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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

MARIA COCA OSPINA, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

PRECISE INDUSTRIES, INC., a corporation,
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 30-2021-01228457-CU-OE-CXC

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

*[[Assigned for all purposes to Judge William
Claster, Dept. CX-101]]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO APPROVE PAGA
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[[Filed concurrently with: Declarations of
Justin F. Marquez and Maria Coca Ospina;
and [Proposed] Order]]*

Date: February 9, 2024
Time: 9:00 a.m.
Dept: CX-101

Complaint filed: October 26, 2021
FAC filed: February 9, 2022
Trial date: Not Set

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 9, 2024, at 9:00 a.m., in Department
3 CX-101 of the Orange County Superior Court located at 751 West Santa Ana Blvd, Santa Ana,
4 CA 92701, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769 *et*
5 *seq.*, Plaintiff Maria Coca Ospina (“Plaintiff”) will, and hereby does, move for an order under
6 Labor Code section 3699(1)(2) approving the PAGA Settlement Agreement (“Settlement”)
7 entered into by Plaintiff and Defendant Precise Industries, Inc. (“Defendant”).

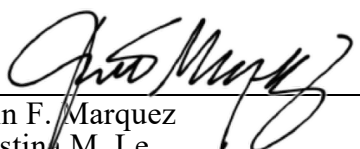
8 Pursuant to Labor Code §2699(1)(2), the settlement of Plaintiff’s PAGA claims requires
9 the Court’s approval. The basis for this motion is that Plaintiff and Defendant reached and fully
10 executed a Settlement of the above-entitled case¹, Case No. 30-2021-01228457-CU-OE-CXC, that
11 disposes of the matter entirely and is fair, reasonable, and serves the purposes of the PAGA statute.
12 The Settlement includes all persons who were engaged by Defendant as hourly-paid employees in
13 California at any time from October 26, 2020 to April 4, 2023. The Settlement is fair, adequate,
14 and reasonable, and it provides for civil penalties to be distributed to Plaintiff, other aggrieved
15 employees, and the California Labor & Workforce Development Agency.

16 This motion is based on this Notice, the attached Memorandum of Points and Authorities,
17 the Declarations of Justin F. Marquez and Maria Coca Ospina, and attached exhibits, as well as the
18 records on file in this action and any argument the Court is presented with at the time of the hearing.

19 Respectfully submitted,

20 Dated: January 4, 2024

WILSHIRE LAW FIRM

21
22 By: 

Justin F. Marquez
Christina M. Le
Arsiné Grigoryan

23
24 Attorneys for Plaintiff

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27
28 ¹ Please note that Plaintiff will be submitting a request for dismissal of the class claims
without prejudice concurrently with this Motion.

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.....	iii
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. FACTUAL AND PROCEDURAL BACKGROUND	1
III. ARGUMENT	2
A. The Terms of the PAGA Settlement	3
B. The Terms of the PAGA Settlement Are Fair and Should Be Approved	4
1. The Settlement Was Reached Through Arms-Length Bargaining.	6
2. The Settlement Is Based On Sufficient Investigation and Discovery.	7
3. Plaintiff’s Counsel Have Extensive Experience in PAGA Actions.	7
4. Assessing the Amount in Controversy and the Risks of Trial.	7
C. The PAGA Representative Service Payment is Reasonable.....	10
D. The Requested Attorneys’ Fees and Costs Are Reasonable Under the Catalyst Theory.	12
1. Under the Catalyst Theory, Class Counsel’s Fees Should be Calculated Based on the Total Compensation Received by the Settlement Class as a Result of the Litigation.....	12
2. The Requested Attorneys’ Fees are also Reasonable Under Percentage Theory	14
E. Settlement Administrator Costs Are Reasonable.	16
IV. CONCLUSION.....	17

