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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

HUMBERTO MONTOYA, on behalf of himself, all others similarly situated, the State of California, and the general public, *Plaintiff*, vs. EAST BAY TIRE CO., a California Corporation, EXPRESS SERVICES, INC., a Colorado Corporation; and DOES 1 through 50, inclusive, *Defendants*.	Case No. 23CV008841 <u>Assigned for All Purposes To</u>: Hon. Jill H. Talley Dept.: 23 **NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [filed concurrently with Declaration of Enoch J. Kim; Declaration of Jodey Lawrence; and [Proposed] Order] Date: January 23, 2026 Time: 9:00 a.m. Dept.: 23 Original Complaint filed: September 20, 2023 First Amended Complaint: November 22, 2023 Trial Date: None set

<u>TO THE COURT AND DEFENDANTS AND THEIR ATTORNEYS OF RECORD:</u>

PLEASE TAKE NOTICE that on January 23, 2026 at 9:00 a.m. in Department 23 of the above-entitled Court, located at 720 Ninth Street, Sacramento, CA 95814, Plaintiff HUMBERTO MONTOYA ("Plaintiff" or "PAGA Representative"), on behalf of himself, all others similarly situated, the State of California, and the general public, and all aggrieved employees (the "Aggrieved Employees"), 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 EAST BAY TIRE CO., ("Defendant" and/or "East Bay Tire") (Plaintiff and Defendant collectively referred to as the "Parties") which will accomplish the following: approve the representative action settlement embodied in the Private Attorneys General Act Settlement Agreement and Release of All Claims ("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 the State 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 Declaration of Enoch J. Kim ("Kim Decl."), Declaration of Jodey Lawrence ("Lawrence Decl."), and 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.

PLEASE ALSO TAKE NOTICE of Sacramento County Superior Court's Local Rule 1.06: "Pursuant to Local Rule 1.06 (A), the Court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative ruling may be downloaded off the Court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the Court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held."

DATED: October 22, 2025

D.LAW, INC.

By: ______________________

Enoch J. Kim
Attorneys for Humberto Montoya on behalf of himself and Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this motion, Plaintiff HUMBERTO MONTOYA ("Plaintiff") requests that the Court grant approval of the Private Attorneys General Act Settlement Agreement and Release of All Claims ("Settlement" or "Settlement Agreement") reached between 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, Defendant EAST BAY TIRE CO., ("Defendant" and/or "East Bay Tire") will pay the Total Settlement Amount of $165,000.00 on a non-reversionary basis. (Declaration of Enoch J. Kim ("Kim Decl."), Exhibit 1, ¶ 2.)

As further explained below, 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]

II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

A. Litigation Overview and Procedural History

On or about September 20, 2023, Plaintiff Humberto Montoya sent a letter to the California Labor and Workforce Development Agency ("LWDA") and to East Bay Tire giving notice of his intent to pursue a representative action pursuant to PAGA on behalf of himself and the State of California as well as on behalf of a proposed group of allegedly aggrieved employees ("Aggrieved Employees" or "PAGA Members.") (Kim Decl., Exh. 1, ¶ A.) In the letter, Plaintiff claimed

[1] Plaintiff has submitted the Settlement Agreement 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(*1*)(2). (Declaration of Enoch J. Kim ("Kim Decl.") ¶ 41, Exhibit 6.)

Defendant violated the Industrial Welfare Commission Wage Order and California Labor Code sections 201, 202, 203, 204, 210, 223, 226, 226.7, 246, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1199, 2802, and the related IWC Wage Order No. 1-2001. (*Id.*) On November 16, 2023, Plaintiff sent an amended PAGA Notice to the LWDA and to East Bay Tire. (Kim Decl., ¶ 5.)

