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[Additional Counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ERIC ROBINSON and DAVID NUNEZ, on behalf of all other aggrieved employees,

Plaintiff,

vs.

QUIDEL CORPORATION dba QUIDEL, a Delaware corporation; QUIDELORTHO CORPORATION dba QUIDELORTHO, a Delaware corporation; QUIDEL CARDIOVASCULAR INC. dba QUIDELCARDIOVASCULAR, a Delaware corporation; EASTRIDGE WORKFORCE TECHNOLOGY, INC. dba EASTRIDGE WORKFORCE SOLUTIONS, a California corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00054933-CU-OE-CTL

Assigned for All Purposes To:
Hon. Marcella O McLaughlin

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; Declaration of Kelsey M. Szamet; Declaration of William Zev Abramson; Declaration of Julie Green; and [Proposed] Order]

Date: November 14, 2025
Time: 9:30 a.m.
Dept.: C-72

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on behalf of all other aggrieved employees

TO THE COURT AND DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 14, 2025, at 9:30 a.m. in Department C-72 of the above-entitled Court, located at 330 West Broadway, San Diego, CA 92101, Plaintiff Eric Robinson and Plaintiff David Nunez ("Plaintiffs" or "PAGA Representatives"), on behalf of themselves, the State of California and all aggrieved employees (the "Aggrieved Employees"), will and hereby does move this Court pursuant to California Labor Code § 2698 et seq. for an order approving the settlement agreement between Plaintiffs and Defendants Quidel Corporation dba Quidel, Quidelortho Corporation dba Quidelortho, Quidel Cardiovascular Inc. dba Quidel Cardiovascular (collectively referred to herein as "Quidel") and TEG Staffing, Inc. dba Eastridge Workforce Solutions ("TEG") (collectively, Quidel and TEG are referred to herein as "Defendants") which will accomplish the following: approve the representative action settlement embodied in the Private Attorney General Act ("PAGA") Settlement Agreement and Release; approve PAGA Counsel's application for attorney's fees and litigation costs and costs for the Administrator; and enter judgment approving the PAGA Settlement Agreement (the "Motion").

The grounds for this Motion, as set forth in the attached Memorandum of Points and Authorities and supporting Declaration, are that this is a fair and reasonable settlement that benefits the Aggrieved Employees 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).

Defendants do not oppose this Motion. Plaintiffs base this Motion on this Notice and the accompanying Memorandum of Points and Authorities, the Declaration of Enoch J. Kim, 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.

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DATED: October 22, 2025

D.LAW, INC.

By: ______________________
Emil Davtyan
David Yeremian
Roman Shkodnik
Enoch J. Kim
Amanda Fazio
Antonia McKee
Attorneys for Eric Robinson on behalf of himself and Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this Motion, Plaintiff Eric Robinson and Plaintiff David Nunez ("Plaintiffs") request that the Court grant approval of the PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") reached between the parties to resolve claims brought exclusively under the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*. ("PAGA") seeking civil penalties for various violations of the California Labor Code and Industrial Wage Commission's Wage Orders.

Pursuant to the Settlement, Defendants Quidel Corporation dba Quidel, Quidelortho Corporation dba Quidelortho, Quidel Cardiovascular Inc. dba Quidel Cardiovascular (collectively referred to herein as "Quidel") and TEG Staffing, Inc. dba Eastridge Workforce Solutions ("TEG") (collectively, Quidel and TEG are referred to herein as "Defendants") will pay the Gross Settlement Amount of $470,240.00. (Declaration of Enoch J. Kim ("Kim Decl."), Exhibit 1, ¶ 4.1.) For purposes of the Settlement, the group of aggrieved employees included in the Settlement is defined as follows:

(1) all current and former hourly paid, non-exempt employees employed by Quidel Corporation dba Quidel in California at any time from November 8, 2022 through August 16, 2024 (Quidel Group 1);

(2) all current and former hourly-paid, non-exempt employees employed in California at any time from December 19, 2022 through August 16, 2024 and employed by QuidelOrtho Corporation dba QuidelOrtho or Quidel Cardiovascular Inc. dba Quidel Cardiovascular (Quidel Group 2) (Collectively the Quidel Group 1 and Group 2 employees shall be referred to as the Quidel Aggrieved Employees); and

(3) TEG Staffing, Inc. dba Eastridge Workforce Solutions (TEG) non-exempt employees who worked at Quidel Corporation dba Quidel, QuidelOrtho Corporation dba QuidelOrtho, or Quidel Cardiovascular Inc. dba Quidel Cardiovascular ("TEG Aggrieved Employees") during the PAGA Period from December 19, 2022, through August 16, 2024 (Quidel Group 1, Quidel Group 2, and TEG Aggrieved Employees are referred to collectively as "Aggrieved Employees"). (Kim Decl., Exhibit 1, ¶¶ 1.4.)

