

D.LAW, INC.

Emil Davtyan (SBN 299363)

Emil@d.law

David Yeremian (SBN 226337)

d.yeremian@d.law

David Keledjian (SBN 309135)

d.keledjian@d.law

Enoch J. Kim (SBN 261146)

e.kim@d.law

David Arakelyan (SBN 337076)

d.arakelyan@d.law

Norayr Zakaryan (SBN 356913)

n.zakaryan@d.law

450 N Brand, Blvd, Suite 840

Glendale, CA 91203

Telephone: (818) 962-6465

Fax: (818) 962-6469

Attorneys for Plaintiff REGINALD TODD

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

REGINALD TODD, on behalf of himself
and all others similarly situated, and the
general public,

Plaintiff,

vs.

COMPASS GROUP USA, INC. a Delaware
corporation; DELTA AIR LINES, INC., a
Delaware corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. 23CV007763

Assigned for All Purposes To:

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; Declaration of
Reginal Todd; and [Proposed] Order]

Date: June 13, 2025

Time: 9:00 a.m.

Dept.: 23

Original Complaint filed: September 1, 2023

First Amended Complaint: November 16, 2023

Second Amended Complaint: March 7, 2025

Trial Date: None set

1 **TO THE COURT AND DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on June 13, 2025 at 9:00 a.m. in Department 23 of the
3 above-entitled Court, located at 720 Ninth Street, Sacramento, CA 95814, Plaintiff Reginald Todd
4 (“Plaintiff” or “PAGA Representative”), on behalf of himself, the State of California, and all
5 aggrieved employees (the “Aggrieved Employees”), will and hereby does move this Court
6 pursuant to California Labor Code § 2698 et seq. for an order approving the settlement agreement
7 between Plaintiff and Defendants Compass Group, USA, Inc. (“Defendant CGUSA”) and Delta
8 Air Lines, Inc. (“Defendant Delta”) (collectively “Defendants”, Plaintiff and Defendants
9 collectively referred to as the “Parties”) which will accomplish the following: approve the
10 representative action settlement embodied in the PAGA Settlement Agreement and Release
11 (“Settlement Agreement”); approve PAGA Counsel’s application for attorney’s fees and litigation
12 costs; and enter judgment approving the Settlement Agreement.

13 The grounds for this Motion, as set forth in the attached Memorandum of Points and
14 Authorities and supporting declarations, are that this is a fair and reasonable settlement that
15 benefits the Aggrieved Employees and the State and was the product of informed, non-collusive
16 negotiations by parties who were represented by experienced and able counsel. *See Wershba v.*
17 *Apple Computer, Inc.*, 91 Cal. App 4th 224, 244-45 (1996); *Dunk v. Ford Motor Co.*, 48 Cal. App.
18 4th 1794, 1802 (1996); Manual for Complex Litigation, (Second), § 30.44 (1985).

19 Defendants do not oppose this Motion. Plaintiff bases this Motion on this Notice and the
20 accompanying Memorandum of Points and Authorities, the Declaration of Enoch J. Kim (“Kim
21 Decl.”), Declaration of Jodey Lawrence (“Lawrence Decl.”), and Declaration of Reginald Todd
22 (“Todd Declaration”), the complete pleadings, records and files in the case, and such other further
23 oral and documentary evidence which may be submitted at or before the hearing on this Motion.

24
25 DATED: May 21, 2025

D.LAW, INC.

26
27 By: 
28 Enoch J. Kim

Attorneys for Reginald Todd on behalf of
himself and Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this motion, Plaintiff Reginald Todd (“Plaintiff”) requests that the Court grant
4 approval of the PAGA Settlement Agreement and Release (“Settlement” or “Settlement Agreement”)
5 reached between the Parties to resolve claims brought exclusively under the Private Attorneys
6 General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”) seeking civil penalties for various
7 violations of the California Labor Code and Industrial Wage Commission’s Wage Orders. Pursuant
8 to the Settlement, Defendant Compass Group, USA, Inc. (“Defendant CGUSA”) will pay the Gross
9 Settlement Amount of \$190,000.00 on non-reversionary basis. (Declaration of Enoch J. Kim (“Kim
10 Decl.”), Exhibit 1, ¶ 3.1.)