On or about September 20, 2023, Plaintiff filed a wage and hour class action against Defendant in the Superior Court of the State of California for the County of Sacramento, Case No. 23CV008841, formally asserting claims for: (1) Failure to Provide Meal Periods (Labor Code §§ 204, 223, 226.7, 512 and 1198); (2) Failure to Provide Rest Periods (Labor Code §§ 204, 223, 226.7 and 1198); (3) Failure to Pay Hourly Wages and Overtime (Labor Code §§ 223, 510, 1194, 1194.2, 1197, and 1198); (4) Failure to Pay Proper Sick Pay (Labor Code § 246); (5) Failure to Provide Accurate Written Wage Statements (Labor Code § 226(a)); (6) Failure to Timely Pay All Final Wages (Labor Code §§ 201, 202 and 203); (7) Unfair Competition (Business & Professions Code §§ 17200 et seq.). On November 23, 2023, by stipulation, Plaintiff filed a First Amended Complaint ("FAC" or "Operative Complaint") to add a claim for civil penalties pursuant to PAGA. (Kim Decl., Exh. 1, ¶ B.)

After initiating the Action, the Parties met and conferred regarding the allegations in the Class Action Complaint and PAGA Notices, and the enforceability of an arbitration agreement signed by Plaintiff. (Kim Decl., ¶ 7.) As a result of those discussions, Plaintiff agreed to request dismissal of the Class claims without prejudice, which was entered by the Court on January 31, 2024. (Kim Decl., ¶ 8.)

On May 9, 2025, the Parties attended an all-day mediation with Lonnie Giamela. (Kim Decl., ¶ 10.) With the assistance of a highly respected wage and hour mediator, the Parties agreed to the general terms for settling this Action that were finalized in the long-form PAGA Settlement Agreement now before the Court for approval. (*Id.*)

III. <u>TERMS OF THE SETTLEMENT</u>

A. Key Financial Terms of the Settlement

Total Settlement Amount: Pursuant to the Settlement Agreement, Defendant will pay a maximum, non-reversionary settlement amount of $165,000.00 in full and final settlement of all claims alleged in the Operative Complaint and PAGA Notices (the "Total Settlement Amount"). (Kim Decl., Exhibit 1, ¶¶ 2 and 4.1.)

Pending Court approval, the Total Settlement Amount will be allocated as follows:

a) Attorneys' fees in the amount not to exceed 35% of the Total Settlement Amount, which is currently estimated to be $57,750.00 ("Plaintiff's Counsel Award"), and litigation costs of $16,016.73 ("Litigation Expenses Payment"); (Exh. 1, ¶¶ 3.3 and 5.); (Kim Decl., Exh. 1, ¶¶ 3.3 and 5.)

b) Administration costs in the amount of $3,950.00 to be paid to the Administrator ("Settlement Administration Costs"), Phoenix Class Action Administration Solutions ("Phoenix"), which are the reasonable costs and fees of administration of this Settlement to be paid from the Total Settlement Amount, including but not limited to: (i) preparing and submitting to PAGA Members, the Parties, and government entities all appropriate tax filings and forms; (ii) computing the amount of and distributing Individual Settlement Awards, the Plaintiff's Counsel Award, and the LWDA Payment; and (iii) preparing and submitting filings required by law in connection with the payments required by the Settlement; (Kim Decl., Exh. 1, ¶ 3.4.); and

c) The remainder of the Total Settlement Amount (the "Net Settlement Amount" or "PAGA Penalties") after deducting the above costs is approximately $87,283.27 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% ($65,462.45) being paid to the LWDA (the "LWDA PAGA Payment") and 25% ($21,820.82) being paid to the Aggrieved Employees on a pro-rata basis ("Individual Settlement Awards"). (Kim Decl., Exh. 1, ¶¶ 3.5 and 4.1-4.6.) The estimated average that each Aggrieved Employee will receive per PAGA Pay Period is $130.66 (dividing $21,820.82 with the total estimated number of Aggrieved Employees (167)). (Kim Decl., ¶ 13(c).) The estimated amount that each Aggrieved Employee will receive per PAGA Pay Period is

$3.15.

