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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

HOLLY GARRETT, as an aggrieved employee
pursuant to the Private Attorneys General Act
("PAGA"), on behalf of the State of California
and other aggrieved employees,

Plaintiff,

vs.

SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC.

Defendant.

Case No. CVRI2103869

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

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

Hearing Date: August 8, 2024
Hearing Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp
Dept: 1

Action Filed: August 25, 2021_
Trial Date: Not Set

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED THAT at 8:30 a.m. on August 8, 2024, or as soon
thereafter as the matter can be heard, in Department 1 of the above entitled Court before the
Honorable Harold W. Hopp, Plaintiff Holly Garrett ("Plaintiff") will and hereby does move for an
order approving the settlement of the Private Attorneys General Act (PAGA) claims alleged against
Defendant Sedgwick Claims Management Services, Inc. ("Defendant") in accordance with Labor
Code §2699(l)(2). The proposed settlement is set forth in the accompanying PAGA Settlement
Agreement ("Agreement").

This Motion will be based on this notice, the accompanying points and authorities, the
Declaration of Melinda Arbuckle, the Declaration of Jodey Lawrence on behalf of the settlement

1 administrator, Phoenix Settlement Administrators, the Agreement, and the complete files and records
2 in this action. The Labor and Workforce Development Agency (LWDA) has been served with this
3 motion and the Agreement as set forth in the accompanying proof of service.

4 Respectfully submitted,

5 Dated: June 14, 2024

WAGE AND HOUR FIRM

6 By: s/ Melinda Arbuckle
7 Melinda Arbuckle

8 Attorney for Plaintiff Holly Garrett
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Holly Garrett (“Plaintiff”) and Defendant Sedgwick Claims Management Services,
4 Inc. (“Defendant” or “Sedgwick”) (collectively, the “Parties”) have reached a settlement of the
5 Labor Code Private Attorneys General Act, Cal. Labor Code §2699, *et seq.* (“PAGA”) claims
6 asserted in this action against Defendant, which provides for a “Gross Settlement Amount” payment
7 in the amount of \$250,000.00. In accordance with California Labor Code § 2699(1)(2), Plaintiff now
8 asks this Court to review and approve the settlement of Plaintiff’s PAGA claims.¹ This is only a
9 settlement of the PAGA claims for civil penalties and is not a class settlement and does not release
10 the individual wage claims, if any, of the affected employees other than the Plaintiff herself. Cal.
11 Labor Code § 2699(g)(1); *Iskanian v. CLS Transportation*, 59 Cal. 4th 348, 381 (2014); *ZB, N.A. v.*
12 *Superior Court*, 8 Cal. 5th 175, 182 (2019) (unpaid wages are not recoverable under PAGA).

13 A true and correct copy of the PAGA Settlement Agreement (“Settlement” or “Agreement”),
14 which sets forth the terms for the settlement, is attached as **Exhibit 1** to the concurrently filed
15 Declaration of Melinda Arbuckle (“Arbuckle Decl.”). Capitalized terms in this motion shall have the
16 same meaning as defined in the Agreement. The LWDA received notice of this Settlement and this
17 Motion as set forth in the accompanying proof of service and as set forth in the Declaration of
18 Melinda Arbuckle. (Arbuckle Decl., ¶¶ 14, 19.)

19 A proposed order confirming review and granting approval of the PAGA Settlement is
20 concurrently submitted with this motion.

21 **II. RELEVANT FACTS**

22 Plaintiff worked for Defendant as a non-exempt, hourly-paid telephonic nurse case manager
23 (“TCM”), providing claims management services regarding workers’ compensation claims on behalf
24 of Defendant’s customers. Plaintiff’s duties included reviewing medical records, coordinating
25 medical treatment with providers, communications with customers and patients, and other related
26

27
28 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.”

1 activities, all of which are more specific tasks falling under Plaintiff's more general claims
2 management duties.

3 Plaintiff worked for Defendant in the State of California beginning in or about 2018 through
4 approximately February 2021. Plaintiff began her employment with York Risk Services Group, Inc.
5 ("York"), which was a company offering similar (if not identical) services to Sedgwick. York was
6 acquired by Sedgwick in September 2019. Based on information and belief, York is a subsidiary of
7 Sedgwick.