TABLE OF AUTHORITIES

STATE CASES

Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court,

46 Cal.4th 993 (2009)5

Arias v. Superior Court,

46 Cal.4th 969 (2009)6

Cellphone Fee Termination Cases,

186 Cal.App.4th 1380 (2010)..... 11

Chavez v. Netflix, Inc.,

162 Cal.App.4th 43 (2008)..... 14

Chavez v. Saticoy Lemon Ass’n,

2015 WL 5561118 (Cal. Super. Ct. Ventura Cty. Aug. 10, 2015)..... 14

Clavel v. Lupe’s Thousand Oaks Mexican Restaurant, Inc.,

2016 WL 1601221 (Cal. Super. Ct. Ventura Cty. Mar. 25, 2016)..... 14

Dunk v. Ford Motor Co.,

48 Cal.App.4th 1794, 1802 (1996).....6

Kullar v. Foot Locker Retail, Inc.,

168 Cal.App.4th 116 (2008).....6

Malibu Outrigger Bd. of Governors v. Superior Court,

103 Cal.App.3d 573 (1980).....6

Maria P. v. Riles,

43 Cal.3d 1281 (1987) 12

Munoz v. BCI Coca-Cola Bottling Company of Los Angeles,

186 Cal.App.4th 399 (2010)..... 10

Nordstrom Comm’n Cases,

186 Cal.App.4th 576 (2010)..... 15

Stambaugh v. Superior Court,

(1976) 62 Cal.App.3d 231.....6

1	<i>Tipton-Whittingham v. City of Los Angeles,</i>	
2	34 Cal.4th 604 (2004)	13
3	<i>Westside Cmnty. For Independent Living, Inc. v. Obledo,</i>	
4	33 Cal.4d 348 (1983)	12
5	<u>FEDERAL CASES</u>	
6	<i>Aguirre v. DSW, Inc.,</i>	
7	2012 WL 11875296 (C.D. Cal. Nov. 29, 2012).....	15
8	<i>Boyd v. Bank of America Corp.,</i>	
9	2014 WL 6473804 (C.D. Cal. Nov. 18, 2014).....	15
10	<i>Casida v. Sears Holdings Corp.,</i>	
11	2012 WL 253217 (E.D. Cal. Jan. 26, 2012)	4
12	<i>Chu v. Wells Fargo Investments, LLC,</i>	
13	2011 WL 672645 (N.D. Cal. Feb. 16, 2011)	15
14	<i>Franco v. Ruiz Food Prods.,</i>	
15	2012 WL 5941801 (E.D. Cal. Nov. 27, 2012).....	15
16	<i>Garcia v. Gordon Trucking, Inc.,</i>	
17	2012 WL 5364575 (E.D. Cal. Oct. 31, 2012).....	15
18	<i>In re Pacific Enterprises Securities Litig.,</i>	
19	47 F.3d 373 (9th Cir. 1995).....	14
20	<i>In re TD Ameritrade Account Holder Litig.,</i>	
21	2011 WL 4079226 (N.D. Cal. Sept. 13, 2011)	4
22	<i>Linney v. Cellular Alaska Partnership,</i>	
23	151 F.3d 1234 (9th Cir. 1998).....	10
24	<i>Mendez v. Tween Brands, Inc.,</i>	
25	2010 WL 2650571 (E.D. Cal. July 1, 2010).....	4, 5
26	<i>Ochoa-Hernandez v. Cjaders Foods, Inc.,</i>	
27	2010 WL 1340777 (N.D. Cal. Apr. 2, 2010).....	5
28	<i>Officers for Justice v. Civil Service Com.,</i>	

1	688 F.2d 615 (9th Cir. 1982).....	4
2	<i>Thomas v. Aetna Health of Cal., Inc.,</i>	
3	2011 WL 2173715 (E.D. Cal. June 2, 2011)	4
4	<i>Williams v. MGM-Pathe Communications Co.,</i>	
5	129 F.3d 1026 (9th Cir. 1997).....	14
6	<u>STATE STATUTES</u>	
7	Cal. Code Civ. Pro. § 384	3
8	Cal. Code Civ. Proc. § 382.....	4
9	Cal. Code Civ. Proc. §1021.5.....	12
10	Cal. Lab. Code § 1194	12
11	Cal. Lab. Code § 2699	passim
12	Cal. Lab. Code § 2699.3	2
13	Cal. Lab. Code § 2802(c).....	12
14	<u>FEDERAL STATUTES</u>	
15	Fed. R. Civ. P. 23(e)	5
16	<u>RULES</u>	
17	Cal. Rules of Court, Rule 3.769	4, 5

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On October 26, 2021, Plaintiff Maria Coca Ospina (“Plaintiff”) filed a Private Attorneys General Act of 2004 (“PAGA”) (Cal. Lab. Code §§ 2699, et seq.) representative action against Defendant Precise Industries, Inc. (“Defendant”). Plaintiff and Defendant then engaged in vigorous, arms-length negotiations regarding the resolution of this matter. Following an all-day mediation presided over by third-party neutral Eve Wagner, Esq., the Parties ultimately agreed to settle Plaintiff’s PAGA claim for \$375,000.00, which will provide significant civil penalties to the California Labor & Workforce Development Agency (“LWDA”) and other aggrieved employees. This is in addition to \$236,000.00 Defendant already paid to aggrieved employees in individual settlement agreements.

Labor Code § 2699(1)(2) provides that “[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the [LWDA] at the same time that it is submitted to the court.” Plaintiff submitted the proposed Settlement to the LWDA on or about January 4, 2024, pursuant to Labor Code § 2699(1)(2). Declaration of Justin F. Marquez [“Marquez Decl.”], ¶ 10, Ex. 2. The Parties now seek Court approval of the Settlement. For the reasons discussed in detail below, the Court should issue an order approving the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a metal fabrication company in California. *Id.* at ¶ 2. Plaintiff was employed by Defendant as a non-exempt employee during the relevant PAGA period who worked in the Sheet Metal department of Defendant’s Orange County office from roughly May 2021 to approximately July 2021. *Id.*

Plaintiff’s PAGA claim stems from Defendant’s alleged failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all earned wages twice per month, failure to maintain accurate records of hours worked and meal periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify for necessary business

1 expenditures. *Id.* at ¶ 3.

2 On October 26, 2021, Plaintiff provided notice to the LWDA and Defendant of the
3 violations described above, as required by Labor Code § 2699.3(a)(1). *Id.* at ¶ 5. Pursuant to
4 Labor Code § 2699.3(a)(2)(A), the LWDA had 65 calendar days to notify Plaintiff and Defendant
5 whether it intended to investigate the alleged violations. *Id.* However, the LWDA did not do
6 so. *Id.*

7 After Plaintiff filed her complaint, the Parties engaged in extensive settlement
8 discussions. *Id.* at ¶ 8. To facilitate settlement, Defendant provided Plaintiff with the applicable
9 policies in effect during the relevant time period, data points for the aggrieved employees, and
10 information regarding the number of releases it obtained as a result of its “Pick Up Stix”
11 campaign conducted before the mediation. *Id.* Ultimately, after an all-day mediation presided
12 over by third-party neutral Eve Wagner, Esq., the Parties agreed to settle the PAGA claim for
13 \$375,000.00, which includes all persons who were engaged by Defendant as hourly-paid
14 employees in California at any time from October 26, 2020 to April 4, 2023. *Id.* at ¶ 10. There
15 are approximately 138 aggrieved employees covered by the settlement. *Id.* Plaintiff submitted
16 the Settlement to the LWDA on or about January 4, 2024, pursuant to Labor Code § 2699(1)(2).
17 A true and correct copy of the Settlement executed by the Parties, along with the confirmation
18 that the Settlement was submitted to the LWDA, is attached to the Declaration of Justin F.
19 Marquez as **Exhibit 2**. Marquez Decl., ¶ 8; Ex. 2. Additionally, attached as **Exhibit 3** to the
20 Declaration of Justin F. Marquez is the Settlement Notice that will be sent to the PAGA
21 Employees with payment after the Court enters a Judgment on its Order Approving the PAGA
22 Settlement. (*Id.*)

23 **III. ARGUMENT**

24 PAGA permits an aggrieved employee to sue an employer for civil penalties associated with
25 the employer’s alleged violations of the Labor Code. Cal. Lab. Code § 2699(a). Under the statute,
26 of the amount paid to settle a claim for PAGA penalties, twenty-five percent (25%) is payable to
27 the aggrieved employees and seventy-five percent (75%) is payable to the LWDA. Cal. Lab. Code
28 § 2699(i).