PAGA Members shall not be required to submit a claim in order to receive an Individual Settlement Award, and no portion of the Total Settlement Amount shall revert to Defendant or result in an unpaid residue. (Kim Decl., ¶ 14, Exh. 1, ¶ 4.1.) Each PAGA Member will receive an Individual Settlement Award. (*Id.*) Individual Settlement Award payments shall be made by check and shall be made payable to each PAGA Member as set forth in the Settlement Agreement. (*Id.*) The Settlement Administrator shall issue an IRS Form 1099 to each PAGA Member for the portion of his or her Individual Settlement Award. (*Id.*) If any Individual Settlement Award check remains uncashed after one hundred and eighty (180) calendar days from the date the check is issued, such check(s) will be voided by the Settlement Administrator, and the monies will be deposited with the California Controller's Unclaimed Property Fund in the name of the PAGA Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (*Id.*)

After soliciting and reviewing three bids from potential administrators, the Parties selected Phoenix to handle the notice and administration of the Settlement based on the competitiveness of their bid, their competency in administering settlements, and their responsiveness to the Parties' counsel. (Kim Decl., ¶ 15.)

B. Other Material Terms of the Settlement

PAGA Members or Aggrieved Employees: means all current and former non-exempt employees who worked for East Bay Tire in California at any time from September 21, 2022, through July 1, 2025 (the "PAGA Period"). (Kim Decl., Exhibit 1, § H.)

PAGA Period: means the period from September 21, 2022, through July 1, 2025. (Kim Decl., Exhibit 1, § H.)

Escalator Clause: Defendant has represented that the Aggrieved Employees have worked a total of no greater than 6,919 total pay periods during the PAGA Period. (Kim Decl., ¶ 13.) Should the actual number of pay periods worked by the Aggrieved Employees exceed 6,919 by more than 10% greater than this figure (i.e., if there are 7,611 or more total pay periods), then

Defendant shall pay an additional sum proportionate to the increase in the pay periods over 10% (for example, if the number of pay periods is 7,612, Defendant shall pay an additional 1/7,611 of the PAGA Settlement Amount). (*Id.*) If the Total Settlement Amount is increased pursuant this provision, Plaintiff's attorney's fees shall remain 35% of the increased Total Settlement Amount. (*Id.*)

IV. SUMMARY OF THE CLAIMS, DISCOVERY AND MEDIATION

A. Summary of the Claims

Plaintiff alleges that Defendant violated various provisions of California law and seeks civil penalties for the foregoing violations pursuant to PAGA. Under Labor Code § 2699, specifically, Plaintiff alleged that Defendant:

- Failed to pay the Aggrieved Employees minimum wages, including overtime hours at statutory and/or agreed rates. Specifically, Plaintiff alleges that Plaintiff and Aggrieved Employees were consistently required to perform work, off-the-clock, for which they were not paid wages. Plaintiff alleges that Defendant required Plaintiff and Aggrieved Employees to perform work-related tasks during unpaid meal periods, for which no wages were paid. Furthermore, Plaintiff alleges that Defendant required Plaintiff and Aggrieved Employees to remain on-call outside of their usual scheduled shifts, and remain readily available to work, immediately upon Defendant's request, which resulted in Plaintiff and Aggrieved Employees not being left free and unrestricted during on-call working hours, and were not free to pursue personal interests without restriction. Plaintiff alleges that Defendant failed to pay stipends for either controlled or uncontrolled on-call or stand-by working hours. (Kim Decl., ¶ 19.)
- Failed to pay Plaintiff and Aggrieved Employees at proper overtime and double-time rates of pay. Plaintiff alleges that Plaintiff and Aggrieved Employees earned commission wages and/or performance-based non-discretionary bonus wages under Defendant's employ. However, Plaintiff alleges that these earnings were never factored into their regular rates of pay, and respective overtime and double-time rates of pay. (*Id.*)