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

18 **II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY**

19 **A. Litigation Overview and Procedural History**

20 On September 1, 2023, Plaintiff commenced this Action by filing a Class Action Complaint
21 against Defendants alleging (1) Failure to Provide Meal Periods Under Labor Code §§ 204, 223,
22 226.7, 512, and 1198; (2) Failure to Provide Rest Periods Under Labor Code §§ 204, 223, 226.7 and
23 1198; (3) Failure to Pay Hourly Wages and Overtime Under Labor Code §§ 223, 510, 1194, 1194.2,
24 1197, 1997.1 and 1198; (4) Failure to Provide Accurate Written Wage Statements Under Labor Code

25 _____
26
27 ¹ Plaintiff has submitted the Settlement Agreement and this Motion to the LWDA by uploading it
28 on the LWDA’s website concurrently with the filing of this Motion as required by Labor Code §
2699(l)(2). (Declaration of Enoch J. Kim (“Kim Decl.”) ¶ 43, Exhibit 6.)

§§ 226(a); (5) Failure to Timely Pay All Final Wages Under Labor Code §§ 201, 202, and 203; (6) Failure to Indemnify Under Labor Code § 2802; and (7) Violation of Business and Professions Code § 17200 *et seq.* Simultaneously, Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice pursuant to Labor Code § 2699.3(a). (Kim Decl., ¶ 5.) On November 16, 2023, Plaintiff filed a First Amended Complaint, adding a cause of action for PAGA penalties under Labor Code §§ 2698 *et seq.* (*Id.*)

After initiating the Action, the Parties met and conferred regarding the allegations in the Class Action Complaint and PAGA Notice and the enforceability of an arbitration agreement signed by Plaintiff. (Kim Decl., ¶ 6.) The Parties then filed a joint stipulation for leave to file a Second Amended Complaint and dismiss Plaintiff’s class claims against Defendants without prejudice. (Kim Decl., ¶ 7.) On March 7, 2025, Plaintiff filed a Second Amended Complaint (the “Operative Complaint”) alleging claims for civil penalties under PAGA. (Kim Decl., ¶ 8.)

On April 23, 2024, the Parties attended an all-day mediation with Kevin McKelvey. (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 first memorialized in a Memorandum of Understanding and thereafter in the long-form PAGA Settlement Agreement now before the Court for approval. (*Id.*)

PAGA Counsel represents that he is not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement. (Kim Decl., ¶ 44.)

III. TERMS OF THE SETTLEMENT

A. Key Financial Terms of the Settlement

Gross Settlement Amount: Pursuant to the Settlement Agreement, Defendant CGUSA will pay a maximum, non-reversionary settlement amount of \$190,000.00 in full and final settlement of all claims alleged in the Operative Complaint and PAGA Notices (“Gross Settlement Amount”). (Kim Decl., Exhibit 1, ¶ 3.1).

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

a) Attorneys’ fees in the amount of 1/3 (One-Third) of the Gross Settlement Amount,

1 which is currently estimated to be \$63,333.33 (“PAGA Counsel Fees Payment”), and
2 litigation costs of not more than \$16,173.88 (“Litigation Expenses Payment”); (Kim
3 Decl., Exh. 1, ¶ 3.2.1.)

- 4 b) Administration costs in the amount of \$5,750.00 to be paid to the Administrator
5 (“Administration Expenses Payment”), Phoenix Class Action Administration Solutions
6 (“Phoenix”), for sending notices and for calculating settlement shares and preparing all
7 checks and mailings; (Exh. 1, ¶ 3.2.2.);
- 8 c) Plaintiff’s Enhancement Award payment in the amount of \$2,500.00 to be paid to
9 Plaintiff; (Exh. 1, ¶ 3.2.3.); and
- 10 d) The remainder of the Gross Settlement Amount (the “Net Settlement Amount” or
11 “PAGA Penalties”) after deducting the above costs is approximately \$102,242.79 and
12 shall be designated as PAGA Penalties to be allocated between the LWDA and the
13 Aggrieved Employees pursuant to Labor Code section 2699(i), with 75% (\$76,682.09)
14 being paid to the LWDA (the “LWDA PAGA Payment”) and 25% (\$25,560.70) being
15 paid to the Aggrieved Employees on a pro-rata basis (“Individual PAGA Payment”).
16 (Exh. 1, ¶ 3.3.) The estimated average that each Aggrieved Employee will receive per
17 PAGA Pay Period is \$53.81 (dividing \$25,560.70 with the total estimated number of
18 Aggrieved Employees (475)). The estimated amount that each Aggrieved Employee
19 will receive per PAGA Pay Period is \$2.56.

