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aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF FRESNO

EDUARDO VELAZQUEZ, on behalf of himself and on behalf of all other aggrieved employees, Plaintiff, vs. CARLUCCI TRANSPORT dba CARLUCCI TRANSPORT INC., a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. 22CECG03945 Hon. Kristi Culver Kapetan **NOTICE OF MOTION AND MOTION TO APPROVE THE PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT UNDER CALIFORNIA LABOR CODE §§ 2698 et seq.** *[filed concurrently with Declaration of Enoch J. Kim; Declaration of David Yeremian; Declaration of Jodey Lawrence and [Proposed] Order]* Date: June 5, 2025 Time: 3:27 p.m. Dept.: 502

TO THE COURT AND DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 3, 2025 at 3:30 p.m. in Department 502 of_the above-entitled Court, located at B.F. Sisk Courthouse, 1130 O Street, Fresno, CA 93724, Plaintiff Eduardo Velazquez ("Plaintiff" or "PAGA Representative"), on behalf of himself and all persons similarly situated, will and hereby does move this Court pursuant to California Labor Code § 2698 *et seq.* for an order approving the settlement agreement between Plaintiff and Defendant Carlucci Transport, Inc. dba Carlucci Transport ("Defendant" collectively with Plaintiff referred to as the "Parties,") which will accomplish the following: approve the representative action settlement embodied in the PAGA ("Settlement Agreement"); approve PAGA Counsel's application for attorney's fees and litigation costs; and enter judgment approving the Settlement Agreement.

The grounds for this Motion, as set forth in the attached Memorandum of Points and Authorities and supporting declarations, are that this is a fair and reasonable settlement that benefits the Aggrieved Employees and was the product of informed, non-collusive negotiations by parties who were represented by experienced and able counsel. *See Wershba v. Apple Computer, Inc.*, 91 Cal. App 4th 224, 244-45 (1996); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996); Manual for Complex Litigation, (Second), § 30.44 (1985). Defendant does not oppose this Motion.

Plaintiff bases this Motion on this Notice and the accompanying Memorandum of Points and Authorities, the Declarations of David Yeremian, Enoch J. Kim, and Jodey Lawrence, the complete pleadings, records and files in the case, and such other further oral and documentary evidence which may be submitted at or before the hearing on this Motion.

DATED: May 13, 2025

D.LAW, INC.

By: ______________________

Enoch J. Kim
Attorneys for Eduardo Velazquez on behalf of himself and others similarly situated

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<u>**MEMORANDUM OF POINTS AND AUTHORITIES**</u>

I. <u>INTRODUCTION</u>

Through this motion, Plaintiff Eduardo Velazquez ("Plaintiff") requests that the Court grant approval of the PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") reached between Plaintiff and Defendant Carlucci Transport, Inc. dba Carlucci Transport ("Defendant") (Defendant and Plaintiff collectively referred to as the "Parties,") to resolve claims brought exclusively under the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*. ("PAGA") seeking civil penalties for various violations of the California Labor Code and Industrial Wage Commission's Wage Orders.

Pursuant to the Settlement Agreement, Defendant will pay the Gross Settlement Amount of $225,000.00 on a non-reversionary basis. (Declaration of Enoch J. Kim ("Kim Decl."), Exhibit 1, ¶ 3.1.) For purposes of the Settlement, the group of aggrieved employees included in the Settlement is defined as all individuals employed by Defendant as hourly, non-exempt employees in California at any time during the PAGA Period, which is September 15, 2021 to November 15, 2024 ("Aggrieved Employees"). (Kim Decl., Exhibit 1, §§ 1.4 and 1.20.)

Given the amount Defendant will pay to effectuate the Settlement and the formula for distribution of the Settlement funds, Plaintiff and his counsel ("PAGA Counsel") believe that the Settlement is fair, reasonable and in the best interests of the State and the Aggrieved Employees. Accordingly, Plaintiff requests that the Court "review and approve" the Settlement pursuant to Labor Code § 2699(*l*)(2). If the Court deems the Settlement fair and acceptable, Plaintiff requests that the Court enter an order approving the Settlement in the form lodged herewith and ordering the parties and Administrator to carry out the terms of the Settlement Agreement and enter a Final Judgment thereon.[1]

[1] Plaintiff has submitted the Settlement Agreement to the LWDA by uploading it on the LWDA's website concurrently with the filing of this Motion as required by Labor Code § 2699(*1*)(2). (Declaration of Enoch J. Kim ("Kim Decl.") ¶ 49, Exhibit 4.)