- Failed to provide the Aggrieved Employees with compliant meal periods. Plaintiff alleges that Plaintiff and Aggrieved Employees were denied the opportunity to take timely meal periods due to understaffing and heavy workloads, and were required to keep working during meal breaks. Furthermore, Plaintiff alleges that Defendant failed to pay Plaintiff and Aggrieved Employees premium wages for each meal and rest period denied. (*Id.*)
- Failed to provide the Aggrieved Employees with compliant rest periods as they frequently received interrupted, shortened, or no rest periods. Plaintiff alleges that Defendant required Plaintiff and Aggrieved Employees to continue working through their rest breaks due to excessive workload and to maintain and monitor their cellular phones during breaks. (*Id.*)
- Failed to pay Plaintiff and Aggrieved Employees proper sick pay. Additionally, Plaintiff alleges that the sick pay paid to Plaintiff and Aggrieved Employees did not account for the commission wages and/or performance-based non-discretionary bonus wages, which were never factored into the rate upon which sick pay was accrued and paid. (*Id.*)
- Failed to provide accurate wage statements as mandated by law pursuant to Labor Code section 226, including the failure to include all hours worked by the Aggrieved Employees. (*Id.*)
- Failed to timely pay final wages in accordance with the Labor Code. (*Id.*)

Defendant denied and continue to deny all of the claims made by Plaintiff in this Action and contends that it complied at all relevant times in conformance with the California Labor Code and all other state and federal wage laws. (Kim Decl., ¶ 20.) Defendant contends that Plaintiff and the Aggrieved Employees were paid for all hours worked, that Defendant prohibited Plaintiff and the Aggrieved Employees from working beyond their scheduled shifts, and that any alleged off-the-clock work was performed without Defendant's knowledge and was de minimis; that Defendant provided lawfully compliant meal and rest periods and that any deviations were at the voluntary election of Plaintiff and/or the Aggrieved Employees and not at the request of Defendant or due to work requirements; that Defendant paid all wages due on a timely basis and using Labor Code compliant instruments; that Defendant's wage statements complied with the law; and that Defendant timely paid all final wages. (*Id.*) Defendant further contends that its above defenses are supported by its written policies applicable to Plaintiff and Aggrieved Employees. (*Id.*) As a result, PAGA Counsel had to appropriately discount the amount recoverable from Defendant in a settlement. (*Id.*)

B. Discovery, Mediation and Settlement

Prior to mediation, Plaintiff conducted comprehensive informal discovery and Defendant provided a sampling of time and pay records and time card reports of Aggrieved Employees. (Kim Decl., ¶ 9.) PAGA Counsel also obtained copies of Defendant's 2023 and 2024 Employee Handbooks containing Defendant's policies, including wage and hour policies, practices and procedures, timekeeping procedures, meal and rest break policies, business expense reimbursement policy. (*Id.*) The information and data exchanged by Plaintiff and Defendant prior to and during mediation and settlement negotiations were sufficient to reliably assess the merits of the Parties' respective positions. (*Id.*)

As discussed above, on April 23, 2024, the Parties attended an all-day mediation with Lonnie Giamela. (Kim Decl., ¶ 10.) With the assistance of a highly respected wage and hour mediator, the Parties agreed to the general terms for settling this Action that were finalized in the long-form PAGA Settlement Agreement now before the Court for approval. (*Id.*)

V. <u>THE SCOPE OF THE RELEASE</u>

The Settlement Agreement defines "Released Parties" as "East Bay Tire and its agents, officers, employees, directors, owners, subsidiaries, DBA's, affiliates and parent companies. (Kim Decl., ¶ 16; Exh. 1, ¶ 12.1.)

Upon the date Defendant fully funds the Total Settlement Amount, Plaintiff and PAGA Members fully release and discharge the Released Parties from any and all claims for civil penalties under the PAGA for any violations of the Labor Code or Wage Orders that were alleged by Plaintiff in the Operative Complaint, or that reasonably could have been alleged based on the facts asserted in the Operative Complaint or Plaintiff's notices to the LWDA, including claims for alleged violations of Industrial Welfare Commission Wage Order and California Labor Code sections 201, 202, 203, 204, 210, 223, 226, 226.7, 246, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1199, 2802, and the related IWC Wage Order No. 1-2001 (the "Released PAGA Claims"), during the PAGA Period. (Kim Decl., ¶ 17, Exh. 1, ¶ 12.1.):

VI. 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. ¶ 5.)

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.