1 **A. The Terms of the PAGA Settlement**

2 The Settlement provides for a gross Settlement Amount of \$375,000.00 to be distributed
3 to all persons who were engaged by Defendant as hourly-paid employees in California at any
4 time from October 26, 2020 to April 4, 2023 (“PAGA Employees”) and releases claims by the
5 PAGA Employees during this period as well. Of that amount, \$203,866.67 is allocated to
6 Attorneys’ Fees, up to \$20,000.00 is allocated to litigation costs, up to \$10,000.00 is allocated
7 to Settlement Administrator Costs, and \$5,000.00 is allocated as a Service Award to Plaintiff.
8 Settlement, ¶ 3. The Net Settlement Amount after these deductions is \$34,083.33 and will be
9 allocated and disbursed as follows:

10 **Settlement Administration.** The Parties agree that within fifteen (15) days of the Court’s
11 Approval Order, Defendant will send to the Settlement Administrator a list of all the PAGA
12 Employees and their contact information for the purposes of distributing payments to the
13 aggrieved employees. Settlement, ¶4.2. Within fourteen (14) calendar days after the Effective
14 Date, Defendant shall fully fund the Settlement by transmitting the funds to the Settlement
15 Administrator. Settlement, ¶ 4.3. Within fourteen (14) calendar days following the deposit, the
16 Settlement Administrator shall allocate the Gross Settlement Fund and the Net Settlement Fund
17 as set forth in the Settlement Agreement, provide such calculations and distribution plan to
18 counsel for review and approval, and upon approval by counsel, make all approved distributions
19 consistent with the Settlement Agreement and Order of the Court. Settlement, ¶¶ 4.4.

20 If any check issued to an Aggrieved Employee is returned as undeliverable, the Settlement
21 Administrator shall make reasonable efforts to locate the individual by conducting a National
22 Change of Address Search and re-mail the check. Settlement, ¶¶ 4.4.2. Each recipient of
23 settlement proceeds must cash such checks within 180 days from the date of mailing by the
24 Settlement Administrator. Any funds not cashed within 180 days after mailing will be distributed
25 in accordance with California law. The Parties agree that this disposition results in no "unpaid
26 residue" under California Code of Civil Procedure § 384, as the entire Net Settlement Fund will
27 be paid out to Aggrieved Employees, whether or not they all cash their Settlement Checks.
28 Therefore, the Company will not be required to pay any interest on said amount. Settlement, ¶¶

1 4.4.3.

2 **B. The Terms of the PAGA Settlement Are Fair and Should Be Approved**

3 The settlement of a PAGA claim requires court approval pursuant to the operative PAGA
4 statute, which states that the “court shall review and approve any penalties sought as part of a
5 proposed settlement agreement pursuant to this part.” *See* Cal. Lab. Code § 2699(l).

6 As with any settlement, the Court must be mindful in conducting its inquiry that
7 “[s]ettlement is a compromise, which balances the possible recovery against the risks inherent
8 in litigating further.” *In re TD Ameritrade Account Holder Litig.* 2011 WL 4079226, at *9 (N.D.
9 Cal. Sept. 13, 2011). Indeed, “the very essence of a settlement is ... ‘a yielding of absolutes and
10 an abandoning of highest hopes,’” as “it is the very uncertainty of outcome in litigation and
11 avoidance of wasteful and expensive litigation that induce consensual settlements.” *Officers for*
12 *Justice v. Civil Service Com.* 688 F.2d 615, 624-25 (9th Cir. 1982).) As such, “the settlement or
13 fairness hearing is not to be turned into a trial or rehearsal for trial on the merits” or “judged
14 against a hypothetical or speculative measure of what might have been achieved by the
15 negotiators.” *Id.*

16 Although the operative PAGA statute does not set forth the criteria by which a PAGA
17 settlement is to be judged, it is presumed that a reviewing court may utilize some of the factors
18 for review of a class action settlement. However, “a PAGA claim asserted on a non-class
19 representative basis ... is not considered a class action but a law enforcement action, and
20 therefore does not have to meet the requirements of [a class action].” *Casida v. Sears Holdings*
21 *Corp.* 2012 WL 253217, at *3 (E.D. Cal. Jan. 26, 2012) ; *Thomas v. Aetna Health of Cal., Inc.*
22 2011 WL 2173715, at *13 (E.D. Cal. June 2, 2011) ; *Mendez v. Tween Brands, Inc.*, 2010 WL
23 2650571, at *4 (E.D. Cal. July 1, 2010).) Based thereon, a court’s review of a PAGA settlement
24 necessarily implicates the following unique features that render the approval process distinct
25 from approval of a class action settlement under Code of Civil Procedure § 382 and California
26 Rules of Court, Rule 3.769.

27 First, in evaluating the adequacy of the settlement amount, the Court’s focus is not
28 concerned with the amount(s) that “aggrieved employees” are to receive, but rather, must focus

1 on the total settlement amount in achieving PAGA’s objective. Indeed, “[t]he remedy sought in
2 a PAGA suit consists of civil penalties, not individual or class damages.” *Mendez*, 2010 WL
3 2650571 at *4. “Unlike class actions, these civil penalties are not meant to compensate unnamed
4 employees because the action is fundamentally a law enforcement action.” *Ochoa-Hernandez v.*
5 *Cjaders Foods, Inc.* 2010 WL 1340777, at *4 (N.D. Cal. Apr. 2, 2010). Moreover, while “[a
6 PAGA] action is ... designed to protect the public and penalize the employer for past illegal
7 conduct,” a reviewing Court must take into account the fact that settlement of a PAGA claim –
8 like any settlement – involves a “compromise” that stops short of rendering findings of liability
9 and damages. *Mendez*, 2010 WL 2650571 at *4. As such, the Court must not lose sight of the
10 fact that “[u]nlike a class action seeking damages or injunctive relief for injured employees, the
11 purpose of PAGA is to incentivize private parties to recover civil penalties for the government
12 that otherwise may not have been assessed and collected by overburdened state enforcement
13 agencies.” *Ochoa-Hernandez*, 2010 WL 1340777 at *4.

