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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF EL DORADO

ERIC WEXELMAN, as an individual and on behalf of all similarly situated employees, Plaintiff, vs. J.S. WEST MILLING COMPANY; and DOES 1-50, inclusive, Defendants.	Case No. 23CV1510 Assigned for All Purposes To: Hon. Hana Balfour Department: 9 **NOTICE OF MOTION AND PLAINTIFFS' MOTION FOR APPROVAL OF PAGA SETTLEMENT AGREEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** *[filed concurrently with Declarations of Enoch J. Kim, Katherine J. Odenbreit, and Jodey Lawrence; and [Proposed] Order]*
KELSIE KAY CORAY, on behalf of herself and others similarly situated, Plaintiff, vs. J. S. WEST MILLING COMPANY dba J.S. WEST MILLING CO, a California Corporation; and DOES 1 through 50, inclusive, Defendants.	Hearing Date: Time: 8:30 a.m. Department: 9 *Wexelman v. J.S. West Milling Company:* Case No: 23CV1510 Original Complaint Filed: September 6, 2023 First Amended Complaint Filed: November 15, 2023 Second Amended Complaint Filed: November 10, 2025 *Coray v. J.S. West Milling Company*: Case No: CV-24-000348 Original Complaint filed: January 11, 2024 First Amended Complaint filed: March 18, 2024

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TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on ___________, 2026, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 9 at the El Dorado County Superior Court, located at the Cameron Park Branch Courthouse, 2927 Meder Road, Cameron Park, California, 95682, Plaintiffs Eric Wexelman and Kelsie Kay Coray ("Plaintiffs"), on behalf of themselves and other similarly situated employees of Defendant J.S. West Milling Company dba J.S. West Milling Co. ("Defendant") ("Plaintiffs and Defendant collectively referred to herein as "the Parties") will and hereby do move this Court for entry of an order: (1) approving the representative action settlement embodied in the Parties' PAGA Settlement Agreement and Amendment to PAGA Settlement Agreement (together, "Settlement Agreement" or "Settlement"); (2) approving PAGA Counsel's application for attorney's fees and litigation costs and costs for the Administrator; and (3) entering judgment approving the Settlement Agreement (the "Motion").

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

DATED: February 23, 2026

D.LAW, INC.

By: ________________________________

Enoch J. Kim
Arianna N. Razi
Attorneys for Plaintiffs on behalf of themselves and aggrieved employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this Motion, Plaintiffs Eric Wexelman and Kelsie Kay Coray ("Plaintiffs") request that the Court grant approval of the Parties' PAGA Settlement Agreement, Amendment to PAGA Settlement Agreement, and Second Amendment to PAGA Settlement Agreement (together, "Settlement" or "Settlement Agreement") reached between Plaintiffs and Defendant J.S. West Milling Company dba J.S. West Milling Co. ("Defendant") ("Plaintiffs and Defendant collectively referred to herein as "the Parties") to resolve claims brought exclusively under the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*. ("PAGA") seeking civil penalties for various violations of the California Labor Code and Industrial Wage Commission's Wage Orders. Pursuant to the Settlement, Defendant will pay a gross settlement amount of **$355,000.00** ("Gross Settlement Amount" or "GSA"). (Declaration of Enoch J. Kim ("Kim Decl."), ¶ 23, Exhibit 1, ¶ 1.11.)

For purposes of the Settlement, the group of aggrieved employees included in the Settlement is defined as: "all individuals who were employed by Defendant, as hourly, non-exempt employees in California at any time during the PAGA Period, which is the period from September 5, 2022, through March 10, 2025." ("Aggrieved Employees"). (Kim Decl., ¶ 22, Exhibit 1, ¶¶ 1.4, 1.20.)