20 After soliciting and reviewing three bids from potential administrators, the Parties selected
21 Phoenix to handle the notice and administration of the Settlement based on the competitiveness of
22 their bid, their competency in administering settlements, and their responsiveness to the Parties’
23 counsel. (Kim Decl., Exh. 1, ¶ 7.1.)

24 **B. Other Material Terms of the Settlement**

25 **Aggrieved Employee or Aggrieved Employees:** means all persons employed by CGUSA
26 at Delta Sky Club locations in California, in hourly or non-exempt positions during the PAGA
27 Period. (Kim Decl., Exhibit 1, § 1.4.)

1 **PAGA Period:** means the period from September 1, 2022, through April 23, 2024. (Kim
2 Decl., Exhibit 1, § 1.22.)

3 **PAGA Pay Period:** means any Pay Period during which an Aggrieved Employee worked
4 for Defendant CGUSA for at least one day during the PAGA Period. (Kim Decl., Exhibit 1, §
5 1.21.)

6 **Escalator Clause:** Based on its records, Defendant CGUSA estimates that there are
7 approximately 475 Aggrieved Employees who worked a total of 10,000 PAGA Pay Periods during
8 the PAGA Period. (Kim Decl., ¶ 12, Exh. 1, ¶ 4.2.) If the actual number of PAGA Pay Periods is
9 more than 10% greater than 10,000, then the Gross Settlement Amount shall be increased in
10 proportion to increase in PAGA Pay Periods above 10% (e.g., if the number of PAGA Pay Periods
11 is 12% greater than 10,000 as of April 23, 2024, then the Gross Settlement Amount will be
12 increased by 2%). (Kim Decl., Exh. 1, ¶ 8.)

13 **IV. SUMMARY OF THE CLAIMS, DISCOVERY AND MEDIATION**

14 **A. Summary of the Claims**

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

18 • Failed to pay the Aggrieved Employees minimum wages and overtime by
19 implementing an unlawful time-rounding policy and practice which rounded down and reduced
20 the actual working hours recorded by Plaintiff and Aggrieved Employees. Furthermore, Plaintiff
21 and Aggrieved Employees were also consistently required to perform work “off-the-clock” both
22 before and after their shifts, including undergoing mandatory temperature checks, various security
23 checks, and bag checks. (Kim Decl., ¶ 18.)

24 • Failed to provide the Aggrieved Employees with compliant meal periods because
25 they were frequently interrupted during meal periods and regularly had to work through their meal
26 periods. (*Id.*) Furthermore, Defendants failed to pay Plaintiff and Aggrieved Employees premium
27 pay wages at their appropriate regular rates of pay for each meal and rest period denied. (*Id.*)

- 1 • Failed to provide the Aggrieved Employees with compliant rest periods as they
- 2 frequently received interrupted, shortened, or no rest periods. (*Id.*)
- 3 • Failed to reimburse the Aggrieved Employees for business expenses, including the
- 4 use of their personal cell phones for work-related activities. (*Id.*)
- 5 • Failed to provide accurate wage statements as mandated by law pursuant to Labor
- 6 Code section 226, including the failure to include all hours worked by the Aggrieved Employees.
- 7 (*Id.*)