8 Specifically, Plaintiff alleges she was assigned a caseload of approximately 60 cases.
9 Plaintiff alleges she was required to bill per activity she performed, as it relates to cases assigned to
10 her by Defendant. Plaintiff alleges her billable time was then submitted as an invoice to an insurance
11 company or to Workers' Compensation (*i.e.*, clients of Sedgwick). However, Plaintiff alleges, at
12 times, her billable hours did not include all hours that she worked for Sedgwick. Furthermore, when
13 Plaintiff's billable hours exceeded forty (40) hours of work in a workweek, Plaintiff alleges she was
14 not compensated for all billable hours of work. Accordingly, Plaintiff alleges she did not receive,
15 and Defendant frequently refused to pay her, all of the compensation she was entitled to when she
16 worked over forty (40) hours in a given workweek or over eight (8) hours in a workday for
17 Defendant. Plaintiff alleges this would often result in up to four (4) hours per day, or more, of
18 uncompensated work hours.

19 Plaintiff also alleges that she and the Aggrieved Employees were required to work without
20 compliant meal and rest periods (California Labor Code §§ 226.7 & 512 and California Wage Order
21 4-2001, §§ 11(A), 12(A)) as she alleges Sedgwick failed to fully relieve Plaintiff and the Aggrieved
22 Employees while on their meal or rest period and then did not pay mandatory, corresponding
23 penalties. Plaintiff further alleges that because of its violations of state law, Defendant failed to
24 provide accurate, itemized wage statements to Plaintiff and the Aggrieved Employees (Cal. Labor
25 Code §§ 226, 1174, 1174.5); and failed to pay them all wages due immediately upon discharge and
26 within the time required by law after their employment ended (Cal. Labor Code §§ 201-203).

27 On June 9, 2021, Plaintiff provided written notice by online filing to the LWDA and by
28 certified mail to Defendant of the specific provisions of the California Labor Code alleged to be

1 violated, including facts and theories to support the alleged violations, in accordance with California
2 Labor Code Section 2699.3. Plaintiff's written notice was accompanied by the requisite filing fees of
3 seventy-five dollars (\$75). That same day, the LWDA PAGA Administrator confirmed receipt of the
4 written notice and assigned PAGA Case Number LWDA-CM-834484-21. (Arbuckle Decl., ¶ 7, Ex.
5 4.) The 65-day notice period for the LWDA to investigate expired and the LWDA did not notify
6 Plaintiff's counsel of an intent to investigate the claims at issue in this action. (*Ibid.*)

7 The Parties agreed to mediate with Honorable Jan M. Adler (Ret.), an experienced mediator
8 and former California magistrate judge knowledgeable regarding PAGA and the wage and hour
9 claims at issue in this action. Prior to the mediation, Plaintiff conducted significant investigation and
10 discovery of the facts and law. Defendant produced numerous documents relating to its policies,
11 practices, and procedures regarding paying non-exempt employees working in California for all
12 hours worked, overtime, meal and rest period policies, payroll and operations policies, and more.
13 Defendant also produced the time and pay records for 50% of the Aggrieved Employees, and
14 sufficient records and data for Plaintiff to determine the number of Aggrieved Employees and the
15 number of pay periods in the PAGA Period and to evaluate the merits of their claims. The Parties
16 agree that the above-described investigation and evaluation, as well as the information exchanged
17 during the settlement negotiations, are more than sufficient to assess the merits of the Parties'
18 positions and to compromise the issues on a fair and equitable basis. (Arbuckle Decl., ¶ 9.)

19 The Parties engaged in a full-day mediation session with Judge Adler (Ret.) on December 5,
20 2023. Plaintiff's theories of PAGA liability asserted at mediation consisted of the following:

- 21 (a) Defendant's policy or practice of requiring Plaintiff and the non-party Aggrieved
22 Employees to work off-the-clock without any compensation resulted in violations of the
23 California Labor Code's overtime wage payment provisions. Cal. Labor Code §§ 510,
24 1194, 1771, 1774.
- 25 (b) Defendant's policy or practice of requiring Plaintiff and the non-party Aggrieved
26 Employees to work without proper meal and rest periods resulted in violations of the
27 California Labor Code. California Labor Code §§ 226.7 & 512 and California Wage
28 Order 4-2001, §§ 11(A), 12(A). Defendant did not pay mandatory penalties when it failed

1 to fully relieve Plaintiff and non-party Aggrieved Employees of all duties for meal and
2 rest periods. Cal. Labor Code § 226.7 and California Wage Order 4-2001, §§ 11(B),
3 12(B).