As further explained below, Plaintiffs and their counsel ("PAGA Counsel") believe that the Settlement is fair, reasonable, and in the best interests of the State and the Aggrieved Employees. Accordingly, Plaintiffs request that the Court "review and approve" the Settlement pursuant to Labor Code § 2699(*l*)(2). If the Court deems the Settlement fair and acceptable, Plaintiffs request that the Court enter an order approving the Settlement in the form lodged herewith 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

Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Eric Wexelman gave timely written

[1] Plaintiffs have 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(*l*)(2). (Kim Decl., ¶ 61, Exhibit 6.)

notice to Defendant and the Labor and Workforce Development Agency ("LWDA") by sending his PAGA Notice on September 5, 2023 (LWDA-CM-979780-23). (Kim Decl., ¶ 4.) The LWDA did not respond to Plaintiff Eric Wexelman's PAGA Notice and did not notify him that it intended to investigate his allegations. (*Id.*)

On September 6, 2023, Plaintiff Eric Wexelman filed a class action complaint in the El Dorado County Superior Court, Case No. 23CV1510, against Defendant alleging claims under the California Labor Code for (1) unpaid wages, including minimum wages and overtime under Labor Code §§ 204, 510, 1182.12, 1194, and 1194.2; (2) failure to provide meal periods under Labor Code §§ 226.7 and 512; (3) failure to provide rest periods under Labor Code § 226.7; (4) failure to provide accurate itemized wage statements under Labor Code § 226; (5) failure to reimburse necessary business expenditures under Labor Code § 2802; (6) failure to pay all wages due at separation of employment under Labor Code §§ 201-203; and (7) unfair/unlawful business practices (the "Wexelman Action" or "Action"). (*Id.* at ¶ 5.)

On November 15, 2023, 65 days after Plaintiff Eric Wexelman's submission of his PAGA Notice, Plaintiff Eric Wexelman filed a First Amended Complaint, alleging an eighth cause of action for Penalties Pursuant to Labor Code § 2699, *et seq*. (*Id.* at ¶ 6.)

On January 11, 2024, Defendant filed a Motion to Compel Arbitration of Plaintiff Eric Wexelman's individual claims. (*Id.* at ¶ 7.) On May 10, 2024, the El Dorado County Superior Court granted Defendant's motion and ordered Plaintiff Eric Wexleman's individual claims to arbitration and stayed the representative PAGA claims. (*Id.*)

Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Kelsie Kay Coray gave timely written notice to Defendant and the LWDA by sending her PAGA Notice on January 11, 2024 (LWDA-CM-1004487-24). (Kim Decl., ¶ 8.) The LWDA did not respond to Plaintiff Kelsie Kay Coray's PAGA Notice and did not notify her that it intended to investigate her allegations. (*Id.*)

On January 11, 2024, Plaintiff Kelsie Kay Coray filed a class action complaint in the Stanislaus County Superior Court, Case No. CV-24-000348, against Defendant alleging claims under the California Labor Code for (1) failure to pay minimum wages; (2) failure to pay wages and overtime under Labor Code § 510; (3) meal-period liability under Labor Code § 226.7; (4) rest-break liability under Labor Code § 226.7; (5) reimbursement of necessary expenditures under Labor Code § 2802; (6) violation of Labor Code § 226; (7) failure to keep required payroll records under Labor Code §§ 1174 and 1174.5; (8) penalties pursuant to Labor Code § 203; (9) failure to pay proper vacation wages under Labor Code § 227.3; (10) failure to pay proper sick pay under Labor Code §§ 245 *et seq*. and 246; and (11) violation of business & professions code § 17200 *et seq*. (the "Coray Action"). (*Id*. at ¶ 9.)

On March 18, 2024, 65 days after Plaintiff Kelsie Kay Coray's submission of her PAGA Notice, Plaintiff Kelsie Kay Coray filed a First Amended Complaint, alleging a twelfth cause of action for Penalties Pursuant to Labor Code § 2699, *et seq*. (*Id*. at ¶ 10.)

On June 21, 2024, the Parties filed a Joint Stipulation to Arbitrate Individual Class Claims and [Proposed] Order, which effectively dismissed Plaintiff Kelsie Kay Coray's class action allegations, pursuant to an arbitration agreement Plaintiff Kelsie Kay Coray signed while employed with Defendant which contained a class action waiver, which the Court granted on June 25, 2024. (*Id*. at ¶ 11.)