Given the amount Defendants will pay to effectuate the Settlement and the formula for distribution of the Settlement funds, Plaintiffs and their counsel believe that the Settlement is fair, reasonable and in the best interests of the State and the Aggrieved Employees. (Kim Decl., ¶ 11.) 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 and ordering the parties and Administrator to carry out the terms of the Settlement Agreement and enter a Final Judgment thereon.[1]

II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

A. Litigation Overview and Procedural History

On November 8, 2023, Plaintiff Nunez commenced the *Nunez* class action (*David Nunez v. Quidel Corporation*, San Diego Superior Court, Case No. 37-2023-00048776-CU-OE-CTL) by filing a class action in San Diego County Superior Court against Defendant Quidel Corporation. Plaintiff Nunez gave written notice to Defendant Quidel and the LWDA by sending PAGA Letters on November 8, 2023. (Kim Decl., ¶ 4.) Nunez filed a First Amended Complaint adding a cause of action for PAGA penalties under Labor Code §§ 2698 *et seq*. on January 17, 2024 ("Nunez PAGA Action"). (*Id*.)

On December 19, 2023, Plaintiff Robinson commenced *Eric Robinson v. Quidel Corporation*, San Diego Superior Court, Case No. 37-2023-00054933-CU-OE-CTL, (the "*Robinson* PAGA Action") by filing a PAGA Letter with the LWDA and filing a putative class action in San Diego County Superior Court against Defendants Quidel Corporation dba Quidel, QuidelOrtho Corporation dba QuidelOrtho, Quidel Cardiovascular Inc. dba Quidel Cardiovascular (collectively, "Quidel") and Eastridge Workforce Technology, Inc. dba Eastridge Workforce Solutions ("EWT"). (Kim Decl., ¶

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[1] Plaintiff has submitted this Motion to the LWDA by uploading it on the LWDA's website concurrently with the filing of this Motion as required by Labor Code § 2699(*1*)(2). (Declaration of Enoch J. Kim ("Kim Decl.") ¶ 5, Exhibit 3.)

5.) EWT was incorrectly named as Plaintiff Robinson's employer. (*Id*.)

Plaintiff Robinson gave written notice to Defendants Quidel and TEG, and the LWDA by sending PAGA Letters on December 19, 2023, and February 1, 2024. On or about February 1, 2024, Plaintiff Robinson filed a DOE Amendment to the initial complaint to insert TEG Staffing, Inc. in place of DOE 1. That same day, Plaintiff filed an amended PAGA Letter with the LWDA naming TEG Staffing, Inc. as a Defendant. On or about February 13, 2024, Plaintiff Robinson dismissed Eastridge Workforce Technology, Inc. from the complaint without prejudice. (*Id*.) On or about February 22, 2024, Plaintiff Robinson filed a First Amended Complaint (the "Robinson FAC"), which named TEG Staffing, Inc. dba Eastridge Workforce Solutions as a defendant and alleges claims for: (1) minimum wages; (2) overtime; (3) meal periods; (4) rest breaks; (5) calculation of paid vacation wage rates; (6) calculation of paid sick leave wage rates; (7) unreimbursed business expenses; (8) wage statement violations; (9) payroll records; (10) waiting time penalties; and (11) unfair business practices under the Unfair Competition Law ("UCL"). (*Id*.)

In light of Plaintiff Robinson's arbitration agreement, Plaintiff Robinson filed a request for dismissal of the statutory class claims against all Defendants. Additionally, as part of the global settlement, the Parties stipulated to the filing of a Second Amended Complaint to assert all PAGA claims and theories that were alleged in the Nunez PAGA Action (the "Robinson Second Amended Complaint" or "Robinson SAC"). The Parties also stipulated to the consolidation of the Nunez PAGA Action and the Robinson PAGA Action before the Hon. Judge Marcella O. McLaughlin in San Diego County Superior Court, Department C-72 ("Action"). (*Id*.) On April 15, 2025, the Parties filed the Second Amended Complaint which is the operative complaint in the Action ("Operative Complaint').