4 (c) Defendant's failure to pay proper compensation to Plaintiff and the non-party Aggrieved
5 Employees; failure to provide accurate, itemized wage statements and to keep and furnish
6 accurate records of hours worked (Cal. Labor Code §§ 226, 1174, 1174.5); and failure to
7 pay them all wages due immediately upon discharge and within the time required by law
8 after their employment ended (Cal. Labor Code §§ 201-203) is unlawful and constitutes
9 violations of the California Labor Code, each actionable under PAGA.
10 (Arbuckle Decl., ¶¶ 18, 20.)

11 Defendant denies these contentions on various factual and legal grounds. Defendant
12 maintains that it did not violate the Labor Code and that it has compliant policies and procedures to
13 ensure that its employees are compensated for all hours worked and receive meal and rest periods in
14 compliance with California law, which includes paying employees even if they work unauthorized
15 hours. Sedgwick contends it compensates employees for all time worked and recorded in the
16 timekeeping system and pays for overtime hours even if not authorized. Sedgwick further contends it
17 does not require employees to work overtime without pay and continually reiterates that off-the-
18 clock work is prohibited. Sedgwick also contends that because Plaintiff and other TCMs in
19 California work remotely, they are free to take meal and rest periods when needed. Sedgwick also
20 pays meal period premiums for late, short, and missed meal periods. Further, Sedgwick disputes that
21 Plaintiff's and other TCMs' billing records are indicative of the time they actually spent working;
22 rather, Sedgwick contends the nature of billing time in six-minute increments and the TCMs' ability
23 to multi-task may result in a higher number of billed hours than recorded hours worked. As a result,
24 Defendant contends Plaintiff will be unable to demonstrate that Sedgwick knowingly and
25 intentionally violated the Labor Code or that it acted willfully, as Sedgwick has compliant policies
26 and practices and it was not aware that TCMs may have been working off-the-clock or not taking
27 their meal and rest periods. For the same reasons, Defendant contends it would be unjust, arbitrary,
28 oppressive, or confiscatory to award maximum civil penalties under PAGA, and enhanced penalties

are not warranted because Sedgwick has not been notified by the Labor Commissioner or a court that it has engaged in any unlawful practice with respect to the TCMs.

Through arm's length negotiations with the assistance of the mediator, the Parties reached an agreement to settle the PAGA claims in this action leading to the signing of a settlement agreement. (Arbuckle Decl., at ¶ 10.)

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 prevail on her legal theories, the difficulty of proving violations as to all or most employees at issue in an efficient 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 Judge Adler (Ret.). (*Ibid.*)

III. TERMS OF THE PAGA SETTLEMENT

The PAGA settlement is subject to Court approval consistent with Labor Code §2699(1)(2). (Arbuckle Decl., **Ex. 1**, Agreement at Section 6, p. 8.) The Agreement negotiated by the Parties provides for a Gross Settlement Amount of \$250,000 to resolve the Released PAGA Claims. From this Gross Settlement Amount of \$250,000, there is a deduction of attorney's fees, subject to Court approval in the amount of \$62,500.00 (which is 25% of the Gross Settlement Amount), reimbursement of reasonable incurred costs in an amount not to exceed \$10,000, and settlement administration costs not to exceed \$2,500. (*Id.* at Section 3, pp. 4-5.)² After these deductions, the amount remaining comprises the "PAGA Penalties" or "Net Settlement Amount," which is estimated to be no less than \$175,000.

Seventy-five percent (75%) of the PAGA Penalties (no less than \$131,481.49) will be paid to the LWDA and the remaining twenty-five percent (25%) of the PAGA Penalties (no less than \$43,750) will be paid to the Aggrieved Employees as Individual PAGA Payments. (*Id.* at ¶ 3.2.3.)