On June 28, 2024, Defendant filed a Motion to Compel Arbitration of Plaintiff Kelsie Kay Coray's individual PAGA claims. (Kim Decl., ¶ 12.) On August 22, 2024, the Stanislaus County Superior Court granted Defendant's motion and ordered Plaintiff Kelsie Kay Coray's individual PAGA claims to arbitration and stayed the representative PAGA claims. (*Id*.)

The Parties mediated this matter before Jason Marsili, a well-respected employment law mediator, on March 10, 2025, and reached a settlement through arm's length negotiations of the Plaintiffs' representative PAGA claims. (*Id*. at ¶ 13.)

On October 29, 2025, Plaintiff Eric Wexelman and Defendant filed a Stipulation to Lift the Stay of the PAGA Claims and for Plaintiff to File Second Amended Complaint, which the Court granted on November 5, 2025, for purposes of filing the Second Amended Complaint and obtaining Court approval of the PAGA settlement. (*Id*. at ¶ 14.)

To effectuate the Settlement, on November 10, 2025, the Parties filed a Second Amended

Complaint ("Operative Complaint") in the Wexelman Action, adding Plaintiff Kelsie Kay Coray as a representative PAGA Plaintiff and the PAGA claims asserted in the Coray Action. (*Id*. at ¶ 15.)

After initiating the Action, the Parties met and conferred about the claims and issues in this case, including the existence of an arbitration agreement with a class action waiver between the Parties, and agreed to explore resolution of this case through mediation with a highly respected mediator. (*Id*. at ¶ 17.)

B. Mediation and Settlement

Defendant provided data, numbers, and documents, including two signed Meal and Rest Period Acknowledgment and Waiver, a sampling of Aggrieved Employee's timekeeping and payroll data, information and documentation regarding Defendant's wage and hour policies, Plaintiffs' wage statements and personnel file, meal period and rest period information, and Plaintiffs' signed arbitration agreements. (Kim Decl., ¶ 17.) Defendant also provided information relating to the number of Aggrieved Employees and PAGA Pay Periods. (*Id*.) The information and data exchanged by Plaintiffs and Defendant prior to and during mediation and settlement negotiations were sufficient to reliably assess the merits of the Parties' respective positions, to compromise the issues on a fair and equitable basis, and to devise a formula for distribution of civil penalties among the Aggrieved Employees that took into consideration the strength of the PAGA claims. (*Id*. at ¶ 18.)

With the assistance of a highly respected wage and hour mediator, the Parties agreed to the general terms for settling this Action and finalized the long-form PAGA Settlement Agreement. (Kim Decl., ¶ 20.) The Parties believe and agree that the PAGA Settlement provides for a fair, adequate, and reasonable resolution of the Action and have arrived at the Settlement after extensive, arm's length negotiations, considering all relevant factors, present and potential. (Kim Decl., ¶ 21.) PAGA Counsel believes that the Settlement confers real benefits upon the State and Aggrieved Employees and that an independent review of the Settlement by the Court in the approval process will confirm this conclusion. (*Id*.)

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III. PAGA ACTIONS AND THE REQUIREMENTS

A. The PAGA Statutory Scheme

PAGA creates a means of "deputizing" citizens as private attorney generals 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. S19"850), *cert. denied* 132 S.Ct. 1910 (Apr. 16, 2012). A plaintiff may not — and Plaintiffs here do 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 pa"ty in €nterest." *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, Plaintiffs complied with the notice requirements and properly pled a PAGA claim. (Kim Decl. ¶¶ 4, 8.)

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

PAGA provides for default 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, and penalties in the amount of $50 for each pay period for the initial violation and $100 for each pay period for each subsequent violation for claims brought under Labor Code § 558 and the Wage Orders. 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

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

IV. <u>THE SETTLEMENT</u>

Pursuant to the Settlement Agreement, Defendant will pay the Gross Settlement Amount of $355,000.00 on a non-reversionary basis. (Kim Decl., ¶ 23, Exhibit 1, ¶ 1.11.) Defendant shall fully fund the Gross Settlement Amount by transmitting the Gross Settlement Amount to the Administrator no later than forty-five (45) days after the Effective Date. (Kim Decl., ¶ 23, Exhibit 1, ¶¶ 1.10, 4.2.)

