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on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

CECILIA ALCARAZ, on behalf of herself
and on behalf of all other aggrieved
employees,

Plaintiff,

vs.

HHM FACILITY MANAGEMENT LLC,
Missouri limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00055133-CU-OE-CTL

Assigned for All Purposes To:
Hon. Matthew Braner
Dept.: C-60

**NOTICE OF MOTION AND MOTION TO
APPROVE THE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT UNDER
CALIFORNIA LABOR CODE §§ 2698 et seq.;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[filed concurrently with Declaration of Enoch J.
Kim; and [Proposed] Order]

Hearing Date: March 7, 2025
Time: 11:00 a.m.
Department: C-60

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

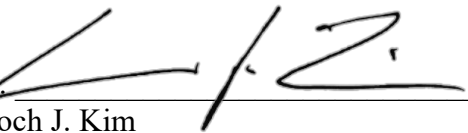
2 **PLEASE TAKE NOTICE** that on March 7, 2025, at 11:00 a.m. in Department C-60 of
3 the above-entitled Court, located at 330 West Broadway, San Diego, CA 92101. Plaintiff Cecilia
4 Alcaraz (“Plaintiff” or “PAGA Representative”), on behalf of herself, the State of California and
5 all aggrieved employees (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 Defendant HHM Facility Management, LLC (“Defendant”) which will
8 accomplish the following: approve the representative action settlement embodied in the Private
9 Attorney General Act (“PAGA”) Settlement Agreement/Stipulation of Settlement; approve PAGA
10 Counsel’s application for attorney’s fees and litigation costs and costs for the Administrator; and
11 enter judgment approving the PAGA Settlement Agreement (the “Motion”).

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

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

22
23 DATED: February 7, 2025

D.LAW, INC.

24
25 By: 

26 Enoch J. Kim
27 Attorneys for Cecilia Alcaraz on behalf of
28 herself and Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this Motion, Plaintiff Cecilia Alcaraz (“Plaintiff”) requests that the Court grant
4 approval of the PAGA Settlement Agreement/Stipulation of Settlement (“Settlement” or “Settlement
5 Agreement”) reached between the parties to resolve claims brought exclusively under the Private
6 Attorneys General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”) seeking civil penalties for
7 various violations of the California Labor Code and Industrial Wage Commission’s Wage Orders.
8 Pursuant to the Settlement, Defendant HHM Facility Management, LLC (“Defendant”) will pay the
9 Gross Settlement Amount of \$98,277.00. (Declaration of Enoch J. Kim (“Kim Decl.”), Exhibit 1, ¶
10 3.1.) For purposes of the Settlement, the group of aggrieved employees included in the Settlement is
11 defined as all persons who are employed or were previously employed by Defendant in California
12 and are or were classified as non-exempt employees at any time from October 12, 2022, to the date
13 of the Approval Order (“Aggrieved Employees”). (Kim Decl., Exhibit 1, ¶¶ 1.4 and 1.24.)

14 Given the amount Defendant will pay to effectuate the Settlement and the formula for
15 distribution of the Settlement funds, Plaintiff and her counsel believe that the Settlement is fair,
16 reasonable and in the best interests of the State and the Aggrieved Employees. Accordingly, Plaintiff
17 requests that the Court “review and approve” the Settlement pursuant to Labor Code § 2699(1)(2). If
18 the Court deems the Settlement fair and acceptable, Plaintiff requests that the Court enter an order
19 approving the Settlement in the form lodged herewith and ordering the parties and Administrator to
20 carry out the terms of the Settlement Agreement and enter a Final Judgment thereon.¹

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

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

23 On October 10, 2023, Plaintiff filed a class-action complaint in the San Diego County
24

25 _____
26 ¹ Plaintiff has submitted this Motion to the LWDA by uploading it on the LWDA’s website
27 concurrently with the filing of this Motion as required by Labor Code § 2699(1)(2). (Declaration
of Enoch J. Kim (“Kim Decl.”) ¶ 5, Exhibit 3.)