14 Second, consistent with the fact that unnamed employees have no property interest in a
15 PAGA claim,² “[u]nnamed employees need not be given notice of the PAGA claim, nor do they
16 have the ability to opt-out of the representative PAGA claim.” *Ochoa-Hernandez*, 2010 WL
17 1340777 at *4. This renders the approval process of a PAGA settlement distinct from a class
18 action settlement, as there is no need for the Court to employ the “two-step approval process”
19 required under Fed. R. Civ. P. 23(e) and Rule 3.769.³

20 Finally, unlike a class action settlement under Rule 23(e) and Rule 3.769, the scope of
21

22 ² As held by the California Supreme Court, “[t]he Labor Code Private Attorneys General Act of
23 2004 does not create property rights or any other substantive rights” as “[i]t is simply a procedural statute
24 allowing an aggrieved employee to recover civil penalties—for Labor Code violations—that otherwise
would be sought by state labor law enforcement agencies.” (*Amalgamated Transit Union, Local 1756,*
AFL-CIO v. Superior Court 46 Cal.4th 993, 1003 (2009).)

25 ³ Significantly, the “two-step” approval process of Rule 23(e) is required to facilitate “notice” to
26 absent class members, as Rule 23(e) expressly requires notice and an opportunity for absent class members
27 to exclude themselves or object. (*See* Fed. R. Civ. P. 23(e) (“The following procedures apply to a proposed
28 settlement ... (1) The court must direct notice in a reasonable manner to all class members who would be
bound by the proposal.... (4) ... the court may refuse to approve a settlement unless it affords a new
opportunity to request exclusion to individual class members.... (5) Any class member may object to the
proposal if it requires court approval under this subdivision”).) Cal. Rule of Court 3.769 contains similar
rules for State court class actions.

1 release permitted in a PAGA settlement is limited. While “judgment in [a PAGA] action is
2 binding not only on the named employee plaintiff but also on government agencies and any
3 aggrieved employee not a party to the proceeding...the non-party employees, because they were
4 not given notice of the action or afforded any opportunity to be heard, would not be bound by
5 the judgment as to remedies other than civil penalties.” *Arias v. Superior Court* 46 Cal.4th 969,
6 986-87 (2009). Thus, with the exception of the named Plaintiff, the scope of a release in a PAGA
7 settlement is necessarily strictly confined to the PAGA penalties alleged in the complaint, and
8 claims that were or could have been alleged pursuant to PAGA based on the factual allegations
9 in the Complaint. In the case at hand, as the only claims at issue are PAGA claims, those will
10 be the only claims extinguished as a result of this Settlement, with the exception of Plaintiff’s
11 much broader, general personal release against Defendant.

12 California courts have a strong policy in favor of settlement. (*See, e.g., Stambaugh v.*
13 *Superior Court* 62 Cal.App.3d 231, 236 (1976) .) Unlike individual settlements, class action
14 settlements (and representative PAGA settlements) involve a court approval process that exists
15 to prevent fraud, collusion, and unfairness to absent individuals. *Malibu Outrigger Bd. of*
16 *Governors v. Superior Court* 103 Cal.App.3d 573, 578-79 (1980).) In the class action context,
17 there is a presumption of fairness of a class action settlement when: (1) the settlement is reached
18 as a result of arm’s length negotiations; (2) there has been sufficient investigation and discovery;
19 (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*
20 *v. Ford Motor Co.* 48 Cal.App.4th 1794, 1802 (1996). Before approving a class action
21 settlement, a trial court must develop an understanding “of the amount that is in controversy and
22 the realistic range of outcomes of the litigation.” *Kullar v. Foot Locker Retail, Inc.* 168
23 Cal.App.4th 116, 120(2008).

24 The proposed settlement meets all of these factors.

25 **1. The Settlement Was Reached Through Arms-Length Bargaining.**

26 The Parties reached the Settlement after an all-day mediation presided over by Third-
27 party neutral Eve Wagner, Esq. Marquez Decl., ¶¶ 9, 10. The settlement negotiations were at
28 arm’s length and, although conducted in a professional manner, were adversarial. *Id.* at ¶ 9. The

1 Parties went into the mediation willing to explore the potential for a settlement of the dispute,
2 but each side was also prepared to litigate their position through trial and appeal if a settlement
3 had not been reached. *Id.*

4 **2. The Settlement Is Based On Sufficient Investigation and Discovery.**

5 Before the Settlement, Plaintiff's counsel conducted an investigation into the claims
6 alleged by Plaintiff, conducted legal research, and engaged in informal discovery. Based upon
7 the information obtained through informal discovery, Plaintiff's counsel was able to act
8 intelligently and effectively in negotiating the proposed Settlement. *Id.* at ¶ 11.

9 **3. Plaintiff's Counsel Have Extensive Experience in PAGA Actions.**

10 Highly capable and experienced counsel conducted the settlement negotiations.
11 Plaintiff's counsel are respected members of the bar with a strong record of vigorous and
12 effective advocacy for their clients, and they are experienced in handling complex wage and hour
13 class action litigation and PAGA actions. *Id.* at ¶¶ 31-42. Although Plaintiff and counsel were
14 prepared to litigate the claims in this action, they support the proposed Settlement as being in
15 the best interests of the State of California and the aggrieved employees. *Id.* at ¶ 9.