Pending Court approval, the Gross Settlement Amount will be allocated as follows: (1) attorneys' fees in the amount of one-third of the Gross Settlement Amount, which is **$118,333.33** ("PAGA Counsel Fees Award"); (2) actual litigation costs incurred in this matter in the amount of **$27,565.93** ("PAGA Counsel Costs Award"); and (3) settlement administration costs of up to **$6,500.00** to be paid to the Administrator, Phoenix Class Action Administration Solutions ("Phoenix"), for sending notices and for calculating settlement shares, preparing all checks and mailings, and preparing the necessary tax return and reporting documents. ("Administration Expenses Payment"). (Kim Decl., ¶ 23, Exhibit 1, ¶¶ 3.2.1-3.2.2.) The remaining settlement amount of **$202,600.74** ("Net Settlement Amount") shall be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% ($151,950.56) allocated to the LWDA ("LWDA PAGA Payment") and 25% ($50,650.18) allocated to the Aggrieved Employees on a pro-rata basis ("Individual PAGA Payment"). (Kim Decl., ¶ 23, Exhibit 1, ¶ 3.2.3.)

The Individual PAGA Payments will be calculated according to the number of PAGA Pay Periods the Aggrieved Employee worked for Defendant in California during the PAGA Period. (Kim Decl., Exhibit 1, ¶ 3.2.4.1.) Based on a review of the records to date, Defendant estimates there are approximately 478 Aggrieved Employees who worked a total of approximately 17,438 PAGA Periods through March 2025. (Kim Decl., ¶ 22, Exhibit 1, ¶ 8.) If the total number of PAGA Pay Periods encompassed within the PAGA Period exceeds 17,438 by more than 10% (i.e., if the total PAGA Pay Periods exceeds 19,182 pay periods), then the Gross Settlement Amount shall be increased in proportion to the percentage increase in the number of PAGA Pay Periods encompassed in the PAGA Period in excess of 10% (e.g., if there was a 12% increase in PAGA Pay Periods, then Defendant would agree to increase the Gross Settlement Amount by 2%), or the Defendant can instead opt to end the PAGA period as of the date that the PAGA pay periods reached 19,182. (*Id.*)

V. <u>ARGUMENT</u>

A. The Court Should Approve the Settlement Agreement.

Pursuant to Labor Code § 2699(*l*), the parties must obtain Court approval of a settlement of a PAGA action on a representative basis. However, as explained in *Arias v. Superior Ct.* (2009) 46

Cal.4th 969, the parties need not follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement through a motion for preliminary or final approval. Nonetheless, to comply with the requirements of Labor Code section 2699, Plaintiff submits this Motion and the Settlement Agreement for Court approval.

B. The Risks of Moving Forward with Plaintiffs' PAGA Claim

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

Plaintiffs estimated that the maximum potential exposure on the PAGA claim is $1,743,800.00, calculated by multiplying the total number of PAGA Pay Periods (17,438) by $100 per violation. (Kim Decl., ¶ 28.) Plaintiffs' calculation of the total potential exposure on the PAGA claim was based on one PAGA penalty per PAGA Pay Period (i.e., Plaintiffs did not stack the PAGA penalties in their 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 ¶ 29.)

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

Defendant denied and continues to deny all of the claims made by Plaintiffs in this Action and contend that it acted at all relevant times in conformance with the law. (*Id.* at ¶ 26.) Defendant contends that Plaintiffs and Aggrieved Employees were required to report all hours worked and were paid for all hours worked, and that Defendant paid all wages at the proper rates; that Defendant provided Plaintiff and Aggrieved Employees with the reasonable opportunity to take compliant meal periods and rest breaks and that any deviations were at the voluntary election of Plaintiff and Aggrieved Employees; that Defendant paid meal and rest premiums for any non-compliant meal and rest breaks; that Defendant paid all wages due on a timely basis and using Labor Code compliant instruments; that any expenses incurred were not necessary or work-related; and that Defendant's wage statements complied with the law. (*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 Defendants 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€(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 $355,000.00 Gross Settlement Amount in this case, Plaintiffs 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., ¶ 30.) Based on those considerations, Plaintiffs applied a discount of 75% to the maximum potential exposure (which equates to $25 penalty per pay period) to get a realistic potential exposure of $435,950.00 (17,438 pay periods x $25 penalty per pay period). (*Id.*)