8 Defendants denied and continue to deny all of the claims made by Plaintiff in this Action
9 and contend that they acted at all relevant times in conformance with the law. (Kim Decl., ¶ 19.)
10 Defendants contend that Plaintiff and the Aggrieved Employees were paid for all hours worked,
11 that Plaintiff and the Aggrieved Employees were instructed and required to report all hours
12 worked, that Defendants prohibited Plaintiff and the Aggrieved Employees from working beyond
13 their scheduled shifts, and that any alleged off-the-clock work was performed without Defendants’
14 knowledge and was de minimis; that Defendants provided lawfully compliant meal and rest
15 periods and that any deviations were at the voluntary election of Plaintiff and/or the Aggrieved
16 Employees and not at the request of Defendants or due to work requirements; that Defendants paid
17 all wages due on a timely basis and using Labor Code compliant instruments; that Defendants’
18 wage statements complied with the law; and that neither Plaintiff nor any Aggrieved Employees
19 incurred reasonable business related expenses for which they were not reimbursed. (*Id.*)
20 Defendants further contend that their above defenses are supported by their written policies
21 applicable to Plaintiff and Aggrieved Employees. (*Id.*) As a result, PAGA Counsel had to
22 appropriately discount the amount recoverable from Defendants in a settlement. (*Id.*)

23 **B. Discovery, Mediation and Settlement**

24 Prior to mediation, Plaintiff conducted comprehensive informal discovery and Defendant
25 CGUSA provided data and numbers and documents, including a sampling of timekeeping records
26 and wage statements relating to Plaintiff and Aggrieved Employees, documents containing
27 Defendant CGUSA’s wage and hour policies, practices and procedures, meal and rest break
28

1 policies, uniform policy, use of cell phone policy and summaries of data pertaining to the number
2 of employees allegedly affected by Defendant CGUSA's wage and hour policies, practices and
3 procedures. (Kim Decl., ¶ 9.) The information and data exchanged by Plaintiff and Defendant
4 CGUSA prior to and during mediation and settlement negotiations were sufficient to reliably
5 assess the merits of the Parties' respective positions. (*Id.*)

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

11 **V. THE SCOPE OF THE RELEASE**

12 The Settlement Agreement defines "Released Parties" as "Defendants and any of their past,
13 present and future direct or indirect parents, subsidiaries, predecessors, successors, affiliates,
14 sectors, and other related entities, as well as each of its of their past, present and future officers,
15 directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers,
16 and any individual or entity which could be jointly liable with Defendants." (Kim Decl., ¶ 15; Exh.
17 1, ¶ 1.29.) Subject to this Court's approval of the Settlement Agreement, and effective on the date
18 when Defendants fully fund the entire Gross Settlement Amount, Plaintiff and Aggrieved
19 Employees will release claims against all Released Parties as follows:

20 **Release by Aggrieved Employees:** All Aggrieved Employees are deemed to release, on
21 behalf of themselves and their respective former and present representatives, agents, attorneys,
22 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
23 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period
24 facts stated in the Operative Complaint and the PAGA Notice. (Kim Decl., ¶ 16(a); Exh. 1, ¶ 5.1.)

1 **VI. PAGA ACTIONS AND THE REQUIREMENTS**

2 **A. The PAGA Statutory Scheme**

3 PAGA creates a means of “deputizing” citizens as private attorneys general to enforce the
4 Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal. App. 4th 489,
5 501, *review den.* (Oct. 19, 2011, No. S195850), *cert. denied* 132 S.Ct. 1910 (Apr. 16, 2012). A
6 plaintiff may not — and Plaintiff here does not — bring a PAGA claim simply on his or her own
7 behalf as an individual claim, but “as the proxy or agent of the state’s labor law enforcement
8 agencies.” *Id.*, at 986; *see also Reyes v. Macy’s, Inc.* (2011) 202 Cal. App. 4th 1119, 1123-1124;
9 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. When an aggrieved employee
10 brings a PAGA claim, “the government is always the real party in interest.” *Securitas Sec. Servs.*
11 *USA, Inc. v. Sup. Ct. of San Diego Cnty.* (2015) 234 Cal. App. 4th 1109, 1119; *Montano v. The Wet*
12 *Seal Retail, Inc.* (2015) 232 Cal. App. 4th 1214, 1222 (“[A] PAGA action is a dispute between an
13 employer and the State agency.”). Accordingly, a plaintiff that brings a PAGA claim represents “the
14 same legal right and interest as state labor law enforcement agencies,” in that the plaintiff seeks to
15 recover those civil penalties that the LWDA otherwise would assess and collect. *Arias v. Super. Ct.*
16 (2009) 46 Cal.4th 969, 986; Labor Code § 2699(a) & (f); *Securitas, supra*, 234 Cal. App. 4th at 1119;
17 *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (holding “PAGA plaintiffs do
18 not have property rights in their cases.”), and *Amalgamated Transit Union, Local 1756, AFL-CIO v.*
19 *Superior Court* (2009) 46 Cal.4th 993, 1003.