16 **4. Assessing the Amount in Controversy and the Risks of Trial.**

17 Plaintiff remains confident of the merits of Plaintiff's claims. Plaintiff's allegation that
18 Defendant failed to pay Plaintiff and the aggrieved employees all of their owed wages is based on
19 Defendant's alleged failure to pay employees for work performed "off-the-clock." *Id.* at ¶ 12. With
20 respect to the meal period allegation, Plaintiff alleges that Defendant required her and the other
21 aggrieved employees to work in lieu of taking meal periods. *Id.* With respect to the rest period
22 allegation, Plaintiff contends that employees, including herself, were not provided with California-
23 compliant rest periods. *Id.* Despite Plaintiff's contention that this allegation is credible, proving
24 rest period allegations is particularly difficult because rest periods do not have to be recorded and
25 Defendant can argue that the aggrieved employees received all required rest periods, or chose to
26 voluntarily forego their rest periods. *Id.* Lastly, regarding Plaintiff's wage statement claim,
27 Defendant argue that the wage statements issued to employees meet the requirement of Labor
28 Code § 226(a). *Id.* at ¶ 13. Defendant also maintain that any alleged wage statement violation

1 could not be shown to be “knowing and intentional,” and that Plaintiff cannot show that he or
2 any other employee “suffer[ed] injury” as a result of the alleged wage statement violations, as
3 required by Labor Code § 226E for the imposition of penalties. *Id.*

4 Additionally, Plaintiff faced a significant risk that even if the Court did award PAGA
5 penalties, the Court could drastically reduce the penalties based on the discretionary factors
6 contained in Labor Code § 2699(e)(2) (“In action by an aggrieved employee..., a court may
7 award a lesser amount than the maximum civil penalty amount specified by this part if, based on
8 the facts and circumstances of the particular case, to do otherwise would result in an award that
9 is unjust, arbitrary and oppressive, or confiscatory.”). Plaintiff believed there was a legitimate
10 risk of the Court significantly reducing penalties given the technical nature of the alleged
11 violations. Marquez Decl., ¶ 14.

12 Without this settlement, the Parties face preparation for trial, as well as extensive formal
13 discovery efforts and further depositions. *Id.* As a result, the Parties would incur considerably
14 more attorneys’ fees and costs through trial. *Id.* This settlement avoids those risks and the
15 accompanying expense. Thus, this factor favors settlement approval. *Id.*

16 As described above, the proposed Settlement provides a fair and reasonable monetary
17 recovery for the PAGA Employees and the LWDA in the face of the contested claims. Plaintiff
18 estimated Defendant’ realistic exposure for the PAGA penalties as follows:

19 **PAGA Waiting Time Penalties: \$68,525.03**

20 Based on the data points provided by Defendant, there were 39 terminated employees
21 who worked an average of 9.9 hours per workday during the 3-year statute for waiting time
22 penalties. Marquez Decl., ¶ 15. Assuming the maximum waiting time penalty of 30 days and
23 Defendant’s hourly average rate of pay of \$19.72, Defendant’s maximum potential liability for
24 waiting time penalties was \$228,416.76 (39 * \$19.72 * 9.9 hours * 30 days). *Id.* However,
25 Defendant’s contention that the underlying allegations lacked merit led to Plaintiff discounting
26 this maximum exposure by 70% (to \$68,525.03 as Defendant’s reasonable potential liability) to
27 account for the risk of not prevailing on the merits and the Court’s discretion in reducing
28 penalties. *Id.*

1 PAGA Penalties for Unpaid Wages, Meal Period Violations, Rest Period Violations, and
2 Unreimbursed Business Expenses: \$335,280

3 Based on data points provided by Defendant, there are approximately 11,176 pay periods
4 during the relevant time period which presented issues with regard to unpaid wages, meal period
5 violations, rest period violations, and unreimbursed business expenses. Marquez Decl., ¶ 16.
6 Plaintiff acknowledges that when evaluating Defendant’ potential exposure, it is likely that the
7 Court would impose only the initial \$100 violation for all PAGA violations. *See Amaral v. Cintas*
8 *Corp. No. 2* 163 Cal.App⁴th 1157, 1207 (2008) (finding that the “initial” violation rate applies until
9 the employer has been notified that it is violating a Labor Code provision.) Applying the \$100
10 “initial violation” penalty for each of these pay periods, Defendant’ potential PAGA exposure is
11 \$1,117,600.00 (based on 11,176 pay periods). *Id.* However, Defendant’ contention that the
12 underlying allegations lacked merit led to Plaintiff discounting this maximum exposure by 70% to
13 account for the risk of not prevailing on the merits and the Court’s discretion in reducing penalties.
14 (*Id.*)

15 PAGA Penalties for Wage Statement Violations: \$182,400

16 Plaintiff’s expert determined that there were 11,176 pay periods at issue with regard to the
17 wage statement violations claim. Marquez Decl., ¶ 17. Because Plaintiff’s wage statement theory
18 of liability is predicated on Defendant’ issuance of facially deficient wage statements, each of the
19 wage statements issued would carry a potential PAGA penalty. *Id.* As Labor Code § 226(e)
20 specifies what penalties are recoverable for violations of § 226(a) (\$50 penalty per initial violation
21 and a \$100 penalty per subsequent violation, up to an aggregate penalty of \$4,000 per employee),
22 the PAGA penalties recoverable through this section mirror the penalties available through § 226(e).
23 Labor Code § 2699(a). Accordingly, Defendant’s maximum exposure for its wage statement
24 violations is \$456,000. Marquez Decl., ¶ 17. However, based on Defendant’s counterarguments
25 and because the Court maintains discretion to reduce these penalties, Plaintiff discounted that figure
26 by 20% for the risk of not prevailing on the merits, and an additional 50% to account for the Court’s
27 discretion to reduce the penalties (given the highly technical nature of the alleged violations).
28 Accordingly, reasonable liability for this claim is \$182,400.00.

