

D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
Alvin B. Lindsay (SBN 220236)
a.lindsay@d.law
Enoch Kim (SBN 261146)
e.kim@d.law
Rose Sorial (SBN 271382)
r.sorial@d.law
Melissa Rodriguez (SBN 352716)
m.rodriguez@d.law
450 N. Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
david@yeremianlaw.com
450 N. Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

Attorneys for Plaintiff ERIK C. MCLAREN
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS

ERIK C. MCLAREN, an individual, on
behalf of himself and others similarly
situated,

Plaintiff,

vs.

TOTAL PCS SOLUTIONS, INC., a
California corporation; and DOES 1 through
20, inclusive,

Defendant,

Case No. CV-22-004069

Assigned for All Purposes To:
Honorable Sonny S. Sandhu
Department: 24

**NOTICE OF MOTION AND MOTION FOR
APPROVAL OF PAGA SETTLEMENT
AGREEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

[filed concurrently with Declarations of Enoch J.
Kim, David Yeremian, and Michael Sutherland;
and [Proposed] Order]

Hearing Date: June 6, 2025
Time: 8:30 a.m.
Department: 24

1 **TO THE COURT, DEFENDANT, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on June 6, 2025, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Department 24 at City Tower Courthouse of the Superior Court for the
4 County of Stanislaus located at 801 10th Street, Modesto, CA 95354, Plaintiff Eric C. McLaren
5 (“Plaintiff”) on behalf of himself and other similarly situated employees of Total PSC Solutions,
6 Inc. (“Defendant”) (“Plaintiff and Defendant collectively referred to herein as “the Parties”) will
7 and hereby does move this Court for entry of an order: (1) approving the representative action
8 settlement embodied in the Parties’ PAGA Settlement Agreement (“Settlement Agreement”); (2)
9 approving PAGA Counsel’s application for attorney’s fees and litigation costs and costs for the
10 Administrator; and (3) entering judgment approving the Settlement Agreement (the “Motion”).

11 The grounds for this Motion, as set forth in the attached Memorandum of Points and
12 Authorities and supporting Declarations, are that this is a fair and reasonable settlement that
13 benefits the Aggrieved Employees and was the product of informed, non-collusive negotiations by
14 the parties who were represented by experienced and able counsel. *See Wershba v. Apple*
15 *Computer, Inc.*, 91 Cal. App 4th 224, 244-45 (1996); *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
16 1794, 1802 (1996); Manual for Complex Litigation, (Second), § 30.44 (1985).

17 Defendant does not oppose this Motion. Plaintiff bases this Motion on this Notice and the
18 accompanying Memorandum of Points and Authorities, the Declarations of Enoch J. Kim, David
19 Yeremian, and Michael Sutherland, the complete pleadings, records, and files in the case, and such
20 other further oral and documentary evidence which may be submitted at or before the hearing on
21 this Motion.

22 DATED: April 7, 2025

D.LAW, INC.

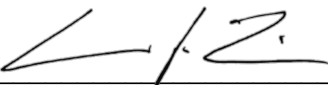
23
24 By: 
25 Enoch J. Kim
26 Attorneys for Eric C. McLaren and .
27 Aggrieved Employees
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this Motion, Plaintiff Eric C. McLaren (“Plaintiff”) requests that the Court grant
4 approval of the parties’ PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”)
5 reached between Plaintiff and Defendant Total PSC Solutions, Inc. (“Defendant”) (“Plaintiff and
6 Defendant collectively referred to herein as “the Parties”) to resolve claims brought exclusively under
7 the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”) seeking civil
8 penalties for various violations of the California Labor Code and Industrial Wage Commission’s
9 Wage Orders. Pursuant to the Settlement Agreement, Defendant will pay a gross settlement amount
10 of **\$325,000.00** (“Gross Settlement Amount”). (Declaration of Enoch J. Kim (“Kim Decl.”), Exhibit
11 1, ¶ 1.10)

12 For purposes of the Settlement, the group of aggrieved employees included in the Settlement
13 is defined as “all current and former non-exempt employees of Defendant in California who worked
14 during the PAGA Period, which is the period from September 9, 2021, through September 12, 2024”
15 (Kim Decl., ¶ 12, Exhibit 1, ¶ 3.2.2) (“Aggrieved Employees”). Based on its records, Defendant
16 estimates that there are approximately 700 Aggrieved Employees who collectively worked a total of
17 12,000 pay periods during the PAGA Period (“PAGA Pay Periods”). (Kim Decl., ¶ 12.)