The Gross Settlement Amount of $355,000.00 is 81.43% of the realistic potential exposure of $435,950.00. (*Id*. at ¶ 31.) PAGA Counsel submits that this is an excellent result for the State and Aggrieved Employees in light of the strengths and weaknesses of the case and the risks and delays posed by further litigation. (*Id*.)

VI. <u>THE REQUEST FOR ATTORNEYS' FEES AND COSTS</u>

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

PAGA Counsel is requesting a PAGA Counsel Fees Award in the amount of **$118,333.33** and a PAGA Counsel Costs Award of **$27,565.93** for litigation costs incurred, which is less than the allocated amount of $32,000.00 in the Settlement Agreement. (Kim Decl., ¶ 32.)

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) <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 $355,000.00 common fund created for the benefit of the public is, with Plaintiffs as proxies for the State, not unlike the fund created in class action settlements, with the public the equivalent of the class referenced in *Laffitte*.

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

> The recognized advantages of the percentage method—including relative ease of

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

Id. at 573.

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

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

PAGA Counsel are experienced employment attorneys with expertise in wage and hour class and representative actions. (Kim Decl., ¶¶ 45-56; Declaration of Katherine J. Odenbreit ("Odenbreit Decl."), ¶¶ 10-24). 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., ¶ 34; Odenbreit 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 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 Plaintiffs are requesting here. (Kim Decl., ¶ 37.)

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) <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").

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., ¶ 34.) 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*.)

Contingent-fee cases present the very real risk of working hundreds if not thousands of hours that may never be entirely compensated. (Kim Decl., ¶ 35.) Moreover, while the case is being litigated, counsel must pay overhead (salaries, rent, etc.), provide for their own expenses, and in most cases pay the out-of-pocket expenses incurred on the plaintiff's behalf. (*Id*.) And the prospect of a court-awarded fee does not greatly reduce the risk posed by these cases. (*Id*.) In many cases, the prospect is nothing more than a potential that never materializes. (*Id*.) First, you must win the case to get a court-awarded fee; even those cases that seem strongest at the onset can be lost and sometimes are lost (*Id*.). Second, there are always pitfalls and unforeseen obstacles that arise along the way, such as settlement offers that the client may accept without ensuring that we receive a reasonable fee or changes in the law that substantially affect the merits of the case, or other uncertainties involving the client. (*Id*.) Finally, there is the great risk inherent in advancing tens if not hundreds of thousands of dollars in out-of-pocket expenses. (*Id*.) If that money were to be invested in some sort of financial investment, one would expect a reasonable rate of return on that investment. (*Id*.) Here, however, the best we can hope to recover is our money, and then only if we are substantially successful; if we are not, all or part of this "investment" can be lost. (*Id.*)

PAGA Counsel is well acquainted with the contingent fee market throughout California, particularly as it pertains to PAGA and class action litigation. (Kim Decl., ¶ 36.) PAGA Counsel has negotiated numerous contingency-fee agreements with plaintiffs, both as individuals and as representatives in class-action and PAGA suits. (*Id.*) Many of those agreements required that counsel receive a fee under certain scenarios that exceed one-third of the recovery. (*Id.*) Plaintiffs here signed a retainer agreement indicating that PAGA Counsel could receive a fee under certain scenarios that exceed one-third of the recovery, as much as 40%. (*Id*; Odenbreit Decl., ¶ 28.) PAGA Counsel's recent attorneys' fees awards in similar wage-and-hour class and PAGA actions have been one-third of the recovery. (*Id.*)