² If the Court approves attorney's fees and/or litigation expenses less than the amounts requested, the Administrator will allocate the remainder of these amounts to the Net Settlement Amount. (Arbuckle Decl., **Ex. 1** at Section 3, pp. 4-5.) To the extent the settlement administration expenses are less, or the Court approves payment less than \$2,500, the Administrator will allocate the remainder of this amount to the Net Settlement Amount. (*Id.*)

1 This 75/25 allocation is required by Labor Code §2699 as explained by *ZB, N.A. v. Superior Court*, 8
2 Cal.5th 175 (2019).

3 The Individual PAGA Payment for each Aggrieved Employee shall be the Aggrieved
4 Employee's *pro rata* share of 25% of the PAGA Penalties calculated according to the number of Pay
5 Periods the Aggrieved Employee worked during the PAGA Period.³

6 For mediation, Defendant represented that there were approximately thirty-seven (37)
7 Aggrieved Employees who collectively worked approximately 1,238 pay periods through January
8 31, 2024. (*Id.* at ¶ 4.1, p. 5.)

9 Upon entry of final judgment, the Released Parties⁴ shall be entitled to a release from
10 Plaintiff, on behalf of the State of California and the LWDA, and the Aggrieved Employees, for any
11 PAGA claims only, which means all claims for civil penalties, attorneys' fees, and costs recoverable
12 under PAGA that were alleged, or reasonably could have been alleged, based on the facts stated in
13 the operative Complaint, and/or the PAGA Notice letters submitted by Plaintiff to the LWDA. (*Id.* at
14 Section 5, pp. 6-7.) PAGA Counsel is also releasing the Released Parties from all claims for PAGA
15 fees incurred in connection with this action. (*Id.* at ¶ 5.3, p. 7.) The release provided for by the
16 PAGA Settlement Agreement was modeled on the release contained in the Los Angeles Superior
17 Court's model PAGA settlement agreement. (Arbuckle Decl., at ¶ 12.)

18 Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the
19 Administrator no later than thirty (30) days after the Effective Date.⁵ (Arbuckle Decl., **Ex. 1** at ¶ 4.3,

20
21 ³ "PAGA Period" means the following: Sedgwick resolved a prior PAGA action on behalf of an
22 acquired company, York Risk Services Group, Inc. ("York"). The settlement in *Sumers/Warner v.*
23 *York Risk Services Group, Inc.*, included all of York's non-exempt employees in California through
24 October 31, 2020. Thus, for those Aggrieved Employees who were involved in the *Sumers/Warner*
25 settlement, the relevant PAGA Period runs from November 1, 2020, up to the date of entry of an Order
Approving the PAGA Settlement, whereas the PAGA Period for all other Aggrieved Employees is
from June 9, 2020, up to the date of entry of an Order Approving the PAGA Settlement (collectively
referred to herein as "the PAGA Period"). (Arbuckle Decl., **Ex. 1** at ¶ 1.19, p. 2.)

26 ⁴ "Released Parties" means Sedgwick and all of its parent, subsidiary, and affiliated and
27 related companies and entities, as well as its/their officers, directors, investors, owners, members,
shareholders, employees, partners, agents, attorneys, insurers, predecessors, successors, assigns, and
any entities or partnerships. (Arbuckle Decl., **Ex. 1** at ¶ 1.26, p. 3.)

28 ⁵ "Effective Date" means the date by when both of the following have occurred: (a) the Court
enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The

p. 5.) Within ten (10) days after Sedgwick funds the Gross Settlement Amount, the Administrator will issue payment for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Fees Payment, and the PAGA Counsel Litigation Expenses Payment. Disbursement of the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual PAGA Payments. (*Id.* at ¶ 4.4, p. 5.)

Pursuant to California Labor Code Section 2699(1)(2), Plaintiff is providing a copy of the settlement agreement and this motion to the LWDA concurrently with the filing of this Motion for settlement approval, as set forth in the accompanying proof of service in compliance with Labor Code section 2699(1)(2). (Arbuckle Decl., at ¶¶ 14, 19.) In addition, Plaintiff shall submit to the LWDA a copy of the Court's judgment and order approving the Agreement within ten (10) days after entry of judgment or order. (*Id.*)

Per the Court's Case Management Order, section D(10), any uncashed checks will be transmitted to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (Arbuckle Decl., **Ex. 1** at ¶ 4.4.3, p. 6.)