20 Therefore, when a plaintiff brings a PAGA claim, he or she is properly viewed as a private
21 attorney general prosecuting violations of California’s labor laws on behalf of the state. An employee
22 may commence a PAGA action by fulfilling the requirements of California Labor Code §
23 2699.3(a)(1), which simply states: “The aggrieved employee or representative shall give written
24 notice by certified mail to the Labor and Workforce Development Agency and the employer of the
25 specific provisions of this code alleged to have been violated, including the facts and theories to
26 support the alleged violation.” Labor Code § 2699.3(a)(1). As explained above, Plaintiff complied
27 with the notice requirements and properly pled a PAGA claim. (Kim Decl. ¶ 5.)

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

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

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

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

20 **VII. ARGUMENT**

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

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

1 **B. The Settlement is Fair and Adequate**

2 Settlements to resolve PAGA Claims require court approval. (Labor Code ¶ 2699(1)(2).)
3 Further, in accordance with the statutory requirement, Plaintiff provided a copy of the Settlement
4 Agreement to the LWDA on the same day he filed the instant motion with this Court. (Kim Decl.,
5 ¶ 43; Exh. 6.) PAGA civil penalties recovered on the State’s behalf are intended to “remediate
6 present violations and deter future ones, not to redress employees’ injuries.” (*Amaro v. Anaheim*
7 *Arena Management, LLC* (2021) 69 Cal.App.5th 521, 542.) The standard for evaluating a PAGA
8 settlement is not whether the employees are fully compensated for their injuries, but “whether it is
9 fair, reasonable, and adequate in view of PAGA’s purposes to remediate present labor law
10 violations, deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco*
11 *USA, Inc.*, (2021) 72 Cal.App.5th 56, 77, *disapproved of on other grounds by Turrieta v. Lyft, Inc.*,
12 16 Cal. 5th 664 (2024)).

13 Here, as discussed above, Defendant CGUSA must pay the Gross Settlement Amount of
14 \$190,000.00 in full and final settlement of all claims alleged in the Operative Complaint and
15 PAGA Notice. (Kim Decl., Exh. 1, ¶ 3.1.) This settlement payment would purportedly remediate
16 any alleged labor law violations and deter future violations.

17 In addition, the settlement amount is fair to those affected because it accounts for a realistic
18 assessment of the PAGA exposure on the claims as well as the significant possibility of the Court
19 awarding only a fraction of the PAGA penalties sought by Plaintiff if Plaintiff prevailed on the
20 merits due to the Court’s discretion to substantially reduce PAGA penalties under Labor Code §
21 2699(e)(2). Indeed, PAGA settlements for as little as \$0 have been approved (*See Nordstrom*
22 *Com’n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that
23 allocated \$0 to PAGA claim).) Courts have also approved settlements for \$20,000 or less. (*See,*
24 *e.g., Hicks v. Toys ‘R’ Us-Delaware, Inc.*, (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1
25 (approving \$5,000 PAGA payment in \$4 million settlement); *Chu v. Wells Fargo Invest. LLC*
26 (N.D. Cal. Feb 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of \$7,500 in \$6.9
27 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 Defendants at mediation, assessed the risks of moving forward to trial and what this Court could do in awarding penalties even if Plaintiff were to prevail at trial.

Plaintiff estimated that the maximum potential exposure on the PAGA claim is \$1,000,000.00, calculated by multiplying the total number of PAGA Pay Periods (10,000) by \$100 per violation. (Kim Decl., ¶ 21.) 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 ¶ 16.)