Superior Court, Case No. 37-2023-00044371-CU-OE-CTL, against Defendant alleging claims under the California Labor Code (the “Labor Code”) for failure to pay minimum wages, failure to pay wages and overtime, failure to pay reporting-time pay, failure to provide meal-periods, failure to provide rest periods, failure to pay vacation wages, failure to pay sick time at the regular rate of pay, failure to provide accurate, itemized wage statements, failure to keep payroll records, failure to produce requested employment records, unlawfully removing wages for medical insurance, failure to reimburse for necessary business expenses, failure to pay all wages due at time of termination or resignation, and unlawful business practices under California’s Business and Professions Code (the “Class Action”). (Kim Decl., ¶ 4.) Defendant timely removed the Class Action to the United States District Court, Southern District of California, Case No. 3:23-cv-02103-DMS-JLB (the “Federal Court”). (*Id.*)

On or about October 12, 2023, Plaintiff submitted her PAGA letter to the California Labor & Workforce Development Agency (“LWDA”) and Defendant, alleging that Defendant committed various wage and hour violations under the California Labor Code and were entitled to civil penalties under PAGA. (*Id.* at ¶ 5.)

On or about December 20, 2023, Plaintiff filed this representative lawsuit for civil penalties under PAGA against Defendant in San Diego County Superior Court, Case No. 37-2023-00055133-CU-OE-CTL, alleging claims for (1) failure to pay minimum wage; (2) failure to pay wages and overtime; (3) failure to pay vacation wages; (4) failure to comply with Labor Code Section 245 and 246; (5) meal period liability; (6) rest period liability; (7) violation of Labor Code Section 221; (8) failure to reimburse for necessary business expenses; (9) violation of Labor Code Sections 226 and 1174; (10) failure to produce employment records; and (11) violation of Labor Code Sections 203 and 204 (the “Action”). (*Id.* at ¶ 6.) On June 5, 2024, Plaintiff provided Defendant with the PAGA Lawsuit via Notice of Acknowledgment and Receipt. (*Id.*)

On or about April 30, 2024, Plaintiff filed a complaint in the Los Angeles County Superior Court, Case No. 24STCV10833, against Defendant and a former employee of Defendant, Daniel Noell, alleging (1) sex/gender harassment in violation of the Fair Employment and Housing Act,

California Government Code Section 12940 *et seq.* (the “FEHA”); (2) retaliation in violation of the FEHA; (3) failure to prevent harassment and retaliation in violation of the FEHA; (4) violation of Labor Code Section 232.5; (5) violation of Labor Code Section 6310; (6) violation of Labor Code Section 6311; (7) violation of Labor Code 1102.5; (8) wrongful termination in violation of public policy; (9) intentional infliction of emotional distress; and (10) unfair competition in violation of the California business and Professions Code Section 17200 *et seq.* (the “Harassment Action”). (*Id.* at ¶ 7.) Plaintiff served the Harassment Complaint on Defendant on May 8, 2024, and the Parties agreed that Defendant’s answer or response to the Harassment Lawsuit would be due June 21, 2024. (*Id.*)

On June 11, 2024, prior to answering any of the complaints filed by Plaintiff, the Parties attended an all-day mediation with the Honorable John Leo Wagner (Ret) and globally settled the Action, the Class Action and the Harassment Action. (*Id.* at ¶ 9.) The Settlement Agreement reached between the parties does not constitute, is not intended to constitute, and will not be deemed to constitute, an admission of liability by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against Defendant in the Action. (Kim Decl., Exhibit 1, ¶ 11.1.) Defendant denies all liability in the Action, Class Action, and Harassment Action. (*Id.*)

B. Mediation and Settlement

Prior to mediation, Plaintiff conducted comprehensive informal discovery and Defendant provided data and numbers and documents, including electronic payroll and timekeeping data for all alleged Aggrieved Employees, Employee Handbooks and other policies, information and documentation regarding Defendant’s wage and hour policies, expense report data and information, and meal period information. (Kim Decl., ¶ 8.) 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, 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.*)

On June 11, 2024, the parties attended an all-day mediation with the Honorable John Leo Wagner (Ret.). (Kim Decl., ¶ 9.) With the assistance of a highly respected wage and hour mediator,

the parties agreed to a global settlement of the Action, Class Action and the Harassment Action. (*Id.*) The general terms for settling this Action were first memorialized in a Memorandum of Agreement, fully executed on June 20, 2024, and thereafter in the long-form Settlement Agreement now before the Court for approval, which was fully executed on August 14, 2024. (*Id.*) Additionally, as part of the global settlement, (a) the Parties executed an individual settlement agreement with Plaintiff, for which Plaintiff received additional compensation, which was fully executed on July 3, 2024; (b) the Class Action was dismissed without prejudice, except for Plaintiff's individual claims, which were dismissed with prejudice, in an Order signed by the Federal Court on September 5, 2024; and (c) Plaintiff filed a conditional Notice of Settlement with the Court in the Harassment Action on September 12, 2024, which states that the Harassment Action will be dismissed with prejudice after the Court approves this Settlement. (*Id.*)