VII. 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 Settlement is Fair and Adequate

Settlements to resolve PAGA Claims require court approval. (Labor Code ¶ 2699(l)(2).) Further, in accordance with the statutory requirement, Plaintiff provided a copy of the Settlement Agreement to the LWDA on the same day he filed the instant motion with this Court. (Kim Decl., ¶ 41; Exh. 6.) PAGA civil penalties recovered on the State's behalf are intended to "remediate present violations and deter future ones, not to redress employees' injuries." (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 542.) The standard for evaluating a PAGA settlement is not whether the employees are fully compensated for their injuries, but "whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.,* (2021) 72 Cal.App.5th 56, 77, *disapproved of on other grounds by Turrieta v. Lyft, Inc.,* 16 Cal. 5th 664 (2024)).

Here, as discussed above, Defendant must pay the Total Settlement Amount of $165,000.00 in full and final settlement of all claims alleged in the Operative Complaint and PAGA Notice. (Kim Decl., Exh. 1, ¶ 2.) This settlement payment would purportedly remediate any alleged labor law violations and deter future violations.

In addition, the settlement amount is fair to those affected because it accounts for a realistic assessment of the PAGA exposure on the claims as well as the significant possibility of the Court awarding only a fraction of the PAGA penalties sought by Plaintiff if Plaintiff prevailed on the merits due to the Court's discretion to substantially reduce PAGA penalties under Labor Code § 2699(e)(2). Indeed, PAGA settlements for as little as $0 have been approved (*See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated $0 to PAGA claim).) Courts have also approved settlements for $20,000 or less. (*See, e.g., Hicks v. Toys 'R' Us-Delaware, Inc.,* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in $4 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of $7,500 in $6.9 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 ($10,000 PAGA settlement in $300,000 settlement).)

A review of the approval criteria demonstrates a substantial basis for granting this Motion.

C. 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 Defendant 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 $691,000.00, calculated by multiplying the total number of PAGA pay periods (6,919) by $100 per violation. (Kim Decl., ¶ 22.) 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 ¶ 23.)

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

Defendant denied and continue to deny all of the claims made by Plaintiff in this Action and contends that it complied at all relevant times in conformance with the California Labor Code and all other state and federal wage laws. (Kim Decl., ¶ 20.) Defendant contends that Plaintiff and the Aggrieved Employees were paid for all hours worked, that Defendant prohibited Plaintiff and the Aggrieved Employees from working beyond their scheduled shifts, and that any alleged off-the-clock work was performed without Defendant's knowledge and was de minimis; that Defendant provided lawfully compliant meal and rest periods and that any deviations were at the voluntary election of Plaintiff and/or the Aggrieved Employees and not at the request of Defendant or due to work requirements; that Defendant paid all wages due on a timely basis and using Labor Code compliant instruments; that Defendant's wage statements complied with the law; and that Defendant timely paid all final wages. (*Id.*) Defendant further contends that its above defenses are supported by its written policies applicable to Plaintiff and Aggrieved Employees. (*Id.*) As a result, PAGA Counsel had to appropriately discount the amount recoverable from Defendant in a settlement. (*Id.*)

E. 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 $165,000.00 Total 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. ¶ 24.) Based on those considerations, Plaintiff applied a discount of 70% to the maximum potential exposure (which equates to $30 penalty per pay period) to get a realistic potential exposure of $207,570.00 (6,919 pay periods x $30 penalty per pay period). (*Id.*)

The Total Settlement Amount of $165,000.00 is approximately 79.4% of the realistic potential exposure of $207,570.00. (Kim Decl., ¶ 25.) 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. (*Id.*)

VIII. THE SETTLEMENT ADMINISTRATION PROCESS

A. Selection of Administrator

After soliciting and reviewing three bids from potential administrators, the Parties selected Phoenix to handle the notice and administration of the Settlement based on the competitiveness of their bid, their competency in administering settlements, and their responsiveness to the Parties' counsel. (Kim Decl., ¶ 15.) Pursuant to the Settlement Agreement, the administration costs shall not exceed $3,950.00. (Kim Decl., ¶ 15, Exh. 1, 3.4.)