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

Defendants denied and continue to deny all of the claims made by Plaintiff in this Action and contend that they acted at all relevant times in conformance with the law. (Kim Decl., at ¶ 19.) Defendants contend that Plaintiff and the Aggrieved Employees were paid for all hours worked and that Defendants prohibited Plaintiff and the Aggrieved Employees from working beyond their scheduled shifts; that Defendants provided lawfully compliant meal and rest periods (and in fact provided longer breaks than required by law) and that any deviations were at the voluntary election of Plaintiff and/or the Aggrieved Employees and not at the request of Defendants or due to work requirements; that Defendants paid all wages due on a timely basis; that Defendants paid all wages due on a timely basis and using Labor Code compliant instruments; that Defendants' wage statements complied with the law; and that neither Plaintiff nor any Aggrieved Employees incurred reasonable business related expenses for which they were not reimbursed. (*Id.*) Defendants further contend that their above defenses are supported by their written policies applicable to Plaintiff and Aggrieved Employees. (*Id.*) As a result, PAGA Counsel had to appropriately discount the amount recoverable

1 from Defendants in a settlement. (*Id.*)

2 **E. The Court May Have Exercised Its Discretion to Reduce Civil Penalties.**

3 “PAGA penalties...are mandatory, not discretionary” and the Court must award penalties
4 upon a showing that Defendant violated the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163
5 Cal. App. 4th 1157, 1213; *Moreno v. Autozone, Inc.* (N.D. Cal. June 5, 2007) No. C05-04432 MJJ,
6 2007 WL 1650942, at *3. However, PAGA does provide the Court with discretion when it awards
7 these penalties. Labor Code § 2699(e)(2) states that “a court may award a lesser amount than the
8 maximum civil penalty amount specified by this part if, based on the facts and circumstances of the
9 particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
10 confiscatory.” (*See also Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (reducing PAGA
11 penalties by 30% under this provision).

12 In departing from the \$100/pay period calculation to arrive at the \$190,000.00 Gross
13 Settlement Amount in this case, Plaintiff considered what the realistic potential exposure could be
14 and why the Court may reduce any eventual recovery at its discretion, including Defendants’ defenses
15 to the claims and the potential manageability issues with PAGA claims at trial. (Kim Decl., at ¶ 23.)
16 Based on those considerations, Plaintiff applied a discount of 80% to the maximum potential exposure
17 (which equates to \$20 penalty per pay period) to get a realistic potential exposure of \$200,000.00
18 (10,000 pay periods x \$20 penalty per pay period). (*Id.*)

19 The Gross Settlement Amount of \$190,000.00 is 95% of the realistic potential exposure of
20 \$200,000.00. PAGA Counsel submits that this is an excellent result for the State and Aggrieved
21 Employees in light of the strengths and weaknesses of the case and the risks and delays posed by
22 further litigation.

23 **VIII. THE SETTLEMENT ADMINISTRATION PROCESS**

24 **A. Selection of Administrator**

25 After soliciting and reviewing three bids from potential administrators, the Parties selected
26 Phoenix Class Action Administration Solutions (“Phoenix” or the “Administrator”) to handle the
27 notice and administration of the Settlement based on the competitiveness of their bid, their
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competency in administering settlements, and their responsiveness to the Parties' counsel. (Kim Decl., ¶ 14.) Pursuant to the Settlement Agreement, the administration costs shall not exceed \$5,750.00. (Kim Decl., ¶ 13(b).)

B. Administration Process

Within 15 calendar days of the Court filing the Approval Order, Defendant CGUSA will deliver the Aggrieved Employee Data (identifying information in Defendants' possession including the Aggrieved Employee's full name, last-known mailing address, and Social Security number, and information necessary to determine the estimated settlement allocation to each Aggrieved Employee) to the Administrator in the form of a Microsoft Excel spreadsheet. (Kim Decl., Exh. 1, ¶ 4.2.) Defendant CGUSA shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than fifteen (15) days after the Effective Date.² (Kim Decl., Exh. 1, ¶ 4.3.) Thereafter, within 15 days of Defendants' funding the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment, and Plaintiff's Enhancement Award payment. (Kim Decl., Exh. 1, ¶ 4.4.) For all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address, the Administrator must conduct an Aggrieved Employee Address Search and re-mail checks within three days to the USPS forwarding address provided. (Kim Decl., Exh. 1, ¶ 4.4.2.) The checks issued by the Administrator will be voided after 180 days if remained uncashed, and the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (Kim Decl., Exh. 1, ¶ 4.4.1-4.4.3.)

