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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

CATHERINE ZULU, RAMY EL
MALLAKH, and MIGUEL INFANZON
on behalf of the State of California, as a
private attorney generals,

Plaintiffs,

vs.

FRONT PORCH COMMUNITIES AND
SERVICES, a California Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 21CV386663

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

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

Hearing Date: May 1, 2025

Hearing Time: 1:30 p.m.

Dept: 7

Judge: Hon. Charles F. Adams

Action Filed: September 14, 2021

Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 YOU ARE HEREBY NOTIFIED THAT at 1:30 p.m. on May 1, 2025, or as soon thereafter as
3 the matter can be heard, in Department 7 of the above entitled Court before the Honorable Charles F.
4 Adams, Plaintiffs Catherine Zulu, Ramy El Mallakh and Miguel Infanzon (“Plaintiffs”) will and
5 hereby does move for an order approving the settlement of the California Labor Code Private
6 Attorneys General Act (“PAGA”) claim alleged against Defendant Front Porch Communities and
7 Services (collectively “Defendant”) in accordance with Labor Code §2699(s)(2). The proposed
8 settlement is set forth in the accompanying PAGA Settlement Agreement (“Agreement”).

9 This Motion will be based on this notice, the accompanying points and authorities, the
10 Declaration of Kyle Nordrehaug, the Declaration of Paul Haines, the Declaration of Anthony Rogers,
11 the Agreement, and the complete files and records in this action. The Labor & Workforce
12 Development Agency has been served with this motion and the Agreement as set forth in the
13 accompanying proof of service.

14 Respectfully submitted,

15 Dated: April 7, 2025

**BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP**

17 By: /s/ Kyle Nordrehaug
18 Kyle R. Nordrehaug
19 Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Catherine Zulu, Ramy El Mallakh and Miguel Infanzon (“Plaintiff”) reached a
4 settlement of the California Private Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”)
5 claim asserted in this action against Defendant Front Porch Communities and Services (“Defendant”)
6 (collectively, the “Parties”) which provides for a “Gross PAGA Settlement Amount” payment in the
7 amount of \$ 3,060,000. In accordance with California Labor Code §2699(s)(2), Plaintiffs now ask this
8 Court to review and approve the settlement of Plaintiff’s PAGA claims.¹ This is only a settlement of
9 the PAGA claims for civil penalties and is not a class settlement and does not release the individual
10 wage claims, if any, of the affected employees other than the Plaintiff himself. Cal. Labor Code §
11 2699(k)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v. Superior Court*,
12 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

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

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

22
23 **II. RELEVANT FACTS**

24 PAGA Counsel mailed the necessary correspondence to the LWDA on April 22, 2021, on
25 behalf of Plaintiff, requesting authorization from the LWDA to seek civil penalties as provided by
26

27 ¹ Labor Code Section 2699(s)(2) provides as follows: “The superior court shall review and approve
28 any settlement of any civil action pursuant to this part.” Because this action was filed before June
2024, the 75/25 allocation is based upon the older enactment of Section 2699.

1 PAGA for the wage and hour violations alleged in the PAGA Notice. (Declaration of Kyle
2 Nordrehaug, at ¶3). The 65-day notice period for the LWDA to notify of its intent to investigate
3 expired on June 26, 2021. On September 14, 2021, Plaintiff Catherine Zulu filed a Representative
4 Action Complaint in this Court against Defendant Front Porch Communities and Services alleging a
5 single cause of action for recovery of civil penalties for violation of the PAGA [Labor Code §§ 2698,
6 *et seq.*]. On November 26, 2024, Plaintiffs filed a First Amended Complaint adding additional claims
7 plead in the related case, *Miguel Infanzon v. Front Porch Communities and Services*, initiated on
8 February 29, 2024 and pending in Superior Court of the State of California, County of Los Angeles
9 and adding as named plaintiffs Ramy El Mallakh, and Miguel Infanzon. The First Amended Complaint
10 is the operative complaint in the Action (the “Operative Complaint”).