IV. THE PARTIES HAVE SETTLED THE PAGA CLAIMS

The claims before this Court are solely the representative claims under PAGA on behalf of the State of California and allegedly Aggrieved Employees of Defendant in California for civil penalties pursuant to the PAGA. The parties have agreed to settle this PAGA action in its entirety after investigation and an arm's length mediation session. 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

Judgment is final as of the latest of the following occurrences: (a) the sixty-fifth (65th) calendar day after Judgment is entered, provided no motion to intervene or motion to vacate the Judgment, appeal, writ, or other appellate proceeding has been filed; or (b) the seventh (7th) calendar day after any motion to intervene or motion to vacate the Judgment, appeal, writ, or other appellate proceeding opposing the Agreement has been finally dismissed with no material change to the terms of this Agreement and there is no right to pursue further remedies or relief, whichever is later. (Arbuckle Decl., **Ex. 1** at ¶ 1.9, p. 1.)

1 release the individual claims, if any, of the PAGA Aggrieved Employees. It only settles claims under
2 PAGA. This settlement does not release any claim that is not a PAGA claim.⁶

3 A PAGA Counsel Fees Payment equal to 25% of the Gross Settlement Amount (\$62,500) and
4 a PAGA Counsel Litigation Expenses Payment in an amount not to exceed \$10,000, subject to this
5 Court's approval, will be paid to PAGA Counsel as part of the settlement in accordance with California
6 Labor Code § 2699(g)(1), as set forth in the Agreement. Lastly, payment to the Administrator in an
7 amount not to exceed \$2,500 to perform the administrative duties to distribute the settlement money
8 shall also be paid from the Gross Settlement Amount. (Arbuckle Decl., ¶¶ 11-16; Declaration of Jodey
9 Lawrence ("Lawrence Decl."), ¶ 14.)

10 **V. PLAINTIFF REQUESTS REVIEW AND APPROVAL OF THE SETTLEMENT OF**
11 **THE PAGA CLAIM**

12 Labor Code § 2699(l)(2) requires that the Court "review and approve any settlement of any
13 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
14 agency at the same time that it is submitted to the court." While PAGA actions are not class actions,
15 the PAGA approval standard has class action-like components for approval. As a leading appellate
16 court opinion explains, the plain language of PAGA is consistent with "a standard requiring the trial
17 court to determine independently whether a PAGA settlement is fair and reasonable. . . ." *Moniz v.*
18 *Adecco USA, Inc.*, 72 Cal. App. 5th 56, 76 (2021). Relevant factors for a PAGA settlement include the
19 "strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation . . .
20 the amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
21 the experience and views of counsel, the presence of a governmental participant. . . ." *Id.* The *Moniz*
22 court held that "a trial court should evaluate a PAGA settlement to determine whether it is fair,
23 reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter
24 future ones, and to maximize enforcement of state labor laws." *Id.* at 77; *see also Basili v. Allegiant*
25 *Air, LLC*, 2019 U.S. Dist. LEXIS 228250, at *8 (C.D. Cal. July 1, 2019). A PAGA settlement should
26 be approved when "a PAGA plaintiff has adequately represented the state's interests, and hence the

27 ⁶ As explained by the Supreme Court in *ZB, N.A.*, 8 Cal. 5th at 196: "Nonparty employees are
28 bound by the judgment in an action under the PAGA, but only with respect to recovery of civil
penalties."

1 public interest.” *Moniz*, 72 Cal. App. 5th at 89. Consequently, the Parties respectfully ask the Court to
2 review and approve the settlement of the PAGA claims pursuant to the Parties’ Agreement, including
3 the Gross Settlement Amount to be paid as part of the settlement, for the reasons set forth below.

4 **A. The Gross Settlement Amount to Be Paid Is Fair and Reasonable**

5 The Gross Settlement Amount is fair and reasonable and therefore should be approved. Here,
6 the Gross Settlement Amount of \$250,000 represents a gross settlement value of \$6,756.76 per
7 Aggrieved Employee. (Arbuckle Decl., at ¶ 11 (gross amount divided by number of TCMs (37).)