² Effective Date means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) the day the Court enters Judgment assuming no appeal is filed; or (b) if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for writs of certiorari) resulting in final judicial approval of the Settlement. (Kim Decl., Exh. 1, ¶ 1.9)

1 **IX. THE REQUEST FOR ATTORNEYS' FEES AND COSTS**

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

3 Pursuant to the Settlement Agreement, PAGA Counsel is requesting an award of attorneys'
4 fees in the amount of **\$63,333.33** and an award of litigation costs to PAGA Counsel of **\$16,173.88**,
5 which is lower than the requested \$20,000.00 "not-to-exceed" amount in the Settlement
6 Agreement. (Kim Decl., ¶ 13.)

7 Prior to enactment of PAGA, when the State had the resources to seek civil penalties on behalf
8 of the public, it paid its employees (including their attorneys) their salaries and benefits for pursuing
9 such penalties. The Legislature enacted PAGA because the Labor Commissioner and other agencies
10 were hampered in their enforcement of civil penalties by inadequate funding and staffing constraints.
11 *Iskanian, supra*, 59 Cal.4th at 379. To facilitate broader enforcement, the Legislature enacted PAGA,
12 authorizing "aggrieved employees" to pursue civil penalties on the state's behalf. Labor Code §
13 2699(a). In creating PAGA, the Legislature expressly provided that the private counsel retained by
14 the Plaintiff to represent the public's interest can recover fees if the Plaintiff is the prevailing party.
15 Labor Code § 2699(g)(1).

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

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

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

1 *Id.* at p. 573. Here, the \$190,000.00 common fund created for the benefit of the public is, with Plaintiff
2 as a proxy for the State, not unlike the fund created in class action settlements, with the public the
3 equivalent of the class referenced in *Laffitte*.

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

6 The recognized advantages of the percentage method—including relative ease of
7 calculation, alignment of incentives between counsel and the class, a better
8 approximation of market conditions in a contingency case, and the encouragement
9 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.

10 *Id.* at 573.

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

21 2) The Attorneys’ Fees Request Is Within the Range of Reasonable Fees

22 PAGA Counsel at D.Law, Inc. are experienced employment attorneys with expertise in wage
23 and hour class and representative actions. (Kim Decl., ¶¶ 25-32.) Throughout this case, PAGA
24 Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this
25 Action on a purely contingency basis. (Kim Decl., ¶ 27.) As a result, PAGA Counsel have yet to
26 receive any compensation for the amount of time and money invested in the case to date. (*Id.*)
27 Moreover, courts have approved attorneys’ fees awards in other PAGA settlements on a common
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1 fund basis at higher percentages than the one-third Plaintiff is requesting here. (*Id.* at ¶¶ 27-28.)

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

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

6 PAGA Counsel’s fee request is reasonable when calculated using the lodestar method. Under
7 the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on
8 the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20 Cal.3d
9 25, 48. The court then may enhance this lodestar figure by a “multiplier” to account for a range of
10 factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success
11 achieved. *Id.* at 49; *see also Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells*
12 *Fargo Bank* (2001) 92 Cal. App. 4th 819, 834, (“[t]here is no...rule limiting the factors that may
13 justify an exercise of judicial discretion to [adjust the] lodestar”).