B. Mediation and Settlement

Prior to mediation, Plaintiffs conducted comprehensive informal discovery and Defendants 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 Defendants' wage and hour policies, expense report data and information, and meal period information. (Kim Decl., ¶ 6.) The information and data exchanged by Plaintiffs and Defendants 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 August 16, 2024, the parties attended an all-day mediation with the Francis J. "Tripper" Ortman, III, Esq. (Kim Decl., ¶ 7.) With the assistance of a highly respected wage and hour mediator, the parties agreed to a global settlement of the Actions. (*Id*.) The general terms for settling these Actions were first memorialized in a Memorandum of Agreement and thereafter in the long-form Settlement Agreement now before the Court for approval. (*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., ¶ 8.) PAGA Counsel believes that the Settlement confers real benefits upon the State 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 Plaintiffs here does not — bring a PAGA claim simply on his or her own behalf as an individual claim, but "as the proxy or agent of the state's labor law enforcement agencies." *Id*., at 986; *see also Reyes v. Macy's, Inc*. (2011) 202 Cal. App. 4th 1119, 1123-1124; *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. When an aggrieved employee brings a PAGA claim, "the government is always the real party in interest." *Securitas Sec. Servs. USA, Inc. v. Sup. Ct. of San Diego Cnty*. (2015) 234 Cal. App. 4th 1109, 1119; *Montano v. The Wet Seal Retail, Inc*. (2015) 232 Cal. App. 4th 1214, 1222 ("[A] PAGA action is a dispute between an employer and the State agency."). Accordingly, a plaintiff that brings a PAGA claim represents "the same legal right and interest as state labor law enforcement agencies," in that the plaintiff seeks to recover those civil penalties that the LWDA otherwise would assess and collect. *Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 986; Labor Code § 2699(a) & (f); *Securitas, supra*, 234 Cal. App. 4th at 1119; *see also Medina v. Vander Poel* (E.D. Cal. 2015) 523 B.R. 820, 825 (holding "PAGA plaintiffs do not have property rights in their cases."), and *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1003.

Therefore, when a plaintiff brings a PAGA claim, he or she is properly viewed as a private attorney general prosecuting violations of California's labor laws on behalf of the state. An employee may commence a PAGA action by fulfilling the requirements of California Labor Code § 2699.3(a)(1), which simply states: "The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." Labor Code § 2699.3(a)(1). As explained above, Plaintiffs complied with the notice requirements and properly pled a PAGA claim. (Kim Decl. ¶¶ 4-5, Exhibit 2, PAGA Letters).

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

The PAGA provides for penalties in the amount of $100 for each violation per aggrieved employee per pay period for the initial violation and $200 for each violation per aggrieved employee per pay period for each subsequent violation, 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, the PAGA provides the Court with discretion when it finds liability and awards these penalties as part of a judgment. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

C. PAGA Authorizes the Payment of PAGA Counsel's Fees and Costs

PAGA provides for the recovery of reasonable attorneys' fees and costs. Labor Code § 2699(g)(1) ("Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid…"). The monetary settlement and programmatic relief make Plaintiff a "prevailing party." *Folsom v. Butte County Ass'n of Gov'ts* (1982) 32 Cal. 3d 668,671; *Santisas v. Goodin* (1998) 17 Cal.4th 599, 621. Even if Labor Code § 2699(g)(1) did not authorize fees, Plaintiff would be entitled to fees as a Private Attorney General under Code of Civil Procedure § 1021.5 because Plaintiffs 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, Defendants will pay the Gross Settlement Amount of $470,240.00 in full and final settlement of the PAGA claims alleged in the Action. (Kim Decl., Exhibit 1, ¶ 4.1).

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 **$156,746.67** ("PAGA Counsel Fees Payment") (Kim Decl., ¶ 10.); (2) actual litigation costs incurred in this matter in the amount not to exceed $30,000, which total **$27,669.18** ("PAGA Counsel Litigation Expenses Payment") (*Id*.); (3) settlement administration costs of up to **$11,000.00** to be paid to the Settlement Administrator, CPT Group, 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 **$274,824.15**, with 75% ($206,118.11) allocated to the LWDA ("LWDA PAGA Payment") and 25% ($68,706.04) allocated to the Aggrieved Employees ("Individual PAGA Payments"). (*Id*.) The Individual PAGA Payments will be calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved

Employee's PAGA Pay Periods. (Kim Decl., Exhibit 1, ¶ 4.2.3.1.)