11 Plaintiffs and Defendant agreed to mediate with Lynn Frank, Esq. Prior to the mediation, the
12 Parties conducted significant investigation and informal discovery of the facts and law. Defendant
13 produced hundreds of documents relating to its policies, practices, and procedures regarding paying
14 non-exempt employees for all hours worked, overtime, meal and rest period policies, payroll and
15 operations policies, and more. Plaintiffs were provided with sufficient records and data to determine
16 the number of Aggrieved Employees and the number of pay periods in the PAGA Period. The Parties
17 agree that the above-described investigation and evaluation, as well as the information exchanged
18 during the settlement negotiations, are more than sufficient to assess the merits of the Parties’ positions
19 and to compromise the issues on a fair and equitable basis. (Declaration of Kyle Nordrehaug, at ¶3).

20 In the Operative Complaint, Plaintiffs alleged that Defendant were liable for miscalculating
21 overtime and meal period premiums as a result of not including certain remunerations in the regular
22 rate, including shift differentials. Plaintiffs also alleged they was required to work off the clock and
23 required to submit to COVID 19 screenings, including temperature checks and symptom
24 questionnaire. Plaintiffs contend they were never paid premiums for missed or interrupted meal and
25 rest breaks when they were unable to leave Alzheimer and dementia patients unsupervised or due to
26 workload. Plaintiffs also alleged that Defendant required Plaintiffs to carry and monitor
27 communication devices during all working hours, including rest breaks and meal periods. Plaintiffs
28 also alleged that Defendant failed to provide cell phone reimbursements despite requiring Plaintiffs to

1 use their personal cell phones to respond to work related issues and changes to scheduling.
2 (Declaration of Kyle Nordrehaug, at ¶3).

3 Defendant denies all allegations in the Operative Complaint, deny any failure to comply with
4 the laws identified in the Operative Complaint, and deny any and all liability for the causes of action
5 alleged. Defendant maintained that it always complied with applicable wage and hour regulations.
6 Defendant also contends that its policies, documents, and expert analysis supported a conclusion that
7 the calculation of the regular rate and weighted averages accounted for all applicable remuneration
8 consistent with applicable law.

9 On October 18, 2024, the Parties engaged in an all-day mediation session before Mediator
10 Lynn Frank, Esq., a respected and experienced mediator knowledgeable of both the wage and hour
11 laws and representative claims at issue in this action. Through arms-length negotiations with the
12 assistance of the mediator, the Parties reached an agreement to settle the PAGA claims in this action
13 which led to the signing of a Memorandum of Understanding memorializing the settlement.²
14 (Declaration of Kyle Nordrehaug, at ¶3).

15 The settlement was negotiated in light of all known facts and circumstances and the uncertainty
16 associated with litigation – including the risk of Plaintiffs not being able to maintain representative
17 claims, the difficulty of proving Plaintiffs’ claims in a manageable trial, the merits of Defendant’s
18 potential defenses, and the significant delay and potential appellate issues inherent to litigation – and
19 was reached after extensive arm’s length negotiations, with the assistance of Mediator Frank.
20 (Declaration of Kyle Nordrehaug, at ¶3).

21 22 **III. TERMS OF THE PAGA SETTLEMENT**

23 The PAGA settlement is subject to Court approval consistent with Labor Code §2699(s)(2).
24

25 ² In addition to the Gross PAGA Settlement Amount, Defendant has agreed to separately settle
26 Plaintiffs’ individual claims pursuant to separate confidential Individual Settlement Agreements
27 (“Individual Settlements”) (Agreement at ¶ 2.3). The individual claims were not at issue in this action
28 and exist independent and apart from the PAGA claims at issue before the Court. *See Kim v. Reins*
Int’l Cal., Inc., 9 Cal. 5th 73, 80 (2020) (the “[s]ettlement of individual claims does not strip an
Aggrieved Employee of standing, as the state’s authorized representative, to pursue PAGA remedies”
nor resolve the PAGA claims.).

1 (Agreement at ¶ 6.1). The Agreement negotiated by the Parties provides for a “Gross PAGA
2 Settlement Amount” payment in the amount of \$3,060,000.00. to resolve the Released PAGA Claims
3 (hereinafter referred to as the “PAGA Settlement”). From this PAGA Settlement of \$3,060,000.00,
4 there is a deduction of attorneys’ fees (“PAGA Counsel Fees Payment”) in the amount of \$1,020,000
5 (which is one-third of the PAGA Settlement), reimbursement of incurred costs (“PAGA Counsel
6 Litigation Expenses Payment”) in an amount not to exceed \$40,000.00, and the expense of settlement
7 administration (“Administration Expenses Payment”) not to exceed \$20,700.00. (Agreement at ¶¶
8 3.2.1-3.2.2).³ After these deductions, the amount remaining is the “PAGA Payment”, which is
9 estimated to be no less than \$1,979,300.00.