The parties believe and agree that the Settlement provides for a fair, adequate, and reasonable resolution of the Action and have arrived at the Settlement in extensive, arm's length negotiations, considering all relevant factors, present and potential. (Kim Decl., ¶ 10.) PAGA Counsel believes that the Settlement confers real benefits upon Plaintiff and the Aggrieved Employees and that an independent review of the Settlement by the Court in the approval process will confirm this conclusion. (*Id.*)

III. PAGA ACTIONS AND THE REQUIREMENTS

A. The PAGA Statutory Scheme

PAGA creates a means of “deputizing” citizens as private attorneys general to enforce the Labor Code on behalf of the LWDA. *Brown v. Ralphs Grocery Co.* (2011) 197 Cal. App. 4th 489, 501, *review den.* (Oct. 19, 2011, No. S195850), *cert. denied* 132 S.Ct. 1910 (Apr. 16, 2012). A plaintiff may not — and Plaintiff here does not — bring a PAGA claim simply on his or her own behalf as an individual claim, but “as the proxy or agent of the state’s labor law enforcement agencies.” *Id.*, at 986; *see also Reyes v. Macy’s, Inc.* (2011) 202 Cal. App. 4th 1119, 1123-1124; *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. When an aggrieved employee brings a PAGA claim, “the government is always the real party in interest.” *Securitas Sec. Servs.*

1 *USA, Inc. v. Sup. Ct. of San Diego Cnty.* (2015) 234 Cal. App. 4th 1109, 1119; *Montano v. The Wet*
2 *Seal Retail, Inc.* (2015) 232 Cal. App. 4th 1214, 1222 (“[A] PAGA action is a dispute between an
3 employer and the State agency.”). Accordingly, a plaintiff that brings a PAGA claim represents “the
4 same legal right and interest as state labor law enforcement agencies,” in that the plaintiff seeks to
5 recover those civil penalties that the LWDA otherwise would assess and collect. *Arias v. Super. Ct.*
6 (2009) 46 Cal.4th 969, 986; Labor Code § 2699(a) & (f); *Securitas, supra*, 234 Cal. App. 4th at 1119;
7 *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (holding “PAGA plaintiffs do
8 not have property rights in their cases.”), and *Amalgamated Transit Union, Local 1756, AFL-CIO v.*
9 *Superior Court* (2009) 46 Cal.4th 993, 1003.

10 Therefore, when a plaintiff brings a PAGA claim, he or she is properly viewed as a private
11 attorney general prosecuting violations of California’s labor laws on behalf of the state. An employee
12 may commence a PAGA action by fulfilling the requirements of California Labor Code §
13 2699.3(a)(1), which simply states: “The aggrieved employee or representative shall give written
14 notice by certified mail to the Labor and Workforce Development Agency and the employer of the
15 specific provisions of this code alleged to have been violated, including the facts and theories to
16 support the alleged violation.” Labor Code § 2699.3(a)(1). As explained above, Plaintiff complied
17 with the notice requirements and properly pled a PAGA claim. (Kim Decl. ¶¶ 5-6).

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

19 The PAGA provides for penalties in the amount of \$100 for each violation per aggrieved
20 employee per pay period for the initial violation and \$200 for each violation per aggrieved employee
21 per pay period for each subsequent violation. Labor Code § 2699(f)(2). “PAGA penalties...are
22 mandatory, not discretionary” and must be awarded upon a showing that Defendants violated the
23 Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213. However, the PAGA
24 provides the Court with discretion when it finds liability and awards these penalties as part of a
25 judgment. Labor Code § 2699(e)(2) states that “a court may award a lesser amount than the maximum
26 civil penalty amount specified by this part if, based on the facts and circumstances of the particular
27 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.

IV. THE SETTLEMENT

Pursuant to the Settlement Agreement, Defendant will pay the Gross Settlement Amount of \$98,277.00 in full and final settlement of the PAGA claim alleged in the Action. (Kim Decl., Exhibit 1, ¶ 3.1).