II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

A. Litigation Overview and Procedural History

On September 15, 2022, Plaintiff Eduardo Velazquez filed a claim notice online with the California Labor & Workforce Development Agency (the "LWDA") pursuant to Labor Code § 2699.3(a)(1) and gave notice to Defendant ("PAGA Notice"). (Kim Decl., ¶ 4.) The PAGA Notice alleged that Defendant failed to pay minimum wages, failed to pay wages and overtime, failed to provide meal and rest breaks, failed to provide accurate wage statements, failed to timely pay wages on a semimonthly basis, failed to provide itemized wage statements, failed to pay all wages due upon termination, and violated Business and Professions Code § 17200, *et seq*. (*Id.*) The LWDA did not respond to the PAGA Notice and did not notify Plaintiff or Defendant that it intended to investigate Plaintiff's allegations. (*Id.*)

On December 9, 2022, after 65 days from the mailing of the PAGA Notice to the LWDA, Plaintiff filed a Complaint against Defendant under PAGA alleging: (1) failure to pay minimum wages; (2) failure to pay wages and overtime under Labor Code § 510; (3) meal period liability under Labor Code § 226.7; (4) rest period liability under Labor Code § 226.7; (5) violation of Labor Code §§ 226(a), 1174; and (6) violation of Labor Code §§ 203 and 204. (Kim Decl., ¶ 5.) On December 13, 2022, Plaintiff submitted an amended PAGA Notice to the LWDA and served Defendant. (Kim Decl., ¶ 6.) On May 5, 2023, Plaintiff filed a First Amended Complaint adding a seventh cause of action for failure to reimburse necessary business expenditures under Labor Code § 2802 ("Operative Complaint"). (*Id.*)

On August 15, 2023, Defendant filed its motion to compel arbitration of Plaintiff's individual claims under PAGA based on an arbitration agreement signed by Plaintiff during his employment with Defendant. (Kim Decl., ¶ 7.) On March 28, 2024, the Court entered its order adopting its tentative ruling denying Defendant's motion. (*Id.*) Thereafter, the Parties agreed to mediate Plaintiff's representative PAGA action. (*Id.*)

Other than a clerical error omitting pay period end date on less than 6% of the pay periods at issue (which Defendant contends was corrected prior to Defendant having received notice of any threatened claim), Defendant denied and continues to deny the claims made by Plaintiff in this Action and contends it acted at all relevant times in conformance with the law. (Kim Decl., ¶ 22.) Nothing in the Settlement Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. (Kim Decl., Exhibit 1, ¶ 10.)

B. Mediation and Settlement

Prior to mediation, the Parties engaged in informal discovery, and PAGA Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting informal discovery, and meeting and conferring with defense counsel about same; (2) reviewing and analyzing 20% sampling of time and pay records from September 15, 2021 through August 19, 2024 as well as the employment handbook from 2022, Plaintiff's personnel files, relevant policies, including meal and rest break policies, and policies related to the payment of wages; (3) researching the applicable law and potential defenses; (4) constructing damage models based on interpretations of California law; and (5) reviewing information provided by Defendant at the mediation. (Kim Decl., ¶ 9.) With the discovery in hand, the Parties were able to engage in meaningful settlement discussions in an attempt to resolve the Action. (*Id.*) The information and data exchanged by Plaintiff and Defendants prior to and during mediation and settlement negotiations were sufficient to reliably assess the merits of the Parties' respective positions, to compromise the issues on a fair and equitable basis, and to devise a formula for distribution of civil penalties among the Aggrieved Employees that took into consideration the strength of the PAGA claims. (*Id.*)

On October 28, 2024, the Parties mediated this case with Jeffery Owensby, Esq., a respected and highly experienced mediator in wage and hour class and PAGA actions. (Kim Decl., ¶ 12.) The Parties discussed all aspects of the case, including the risks of further litigation, the claims, Defendant's defenses and exchanged further information. (*Id.*) The Parties recognized that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will lead to inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. *Id.* The Parties took into account the risk and uncertainty of the outcome inherent in any litigation in reaching this agreement. (*Id.*) The Parties reached a tentative settlement agreement as embodied in the Settlement, which is attached as **Exhibit 1** to the Kim Declaration and now before the Court for approval. (Kim Decl., ¶ 13.)