10 Of the PAGA Payment amount, seventy-five percent (75%) (no less than \$1,484,475.00) will
11 be paid to the LWDA and the remaining twenty-five percent (25%) (no less than \$494,825.00) will be
12 paid to the Aggrieved Employees (Agreement at ¶ 3.2.3).⁴ The 25% payable to the Aggrieved
13 Employees results in an average recovery of \$85.55 per individual and \$2.18 per pay period. This
14 75/25 allocation is required by Labor Code §2699 (as it was in effect prior to June 2024) as explained
15 by *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).

16 The Individual PAGA Payment for each Aggrieved Employee shall be based on the number of
17 pay periods each Aggrieved Employee worked during the PAGA Period as a Aggrieved Employee, as
18 a percentage of the total pay periods worked by all Aggrieved Employees from April 22, 2020 to
19 December 9, 2024.⁵ The PAGA Period is the time period from April 22, 2020 to December 9, 2024.
20 (Agreement at ¶ 1.23). For mediation, Defendant represented that there are approximately 5,784
21

22 ³ If the Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel Litigation Expenses
23 Payment less than the amounts requested, the Administrator will allocate the remainder of these
24 amounts to the PAGA Payment. (Agreement at ¶ 3.2.1). To the extent the Administration Expenses
25 are less, or the Court approves payment less than \$20,700.00, the Administrator will allocate the
26 remainder of this amount to the PAGA Payment (*Id.* at ¶ 3.2.2).

27 ⁴ “Aggrieved Employees” means all current and former non-exempt, hourly paid employees, who were
28 employed by Defendant in California during the PAGA Period. (Agreement at ¶¶ 1.4, 1.24).

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 Pay Periods.”)

1 Aggrieved Employees who collectively worked approximately 226,882 PAGA Pay Periods during the
2 PAGA Period. (Agreement at ¶ 4.1).

3 Effective on the date when Defendant fully funds the entire Gross PAGA Settlement Amount,
4 the Released Parties shall be entitled to a release from all members of the Aggrieved Employees of
5 the “Released PAGA Claims,” which means all claims for PAGA penalties that were alleged, or
6 reasonably could have been alleged, based on the facts stated in the Operative Complaint, and the
7 PAGA Notice submitted by Plaintiffs to the LWDA, which occurred during the PAGA Period
8 (collectively the “Released PAGA Claims”). (Agreement at ¶5.1).

9 Within fourteen (14) calendar days after Defendant funds the Gross PAGA Settlement
10 Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA
11 Payment, the Administration Expenses Payment, and the PAGA Counsel Fees Payment and PAGA
12 Counsel Expenses Payment. (Agreement at ¶ 4.4).⁶ Checks will remain negotiable for one hundred
13 eighty (180) calendar days after the date of mailing. (*Id.* at ¶ 4.4.1) For any Individual PAGA Payment
14 check that is uncashed and cancelled after the void date, the Administrator shall transmit the funds
15 represented by such checks to the California State Controller’s Unclaimed Property Fund in the name
16 of the individual who failed to cash/deposit their check, subject to Court approval. (*Id.* at ¶ 4.4.3).

17 Pursuant to California Labor Code section 2699(s)(2), Plaintiff is providing a copy of the
18 Agreement and this motion to the LWDA concurrently with the filing of the instant motion for
19 settlement approval as set forth in the accompanying proof of service in compliance with Labor Code
20 section 2699(s)(2). In addition, pursuant to California Labor Code section 2699(s)(3), Plaintiffs shall
21 submit to the LWDA a copy of the Court’s judgment and order approving the Agreement within ten
22 (10) days after entry of judgment or order.