1 Using these estimated figures, Plaintiff predicted that the realistic total potential recovery
2 for the PAGA Employees and the LWDA would be approximately \$586,205.03. *Id.* at ¶ 18. The
3 proposed Settlement of \$375,000 therefore represents 64% of Plaintiff’s reasonably forecasted total
4 recovery. *Id.* “The fact that a proposed settlement may only amount to a fraction of the potential
5 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
6 should be disapproved.” *Linney v. Cellular Alaska Partnership* 151 F.3d 1234, 1242 (9th Cir.
7 1998). In this case, continued litigation would delay payment to the LWDA and the PAGA
8 Employees as they await trial and, most likely, appellate proceedings. Marquez Decl., ¶ 18.
9 Furthermore, while Plaintiff is confident in the merits of the case, a legitimate controversy exists as
10 to each of the predicate Labor Code violations. *Id.* The possibility that the Court finds no liability
11 at the PAGA bench trial is also a risk. *Id.* In sum, when the risks of litigation, the burdens of proof
12 necessary to establish liability, and the probability of appeal of a favorable judgment are balanced
13 against the merits of Plaintiff’s claims, it is clear that the Settlement amount is fair. *Id.* Further,
14 because of the proposed Settlement, the PAGA Employees will receive timely, guaranteed relief
15 and will avoid the risk of an unfavorable judgment. *Id.* Plaintiff also recognizes that proving the
16 amount of wages due to each employee would be an expensive, time-consuming, and uncertain
17 proposition. *Id.*

18 If the Court approves the terms of the Settlement, each aggrieved employee’s payment will
19 be paid approximately \$246.50 and approximately \$102,050.00 will go to the LWDA. *Id.* at ¶ 19.
20 In reality, some employees will likely receive more, and others may receive less depending on the
21 length of their employment with Defendant. *Id.*

22 **C. The PAGA Representative Service Payment is Reasonable**

23 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
24 compensation “for the expense or risk they have incurred in conferring a benefit on other
25 members of the class.” *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* 186
26 Cal.App.4th 399, 412 (2010). Courts routinely grant approval of class action settlement
27 agreements containing additional awards for the class representatives, which are “intended to
28 compensate class representatives for work done on behalf of the class, to make up for financial

1 or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
2 willingness to act as a private attorney general.” *Cellphone Fee Termination Cases* 186
3 Cal.App.4th 1380, 1393-94 (2010).

4 The Settlement provides for a PAGA Representative Award to Plaintiff in an amount not
5 to exceed \$5,000.00. Settlement, ¶ 3.2.3. The requested service award is intended to recognize:
6 (1) the substantial time and effort that Plaintiff has expended on behalf of the State and Aggrieved
7 Employees; (2) the risks faced by Plaintiff as a result of bringing this action; (3) the fact that
8 Plaintiff put the interests of the State of California and other aggrieved employees ahead of her
9 own; and (4) the substantial benefit conferred upon the State and the aggrieved employees as a
10 result of Plaintiff’s actions. Marquez Decl., ¶ 20. Plaintiff has spent numerous hours performing
11 tasks for this case, including, but not limited to, the following: consulting with counsel in-person
12 and over the telephone; searching for and producing relevant documents; reviewing documents
13 produced by Defendant and settlement documents; keeping informed of the developments in the
14 case; and participating in decisions concerning the case, including settlement. *Id.* at ¶ 21. As a
15 result of her efforts, the LWDA and about 138 aggrieved employees will receive compensation
16 for civil penalties for underpaid wages and other wage and hour violations. *Id.*

17 Plaintiff put herself at significant risk in pursuing this action on behalf of the State, as
18 serving as a Plaintiff in a representative action could affect her prospects for future
19 employment. *Id.* at ¶ 22. Plaintiff also placed herself at substantial risk because, if Defendant
20 were to prevail in this action, Plaintiff could be liable for Defendant’s costs and attorneys’ fees.
21 *Id.*

22 In short, this action would not have been possible without the aid of Plaintiff, who put
23 her own time and effort into this litigation, sacrificed the value of her individual claims by
24 entering into a general release of all known and unknown claims, and placed herself at risk for
25 the sake of the State and the aggrieved employees. *Id.* at ¶ 23. Accordingly, the requested
26 Service Payment is reasonable and should be approved by the Court.

27 ///

28 ///

1 **D. The Requested Attorneys’ Fees and Costs Are Reasonable Under the Catalyst**
2 **Theory.**

3 As the prevailing parties in the settlement, Plaintiff and the Settlement Class are entitled
4 to recover their attorneys’ fees and costs for their wage claims. *See* Cal. Lab. Code §§ 226(e)
5 1194, 2802(c), and 2699(g) An attorneys’ fee award is justified where the legal action has
6 produced its benefits by way of a voluntary settlement. *See Maria P. v. Riles*, 43 Cal.3d 1281,
7 1290-91 (1987); *Westside Cmnty. For Independent Living, Inc. v. Obledo*, 33 Cal.4d 348, 252-
8 53 (1983); *see also* Cal. Code Civ. Proc. §1021.5.

9 (“Any employee who prevails in any action shall be entitled to an award of reasonable
10 attorney’s fees and costs.”). A fee award is justified where the legal action has produced its
11 benefits by way of a voluntary settlement. (*See, e.g., Maria P. v. Riles* 43 Cal.3d 1281, 1290-91
12 (1987); *Westside Community for Independent Living, Inc. v. Obledo* 33 Cal.3d 348, 352-53
13 (1983).) Here, as explained below, Plaintiff’s action produced its benefit by way of a voluntary
14 settlement, and thus, Plaintiff is entitled to recover her attorneys’ fees under the catalyst theory.
15 Here, Plaintiff submits that she is entitled to recover her attorneys’ fees under the catalyst theory,
16 as explained below.