18 As further explained below, Plaintiff and his counsel (“PAGA Counsel”) believe that the
19 Settlement is fair, reasonable, and in the best interests of the State and the Aggrieved Employees.
20 Accordingly, Plaintiff requests that the Court “review and approve” the Settlement pursuant to Labor
21 Code § 2699(l)(2). If the Court deems the Settlement fair and acceptable, Plaintiff requests that the
22 Court enter an order approving the Settlement in the form lodged herewith and ordering the Parties
23 and Administrator to carry out the terms of the Settlement Agreement and enter a Final Judgment
24 thereon.¹

25
26
27
28 ¹ Plaintiff has submitted the Settlement and this Motion to the LWDA by uploading it on the LWDA’s website
concurrently with the filing of this Motion as required by Labor Code § 2699(l)(2). (Kim Decl., ¶ 40, Exhibit 6.)

II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

A. Litigation Overview and Procedural History

On September 9, 2022, Plaintiff Eric C. McLaren filed a claim online with the California Labor & Workforce Development Agency (LWDA Case No. LWDA-CM-906881-22) (the “LWDA”) pursuant to Labor Code § 2699.3(a)(1) and gave notice to Defendant (“PAGA Notice”). (Kim Decl., ¶ 4.) The PAGA Notice sought civil penalties and alleged claims against Defendant for failing to pay minimum wages, failing to pay wages and overtime, failing to provide meal and rest breaks, unlawfully collecting or receiving wages in violation of Labor Code § 221, failing to issue accurate wage statements, failing to issue semimonthly payments in violation of Labor Code § 204, failing to keep records in accordance with Labor Code §1174, failing to pay waiting time penalties, failing to provide paid sick days, failing to reimburse business expenses Labor Code § 2802, and requiring unlawful and unenforceable releases from Aggrieved Employees under Labor Code §§ 206.5, 432.5. The LWDA did not respond to the PAGA Notice and did not notify Plaintiff that it intended to investigate Plaintiff’s allegations. (*Id.*)

Plaintiff simultaneously filed a Class Action Complaint against Defendant in Stanislaus Superior Court on September 9, 2022 asserting the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Labor Code § 226.7; (4) Rest-Break Liability Labor Code § 226.7; (5) Violation of Labor Code § 226; (6) Violation of Labor Code § 204; (7) Violation of Labor Code § 203; (8) Violation of Labor Code §§ 432.5, 206.5; (9) Violation of Labor Code § 2802; and (10) Violation of Business & Professions Code § 17200 *et seq.* (“Action”). (Kim Decl., ¶ 5.) On November 14, 2022, 65 days after Plaintiff’s submission of the PAGA Notice, Plaintiff amended the complaint to allege an additional cause of action for civil penalties under PAGA (“Operative Complaint”). (*Id.*)

After initiating the Action, the Parties met and conferred about the claims and issues in this case, including the existence of an arbitration agreement between the Parties, and agreed to explore resolution of this case through mediation with a highly respected mediator. (Kim Decl., ¶ 7.)

1 **B. Mediation and Settlement**

2 Prior to mediation, Plaintiff conducted comprehensive informal discovery and Defendant
3 provided data, numbers, and documents, including an Aggrieved Employee List (by employee ID
4 number), an employee handbook, and a 25% sampling of Aggrieved Employees' timekeeping and
5 payroll data. Defendant also provided information relating to the number of Aggrieved Employees
6 and pay periods. (Kim Decl., ¶ 7.) The information and data exchanged by Plaintiff and Defendant
7 prior to and during mediation and settlement negotiations were sufficient to reliably assess the
8 merits of the Parties' respective positions, to compromise the issues on a fair and equitable basis,
9 and to devise a formula for distribution of civil penalties among the Aggrieved Employees that
10 took into consideration the strength of the PAGA claims. (*Id.* at ¶ 8.)

11 On September 12, 2024, the Parties attended an all-day mediation with Judge Thierry
12 Patrick Colaw (Ret.). (Kim Decl., ¶ 9.) During mediation, the Parties exchanged further
13 information and discussed all aspects of the case, including Plaintiff's claims, Defendant's
14 defenses, procedural challenges in the case, and the prospects of further litigation. (*Id.*) The Parties
15 recognized that the issues presented in the Action are likely only to be resolved with extensive and
16 costly pretrial and trial proceedings and that further litigation would lead to inconvenience,
17 distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation.
18 (*Id.*) The Parties took into account the risk and uncertainty of the outcome inherent in
19 representative actions such as this one. (*Id.*)

20 With the assistance of a highly respected wage and hour mediator, the Parties agreed to the
21 general terms for settling this Action and finalized the long-form PAGA Settlement Agreement.
22 (Kim Decl., ¶ 10.) Plaintiff also provided a general release and waiver of rights under California
23 Civil Code Section 1542 to Defendant in a separate settlement agreement. (*Id.*)

24 The Parties believe and agree that the Settlement provides for a fair, adequate, and reasonable
25 resolution of the Action and have arrived at the Settlement after extensive, arm's length negotiations,
26 considering all relevant factors, present and potential. (Kim Decl., ¶ 11.) PAGA Counsel believes
27 that the Settlement confers real benefits upon the State and Aggrieved Employees and that an
28 independent review of the Settlement by the Court in the approval process will confirm this

conclusion. (*Id.*)

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, 40.)

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

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

11 **C. PAGA Authorizes the Payment of PAGA Counsel’s Fees and Costs**

12 PAGA provides for the recovery of reasonable attorneys’ fees and costs. Labor Code §
13 2699(g)(1) (“Any employee who prevails in any action shall be entitled to an award of reasonable
14 attorney’s fees and costs, including any filing fee paid...”). The monetary settlement and
15 programmatic relief make Plaintiff a “prevailing party.” *Folsom v. Butte County Ass’n of Gov’ts*
16 (1982) 32 Cal. 3d 668,671; *Santisas v. Goodin* (1998) 17 Cal.4th 599, 621. Even if Labor Code §
17 2699(g)(1) did not authorize fees, Plaintiff would be entitled to fees as a Private Attorney General
18 under Code of Civil Procedure § 1021.5 because Plaintiff brought this action to, and the action does,
19 benefit the public. *Arias*, 46 Cal.4th at 985–986.

20 **IV. THE SETTLEMENT**

21 Pursuant to the Settlement Agreement, Defendant will pay the Gross Settlement Amount of
22 \$325,000.00 in full and final settlement of the PAGA claim alleged in the Action. (Kim Decl., ¶ 13,
23 Exhibit ¶¶ 1, 1.10.) None of the Gross Settlement Amount will revert to Defendant. (Kim Decl., ¶ 13,
24 Exhibit ¶¶ 1, 3.1.)

25 Pending Court approval, the Gross Settlement Amount will be allocated as follows: (1)
26 attorneys’ fees of one-third of the Gross Settlement Amount, which is **\$108,333.00** (“PAGA Counsel
27 Fees Payment”); (2) actual litigation costs incurred in this matter in the amount of **\$17,479.12**
28 (“PAGA Counsel Litigation Expenses Payment”); and (3) settlement administration costs of up to

1 **\$7,000.00** to be paid to the Settlement Administrator, Apex Class Action LLC (“Apex”), for sending
2 notices and for calculating settlement shares and preparing all checks and mailings (“Administration
3 Expenses Payment”). (Kim Decl., ¶ 13.) Plaintiff will receive a separate payment of \$10,000.00 from
4 Defendant in exchange for providing a general release of claims and waiver of rights under California
5 Civil Code Section 1542 to Defendant in a separate settlement agreement signed by the Parties. (*Id.*)
6 The remaining settlement amount of \$182,187.88 is designated as PAGA Penalties under the
7 Settlement Agreement, with 75% (\$136,640.91) allocated to the LWDA (“LWDA PAGA Payment”)
8 and 25% (\$45,546.97) allocated to the Aggrieved Employees (“Individual PAGA Payments”). (*Id.*)