23 **IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS**

24 The claim before this Court is solely the representative claim under PAGA on behalf of the
25 State of California for civil penalties pursuant to the PAGA. The parties have agreed to settle this
26 PAGA claim in its entirety after investigation and an arm’s length mediation session. (Declaration of
27 _____)

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

Kyle Nordrehaug, at ¶4.) 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 (\$1,020,000.00), and PAGA Counsel Litigation Expenses in an amount not to exceed \$40,000.00 will also be paid to PAGA Counsel as part of the settlement in accordance with California Labor Code § 2699(k)(1), as set forth in the Agreement.⁸ Lastly, payment to the Administrator in an amount not to exceed \$20,700.00 to perform the administrative duties to distribute the settlement money shall also be paid. (Declaration of Kyle Nordrehaug, at ¶¶ 4-5.)

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

Labor Code § 2699 (s)(2) 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.” 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

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 \$3,060,000.00 is more than other PAGA settlements as it constitutes approximately \$13.48 per pay period. (Declaration of Nordrehaug, at ¶6.)

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 Kyle Nordrehaug and , PAGA Counsel incurred costs in the current total amount of \$31,515.51, which is less than the cost allocation in the Agreement. See Declaration of Nordrehaug at ¶ 9; Declaration of Paul Haines at ¶ 13.

1 This PAGA Settlement amount compares favorably to the estimated amount of PAGA
2 penalties. With the assistance of an expert, Plaintiff calculated that the maximum amount of statutory
3 PAGA civil penalties was potentially \$22,688,200 based on 226,822 pay periods applicable to the
4 Aggrieved Employees during the PAGA Period.⁹ As a result, the Gross PAGA Settlement Amount is
5 equivalent to this potential maximum recovery. (Declaration of Nordrehaug, at ¶6.) Importantly,
6 however, these calculations were performed at the maximum statutory rate for the penalties, when in
7 fact, it is likely that any penalties awarded would be at a lower rate. California Labor Code Section
8 2699(e)(2) permits a Court to award a lesser amount than the maximum civil penalty if based on the
9 facts and circumstances to do otherwise would result in an award that is “unjust, arbitrary and
10 oppressive or confiscatory.”

11 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed
12 a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Therefore, at
13 trial, any PAGA penalties awarded could be significantly less than Plaintiff’s calculation even where
14 Plaintiff prevailed on the PAGA claim. If the amount of \$5 per pay period from *Carrington v.*
15 *Starbucks* is used, the potential recovery of civil penalties would be only \$1,134,410, which is far less
16 than this settlement provides. (Declaration of Nordrehaug, at ¶6.)

17 Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
18 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
19 from \$2,800,000.00 to \$500,000.00, a reduction of 82.2%, because the court found maximum penalties
20 “unjust” because the employees had suffered no injuries. Some trial courts have actually awarded no
21 civil penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016 Cal.
22 App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by
23 the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour*
24

25 ⁹ Stacking is where more than one civil penalty is imposed in a pay period for the same conduct. The
26 valuation of \$22,688,200.00 is the civil penalty amount without stacking. If stacking is permitted, then
27 the valuation increases with each additional penalty added to each pay period. Plaintiffs, however, are
28 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 2024 amendment to PAGA casts further doubt on the
availability of stacking penalties.

1 *Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after
2 trial).

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

12 Defendant maintains that Plaintiffs and the Aggrieved Employees were properly compensated,
13 and that they did not violate the Labor Code. Accordingly, Defendant dispute and deny Plaintiffs'
14 allegations and claims asserted in both the PAGA Notice and the Operative Complaint, which are
15 resolved by the Agreement. Defendant asserted additional defenses to the PAGA claim, not only as
16 to liability but also as to the amount of the penalties. Defendant could argue that no penalties prior to
17 the PAGA notification should be awarded because the violations were not intentional, and at least one
18 Court has so ruled. These defenses present a risk to the PAGA claims and the potential that some or
19 all of the PAGA penalties sought may not be awarded. (Declaration of Nordrehaug, at ¶7.)

20 Given Defendant's potential defenses to the violations at issue, the risks and costs of continued
21 litigation, Plaintiffs and their attorneys believe that the PAGA Settlement is fair and reasonable.
22 (Declaration of Nordrehaug, at ¶7.) Defendant has similarly concluded that it is desirable that the
23 action is settled in the manner and upon the terms and conditions set forth in the Agreement in order
24 to avoid further expense, inconvenience, and distraction of further legal proceedings, as well as the
25 uncertainty of litigation. Defendant has determined that it is desirable and beneficial to put to rest the
26 claims in this action and Defendant agrees that the PAGA Settlement is fair, reasonable, and adequate.