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

17 Associate Attorney David Arakelyan’s current billing rate is \$500.00 (4 years out of law
18 school, Laffey Matrix rate of \$581.00), and he spent approximately 40.2 hours in this matter with a
19 lodestar amount of \$20,100.00. (Kim Decl., ¶ 31.) Senior Attorney David Keledjian’s current billing
20 rate is \$650.00 (9 years out of law school, Laffey Matrix rate of \$839.00), and he spent approximately
21 15 hours in this matter with a lodestar amount of \$9,750.00. (*Id.*) Senior Attorney Enoch J. Kim’s
22 current billing rate is \$750.00 (16 years out of law school, Laffey Matrix rate of \$948.00), and he
23 spent approximately 13.3 hours in this matter with a lodestar amount of \$9,975.00. (*Id.*) Associate
24 Attorney Norayr Zakaryan’s current billing rate is \$400.00 (11 months out of law school, Laffey
25 Matrix rate of \$473.00), and he spent approximately 50.6 hours in this matter with a lodestar amount
26 of \$20,240.00. (*Id.*) Associate Attorney Kevin Burns’ current billing rate is \$425.00 (1 year out of
27 law school, Laffey Matrix rate of \$473.00), and he spent approximately 1.1 hours with a lodestar
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amount of \$467.50. (*Id.*) Associate Attorney Lana Hovhannisyan's current billing rate is \$400 (11 months out of law school, Laffey Matrix rate of \$473.00), and she spent approximately 1.1 hours in this matter with a lodestar amount of \$440.00. (*Id.*) Associate Attorney Samantha Smith's billing rate, at the time of being employed at D.Law, Inc., was \$950.00 (21 years out of law school, Laffey Matrix rate of \$1,141.00), and she spent approximately 1.5 hours in this matter with a lodestar amount of \$1,425. (*Id.*) The total lodestar for PAGA Counsel is \$63,677.50, above the fee request of \$63,333.33 and requires no **multiplier**. (*Id.*)

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

The litigation expenses incurred by PAGA Counsel in this Action are also to be reimbursed under the Settlement Agreement. PAGA Counsel seek **\$16,173.88** 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 \$16,173.88.

X. THE REQUEST FOR PLAINTIFF'S ENHANCEMENT AWARD PAYMENT

Plaintiff is entitled to a reasonable service payment for his efforts and initiative in bringing and helping to prosecute this action. (Kim Decl., ¶ 39.) Plaintiff initiated this litigation on behalf of State of California and Aggrieved Employees who will now be entitled to receive payment from the Agreement. (*Id.*) By initiating and pursuing the Action, Plaintiff stepped into the shoes of the State of California and undertook the responsibilities of serving in representative capacity. Plaintiff spent significant time better apprising himself of his rights, deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and contacting PAGA Counsel, who spent many hours with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only his own rights but also those of other aggrieved employees by filing a representative action lawsuit. (*Id.*)

Both before and after the filing of this lawsuit, Plaintiff conferred with PAGA Counsel on to discuss every aspect of his case. (Kim Decl., ¶ 40.) Plaintiff provided PAGA Counsel with

1 information about Defendants and about the industry generally, produced and reviewed
2 documents, identified witnesses, consulted with PAGA Counsel regarding litigation strategy,
3 participated in the mediation process, monitored the progress of the litigation with PAGA Counsel,
4 and reviewed and signed the Settlement Agreement. (*Id.*)

5 In light of the foregoing, PAGA Counsel believes that Plaintiff's Enhancement Award
6 payment of \$2,500.00 is fair and reasonable. (Kim Decl., ¶ 41.)

7 **XI. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION**

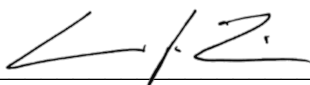
8 The parties agreed to use Phoenix as the third-party settlement administrator in this case. (Kim
9 Decl., ¶ 42.) Phoenix will be responsible for updating the addresses for the Aggrieved Employees,
10 mailing the Notice of PAGA Settlement and Release of Claims ("Notice of Settlement") and
11 calculating and distributing the settlement checks, among other duties. (*Id.*) Phoenix capped its fees
12 at \$5,750.00 for administering the Settlement, and based on PAGA Counsel's experience in other
13 class and PAGA settlements, Phoenix's costs for administering this Settlement are fair and
14 reasonable. (*Id.*)

15 **XII. CONCLUSION**

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

22 DATED: May 21, 2025

D.LAW, INC

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