8 Plaintiff raised two main factual issues in this case. The first was whether Defendant required
9 Plaintiff and other TCMs to work more hours than they were compensated for because of
10 discrepancies between the time reflected on their paystubs versus the time that they billed to
11 customers. (Arbuckle Decl., **Ex. 5**, Pl’s First Am. Compl., ¶¶ 12-32.) Plaintiff also alleged that
12 Plaintiff and other TCMs were not afforded meal and rest breaks that complied with the California
13 Labor Code and the relevant IWC Wage Order. (*Id.* at ¶¶ 33-37.) Consequently, Plaintiff pleaded
14 that Defendant violated:

- 15 - California Labor Code §§ 510, 1194 (requiring overtime compensation at a rate of one
16 and one-half times the regular rate of pay for work in excess of eight (8) hours in one
17 workday, in excess of forty (40) hours in one workweek, and the first eight (8) hours
18 worked on the seventh (7th) day of work; and at a rate of twice the regular rate of pay for
19 work in excess of eight (8) hours on the seventh (7th) day of a workweek) (*Id.* at ¶ 48.)
 - 20 - California Labor Code §§ 226.7, 512 (requiring employers to provide compliant meal and
21 rest breaks or pay statutory penalties of one additional hour of pay weekly if meal or rest
22 breaks are not provided). (*Id.* at ¶ 49.)
 - 23 - California Labor Code §§ 226, 1174, 1174.5 (requiring accurate itemized earning
24 statements) (Ex. 5, Pl’s First Am. Compl., ¶ 50.)
 - 25 - California Labor Code §§ 201-203 (establishing “waiting time” penalties for employers
26 who do not pay all unpaid, earned wages immediately at the time of discharge). (*Id.* at
27 ¶ 50.)
- 28

1 Defendant provided the length of employment of the allegedly Aggrieved Employees for the
2 period between June 9, 2020, through July 19, 2023. (*See* Arbuckle Decl., **Ex. 6**, PAGA
3 Calculations.) Those employment dates reflect 2,498 weeks of work. (*See ibid.*) Given that the
4 allegedly Aggrieved Employees were paid bi-weekly, this leads to 1,249 individual violations with
5 respect to the majority of the PAGA allegations. (*See ibid.*) In that period, thirty-seven (37)
6 employees were allegedly employed as TCMs. (*See ibid.*)

7 Plaintiff calculated the total penalties under two models, a typical model and under the
8 standard set forth in *Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 3 F.4th 1127. In that case, the
9 Ninth Circuit determined that subsequent violation penalties do not accrue until an employer is
10 notified of its violations, at minimum by the notice provided by a representative employee in a
11 PAGA action. *Id.* at 1144. Under the standard model, Defendant could be liable for approximately
12 \$1,159,200.00 in penalties, but under *Bernstein* the number is reduced to \$650,592.86. (*See*
13 Arbuckle Decl., **Ex. 6**, PAGA Calculations.)

14 Plaintiff believes that her strongest claims relate to the overtime claims and the consequent
15 issues with wage statements as to her and other Aggrieved Employees. Given Plaintiff's contention
16 regarding the documented disparity between billing records and wage statements, the likelihood of
17 imposition of damages as to those categories of alleged violation are the highest. Under *Bernstein*,
18 the total penalties attributable to such damages are \$189,735.71. This settlement represents 79% of
19 that total number. (Arbuckle Decl., ¶ 23.)

20 Plaintiff has adduced and Defendant has disclosed no evidence that would tend to indicate
21 that Defendant's alleged violations of the law were knowing and intentional. Indeed, Defendant was
22 a successor in interest to York, and came to liability from its acquisition of that entity. Furthermore,
23 Sedgwick contends that it has compliant policies and practices and it was not aware that TCMs
24 (working remotely) may have been working off-the-clock or not taking their meal and rest periods.
25 Accordingly, Defendant would likely be able to avoid any determination as to intent to violate the
26 law. (*Id.* at ¶ 24.)