17 **1. Under the Catalyst Theory, Class Counsel’s Fees Should be Calculated**
18 **Based on the Total Compensation Received by the Settlement Class as a**
19 **Result of the Litigation**

20 Class Counsel seeks an attorneys’ fee award of \$203,866.67, which amounts to one-third of
21 the total compensation paid by Defendant as a direct result of the litigation. After being sued in
22 this litigation Defendant paid a total of \$236,600.00 to Settlement Class members in connection
23 with obtaining a release from the issues present in this litigation. Indeed, the releases presented to
24 employees as part of Defendant’s *Pick Up Stix* campaign specifically referenced this litigation. As
25 such, the total amount paid by Defendant as a direct result of the litigation (when including the
26 \$236,600.00 previously paid and the \$375,000.00 in new monies under the Settlement) is
27 \$611,600.00.

28 Class counsel’s requested fee of one third of that total amount is proper under the catalyst

theory. In *Tipton-Whittingham v. City of Los Angeles*, 34 Cal.4th 604, 608 (2004), the California Supreme Court held, “California law continues to recognize the catalyst theory and does not require a ‘judicially recognized change in the legal relationship between the parties’ as a prerequisite for obtaining attorney fees under [CCP] section 1021.5.” According to the Court, “in order to obtain attorney fees [in such circumstances]..., a plaintiff must establish that (1) the lawsuit was a catalyst motivating the defendant to provide the primary relief sought; (2) that the lawsuit had merit and achieved its catalytic effect by threat of victory, not by dint of nuisance and threat of expense...; and (3) that the plaintiffs reasonably attempted to settle the litigation.” *Id.* Plaintiff satisfies these requirements.

Here, Defendant began offering individual settlement to putative class members shortly after Plaintiff’s lawsuit was filed against Defendant. In total, Defendant paid \$236,600.00 as release consideration after this litigation was initiated, over and above the monetary relief achieved through the Settlement. Thus, Plaintiff’s initiation of this litigation was the catalyst that activated Defendant to provide monetary benefit to its employees, including both the \$236,600.00 paid as part of the *Pick Up Stix* campaign and the \$375,000.00 in additional monies under the Settlement.

Multiple Courts have approved requests for attorneys’ fees based on the catalyst theory where the defendant conducted a *Pick Up Stix* campaign after a lawsuit was filed. For example, Judge Gregory Pollack of the San Diego Superior Court approved a request for attorneys’ fees of \$466,366, which equaled one third of the total amount paid by the defendant as a result of the litigation, including \$648,680 paid to class members as part of a *Pick Up Stix* campaign after the lawsuit was filed, and \$750,000 in new monies created by the settlement. *See* Plaintiff’s Request for Judicial Notice (“RJN”), Ex. 1, *Diaz v. GKN Aerospace ChemTronics Inc.*, Case No. 37-2016-0004445-CU-OE-CTL, Minute Order Granting Final Approval of Class Action Settlement (Jul. 27, 2018). Similarly, Judge Maren E. Nelson of the Los Angeles Superior Court granted Plaintiff’s attorneys’ fees request of \$382,722, which equaled roughly 33% of the \$1,163,282.51 total fund created by the litigation, including \$463,282,51 in prior consideration paid to class members as a direct result of the litigation (including \$231,691.49 for which releases were obtained) and \$700,000 in new monies created by the settlement. *See* RJN, Ex. 2, *Cristobal v. Planned Parenthood Los*

1 *Angeles*, Case No. BC572766, Order Granting Final Approval. Similarly in *Ontiveros v. Safelite*
2 *Fulfillment, Inc.*, Case No. 2:15-cv-07118-DMG-RAO, Judge Dolly M. Gee of the U.S. District
3 Court for the Central District of California approved Plaintiff's request for attorneys' fees totalling
4 \$2,733,833,33, or one third of the "Total Settlement Amount" of \$8,201,500, which included
5 \$726,500 paid by defendant as part of a *Pick Up Stix* campaign and \$7,475,000 in new monies
6 created by the settlement. See RJN, Ex. 3, Order Granting Final Approval. Accordingly, it is
7 appropriate to anchor Class Counsel's fee award on the total benefit achieved on behalf of the
8 Settlement Class.

9 **2. The Requested Attorneys' Fees are also Reasonable Under Percentage**
10 **Theory**

11 Fee awards of roughly one-third of the settlement fund are routinely awarded in
12 California state and federal courts in class and representative PAGA actions. "[F]ee awards in class
13 actions average around one-third of the recovery." *Chavez v. Netflix, Inc.* 162 Cal.App.4th 43, 66,
14 fn. 11 (2008); see also, *In re Pacific Enterprises Securities Litig.* 47 F.3d 373, 379 (9th Cir. 1995)
15 (affirming 33% fee award); *Williams v. MGM-Pathe Communications Co.* 129 F.3d 1026, 1027 (9th
16 Cir. 1997) (holding that class counsel's fee award should have been calculated as one-third of the
17 gross settlement fund); *Chavez v. Saticoy Lemon Ass'n* 2015 WL 5561118 (Cal. Super. Ct. Ventura
18 Cty. Aug. 10, 2015) (approving attorneys' fees of one-third of settlement fund in representative
19 PAGA settlement); *Clavel v. Lupe's Thousand Oaks Mexican Restaurant, Inc.*, 2016 WL 1601221
20 (Cal. Super. Ct. Ventura Cty. Mar. 25, 2016) (same).

21 The fee award requested here (\$203,866.67, representing 33 1/3% of the \$375,000.00
22 gross settlement amount plus the \$236,700.00 already paid out by Defendant) is justified because
23 Plaintiff's counsel achieved a significant monetary recovery for the aggrieved employees and the
24 LWDA in an uncertain and risky case while bearing the substantial burdens of representation on
25 a contingency basis, and the fees requested are in line with the market rates described above.
26 Plaintiff's counsel expended significant time and resources in litigating this case, which resulted
27 in a favorable result for the LWDA, Plaintiff, and the aggrieved employees. Plaintiff's counsel
28 elected to bear the contingency risk of this litigation for the benefit of the aggrieved employees,

1 as well as for the State of California (who elected not to take the case after receiving the PAGA
2 notice). Marquez Decl., ¶¶ 24-30.