III. PAGA ACTIONS AND THE REQUIREMENTS

A. The PAGA Statutory Scheme

PAGA creates a means of "deputizing" citizens as private attorneys general to enforce the Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co*. (2011) 197 Cal. App. 4th 489, 501, *review den.* (Oct. 19, 2011, No. S195850), *cert. denied* 132 S.Ct. 1910 (Apr. 16, 2012). A plaintiff may not — and Plaintiff here does not — bring a PAGA claim simply on his or her own behalf as an individual claim, but "as the proxy or agent of the state's labor law enforcement agencies." *Id*., at 986; *see also Reyes v. Macy's, Inc*. (2011) 202 Cal. App. 4th 1119, 1123-1124; *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. When an aggrieved employee brings a PAGA claim, "the government is always the real party in interest." *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty*. (2015) 234 Cal. App. 4th 1109, 1119; *Montano v. The Wet Seal Retail, Inc*. (2015) 232 Cal. App. 4th 1214, 1222 ("[A] PAGA action is a dispute between an employer and the State agency."). Accordingly, a plaintiff that brings a PAGA claim represents "the same legal right and interest as state labor law enforcement agencies," in that the plaintiff seeks to recover those civil penalties that the LWDA otherwise would assess and collect. *Arias v. Super. Ct*. (2009) 46 Cal.4th 969, 986; Labor Code § 2699(a) & (f); *Securitas, supra*, 234 Cal. App. 4th at 1119; *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (holding "PAGA plaintiffs do not have property rights in their cases."), and *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003.

Therefore, when a plaintiff brings a PAGA claim, he or she is properly viewed as a private attorney general prosecuting violations of California's labor laws on behalf of the state. An employee may commence a PAGA action by fulfilling the requirements of California Labor Code § 2699.3(a)(1), which simply states: "The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." Labor Code § 2699.3(a)(1). As explained above, Plaintiff complied with the notice requirements and properly pled a PAGA claim. (Kim Decl. ¶ 4.)

B. The Court Has Discretion When Awarding the Amount of Penalties.

PAGA provides for penalties in the amount of $100 for each violation per aggrieved employee per pay period for the initial violation and $200 for each violation per aggrieved employee per pay period for each subsequent violation. Labor Code § 2699(f)(2). "PAGA penalties...are mandatory, not discretionary" and must be awarded upon a showing that Defendants violated the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213. However, PAGA provides the Court with discretion when it finds liability and awards these penalties as part of a judgment. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

C. PAGA Authorizes the Payment of PAGA Counsel's Fees and Costs

PAGA provides for the recovery of reasonable attorneys' fees and costs. Labor Code § 2699(g)(1) ("Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid…"). The monetary settlement and programmatic relief make Plaintiff a "prevailing party." *Folsom v. Butte County Ass'n of Gov'ts* (1982) 32 Cal. 3d 668,671; *Santisas v. Goodin* (1998) 17 Cal.4th 599, 621. Even if Labor Code § 2699(g)(1) did not authorize fees, Plaintiff would be entitled to fees as a Private Attorney General under Code of Civil Procedure § 1021.5 because Plaintiff brought this action to, and the action does, benefit the public. *Arias,* 46 Cal.4th at 985–986.

IV. THE SETTLEMENT

Pursuant to the Settlement Agreement, Defendant will pay a maximum, non-reversionary settlement amount of $225,000.00 to settle the PAGA claims alleged in the Operative Complaint and PAGA Notice. (Kim Decl. at ¶ 15; Exhibit 1 at § 3.1.)

Pending Court approval, the Gross Settlement Amount will be allocated as follows: (1) attorneys' fees in the amount of $75,000.00 ("PAGA Counsel Fees") (Kim Decl. ¶ 15(a); Exhibit 1, §3.2.3); (2) actual litigation costs incurred in the amount of $8,126.87 ("PAGA Counsel Costs") (*Id.*); and (3) Administration costs of no more than $4,750.00 to be paid to the Settlement Administrator ("Phoenix") for sending notices and for calculating settlement shares and preparing all checks and mailings ("Administration Expenses Payment") (Kim Decl., Exhibit 1, § 3.2.1).