27 PAGA Counsel have significant experience litigating wage and hour claims including claims
28 for PAGA penalties, and the PAGA Settlement here is similar to or greater than similar settlements

1 that courts have approved. (Declaration of Nordrehaug, at ¶¶ 7, 10; Declaration of Paul Haines, ¶ 9.)
2 The PAGA Settlement, along with the other terms of the proposed settlement, were negotiated by
3 experienced counsel at arm's length with the assistance of a private mediator, Lynn Frank, Esq.
4 (Declaration of Nordrehaug, at ¶7.)

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

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

13 Although PAGA requires that a court approve the proposed PAGA settlement, Labor Code §
14 2699(s)(2) does not require that a court approve any other elements of the proposed settlement.
15 Because there are no class allegations for which Plaintiffs seek approval, the approval provisions
16 applicable to class settlements under Cal. Code Civil Proc. §382 do not apply. Accordingly, the Court
17 only needs to approve the settlement of the civil penalties sought in the PAGA claim. Nevertheless,
18 as explained herein, the settlement terms for attorneys' fees and costs are reasonable.

19
20 **VI. THE ATTORNEYS' FEES AND COSTS ARE FAIR AND REASONABLE**

21 PAGA Counsel seeks approval of attorneys' fees from the PAGA settlement in the amount of
22 \$1,020,000 representing one-third of the \$3,060,000.00 Gross PAGA Settlement Amount. PAGA does
23 not have any requirements for reviewing attorneys' fees, and Plaintiffs' position is that the payment of
24 attorneys' fees and costs in this settlement is a matter of contract for contingent representation.
25 Nevertheless, should this Court review the requested attorneys' fees, it is clear that the requested fees
26 and costs are reasonable.

27 First, the requested fees are justified by the result achieved. PAGA Counsel negotiated a
28 recovery of \$3,060,000.00, and this result justifies the requested fees equal to one third of this recovery.

1 This percentage is within the standard contingent recovery percentage of one-third, and this percentage
2 is what was expressly approved by the Supreme Court in *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th
3 480, 504, (2016); *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521, 545 (2021)
4 (recognizing that “fee awards in class actions average around one-third of the recovery” regardless
5 of “whether the percentage method or the lodestar method is used.” (quoting *Chavez v. Netflix, Inc.*,
6 162 Cal.App.4th 43, 66, fn. 11 (2008))).

7 Second, the fee award is justified by the work performed and contributions to the case. As
8 detailed in the accompanying Declaration of Kyle Nordrehaug at ¶8 [lodestar of \$231,503.75] and
9 Declaration of Paul Haines at ¶14 [lodestar of \$84,385.00], the fee award represents PAGA Counsel’s
10 current lodestar of \$315,888.75 with a reasonable multiplier of 3.2, with significant additional work
11 to be performed such that the multiplier will ultimately be even less.¹⁰

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

24 Third, consideration of the enhancement factors justify the enhancement of the lodestar.
25 Courts multiply the lodestar by a factor to account for the risk of non-payment, delay in payment, the
26

27 ¹⁰ A true and correct copy of PAGA Counsel’s billing records are attached as Exhibit #2 to the
28 Declaration of Kyle Nordrehaug and the lodestar is detailed in the Declaration of Paul Haines at ¶
14, both filed herewith.

1 quality of work, and the novelty and difficulty of the issues involved. See *Ketchum v. Moses*, 24
2 Cal.4th 1122, 1132 (2001). Failure to apply a risk multiplier in cases that meet these criteria is an
3 abuse of discretion. *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016).

4 Finally, as to litigation expenses, PAGA Counsel will be recovering litigation expenses in the
5 total amount of \$31,515.51 which is less than the \$40,000.00 allocation for costs in the Agreement, so
6 the difference of \$8,484.49 will be added to the PAGA Payment amount. These expenses are
7 documented in the accompanying Declaration of Nordrehaug at ¶9 [expenses of \$28,933.75] and
8 Declaration of Haines at ¶13 [expenses of \$2,581.76].

9
10 **VII. CONCLUSION**

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

13 Dated: April 7, 2025

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

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15 By: /s/ Kyle Nordrehaug
16 Kyle Nordrehaug
17 Attorney for Plaintiffs
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