZALEZ