Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiffs
DAVID DELGADO and BRETT CONSTANT
[Additional Counsel for Plaintiffs on the Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DAVID DELGADO, BRETT CONSTANT, and LUIS ROMERO, on behalf of the State of California as the Real Party In Interest; Plaintiffs, vs. ELITE ROOTER, INC., a California Corporation; ELITE ROOTER ORANGE, INC., a California Corporation; ELITE ROOTER SDN, INC., a California Corporation; ELITE ROOTER PENINSULA, INC., a California Corporation; ELITE ROOTER PHOENIX, INC., a California Corporation; ELITE ROOTER SAN JOSE, INC., a California Corporation; ELITE ROOTER SFV, INC., a California Corporation; ELITE ROOTER SOUTH BAY, INC., a California Corporation; ELITE ROOTER FRESNO, INC., a California Corporation; and DOES 1 through 20, inclusive; Defendants.	Case No. 23STCV25139 [*Assigned to Hon. Richard S. Kemalyan, Dept 61, for all purposes]* **PLAINTIFFS' NOTICE OF MOTION AND MOTION TO ENFORCE SETTLEMENT PURSUANT TO CCP SECTION 664.6 AND TO APPROVE THE PARTIES' SETTLEMENT AGREEMENT PURSUANT TO THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: April 21, 2026 Time: 9:00 a.m. Dept: 61

ADDITIONAL COUNSEL

Larry W. Lee (State Bar No. 228175)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com

Edward W. Choi, Esq., SBN 211334
LAW OFFICES OF CHOI & ASSOCIATES, APLC
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Telephone: (213) 381-1515
Facsimile: (213) 465-4885
edward.choi@choiandassociates.com

Brandon M. Banks, SBN 314667
BRANDON BANKS LAW, APC
3223 Webster Street
San Francisco CA 94123
Office: (415) 606-7017
Fax: (415) 358-4233
brandon@brandonbankslaw.com

David Lee, Esq., SBN 296294
DAVID LEE LAW, APC
777 S. Alameda St., 2nd Fl.
Los Angeles, California 90021
Telephone: (213) 236-3536
Facsimile: (866) 658-4722

Attorneys for Plaintiff LUIS ROMERO

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on April 21, 2026, at 9:00 a.m., or as soon thereafter as the matter be heard in Department 61 of the Superior Court of the State of California for the County of Los Angeles, Stanley Mosk Courthouse, located at 111 N. Hill St., Los Angeles, CA 90012, Plaintiffs David Delgado, Brett Constant, and Luis Romero ("Plaintiffs") will, and hereby do, move the Court for entry of an order approving the PAGA Settlement Agreement ("Settlement Agreement" or "Settlement") entered into in the above-captioned civil action between Plaintiffs and Defendants Elite Rooter, Inc., Elite Rooter Orange, Inc., Elite Rooter SDN, Inc., Elite Rooter Peninsula, Inc., Elite Rooter Phoenix, Inc., Elite Rooter San Jose, Inc., Elite Rooter SFV, Inc., Elite Rooter South Bay, Inc., Elite Rooter Fresno, Inc., and DOES 1 through 20, inclusive, (collectively, "Defendants") (Plaintiffs and Defendants shall collectively be referred to as the "Parties") under the Labor Code Private Attorneys General Act of 2004 (the "PAGA").

This motion is made pursuant to Code of Civil Procedure §664.6 to enforce the terms of the settlement set forth in the Parties' fully executed and enforceable Memorandum of Understanding. Further, pursuant to California Labor Code § 2699(l)(2), which requires trial courts to "review and approve any settlement of any civil action filed pursuant to [PAGA]," *see* Cal. Lab. Code § 2699(l)(2), and on the grounds that the parties' settlement is fundamentally fair, adequate, and reasonable in light of the PAGA's policies and purposes. As set forth in the concurrently filed declaration of Edward W. Choi, a copy of the Parties' proposed Settlement Agreement and this motion was electronically submitted to the Labor and Workforce Development Agency in accordance with California Labor Code §§ 2699(l)(2) and 2699(l)(4) concurrent with the filing of this motion.

This motion is based on this notice of motion and motion for approval of the Parties' Settlement Agreement attached as Exhibit E to the Declaration of Edward W. Choi; the attached memorandum of points and authorities in support of this motion; the concurrently filed declarations of Edward W. Choi, Larry W. Lee, Brian J. Mankin, Peter J. Carlson, Plaintiff David Delgado, Plaintiff Brett Constant, and Plaintiff Luis Romero, all pleadings, records, and files in this action; and upon such other matters as may be properly presented to, or received by, the Court at or before the hearing on this motion.

Dated: March 19, 2026

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

By: ______________________
Edward W. Choi
Attorneys for Plaintiffs and the Aggrieved Employees

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Statutes

Rules

Other Authorities

Federal Cases

State Cases

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case was settled and a fully enforceable Memorandum of Understanding ("Settlement Agreement" or "MOU") was signed by Plaintiffs David Delgado, Brett Constant, and Luis Romero ("Plaintiffs") and Defendants Elite Rooter, Inc., Elite Rooter Orange, Inc., Elite Rooter SDN, Inc., Elite Rooter Peninsula, Inc., Elite Rooter Phoenix, Inc., Elite Rooter San Jose, Inc., Elite Rooter SFV, Inc., Elite Rooter South Bay, Inc., Elite Rooter Fresno, Inc., and DOES 1 through 20, inclusive, (collectively, "Defendants") (Plaintiffs and Defendants are collectively referred to as the "Parties"). Declaration of Edward W. Choi ("Choi Decl.") ¶8, Ex. D. Thereafter, the Parties negotiated and finalized a long form PAGA Settlement Agreement ("Long Form Agreement"). *Id.* ¶11, Ex. E. Plaintiffs have signed the agreed upon Long Form Agreement. *Id.* However, despite numerous repeated requests, Defendants have failed to provide their signatures to the Long Form Agreement. *Id.* ¶12, Ex. F. Thus, Plaintiffs have been forced to bring this Motion to Enforce the Settlement pursuant to C.C.P. §664.6 and seek the Court's approval of the Settlement and to enter judgment thereon.

The settlement was reached after propounding written discovery and then agreeing to mediation and production of documents and data on an informal basis. Choi Decl. ¶13. The first mediation was unsuccessful and the Parties engaged in further discovery. *Id.* Thereafter, the Parties engaged in direct negotiations to reach a settlement in this matter. As part of the privileged settlement negotiations, Defendants produced data regarding the Aggrieved Employees and the number of pay periods at issue for each of Plaintiffs claims from which Plaintiffs' counsel calculated the maximum PAGA penalty exposure. *Id*. Based on this information, the Parties have settled this case on a representative PAGA basis for $200,000.00. Settlement Agreement ¶3.1.

The Settlement Agreement allocates one-third of the Gross Settlement Amount for attorneys' fees, or $66,666.67, reasonable actual litigation costs incurred by Plaintiffs' Counsel, $5,000.00 to each Plaintiff in exchange for a general release, and up to $3,200 for settlement administration costs. Settlement Agreement ¶5; Choi Decl. ¶13. The remainder, or the "PAGA

Payment," is allocated to the payment of civil penalties under PAGA, of which 75% is to be distributed to the Labor and Workforce Development Agency (the "LWDA") and 25% of which is to be distributed to the "Aggrieved Employees" on whose behalf Plaintiffs filed this action as required by PAGA. *Id.* ¶5.

Under PAGA, the Court must review and approve the proposed settlement. *See* Cal. Lab. Code § 2699 (l)(2) Accordingly, Plaintiffs brings this motion to request approval of the Settlement Agreement on the grounds it is fundamentally fair, adequate, and reasonable in light of PAGA's policies and purposes and the facts and circumstances discussed in detail below.

II. PROCEDURAL BACKGROUND

On August 10, 2023, Plaintiff David Delgado ("Delgado") sent notice to the LWDA giving notice of his intent to pursue a representative PAGA action, on behalf of themselves and the State of California as well as on behalf of other aggrieved employees (the "Delgado PAGA Notice"). Choi Decl. ¶2, Ex. A.

On August 31, 2023, Plaintiff Romero sent notice to the LWDA giving notice of his intent to pursue a representative PAGA action, on behalf of themselves and the State of California as well as on behalf of other aggrieved employees (the "Romero PAGA Notice"). Choi Decl. ¶3, Ex. B.

On October 16, 2023, Plaintiff Delgado filed a Representative Action Complaint (the "*Delgado* Action") under the Private Attorneys General Act of 2004 ("PAGA") against Defendants in the Superior Court of California, County of Los Angeles (the "Action"). *Id.* at ¶4.

On October 19, 2023, another wage-and-hour case was filed against Defendants, entitled *Constant v. Elite Rooter, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVSB2326553 (the "*Constant* Action"). *Id.* at ¶5. The *Constant* Action alleged the same wage-and-hour violations as this *Delgado* Action, against the same Defendants as those named herein. However, the *Constant* action was filed as a putative class action with PAGA claims (whereas the *Delgado* Action was initially PAGA-only). *Id.*

On November 17, 2023, Plaintiff Romero filed another PAGA action against Defendants in the Ventura County Superior Court Case No. 2023CUOE016726 (the "Romero Action"). *Id.*

at ¶7.

The Parties engaged in direct negotiations regarding a proposed global resolution of the *Delgado and Romero* Actions. *Id.* at ¶8. On August 27, 2025, the Parties reached the following settlement of the representative PAGA claims pled in the Actions. *Id.* As part of the settlement, and for purposes of efficiency, the Parties agreed that the *Delgado* and *Romero* Actions shall be joined together via the filing of a Second Amended Complaint in the *Delgado* Action that adds Luis Romero as a Plaintiff and PAGA Representative. The Parties subsequently executed the Settlement Agreement, which is attached as Exhibit D to the Choi Decl.

The Gross Settlement Amount is $200,000.00. Settlement Agreement ¶2. Settlement Agreement allocates 33 1/13% of the Gross Settlement Amount for attorneys' fees ($66,666.66) and not more than $25,000.00 in litigation costs incurred by PAGA Counsel, $5,000.00 to Plaintiffs in exchange for a general release ($15,000.00 total), and up to $3,200 for settlement administration costs. *Id.* ¶5. The remainder, is allocated to the payment to the LWDA and Aggrieved Employees. *Id*. ¶6.

The Settlement Agreement provides the following Release by Aggrieved Employees:

> "Upon the Effective Date occurring and Defendants fully funding the Gross Settlement Amount, Plaintiffs – in their individual capacities and on behalf of the State of California and the LWDA – shall completely release and discharge the Released Parties of the Released PAGA Claims. Aggrieved Employees may not opt-out of the PAGA Settlement and Released PAGA Claims."

Id. ¶ 7.

There are approximately 250 Aggrieved Employees. *Id.* ¶4. Each PAGA Settlement Employee will receive an Individual PAGA Payment proportionate to the number of pay periods worked. *See Id.* ¶ 6.

III. <u>STANDARD OF REVIEW</u>

Although PAGA requires courts to "review and approve" the settlement of any civil action filed under PAGA, *see* Cal. Lab. Code § 2699 (l)(2), neither the Legislature, the California Supreme Court, the California Courts of Appeal, nor the LWDA has identified the standard PAGA settlements must satisfy. *See Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d

959, 971 (N.D. Cal. 2019) (noting the absence of a "definitive" guidance for approval of a PAGA settlement); *see also Smith v. H.F.D. No. 55, Inc.*, No. 2:15-cv-01293, 2018 WL 1899912, at *2 (E.D. Cal. Apr. 20, 2018) ("PAGA does not establish a standard for evaluating PAGA settlements."). The LWDA itself has acknowledged the lack of a "specific benchmark" and stated only that the relief provided under PAGA must be "genuine and meaningful," "consistent with the underlying purpose of the statute to benefit the public" and, in the context of a class action, "meet[ ] the standards of being 'fundamentally fair, reasonable, and adequate' with reference to the public policies underlying the PAGA." *See* California Labor and Workforce Development Agency's Comments on Proposed PAGA Settlement at 2-3, *O'Connor v. Uber Techs. Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016).

Left to develop their own standards, federal district courts have typically followed the LWDA's limited guidance by requiring settlements to be "fundamentally fair, adequate, and reasonable in light of PAGA's policies and purposes." *See Haralson*, 383 F. Supp. 3d at 972 (collecting cases). When applying this test, federal district courts often consider factors such as strength of a Plaintiffs case; the risk, expense, complexity, and likely duration of further litigation; the amount offered in settlement; the extent of discovery completed; and the expertise and views of counsel. *See Smith*, 2018 WL 1899912 at *3. Federal district courts have also been mindful of the fact that trial courts have broad discretion to award civil penalties in amounts that are less than the maximum amounts authorized by PAGA. *See, e.g., id.* at *3; *see also* Cal. Lab. Code § 2699 (e)(2).

IV. ARGUMENT

A. The Court Can Enforce the Settlement Pursuant to Code of Civil Procedure §664.6

If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement. Code of Civil Procedure §664.6.

In the present case, all of the material terms of the settlement were reduced to writing and signed by the attorneys and Parties. Choi Decl., Ex. D. The MOU specifically provides that the Parties intend that the MOU is enforceable pursuant to C.C.P. §664.6. Settlement Agreement ¶11. Thus, the Court has power to approve this settlement pursuant to the signed Settlement Agreement along with the further terms that the Parties agreed to in the Long Form Agreement.

B. Notice of the Settlement Agreement Has Been Given to the LWDA Pursuant to Labor Code § 2699(l)(2)

When enacting PAGA, the Legislature intended to ensure that the LWDA retained "primacy" over private enforcement actions. *See* 2003 Cal. Stat. ch. 906 § 1(d). To that end, PAGA requires parties who seek approval of a proposed PAGA settlement to submit the proposed settlement to the LWDA online "at the same time that it is submitted to the court," to give LWDA an opportunity to comment on the proposed settlement. *See* Cal. Lab. Code §§ 2699 (l)(2), 2699 (l)(4). In satisfaction of that requirement, Plaintiffs submitted a copy of the Settlement Agreement and this motion to the LWDA through the LWDA's online filing system in conjunction with filing this motion. *See* Choi Decl. ¶ 19, Ex. H.

C. The Court Should Approve the Settlement Agreement

1. The Settlement Agreement is Entitled to a Presumption of Fairness

In class actions, judicial review of a settlement's fairness is designed to protect class members who had no say in the negotiation of the settlement by ensuring that the settlement is not the product of "fraud," "overreaching," or "collusion" by the negotiating parties and that "due regard" was given to the rights and interests of absent class members subject to the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-01 (1996). Although PAGA actions and class action have certain "fundamental" differences (*see Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425, 435 (9th Cir. 2015)), PAGA settlements are also subject to Court approval. *See Arias v. Superior Court*, 46 Cal. 4th 969, 985 (2009) (discussing the scope of a judgment in a PAGA action); *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016).

Against this backdrop, California courts have identified a set of circumstances entitling class action settlements to a "presumption of fairness." *See Dunk*, 48 Cal. App. 4th at 1802. In particular, a presumption of fairness arise where "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *See id.*

All of the factors that would give rise to a presumption of fairness in the context of a class action settlement are present in this PAGA action. After this lawsuit was commenced, the Parties agreed to engage in arm's length negotiations between highly experienced counsel. As part of their privileged settlement negotiations, Defendants produced data regarding the number of pay periods at issue for each of the claims, from which Plaintiffs' Counsel calculated the maximum PAGA penalties and analyzed Defendants' potential liability. Choi Decl. ¶13. As set forth in the Settlement Agreement, there are approximately 7,000 pay periods worked by 250 Aggrieved Employees. Settlement Agreement ¶4. Thus, the total "unstacked" PAGA penalties amounts to $700,000 (7,000 pay periods X $100). Choi Decl. ¶13. The Gross Settlement Amount of $200,000 represents 28.57% of the total PAGA exposure. *Id.* ¶13.

Both Plaintiffs and Defendants' counsel have significant experience in litigating wage and hour class and PAGA actions, which further supports the reasonableness of the settlement. Choi Decl. ¶14. Therefore, the Settlement Agreement is entitled to a presumption of fairness.

2. The Scope of the Settlement Agreement is Fair, Adequate, and Reasonable

Citing a decline in "[s]taffing levels for state labor law enforcement" and finding the "vigorous assessment and collection of civil penalties as provided in the Labor Code" to sometimes be "the only meaningful deterrent to unlawful conduct," the Legislature enacted PAGA in 2003 to deter violations of the Labor Code by augmenting the limited enforcement capability of the LWDA with private enforcement actions by "aggrieved employees" acting as private attorneys general. *See* 2003 Cal. Stat. ch. 906 § 1; *see also Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 383 (2014). Thus, a PAGA is in the nature of in the nature of an enforcement action, where the named Plaintiffs acts as a proxy of the LWDA to collect penalties otherwise recoverable only by the LWDA. *See Arias*, 46 Cal. 4th at 986; *see* *also Iskanian*, 59 Cal. 4th at 381-82. In that role, the named Plaintiffs "take[s] on a special responsibility to their fellow aggrieved workers who are effectively bound by any judgment." *See O'Connor*, 201 F. Supp. 3d at 1134.

Plaintiffs claims in this action are based on alleged violations of Labor Code §§ 200-204, 221-223, 226, 226.7, 227.3, 233, 246, 510, 512, 1174, 1194, 1194.2, 1197, 2698, *et seq.* and 2802. *See generally* Plaintiffs' Operative Complaint and PAGA notice.

When reviewing a settlement agreement, "the test is not the maximum amount Plaintiffs might have obtained at trial on the complaint," *see Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 250 (2001), nor is it "whether the settlement agreement is perfect in the estimation the reviewing court." *See Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). The test is "whether the settlement is reasonable under all of the circumstances." *See Wershba*, 91 Cal. App. 4th at 250. Relevant considerations include the strength of a Plaintiffs case and the risk, expense, complexity, and likely duration of further litigation. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 130 (2008); *see also Smith*, 2018 WL 1899912 at *2. In PAGA settlements, courts also consider their authority to award less than the maximum penalty authorized by PAGA. *See* Cal. Lab. Code § 2699 (e)(2); *see also Smith*, 2018 WL 1899912 at *3.

Here, Defendants produced data regarding the Aggrieved Employees and the number of pay periods at issue for each of Plaintiffs claims from which Plaintiffs' counsel calculated the maximum PAGA penalty exposure. As set forth in the MOU, there are approximately 7,000 pay periods. Defendants argued that the Court would not impose maximum penalties. Indeed, courts have refused to "stack" PAGA penalties and often significantly reduce the penalties awarded. *Id.* If penalties were not "stacked", the total amount of exposure would amount to $700,000.00 (7,000 pay periods X $100). *Id.* Further, courts have discretion to reduce PAGA penalties. *See Carrington v. Starbucks Corporation* (30 Cal. App. 5th 504, 517 (2018) (approving PAGA penalty reduction to $5 per pay period). If the Court in this case were to reduce penalties to $5 a pay period, as was approved in *Carrington*, the potential exposure amounts to approximately $35,000. *Id.*

Under the circumstances of this case, the payment of $200,000.00 in civil penalties in fair, adequate, and reasonable. The payment of $200,000.00 in exchange for a release of only those claims for civil penalties that are pleaded in the Action or that could have been pleaded based on the facts alleged in the PAGA Notice and the PAGA cause of action pleaded in the Action will have a substantial deterrent effect on Defendants and other California employers and will confer benefits on the Aggrieved Employees, who will each receive a portion of the settlement.

Numerous courts have held that **<u>gross</u>** settlements approximating between only 8 and 25% of the Defendants' potential exposure are fair and reasonable. *See*, *e.g.*, *In re Mego Fin. Corp. Secs. Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment"; noting that whether the settlement is fair and adequate depends on the "the difficulties in proving the case"); *Bellinghausen v. Tractor Supply Co*., No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding that class action settlement recovering between 8.5% and 25% of the Defendants' potential exposure was fair); *Van Ba Ma v. Covidien Holding Inc*., U.S. Dist. Ct. Case No. 8:12-cv-02161 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which obtained ***only 9.1%*** of projected damages, given the risks of continued litigation) *Villegas v. J.P. Morgan Chase & Co*., No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A., Inc*., No. 10–cv–02576 NC, 2013 WL 1789602, at *5 (N.D. Cal. Apr. 26, 2013) (24 percent was reasonable).

In the present case, the Gross Settlement Amount is approximately 28.57% of the total maximum exposure, if the penalties were not "stacked", which is a very reasonable settlement amount. In sum, this settlement is fair, reasonable, and consistent with PAGA's policies and purposes under these circumstances.

3. The Settlement Agreement Apportions Civil Penalties Between the LWDA and the Aggrieved Employees as Required by PAGA

Except when civil penalties are recovered from a Defendants who did not have any employees at the time of an alleged violation, civil penalties recovered under PAGA must be distributed so that 75% of the civil penalties are paid to the to LWDA and 25% are paid to the "aggrieved employees" on whose behalf the PAGA action was brought. *See* Cal. Lab. Code § 2699 (i). In full compliance with that rule, the Settlement Agreement requires 75% of the Net PAGA Payment to be paid to the LWDA and 25% of the PAGA Payment to be paid to the Aggrieved Employees. Settlement Agreement ¶ 6. The Aggrieved Employees will receive penalties based on the number of pay periods they worked during the applicable period using a pro rata distribution formula. *Id.* ¶6.

4. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Attorneys' Fees

a. Percentage of the Fund

PAGA allows a prevailing Plaintiffs to recover reasonable attorneys' fees. *See* Cal. Lab. Code § 2699 (g). In recognition of this, the Settlement Agreement allows Plaintiffs' Counsel to request up to 33 and 1/3 percent ($66,666.66) in attorneys' fees. *See* Settlement Agreement ¶ 3.2.1. This amount is fair, adequate, and reasonable for two reasons.

In class actions, state and federal courts have held that when a class action establishes a monetary fund for the benefit of the class members out of which attorneys' fees may be paid, courts may determine the amount of a reasonable fee by "choosing an appropriate percentage of the fund created." *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016). Specifically, the *Laffitte* Court held:

> "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. 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—convince us the percentage method is a valuable tool that should not be denied our trial courts."

Id. at 503 (internal citation omitted); *see also Rawlings v. Prudential-Bache Properties, Inc.,* 9 F.3d 513, 516 (6th Cir. 1993) (holding that the percentage of the fund method more accurately reflects the results achieved than the lodestar method and "establishes reasonable expectations on the part of Plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.").

Further, the Supreme Court in *Laffitte* stated that lodestar cross-checks are not required; in many cases, **performing a cross-check "undermines" one of the primary reasons for using the percentage method**: aligning counsel's incentives with the benefits delivered to the class and discouraging protracted litigation. *Id*. at 506 [emphasis added] (finding trial courts "retain the discretion to forgo a lodestar cross-check"); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* 108 F.R.D. 237, 258 (1985); *Lealao*, 82 Cal. App. 4th 19, 29–30 (citing the recommendations of the Third Circuit Task Force with approval and observing that "[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many authorities, who have been most vocal about the manner in which it exacerbates the problem of 'cheap settlements' and burdens already overworked trial judge.").

The $66,666.67 requested by Plaintiffs' Counsel represents one-third of the Gross Settlement Amount, which is consistent with awards usually approved in class actions and representative PAGA actions. Without waiving the attorney-client privilege, Named Plaintiffs authorized a fee split with my co-counsel as follows: 50% to Lauby, Mankin & Lauby LLP, 17.5% to the Diversity Law Group, P.C., 17.5% to the Law Offices of Choi & Associates, APLC, 7.5% to Brandon Banks Law, APC, and 7.5% to David Lee Law, APC. Declaration of

David Delgado ("Delgado Decl.") ¶9, Declaration of Brett Constant ("Constant Decl.") ¶8, Declaration of Luis Romero ("Romero Decl.") ¶8, Choi Decl. ¶20, Declaration of Larry W. Lee ("L. Lee Decl.") ¶9, Declaration of Brandon Banks ("Banks Decl.") ¶8, Declaration of David Lee ("D. Lee Decl.") ¶9; Declaration of Brian J. Mankin ("Mankin Decl.") ¶10; and Declaration of Peter J. Carlson ("Carlson Decl.") ¶10.

5. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Litigation Costs

PAGA also allows a prevailing Plaintiffs to recover litigation costs. *See* Cal. Lab. Code § 2699(g). Accordingly, the Settlement Agreement allows Plaintiffs' Counsel to request reimbursement of actual litigation costs. Settlement Agreement ¶ 5.b. Here,

Plaintiffs' Counsel request $15,782.82 for the reimbursement of litigation costs. As set forth in accompanying declarations of Plaintiffs' Counsel, these costs were all directly incurred it the prosecution of this action, including, but not limited to, filing fees, service fees, and mediation fees. Choi Decl. ¶ 18, Ex. G; Lee Decl. ¶8, Ex. A; Mankin Decl. ¶9, Ex. A. As such, Plaintiffs Counsel's request for costs in the amount of $15,782.82 is fair, adequate, reasonable, and consistent with PAGA's policies.

6. The Payments to Plaintiffs Should Be Approved

Courts have held that named Plaintiffs in class, or private attorney general actions can request a service award. *Rodriguez v. W. Publ'g Corp*., 563 F.3d 948, 958-59 (9th Cir. 2009) (explaining that service awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their **<u>willingness to act as a private attorney general</u>**") (emphasis added).

Here, Plaintiffs respectfully requests $5,000.00 each, which is intended to compensate Plaintiffs for the time spent on this case. Settlement Agreement ¶5.c. This requested enhancement is consistent with awards approved in other common fund cases. *See Van Vranken v. Atlantic Richfield Co*., 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of $50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig*., 130 F.R.D. 366, 374 (S.D. Ohio

1990) (two incentive awards of $55,000, and three incentive awards of $35,000). Plaintiffs also took the risk of bringing the lawsuit, which was a matter of public record. Future employers may be less likely to hire an employee who has previously filed an action against an employer. This in conjunction with Plaintiffs agreement to provide a general release supports the requested award. Delgado Decl. ¶7, Constant Decl. ¶6, Romero Decl. ¶7.

7. The Settlement Agreement Allocates a Fair, Adequate, and Reasonable Amount to the Payment of Settlement Administration Costs

Because the Settlement Agreement requires payments not only to Plaintiffs, Plaintiffs' Counsel, and the LWDA, but also to Defendants' current and former employees, significant time and effort will be required to administer the Settlement if it is approved by this Court. Among other things, the Settlement Administrator will calculate each PAGA Settlement Employee Individual PAGA Payment; issue appropriate tax forms to all parties who receive payments under the Settlement Agreement; mail payments to Plaintiffs, Plaintiffs' Counsel, the LWDA, and each Aggrieved Employee; and void any checks not cashed by Aggrieved Employees so that the unclaimed amount can be forwarded to the St. Jude Children's Research Hospital, Inc.. *See* Settlement Agreement ¶ 5.c.

In contemplation of these expenses, the parties will engage Xpand Legal to act as a third-party settlement administrator and have allocated up to $3,200.00 to cover the cost of settlement administration. Choi Decl. ¶21, Ex. H. Plaintiffs' counsel have solicited bids from several Settlement Administrators and Xpand Legal provided the lowest bid. *Id*.

8. Notice to the Aggrieved Employees is Adequate

The draft cover letter to be sent to the Aggrieved Employees adequately provides notice of the claims that are being released by the Aggrieved Employees. (*See* Choi Decl., Ex. J).

V. CONCLUSION

For all of the foregoing reasons, Plaintiffs requests that the Court approve the Settlement Agreement pursuant to Labor Code § 2699 (l)(2).

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Dated: March 17, 2026

LAW OFFICES OF CHOI & ASSOCIATES, P.C.

By: ______________________________
Edward W. Choi
Attorneys for Plaintiffs and the Aggrieved Employees