Moreover, PAGA Counsel spent substantial time on this matter. (Kim Decl., ¶ 41; Odenbreit Decl., ¶ 27.) Aside from drafting the initial complaint, PAGA Counsel conducted informal discovery, reviewed and analyzed time and pay records, an arbitration agreement, Plaintiffs' personnel files, relevant policies, and other documentation, researched the applicable law and potential defenses, constructed damage models based on interpretations of California law, reviewed information provided by Defendant at the mediation, engaged in meet and confer efforts with Defendant, drafted and revised the Settlement Agreement, and drafted this Motion. (*Id.*)

PAGA Counsel worked at least **202.2** hours on this matter and calculated the base lodestar at **$152,164.00** at rates reflecting those currently earned in the marketplace. (Kim Decl., ¶¶ 42-43; Odenbreit Decl., ¶ 27.) Senior Attorney Enoch J. Kim's records indicate at least 6.5 hours on this matter with an hourly rate of $1,045. Senior Attorney Roman Shkodnik's records indicate at least 23.5 hours on this matter with an hourly rate of $1,045. Associate Attorney Emma Geesaman's records indicate at least 27.0 hours on this matter with an hourly rate of $475. Associate Attorney Amanda Fazio's records indicate at least 0.3 hours on this matter with an hourly rate of $475. Associate Attorney Mason Doidge's records indicate at least 0.3 hours on this matter with an hourly rate of $475. Associate Attorney Robert Payaslyan's records indicate at least 23.9 hours on this matter with an hourly rate of $585. Associate Attorney Arianna N. Razi's records indicate at least 23.3 hours on this matter with an hourly rate of $475. Mahoney Law Group, APC invested approximately 97.40 hours for a total of $82,655.00 in attorneys' fees. (Kim Decl., ¶¶ 42-43; Odenbreit Decl., ¶ 27, Ex. B.)

Multiplying the total hours billed by PAGA Counsel to the litigation by their reasonable hourly rates yields a lodestar of $152,164.00, which is more than the $118,333.33 in attorneys' fees PAGA Counsel are requesting, therefore eliminating the need to use a multiplier. (Kim Decl., ¶ 44.) This disparity is important to note because when plaintiffs seek an amount in fees that is less than what they actually billed, the requested fee amount is generally considered reasonable. (*Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F. Supp. 2d 848, 854 [finding that, if the court is asked to apply a negative multiplier, it "suggests the negotiated fee award is reasonable and fair valuation of the services rendered to the class by Plaintiff's Counsel."].) (*Id.*) As such, PAGA Counsel respectfully request the Court grant their request for $118,333.33 in attorneys' fees.

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. (Kim Decl., ¶ 23.a.) PAGA Counsel incurred $27,565.93 in expenses in litigating this Action. (Kim Decl., ¶ 32; Odenbreit Decl., ¶ 30, Ex. C.) 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. (*Id.*) Thus, PAGA Counsel respectfully request the Court approve their request for reimbursement in the amount of $27,565.93.

VII. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION AND NOTICE

The Parties agreed to use Phoenix as the third-party settlement administrator in this case. (Kim Decl., ¶ 58.) Phoenix will be responsible for updating Aggrieved Employees' addresses, mailing the settlement payment letter, and calculating and distributing the settlement checks, among other duties. (*Id.*) Phoenix capped its fees at $6,500.00 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.*)

The Administrator will mail the Individual PAGA Payment along with the settlement payment letter providing notice of the Settlement and release of claims to Aggrieved Employees. (*Id*. at ¶ 59.) The settlement payment letter includes, among other things, the scope of released claims. (*Id*.)

VIII. <u>CONCLUSION</u>

Plaintiffs and PAGA Counsel submit that the proposed Settlement as documented in the Settlement Agreement is fair, adequate, reasonable, and in the best interest of Aggrieved Employees and the State of California. Plaintiffs respectfully request 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: February 23, 2026

D.LAW, INC

By ______________________________

Enoch J. Kim
Arianna N. Razi
Attorneys for Plaintiffs on behalf of themselves and Aggrieved Employees