The remainder of the Gross Settlement Amount after deducting the above costs is approximately $137,123.13 and shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% (or $102,843.85) paid to the LWDA ("LWDA PAGA Payment") and 25% (or $34,281.28) paid to the Aggrieved Employees ("Individual PAGA Payment") on a pro-rata basis based on the number of PAGA Pay Periods worked by each Aggrieved Employee during the PAGA Period (Kim Decl., Exhibit 1 at §3.2.3). (*Id.*)

Based on its records, Defendant estimates that there are approximately 375 Aggrieved Employees who worked a total of approximately 15,427 pay periods during the PAGA Period through August 2024. (Kim Decl., Exhibit 1 at § 8.) If the total number of PAGA Pay Periods encompassed within the PAGA Period exceeds 15,427 by more than 13% (i.e., if the total PAGA Pay Periods exceeds 17,432 pay periods), then at Defendant's option (1) the Gross Settlement Amount shall be increased in proportion to the percentage increase in the number of PAGA Pay Periods encompassed in the PAGA Period in excess of 13% (e.g. if there was a 14% increase in PAGA Pay Periods, then Defendant would agree to increase the Gross Settlement Amount by 1%) or (2) the PAGA Period shall end on the date where the PAGA Pay Periods does not exceed 17,432. (Kim Decl., Exhibit 1, § 8.)

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V. ARGUMENT

A. The Court Should Approve the Settlement Agreement.

Pursuant to Labor Code § 2699(*l*), the parties must obtain Court approval of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Ct.* (2009) 46 Cal.4th 969, the parties need not follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. Nonetheless, to comply with the requirements of Labor Code section 2699, Plaintiff submits this Motion and the Settlement Agreement for Court approval.

B. The Risks of Moving Forward with Plaintiff's PAGA Claim

To help the Court evaluate the fairness of the Settlement, below is a discussion of the risk evaluation made by Plaintiff and PAGA Counsel. They considered the arguments and defenses asserted by Defendants at mediation, assessed the risks of moving forward to trial and what this Court could do in awarding penalties even if Plaintiff were to prevail at trial.

Plaintiff estimated that the maximum potential exposure on the PAGA claim is $1,542,700.00, calculated by multiplying the total number of pay periods (15,427) by $100 per violation. (Kim Decl., ¶ 24.) Plaintiff's calculation of the total potential exposure on the PAGA claim was based on one PAGA penalty per pay period (i.e., Plaintiff did not stack the PAGA penalties in his damages calculation). (*Id.*) Case law supports the notion that it is inappropriate to "stack" penalties for multiple violations, particularly when those violations all stem from the same alleged "injury." (*Id.* at ¶ 25.)

C. Trial of Plaintiff's PAGA Claims Would Have Presented Many Hurdles.

Other than a clerical error omitting pay period end date on less than 6% of the pay periods at issue (which Defendant contends was corrected prior to Defendant having received notice of any threatened claim), Defendant denied and continues to deny the claims made by Plaintiff in this Action and contends it acted at all relevant times in conformance with the law. (Kim Decl., ¶ 22.) Defendant contends Plaintiff and all putative Aggrieved Employees were paid for all hours worked; Plaintiff's overtime and meal and rest period claims were preempted by the Motor Carrier Safety Act; that Plaintiff and Aggrieved Employees were instructed to record all hours worked and Defendant paid all hours recorded by Plaintiff and Aggrieved Employees; that Defendant paid all wages due on a timely basis; and that neither Plaintiff nor any putative Aggrieved Employee incurred reasonable business related expenses for which they were not reimbursed as they were provided company phones and were not required to purchase any tools or protective gear. (*Id.*) As a result of Defendant's arguments, Plaintiff's Counsel had to apply appropriate discounts in light of the facts and law as discussed above. (*Id.*)

D. The Court May Have Exercised Its Discretion to Reduce Civil Penalties.

"PAGA penalties…are mandatory, not discretionary" and the Court must award penalties upon a showing that Defendant violated the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal. App. 4th 1157, 1213; *Moreno v. Autozone, Inc*. (N.D. Cal. June 5, 2007) No. C05-04432 MJJ, 2007 WL 1650942, at *3. However, PAGA does provide the Court with discretion when it awards these penalties. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (*See also Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (reducing PAGA penalties by 30% under this provision).