Pending Court approval, the Gross Settlement Amount will be allocated as follows: (1) attorneys’ fees of one-third (1/3) of the Gross Settlement Amount which is **\$32,759.00** (“PAGA Counsel Fees Payment”) (Kim Decl., ¶ 12.); (2) actual litigation costs incurred in this matter in the amount of **\$16,443.83** (“PAGA Counsel Litigation Expenses Payment”) (*Id.*); (3) settlement administration costs of up to **\$5,900.00** to be paid to the Settlement Administrator, Apex, for sending notices and for calculating settlement shares and preparing all checks and mailings (“Administration Expenses Payment”) (*Id.*); and (4) PAGA Penalties in the amount of **\$43,174.17**, with 75% (\$32,380.63) allocated to the LWDA (“LWDA PAGA Payment”) and 25% (\$10,793.54) allocated to the Aggrieved Employees (“Individual PAGA Payments”). (*Id.*) The Individual PAGA Payments will be calculated based on the number of Pay Periods the Aggrieved Employee worked during the PAGA Period of October 12, 2022, to the date of the Approval Order. (Kim Decl., Exhibit 1, ¶ 3.3.1.)

Based on its records, Defendant represents that there are approximately 1,927 Aggrieved Employee pay periods in the aggregate from October 12, 2022, through September 11, 2024. (*Id.* at

¶ 11.) If the total number of Aggrieved Employee pay periods in the foregoing period increases by more than 10% (i.e., an increase of 193 or more), then Defendant will increase the GSA in proportion to the number of Aggrieved Employee pay periods in excess of 10%. (Kim Decl., Exhibit 1, ¶ 8.) For example, if the number of Aggrieved Employee pay periods increased by 15% over 1,927 employee pay periods, then the GSA will increase by 5%. (*Id.*)

Based on this information, Plaintiff believes that the Aggrieved Employees will receive an average of approximately \$106.87 per person (\$10,793.54 divided by 101 Aggrieved Employees, which is the approximate number of Aggrieved Employees based on the data given at the time of mediation). (Kim Decl., ¶ 12.)

V. ARGUMENT

A. The Court Should Approve the Settlement Agreement.

Pursuant to Labor Code § 2699(*I*), 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 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 prevailed at trial.

Plaintiff estimated that the maximum potential exposure on the PAGA claim is \$192,700.00, calculated by multiplying the total number of Pay Periods (1,927) by \$100 per violation. (Kim Decl., ¶ 17.) 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 her 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 ¶ 18.)

The Gross Settlement Amount of \$98,277.00 is approximately 51% of the maximum potential exposure of \$192,700.00. (*Id.* at ¶ 20.) The Gross Settlement Amount therefore represents a strong value at approximately \$51.00 per Pay Period. (*Id.*) From PAGA Counsel’s review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, PAGA Counsel believes that the recovery for each Aggrieved Employee is fair and reasonable. (*Id.*)

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

Defendant denied and continues to deny all of the claims made by Plaintiff in this Action and contend that it acted at all relevant times in conformance with the law. (*Id.* at ¶ 15.) Defendant contends that Plaintiff and the Aggrieved Employees were paid for all hours worked and that Defendant prohibited Plaintiff and the Aggrieved Employees from working beyond their scheduled shifts; that Defendant 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 Defendant or due to work requirements; that Defendant paid all wages due on a timely basis; 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 neither Plaintiff nor any Aggrieved Employees incurred reasonable business related expenses for which they were not reimbursed. (*Id.*) As a result, PAGA Counsel had to appropriately discount the amount recoverable from Defendant in a settlement. (*Id.*)

D. The Court May Have Exercised Its Discretion to Reduce Civil Penalties.

“PAGA penalties...are mandatory, not discretionary” and the Court must award penalties upon a showing that Defendant violated the Labor Code. *Amaral v. Cintas Corp. No. 2* (2008) 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. In departing from the \$100/pay period calculation to arrive at the \$98,277.00 Gross Settlement Amount in this case, Plaintiff considered various reasons why the Court may reduce any eventual recovery at its discretion, and considered that PAGA penalties are not mandatory but

1 permissive. (Kim Decl., at ¶ 17.) Labor Code § 2699(e)(2) states that “a court may award a lesser
2 amount than the maximum civil penalty amount specified by this part if, based on the facts and
3 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary
4 and oppressive, or confiscatory.” (*See also Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112
5 (reducing PAGA penalties by 30% under this provision).

6 **VI. THE REQUEST FOR ATTORNEYS’ FEES AND COSTS**

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

8 Pursuant to the Settlement Agreement, PAGA Counsel is requesting an award of attorneys’
9 fees in the amount of **\$32,759.00** and an award of litigation costs to PAGA Counsel of **\$16,443.83**.