9 The Individual PAGA Payments will be calculated based on the number of PAGA Pay Periods
10 each Aggrieved Employee worked during the PAGA Period to ensure an equitable distribution among
11 Aggrieved Employees. (Kim Decl., ¶ 13.) Based on its records, Defendant represents that there are
12 approximately 700 Aggrieved Employees who worked a total of 12,000 PAGA Pay Periods. (Kim
13 Decl., ¶ 12, Exhibit 1, ¶ 8.) In the event that the total PAGA Pay Periods increases by more than 10%
14 such that the total PAGA Pay Periods is more than 13,200, either the Gross Settlement Amount will
15 increase proportionately according to the percentage increase in Pay Periods above 10% (calculated
16 by dividing the Gross Settlement Amount by 13,200) or Defendant may elect to change the last day
17 of the PAGA Period to the date on which the total PAGA Period Pay Periods is 13,200 or less. (Kim
18 Decl., ¶ 12, Exhibit 1, ¶ 4.1.)

19 **V. ARGUMENT**

20 **A. The Court Should Approve the Settlement Agreement.**

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

27 **B. The Risks of Moving Forward with Plaintiff’s PAGA Claim**

28 To help the Court evaluate the fairness of the Settlement, below is a discussion of the risk

1 evaluation made by Plaintiff and PAGA Counsel. They considered the arguments and defenses
2 asserted by Defendant at mediation and assessed the risks of moving forward to trial and what this
3 Court could do in awarding penalties even if Plaintiff were to prevail at trial.

4 Plaintiff estimated that the maximum potential exposure on the PAGA claim is \$1,200,000.00,
5 calculated by multiplying the total number of PAGA Pay Periods (12,000) by \$100 per violation.
6 (Kim Decl., ¶ 18.) Plaintiff’s calculation of the total potential exposure on the PAGA claim was based
7 on one PAGA penalty per PAGA Pay Period (i.e., Plaintiff did not stack the PAGA penalties in his
8 damages calculation). (*Id.*) Case law supports the notion that it is inappropriate to “stack” penalties
9 for multiple violations, particularly when those violations all stem from the same alleged “injury.”
10 (*Id.*)

11 The Gross Settlement Amount of \$325,000.00 is approximately 27.08% of the maximum
12 potential exposure of \$1,200,000.00. (*Id.* at ¶ 21.) The Gross Settlement Amount, therefore,
13 represents a strong value at approximately \$27.08 per PAGA Pay Period. From PAGA Counsel’s
14 review of the facts, strengths, and weaknesses of the case and the risks and delays posed by further
15 litigation, PAGA Counsel believes that the recovery for the State and Aggrieved Employee is fair and
16 reasonable. (*Id.*)

17 **C. Trial of Plaintiff’s PAGA Claims Would Have Presented Many Hurdles.**

18 Defendant denied and continues to deny all of the claims made by Plaintiff in this Action and
19 contends that it acted at all relevant times in conformance with the law. (*Id.* at ¶ 16.) Defendant
20 contends that Plaintiff and Aggrieved Employees were paid for all hours worked, that Defendant
21 prohibited Plaintiff and Aggrieved Employees from working beyond their scheduled shifts, and that
22 any “off-the-clock” work was performed without Defendant’s knowledge and de minimis; that
23 Plaintiff and Aggrieved Employees were provided with compliant meal periods and rest periods and
24 that any deviations were at the voluntary election of Plaintiff and/or Aggrieved Employees and not at
25 the request of Defendant or due to work requirements; that Defendant paid all wages due on a timely
26 basis and using Labor Code compliant instruments; that Defendant’s wage statements complied with
27 the law; that Defendant maintained records of payroll data and hours worked daily by Plaintiff and
28 the Aggrieved Employees; and that neither Plaintiff nor any Aggrieved Employees incurred

reasonable business-related expenses for which they were not reimbursed. (*Id.*) As a result, PAGA Counsel had to appropriately discount the amount recoverable from Defendant in a settlement. (*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) 165 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. In departing from the \$100/pay period calculation to arrive at the \$325,000.00 Gross Settlement Amount in this case, Plaintiff considered various reasons why the Court may reduce any eventual recovery at its discretion and considered that PAGA penalties are not mandatory but permissive. (Kim Decl., ¶ 20.) 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).

VI. THE REQUEST FOR ATTORNEYS’ FEES AND COSTS

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

PAGA Counsel is requesting a PAGA Counsel Fees Payment of \$108,333.00 for their attorneys’ fees and a PAGA Counsel Litigation Expenses Payment of \$17,429.12 for their costs incurred in prosecuting this Action. (Kim Decl., ¶ 22.)

Prior to the 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) PAGA Counsel Are Entitled to Fees from the Civil Penalties Recovered

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 \$325,000.00 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) The Attorneys' Fees Request Is Within the Range of Reasonable Fees

PAGA Counsel at D.Law, Inc. are experienced employment attorneys with expertise in wage and hour class and representative actions. (Kim Decl., ¶¶ 31-36; See Declaration of David Yeremian ("Yeremian Decl."), ¶¶ 4-10.) Throughout this case, PAGA Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this Action on a pure contingency basis. (Kim Decl., ¶¶ 24-25.) 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 in this county and others 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.*)

For these reasons, PAGA Counsel's requested fee of one-third of the Gross Settlement Amount is well within the range of reasonableness and is fair compensation for undertaking this complex and risky litigation on a contingent basis.

3) PAGA Counsel's Fee Request Is Reasonable Under the Lodestar Crosscheck.

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 factors warranting a modest multiplier were apparent in this case.

1 Throughout this case, PAGA Counsel have borne, and continue to bear, the entire risk and
2 cost of litigation associated with this Action on a purely contingency basis. (Kim Decl., ¶ 24.) As
3 a result, PAGA Counsel have yet to receive any compensation for the amount of time and money
4 invested in the case to date. (*Id.*)

5 Contingent-fee cases present the very real risk of working hundreds if not thousands of
6 hours that may never be entirely compensated. (Kim Decl., ¶ 25.) Moreover, while the case is
7 being litigated, counsel must pay overhead (salaries, rent, etc.), provide for their own expenses,
8 and in most cases pay the out-of-pocket expenses incurred on the plaintiff's behalf. (*Id.*) And the
9 prospect of a court-awarded fee does not greatly reduce the risk posed by these cases. In many
10 cases, the prospect is nothing more than a potential that never materializes. (*Id.*) First, you must
11 win the case to get a court-awarded fee; even those cases that seem strongest at the onset can be
12 lost and sometimes are lost (*Id.*). Second, there are always pitfalls and unforeseen obstacles that
13 arise along the way, such as settlement offers that the client may accept without ensuring that we
14 receive a reasonable fee or changes in the law that substantially affect the merits of the case, or
15 other uncertainties involving the client. (*Id.*) Finally, there is the great risk inherent in advancing
16 tens if not hundreds of thousands of dollars in out-of-pocket expenses. (*Id.*) If that money were to
17 be invested in some sort of financial investment, one would expect a reasonable rate of return on
18 that investment. (*Id.*) Here, however, the best we can hope to recover is our money, and then only
19 if we are substantially successful; if we are not, all or part of this "investment" can be lost. (*Id.*)

20 PAGA Counsel is well acquainted with the contingent fee market throughout California,
21 particularly as it pertains to PAGA and class action litigation. (Kim Decl., ¶ 26.) PAGA Counsel
22 has negotiated numerous contingency-fee agreements with plaintiffs, both as individuals and as
23 representatives in class-action and PAGA suits. (*Id.*) Many of those agreements required that
24 counsel receive a fee under certain scenarios that exceed one-third of the recovery. PAGA
25 Counsel's recent attorneys' fees awards in similar wage-and-hour class and PAGA actions have
26 been 35% of the recovery. (*Id.*)

27 Moreover, PAGA Counsel spent substantial time on this matter. Aside from drafting the initial
28 complaint, PAGA Counsel conducted informal discovery, reviewed and analyzed time and pay

1 records, employment handbooks, Plaintiff's personnel file, relevant policies, and other
2 documentation, researched the applicable law and potential defenses, constructed damage models
3 based on interpretations of California law, reviewed information provided by Defendant at the
4 mediation, engaged in meet and confer efforts with Defendant, drafted and revised the settlement
5 agreement, and drafted this Motion. (Kim Decl., ¶ 28.)

6 PAGA Counsel worked at least **134.90** hours on this matter and calculated the base lodestar
7 at \$87,458.00 at rates reflecting those currently earned in the marketplace. (Kim Decl., ¶¶ 28-30.)
8 Senior Attorney Alvin B. Lindsay's records indicate at least 27.0 hours on this matter with an hourly
9 rate of \$800. (*Id.*) Associate Attorney Melissa Rodriguez's records indicate at least 19.20 hours on
10 this matter with an hourly rate of \$400. (*Id.*) Associate Attorney Tania Fonseca records indicate at
11 least 53.10 hours on this matter with an hourly rate of \$580. (*Id.*) Associate Attorney Jean Power's
12 records indicate at least 1.00 hour on this matter with an hourly rate of \$550. (*Id.*) Associate Attorney
13 Rose Sorial's records indicate at least 1.10 hours on this matter with an hourly rate of \$605. (*Id.*)
14 Senior Attorney Enoch Kim's records indicate at least 21.50 hours on this matter with an hourly rate
15 of \$750. Managing Attorney David Yeremian's records indicate at least 12 hours on this matter with
16 an hourly rate of \$850. (Kim Decl., ¶¶ 28-29; Yeremian Decl., ¶ 12.) Thus, consideration of the
17 lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness
18 of the requested fee award. (Kim Decl., ¶ 28.)

19 The contingent nature and complexity of this case as well as the significant benefit that the
20 Settlement confers upon the State and Aggrieved Employees strongly support the application of a
21 modest multiplier of approximately 1.24 to the lodestar amount. (Kim Decl., ¶ 30.) As such, PAGA
22 Counsel respectfully request the Court grant their request for \$108,333.00 in fees.

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

24 The litigation expenses incurred by PAGA Counsel in this Action are also to be reimbursed
25 under the Settlement Agreement. (Kim Decl., ¶ 22.) The lion's share of these costs were incurred in
26 connection with mediation, and the others listed were all reasonably incurred and necessary to the
27 prosecution of this Action. (*Id.*) Thus, PAGA Counsel respectfully request the Court approve their
28 request for reimbursement in the amount of \$17,429.12.

1 **VII. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION AND**
2 **NOTICE**

3 The Parties agreed to use Apex as the third-party settlement administrator in this case. (Kim
4 Decl., ¶ 38.) Apex will be responsible for updating the addresses of Aggrieved Employees, mailing a
5 notice of Settlement, and calculating and distributing the settlement checks, among other duties. (*Id.*)
6 Apex capped its fees at \$7,000.00 for administering the Settlement and based on PAGA Counsel's
7 experience in other class and PAGA settlements, Apex's costs for administering this Settlement are
8 fair and reasonable. (*Id.*)

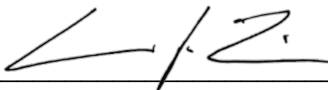
9 The Settlement Administrator will mail the Individual PAGA Payment along with a letter
10 providing notice of the Settlement and release of claims to Aggrieved Employees ("Notice of PAGA
11 Settlement and Release of Claims"). (*Id.* at ¶ 39.) The Notice of PAGA Settlement and Release of
12 Claims includes, among other things, an explanation of PAGA, a description of the allegations in the
13 Action and the scope of released claims, and a statement of the Gross Settlement Amount and
14 payment allocations from the Gross Settlement Amount. (*Id.*)

15 **VIII. CONCLUSION**

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

22 DATED: April 7, 2025

D.LAW, INC

23
24 By 
25 Enoch J. Kim
26 Attorney for Plaintiff on behalf of himself and
27 Aggrieved Employees
28