In departing from the $100/pay period calculation to arrive at the $225,000.00 Gross Settlement Amount in this case, Plaintiff considered what the realistic potential exposure could be and why the Court may reduce any eventual recovery at its discretion, including Defendant's defenses to the claims and the potential manageability issues with PAGA claims at trial. (Kim Decl., at ¶ 26.) Based on those considerations, Plaintiff applied a discount of 80% to the maximum potential exposure (which equates to $20 penalty per pay period) to get a realistic potential exposure of $308,540.00 (15,427 pay periods x $20 penalty per pay period). (*Id.*)

The Gross Settlement Amount of $225,000.00 is approximately 73% of the realistic potential exposure of $308,540.00. PAGA Counsel submits that this is an excellent result for the State and Aggrieved Employees in light of the strengths and weaknesses of the case and the risks and delays posed by further litigation.

VI. THE REQUEST FOR ATTORNEYS' FEES AND COSTS

A. The Court Should Approve the Requested Attorneys' Fees and Costs

Pursuant to the Settlement Agreement, PAGA Counsel is requesting an award of attorneys' fees in the amount of **$75,000.00** and a reimbursement of litigation costs in the amount of $8,126.87, which is lower than the requested $15,000.00 in the Settlement. (Kim Decl., ¶ 15.)

Prior to enactment of PAGA, when the State had the resources to seek civil penalties on behalf of the public, it paid its employees (including their attorneys) their salaries and benefits for pursuing such penalties. The Legislature enacted PAGA because the Labor Commissioner and other agencies were hampered in their enforcement of civil penalties by inadequate funding and staffing constraints. *Iskanian*, *supra*, 59 Cal.4th at 379. To facilitate broader enforcement, the Legislature enacted PAGA, authorizing "aggrieved employees" to pursue civil penalties on the state's behalf. Labor Code § 2699(a). In creating PAGA, the Legislature expressly provided that the private counsel retained by the Plaintiff to represent the public's interest can recover fees if the Plaintiff is the prevailing party. Labor Code § 2699(g)(1).

1) <u>PAGA Counsel Are Entitled to Fees from the Civil Penalties Recovered</u>

As previously indicated, this is *not* a class action. However, like a class action, it is a representative action where instead of a class, the Plaintiff represents the State and the public. As a matter of law and substance, counsel's client is the public at large and the State of California. The Plaintiff is simply a "proxy" for the State. On August 11, 2016, the California Supreme Court decided *Laffitte v. Robert Half International*, which addressed, in a class action context, the correct methodology for awarding fees in a representative action settlement. *Laffitte v. Robert Half Intern. Inc*. (2016) 205 Cal.Rptr.3d 555, 573. The *Laffitte* Court approved awarding fees as a percentage of the settlement fund.:

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards Class Counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.

Id. at p. 573. Here, the $225,000.00 common fund created for the benefit of the public is, with Plaintiff as a proxy for the State, not unlike the fund created in class action settlements, with the public the equivalent of the class referenced in *Laffitte*.

The Court, in *Laffitte,* pointed out several reasons why the percentage-of-the-fund method is preferred over the alternative lodestar-multiplier approach in California courts:

> The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [citations]—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Id. at 573.

An award of one-third of the civil penalties realized in the Settlement is appropriate here under the "substantial benefit" theory. *Dunk v. Ford Motor Co*. (1996) 48 Cal. App. 4th 1794, 1810; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254. That theory permits a litigant who has sued in a representative capacity to recover fees from the beneficiaries of that representation. Courts exercise their inherent equitable powers to assess attorneys' fees against the entire fund, thereby spreading the cost of those fees among the public who benefits from PAGA actions. *Serrano v. Priest* (1977) 20 Cal.3d 25, 35 (*Serrano III).* As this approach "better approximates the workings of the marketplace than the lodestar approach," there is "a greater judicial willingness to evaluate a fee award as a percentage of the recovery." *Lealao v. Beneficial Calif., Inc*. (2000) 82 Cal. App. 4th 19, 31, 48.

2) <u>The Attorneys' Fees Request Is Within the Range of Reasonable Fees</u>

PAGA Counsel at D.Law, Inc. are experienced employment attorneys with expertise in wage and hour class and representative actions. (Kim Decl., ¶¶ 38-45.) Throughout this case, PAGA Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this Action on a purely contingency basis. (Kim Decl., ¶ 32.) As a result, PAGA Counsel have yet to receive any compensation for the amount of time and money invested in the case to date. (*Id*.) Moreover, courts have approved attorneys' fees awards in other PAGA settlements on a common fund basis at higher percentages than the one-third Plaintiff is requesting here. (*Id*. at ¶ 35.)