10 Prior to enactment of PAGA, when the State had the resources to seek civil penalties on behalf
11 of the public, it paid its employees (including their attorneys) their salaries and benefits for pursuing
12 such penalties. The Legislature enacted PAGA because the Labor Commissioner and other agencies
13 were hampered in their enforcement of civil penalties by inadequate funding and staffing constraints.
14 *Iskanian, supra*, 59 Cal.4th at 379. To facilitate broader enforcement, the Legislature enacted PAGA,
15 authorizing “aggrieved employees” to pursue civil penalties on the state’s behalf. Labor Code §
16 2699(a). In creating PAGA, the Legislature expressly provided that the private counsel retained by
17 the Plaintiff to represent the public’s interest can recover fees if the Plaintiff is the prevailing party.
18 Labor Code § 2699(g)(1).

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

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

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

6 *Id.* at p. 573. Here, the \$98,277.00 common fund created for the benefit of the public is, with Plaintiff
7 as a proxy for the State, not unlike the fund created in class action settlements, with the public the
8 equivalent of the class referenced in *Laffitte*.

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

11 The recognized advantages of the percentage method—including relative ease of
12 calculation, alignment of incentives between counsel and the class, a better
13 approximation of market conditions in a contingency case, and the encouragement
14 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
15 the litigation [citations]—convince us the percentage method is a valuable tool that
16 should not be denied our trial courts.

17 *Id.* at 573.

18 An award of one-third of the civil penalties realized in the Settlement is appropriate here under
19 the “substantial benefit” theory. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1810;
20 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254. That theory permits a litigant
21 who has sued in a representative capacity to recover fees from the beneficiaries of that representation.
22 Courts exercise their inherent equitable powers to assess attorneys’ fees against the entire fund,
23 thereby spreading the cost of those fees among the public who benefits from PAGA actions. *Serrano*
24 *v. Priest* (1977) 20 Cal.3d 25, 35 (*Serrano III*). As this approach “better approximates the workings
25 of the marketplace than the lodestar approach,” there is “a greater judicial willingness to evaluate a
26 fee award as a percentage of the recovery.” *Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal. App. 4th
27 19, 31, 48.

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

PAGA Counsel at D.Law, Inc. are experienced employment attorneys with expertise in wage
and hour class and representative actions. (Kim Decl., ¶¶ 29-35.) Throughout this case, PAGA
Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this

1 Action on a purely contingency basis. (Kim Decl., ¶ 23.) As a result, PAGA Counsel have yet to
2 receive any compensation for the amount of time and money invested in the case to date. (*Id.*)
3 Moreover, courts in this county and others have approved attorneys' fees awards in other PAGA
4 settlements on a common fund basis at higher percentages than the one-third Plaintiff is requesting
5 here. (*Id.* at ¶¶ 25-26.)

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

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

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

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

21 PAGA Counsel worked at least 135.30 hours on this matter and calculated the base lodestar
22 at \$69,735.00 at rates reflecting those currently earned in the marketplace. Attorney Roman
23 Shkodnik's records indicate at least 23 hours on this matter with an hourly rate of \$700. (Kim Decl.
24 ¶ 25.) Attorney Amanda Fazio's records indicate at least 87.40 hours on this matter with an hourly
25 rate of \$400. (*Id.*) Attorney Enoch Kim's records indicate at least 24.90 hours on this matter with an
26 hourly rate of \$750. (*Id.*)

27 Thus, consideration of the lodestar method as a cross-check to the percentage figure sought

strongly supports the reasonableness of the requested fee award. PAGA Counsel respectfully request the Court grant its request for \$32,759.00 in fees, which requires **no multiplier**.

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 **\$16,443.83** in reimbursement for litigation costs (Kim Decl., ¶ 19.) 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 \$16,443.83.

VII. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION

The parties agreed to use Apex as the third-party settlement administrator in this case. (Kim Decl., ¶ 34.) Apex will be responsible for updating the addresses for the Aggrieved Employees, mailing the Notice of Settlement and calculating and distributing the settlement checks, among other duties. (*Id.*) Apex capped its fees at \$5,900.00 for administering the Settlement, and based on PAGA Counsel's experience in other class and PAGA settlements, Apex's costs for administering this Settlement are fair and reasonable. (*Id.*)

VIII. 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, Defendant, 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.

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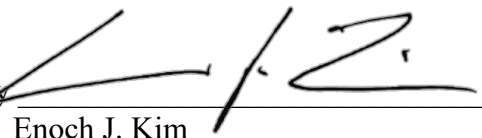
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1 DATED: February 7, 2025

D.LAW, INC

2
3 By


Enoch J. Kim

Attorney for Plaintiff Cecilia Alcaraz on
behalf of herself and others similarly situated