27 This PAGA Settlement amount compares favorably to the estimated amount of PAGA civil
28 penalties. Specifically, Plaintiff calculated that the maximum amount of PAGA civil penalties was

1 potentially \$1,159,200.⁷ (Arbuckle Decl., ¶¶ 21-22, **Ex. 6**.) Importantly, however, these calculations
2 assumed that Plaintiff could prove violations every pay period for every allegedly Aggrieved
3 Employee, and they were performed at the maximum statutory rate for the penalties, when in fact, it
4 is likely that any penalties awarded would be at a lower rate. And under *Bernstein*, the number is
5 reduced to \$650,592.86. (*Id.*) California Labor Code Section 2699(e) (2) permits a Court to award a
6 lesser amount than the maximum civil penalty if based on the facts and circumstances to do
7 otherwise would result in an award that is “unjust, arbitrary and oppressive or confiscatory.”

8 Under PAGA, courts have considerable discretion to reduce the penalty award. In *Fleming v.*
9 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. Aug. 12, 2011), a federal court reduced PAGA
10 penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum
11 penalties “unjust” given that the employees had suffered no injuries. Some trial courts have actually
12 awarded no civil penalties, even when Labor Code violations are established. *See Makabi v. Gedalia*,
13 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were
14 awarded by the Los Angeles County Superior Court as to certain defendants) (unpublished decision);
15 *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 8,
16 2016) (PAGA penalties denied after trial).

17 To recover any PAGA penalties here, Plaintiff would be required at trial to prove each of the
18 underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist.
19 LEXIS 13126, *10 (C.D. Cal. 2011) (“Given the statutory language [of PAGA], a plaintiff cannot
20 recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor
21 Code by the defendant.”). Moreover, Plaintiff would need to prove that each Aggrieved Employee
22 suffered a pleaded violation for each period the employee worked.

23 As set forth above, Defendant maintains that it has compliant policies, that Plaintiff and the
24 Aggrieved Employees were properly compensated, and that it did not violate the Labor Code under
25

26 ⁷ Stacking is where more than one civil penalty is imposed in a pay period for the same
27 conduct. The valuation of \$1,159,200 is the civil penalty amount without stacking. If stacking is
28 permitted, then the valuation increases with each additional penalty added to each pay period.
Plaintiff, however, is not aware of any PAGA award which permitted stacking and, in the cases cited
herein, only one penalty per pay period was assessed.

1 any of Plaintiff's theories. Accordingly, Defendant disputes and denies Plaintiff's allegations and
2 claims asserted in both the PAGA Notice and the operative Complaint, which are resolved by the
3 settlement agreement. Defendant asserted additional defenses to the PAGA claim, not only as to
4 liability but also as to the amount of any civil penalties that could be awarded if Plaintiff prevailed.
5 Even if Plaintiff were to prevail on any of the claims, Defendant could argue that no penalties prior
6 to the PAGA notification should be awarded because the violations were not knowing or intentional.
7 These defenses present a risk to the PAGA claims and the potential that some or all of the PAGA
8 penalties sought may not be awarded. (Arbuckle Decl., ¶¶ 24-25.)

9 Given Defendant's potential defenses to the violations at issue and the risks and costs of
10 continued litigation, Plaintiff and her attorneys believe that the PAGA Settlement is fair and
11 reasonable. (*Id.* at ¶¶ 23-25.) *See, e.g., Hartley v. On My Own, Inc.* (E.D. Cal. Aug. 25, 2020) 2020
12 WL 5017608, at *4 (approving settlement with PAGA penalty of 3.47% of maximum potential
13 penalties); *Ramirez v. Benito Valley Farms, LLC*, No. 16-cv-4708-LHK, 2017 U.S. Dist. LEXIS
14 137272, at *14-15 (N.D. Cal. Aug. 25, 2017) (approving settlement paying PAGA penalties of less
15 than 4.5% of maximum penalties).

16 Defendant has similarly concluded that it is desirable that the action is settled in the manner
17 and upon the terms and conditions set forth in the Agreement in order to avoid further expense,
18 inconvenience, and distraction of further legal proceedings, as well as the uncertainty of litigation. As
19 evidenced by the settlement agreement, Defendant has determined that it is desirable and beneficial to
20 put to rest the claims in this action and Defendant agrees that the PAGA Settlement is fair, reasonable,
21 and adequate.