For these reasons, PAGA Counsel's requested fee of $75,000.00 is well within the range of reasonableness and is fair compensation for undertaking this complex and risky litigation on a contingent basis.

3) <u>PAGA Counsel's Fee Request Is Reasonable Under the Lodestar Crosscheck.</u>

PAGA Counsel's fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20 Cal.3d 25, 48. The court then may enhance this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id*. at 49; *see also Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank* (2001) 92 Cal. App. 4th 819, 834, ("[t]here is no…rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar").

Here, the lodestar cross check establishes that the fees requested are <u>significantly less</u> than the amount warranted by lodestar analysis; therefore, the factors warranting positive multipliers do not come into play, even though they were apparent in this case.

PAGA Counsel worked at least 172.7 hours on this matter and calculated the base lodestar at $90,360.00 at rates reflecting those currently earned in the marketplace. (Kim Decl., ¶ 35.) Attorney Roman Shkodnik's current billing rate is $700.00 (12 years out of law school, Laffey Matrix rate of $948.00), and he spent approximately 55.30 hours in this matter with a lodestar amount of $38,710.00. Attorney Enoch J. Kim's current billing rate is $750.00 (16 years out of law school, Laffey Matrix rate of $948.00), and he spent approximately 10.60 hours in this matter with a lodestar amount of $7,950.00. Attorney Robert Payaslyan's billing rate was $400.00 at the time of being employed at D.Law and he spent approximately 42.6 hours in this matter with a lodestar amount of $17,040.00. Attorney Emma Geesaman's current billing rate is $425.00 (1 year out of law school, Laffey Matrix rate of $473.00), and she spent approximately 32.70 hours in this matter, with a lodestar amount of $13,897.50. Attorney Norayr Zakaryan's current billing rate is $400.00 (11 months out of law school, Laffey Matrix rate of $473.00), and he spent approximately 29.20 hours in this matter with a lodestar amount of $11,680.00. Attorney Amanda Fazio's current billing rate is $475.00 (2 years out of law school, Laffey Matrix rate of $473.00), and she spent approximately 2.10 hours in this matter with a lodestar amount of $997.50. Attorney Mason Doidge's current billing rate is $425.00 (1 year out of law school, Laffey Matrix rate of $473.00), and he spent approximately 0.2 hours in this matter with a lodestar amount of $85.00. The total lodestar for PAGA Counsel is $90,360.00, above the fee request of $75,000.00.

Thus, consideration of the lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested fee award. PAGA Counsel respectfully request the Court grant its request for $75,000.00 in fees, which requires no **multiplier**.

4) The Court Should Approve the Reimbursement of PAGA Counsel's Costs.

The litigation expenses incurred by PAGA Counsel in this Action are also to be reimbursed under the Settlement Agreement. PAGA Counsel seek $8,126.87 in reimbursement for litigation costs (Kim Decl., ¶ 28.) The lion's share of these costs were incurred in connection with mediation, and the others listed were all reasonably incurred and necessary to the prosecution of this Action. Thus, PAGA Counsel respectfully request the Court approve their request for reimbursement in the amount of $8,126.87.

VII. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION

The parties agreed to use Phoenix as the third-party settlement administrator in this case. (Kim Decl., Exhibit 1 at § 7.1.) Phoenix will be responsible for updating the addresses for the Aggrieved Employees, mailing the Notice of Settlement and calculating and distributing the settlement checks, among other duties. (*Id.*) Phoenix capped its fees at $4,750.00 for administering the Settlement, and based on PAGA Counsel's experience in other class and PAGA settlements, Phoenix's costs for administering this Settlement are fair and reasonable. (*Id.*)

VIII. CONCLUSION

Plaintiff and PAGA Counsel submit that the proposed Settlement as documented in the Settlement Agreement is fair, adequate, reasonable, and in the best interest of Plaintiff, Defendant, the Aggrieved Employees, and the State of California. Plaintiff respectfully requests that the Court approve the Settlement and order the Parties to carry out the Settlement according to the terms of the Settlement Agreement and enter the concurrently filed [Proposed] Order Granting Approval and Judgment to that end.

DATED: May 13, 2025

D.LAW, INC

By ______________________

Enoch J. Kim
Attorneys for Plaintiff Eduardo Velazquez