3 Critically, this settlement exceeds other PAGA awards approved by courts. *See, e.g.,*
4 *Aguirre v. DSW, Inc.* 2012 WL 11875296, *3 (C.D. Cal. Nov. 29, 2012) (approving \$10,000
5 PAGA payment); *Garcia v. Gordon Trucking, Inc.* 2012 WL 5364575, *7 (E.D. Cal. Oct. 31,
6 2012) (“GTI agrees to allocate \$10,000 to Plaintiffs’ PAGA claims, and will pay \$7,500 to the
7 LWDA, and \$2,500 to participating Class Members on a pro-rata basis. This comports with
8 settlement approval of PAGA awards in other cases. [Citations.] Therefore, the Court will
9 approve the allocation of the Settlement to Plaintiffs’ PAGA claim.”); *Boyd v. Bank of America*
10 *Corp.* 2014 WL 6473804, *8 (C.D. Cal. Nov. 18, 2014) (approving \$18,750 PAGA payment);
11 *Franco v. Ruiz Food Prods.,* 2012 WL 5941801, *14 (E.D. Cal. Nov. 27, 2012) (approving
12 \$10,000 PAGA payment); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D.
13 Cal. Feb. 16, 2011) (approving \$10,000 PAGA payment); *cf. Nordstrom Comm’n Cases*, 186
14 Cal.App.4th 576, 589 (2010) (holding that trial court did abuse its discretion in approving wage
15 and hour class action settlement that involved PAGA claims even though no settlement money
16 was allocated to the PAGA claims and paid to the LWDA). The fact that Plaintiff’s counsel
17 achieved these results without engaging in a protracted legal battle, in the face of serious defense
18 challenges and an uncertain legal landscape, confirms the strength of the results achieved.

19 As discussed above, this case carried substantial risk as to the merits as well as the
20 potential of the Court drastically reducing penalties in the context of a contested trial or summary
21 judgment proceeding. Accordingly, it is fair and reasonable to account for these risks in
22 compensating Plaintiff’s counsel. Since undertaking this representation, Plaintiff’s counsel has
23 dedicated substantial resources to this litigation, including approximately \$17,794.13 in costs,
24 without receiving any compensation to date. Marquez Decl., ¶ 30. Plaintiff’s counsel conducted
25 extensive legal research regarding the merits of Plaintiff’s claims, her ability to recover penalties
26 under the PAGA, and Defendant’s potential defenses. *Id.* at ¶ 11. Plaintiff’s counsel expended
27 significant additional effort in preparing formal settlement documents and this Motion to
28 Approve PAGA Settlement. *Id.* at ¶ 25. Given the considerable potential for adverse outcomes

1 in this case, including, but not limited to, Defendant defeating Plaintiff's claims on the merits,
2 and/or facing a drastic reduction to potential PAGA penalties, the contingent risk borne by
3 Plaintiff's counsel was great. The quality of Plaintiff's counsel's work, and the efficiency and
4 dedication with which it was performed, should be compensated.

5 Plaintiff's counsel's previous experience in litigating similar class and representative
6 actions also supports the reasonableness of the fee request. Plaintiff's counsel brings extensive
7 plaintiff-side wage-and-hour class, collective, and representative action experience. *Id.* at ¶¶ 31-
8 42. They have been found to be adequate counsel in numerous cases alleging wage and hour
9 claims. *Id.* at ¶ 38. Practice in the narrow field of wage-and-hour litigation requires skill and
10 knowledge concerning the rapidly evolving substantive state and federal law, as well as the
11 procedural law of class and representative action litigation. Because it is reasonable to
12 compensate Plaintiff's counsel commensurate with its skill, reputation, and experience, a fee
13 award of 33 1/3% of the gross settlement amount is reasonable.

14 Plaintiff's request for reimbursement of litigation costs of \$18,094.13 is also fair and
15 reasonable. As the evidence submitted herewith shows, all of Plaintiff's litigation costs are
16 documented and reasonably incurred. *See* Marquez Decl., Ex. 4 [Expense Summary].

17 **E. Settlement Administrator Costs Are Reasonable.**

18 The Settlement Administrator Costs in the amount of \$10,000 is reasonable, given the
19 tasks to be performed by the Settlement Administrator, including, but not limited to, the
20 following duties: mailing and re-mailing (if necessary) checks to approximately 138 PAGA
21 Employees and the LWDA; establishing a Qualified Settlement Fund; preparing and submitting
22 to PAGA Employees and government entities all appropriate tax filings and forms; distributing
23 the PAGA Representative Service Payment and attorneys' fees and costs; and keeping the Parties
24 timely apprised of the performance of all obligations under the Agreement. Plaintiff respectfully
25 requests that the Court approve the requested costs.

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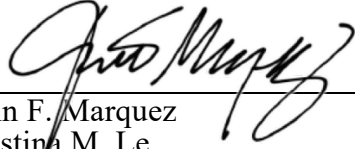
1 **IV. CONCLUSION.**

2 For the reasons set forth above, Plaintiff requests that the Court grant this motion and
3 approve the Parties' PAGA Settlement.

4
5
6 Dated: January 4, 2024

Respectfully submitted,

WILSHIRE LAW FIRM

7
8 By:  _____

Justin F. Marquez
Christina M. Le
Arsiné Grigoryan

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10 Attorneys for Plaintiff
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PROOF OF SERVICE

Maria Coco Ospina v. Precise Industries, Inc., et al.
30-2021-01228457-CU-OE-CXC

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Min Jee Kim, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is minjee@wilshirelawfirm.com.

On **January 4, 2024**, I served the foregoing **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO APPROVE PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Kevin J. Abbott (SBN 281312)
kabbott@fennermorelaw.com
FENNEMORE LLP
550 E. Hospitality Lane, Suite 350
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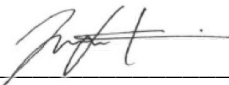
Attorneys for Defendant Precise Industries, Inc.

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on January 4, 2024, at Los Angeles, California.



Min Jee Kim