22 PAGA Counsel have significant experience litigating wage and hour claims including claims
23 for PAGA penalties, and the PAGA settlement here is similar to or greater than similar settlements
24 that courts have approved. (Arbuckle Decl., ¶ 4.) The PAGA Settlement, along with the other terms
25 of the proposed settlement, were negotiated by experienced counsel at arm's length with the assistance
26 of a private mediator. (Arbuckle Decl., ¶ 10.)

27 As set forth in the accompanying proof of service, the LWDA has been provided notice of this
28 motion and the Agreement. The decision of the LWDA to accept the PAGA Settlement and not oppose

1 the motion should be given considerable weight. This is not a situation where the Court needs to be
2 concerned about the rights of absent employees as in a class settlement, as this PAGA-only settlement
3 does not release the individual claims of absent employees other than PAGA claims, and the LWDA
4 is a sophisticated government entity that is more than able to look out for its own rights.

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

6 PAGA Counsel seek approval of attorney's fees from the PAGA settlement in the amount of
7 \$62,500, representing 25% of the \$250,000 Gross Settlement Amount.

8 First, the requested fees are justified by the result achieved. PAGA Counsel negotiated a
9 recovery of \$250,000, and this result justifies the requested fees equal to 25% of this recovery. This
10 percentage is below the standard contingent recovery percentage of one-third, and this percentage is
11 below that which was expressly approved as reasonable by the Supreme Court. *Laffitte v. Robert*
12 *Half Int'l Inc.*, 1 Cal.5th 480, 504, (2016); *see also Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.
13 App. 5th 521, 545 (2021) (recognizing that “‘fee awards in class actions average around one-third of
14 the recovery’” regardless of “‘whether the percentage method or the lodestar method is used.’”
15 (*quoting Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008))).

16 Second, the fee award is justified by the work performed and contributions to the case. As
17 discussed in the accompanying Declaration of Melinda Arbuckle at ¶¶ 28-29, PAGA Counsel's
18 current lodestar of approximately \$88,340.00, is less than the 25% fee sought here by PAGA
19 Counsel.

20 Generally, the Ninth Circuit and California Courts award positive multipliers between 2 to 4
21 times the lodestar to reward counsel for accepting the contingent risks of the litigation or obtaining
22 good results. *See, e.g., Laffitte*, 1 Cal. 5th at 506 (approving one-third fee award with multiplier
23 between 2.03 and 2.13); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th 278 (2010) (noting
24 reasonable multipliers of 2.0 to 4.0 are often applied and affirming 1.75 multiplier); *Wershba v.*
25 *Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (noting that multipliers can range from 2 to 4
26 or higher); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014)
27 (awarding one-third of fund, which was a 2.52 multiplier of lodestar); *Boyd v. Bank of America*,
28 2014 WL 6473804, at *11 (C.D. Cal. 2014) (awarding one-third of fund, which was a 2.58 multiplier

1 of lodestar); *Hopkins v. Stryker Sales Corp.*, No. 11-CV-02786-LHK, 2013 WL 496358, at *6 (N.D.
2 Cal. Feb. 6, 2013) (approving fee award that represented a multiplier of 2.76 as falling within the
3 “majority” range for risk multipliers). Here, where the fee award is less than the lodestar,
4 representing a negative multiplier, there can be no dispute that the fee award is reasonable.⁸

5 Finally, as to litigation expenses, PAGA Counsel seeks approval of litigation expenses in the
6 amount of \$9,691.35. PAGA counsels’ expenses are documented in the accompanying Declaration
7 of Melinda Arbuckle at ¶ 29.

8 **VII. CONCLUSION**

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

11 Dated: June 14, 2024

WAGE AND HOUR FIRM

12 By: s/ Melinda Arbuckle
13 Melinda Arbuckle

14 Attorney for Plaintiff Holly Garrett

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27 ⁸ The lodestar amount is presumptively the reasonable fee amount.” *Topete v. Ramos*
28 *Furniture*, 2018 U.S. Dist. LEXIS 142033 (E.D. Cal. 2018), citing *Van Gerwen v. Guarantee Mut.*
Life Co., 214 F. 3d 1041, 1045 (9th Cir. 2000).