B. Administration Process

Within (30) calendar days of the Effective Date, Defendant shall provide the Settlement Administrator with the name, last known mailing address of each Aggrieved Employee, and the total PAGA pay periods for each Aggrieved Employee. The Settlement Administrator shall mail the Individual Settlement Payments to the PAGA Members via first-class regular U.S. mail along with a Notice of PAGA Settlement. (Kim Decl., Exh. 1, ¶ 7.1.) Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct for any known or identifiable address changes. (*Id.*) For each notice packet returned as undeliverable, without a forwarding address, the Settlement Administrator will perform a single computer and/or "skiptrace" search to obtain an updated address. (*Id.*) If any Individual Settlement Award check remains uncashed after one hundred and eighty (180) calendar days from the date the check is issued, such check(s) will be voided by the Settlement Administrator, and the monies will be deposited with the California Controller's Unclaimed Property Fund in the name of the PAGA Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Kim Decl., Exh. 1, ¶ 4.5.)

IX. 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 **$57,750.00** and an award of litigation costs to PAGA Counsel of **$16,016.73,** which is lower than the requested $20,000.00 "not-to-exceed" amount in the Settlement

Agreement. (Kim Decl., ¶ 26.)

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 $165,000.00 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 35% 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., ¶¶ 26-33.) 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., ¶ 28.) 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 35% Plaintiff is requesting here. (*Id*. at ¶¶ 31.)

For these reasons, PAGA Counsel's requested fee of 35% of the Total 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) <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>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 from D.Law, Inc. conservatively estimates that it invested at least 101.7 hours of attorney time in this matter. (Kim Decl., ¶ 32.) As a Senior Counsel, my current billing rate is $1,045 (17 years out of law school, Laffey Matrix rate of $948.00), and I have spent approximately 12 hours in this matter with a lodestar amount of $12,540.00. (*Id.*) Senior Attorney David Keledjian's current billing rate is $925.00 (9 years out of law school, Laffey Matrix rate of $839.00), and he has spent approximately 2.6 hours in this matter with a lodestar amount of $2,405.00. (*Id.*) Attorney David Arakelyan's current billing rate is $585.00 (4 years out of law school, Laffey Matrix rate of $581.00), and he spent approximately 37.9 hours in this matter with a lodestar amount of $22,171.50. Associate Attorney Kevin Burns's current billing rate is $475.00 (2 years out of law school, Laffey Matrix Rate of $473.00), and he spent approximately 30.6 hours in this matter with a lodestar amount of $14,535.00. (*Id.*) Associate Attorney Norayr Zakaryan's current billing rate is $475.00 (1 year out of law school, Laffey Matrix rate of $473.00), and he spent approximately 18.6 hours in this matter with a lodestar amount of $8,835.00. (*Id.*) The hourly rates for each attorney listed above are the reasonable and usual hourly rates charged by that attorney for class action and PAGA litigation. (*Id.*) The total lodestar for PAGA Counsel is $60,486.50, above the fee request of $57,750.00 and requires no **multiplier**. (*Id.*) A true and correct copy of PAGA Counsel's entry of attorney-hours spent for each task is attached to Kim Declaration as Exhibit 4. (*Id.*)

4) <u>The Court Should Approve the Reimbursement of PAGA Counsel's Costs.</u>

The litigation expenses incurred by PAGA Counsel in this Action are also to be reimbursed under the Settlement Agreement. PAGA Counsel seek **$16,016.73** in reimbursement for litigation costs (Kim Decl., ¶ 13.) 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 $16,016.73.

X. 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., ¶ 40.) Phoenix will be responsible for updating the addresses for the Aggrieved Employees, mailing the Notice of PAGA Settlement and Release of Claims ("Notice of Settlement") and calculating and distributing the settlement checks, among other duties. (*Id*.) Phoenix capped its fees at $3,950.00 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*.)

XI. 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, Defendants, 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: October 22, 2025

D.LAW, INC

By ______________________________

Enoch J. Kim
Attorneys for Plaintiff Humberto Montoya on behalf of himself and Aggrieved Employees