Based on its records, Defendants represent that for the Quidel Aggrieved Employees (Quidel Group 1 and Quidel Group 2, combined) it is estimated that there are 853 Aggrieved Employees who collectively worked approximately 28,765 pay periods during the PAGA Period. TEG estimates that there are approximately 570 TEG Aggrieved Employees who collectively worked approximately 10,258 pay periods at Quidel during the PAGA Period. (*Id*. at ¶ 9.) If the total number of Quidel Aggrieved Employee pay periods increases by more than 12% from the estimate (i.e. an increase of 3,452 more Quidel Aggrieved Employee PAGA Pay Periods), then Quidel's contribution to the GSA will be increased in proportion to the number of total Quidel Aggrieved Employee PAGA Pay Periods in excess of 12%. (Kim Decl., Exhibit 1, ¶ 9.) For example, if the final number of total Quidel Aggrieved Employee PAGA Pay Periods increases by 15% over 28,765, Quidel's contribution to the Gross Settlement Amount will increase by 3%. (*Id*.) If the total number of TEG Aggrieved Employee pay periods increases by more than 12% from the estimate (i.e. an increase of 1,231 more TEG Aggrieved Employee PAGA Pay Periods), then TEG's contribution to the GSA will be increased in proportion to the number of total TEG Aggrieved Employee PAGA Pay Periods in excess of 12%. (*Id*.) For example, if the final number of total TEG Aggrieved Employee PAGA Pay Periods increases by 15% over 10,258, TEG's contribution to the Gross Settlement Amount will increase by 3%.

Based on this information, Plaintiffs believe that the Aggrieved Employees will receive an average of approximately $48.28 per person ($68,706.04 divided by 1,423 Aggrieved Employees, which is the approximate number of Aggrieved Employees based on the data given at the time of mediation). (Kim Decl., ¶ 10 (c).)

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, Plaintiffs submit 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 Plaintiffs 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 Plaintiffs prevailed at trial.

Plaintiffs estimated that the maximum realistic potential exposure on the PAGA claim is $780,460.00, calculated by multiplying the total number of pay periods (39,023 pay periods calculated by adding the 28,765 pay periods from Defendant Quidel to the 10,258 pay periods from Defendant TEG) by $20 per violation. (Kim Decl., ¶ 15.) Plaintiffs' calculation of the total potential exposure on the PAGA claim was based on one PAGA penalty per 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 ¶ 16.)

Moreover, Defendants would argue that Plaintiffs are not entitled to recover PAGA penalties at the subsequent violation rate of $200 per pay period. California's appellate courts have held that "[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware [of the violation]" and therefore, until a Court or the Commissioner issues a finding of a violation, the initial $100 violation rate applies for each pay period in which the alleged violation occurred. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209; *accord Amalgamated Transit Union Local 1309 v. Laidlaw Transit Service, Inc*. (S.D. Cal. Aug. 10, 2009) 2009 WL 2448430, at *9 ("[u]nder California law, courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code"). Thus, Defendants would argue that even if Plaintiffs were able to establish any violation of the Labor Code, the PAGA penalties assessed for these violations will be computed at the $100 per pay period rate, as opposed to the $200 per pay period rate at maximum.

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

Defendants denied and continue 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 ¶ 15.) Defendants contend that Plaintiffs and the Aggrieved Employees were paid for all hours worked and that Defendants prohibited Plaintiffs 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 and using Labor Code compliant instruments; that Defendants' wage statements complied with the law; and that neither Plaintiffs nor any Aggrieved Employees incurred reasonable business related expenses for which they were not reimbursed. (*Id*.) As a result, Plaintiffs had to appropriately discount the amount recoverable from Defendants 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. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *See Carrington v. Starbucks Corporation* (Cal. Ct. App. Nov. 27, 2018) No. D072392 (published Dec. 19, 2018) (approving PAGA penalty reduction to $5 per pay period); *accord Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809; *see also Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 *(*reducing PAGA penalties by 30% under this provision).

In arriving at the $470,240.00 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 Defendants' defenses to the claims and the potential manageability issues with PAGA claims at trial. (Kim Decl., at ¶ 17.) Based on those considerations, Plaintiff applied a penalty of $20 per pay period to get a realistic potential exposure of $780,460.00 (39,023 pay periods x $20 penalty per pay period). (*Id.*) Moreover, there is a strong likelihood that a further reduction of the penalty to $5 per pay period as approved in *Carrington* would apply given Defendants' arguments as discussed above.

The Gross Settlement Amount of $470,240.00 is approximately 60% of the realistic potential exposure of $780,460.00. PAGA Counsel submits that this is a fair and reasonable 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.

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

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

Pursuant to the Settlement Agreement, Plaintiffs are requesting an award of attorneys' fees in the amount of **$156,746.67** and an award of litigation costs to PAGA Counsel of **$27,669.18.**

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

1) <u>PAGA Counsel Are Entitled to Fees from the Civil Penalties Recovered</u>

As previously indicated, this is *not* a class action. However, like a class action, it is a representative action where instead of a class, the Plaintiffs represent the State and the public. As a matter of law and substance, counsel's clients are the public at large and the State of California. The Plaintiffs are 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 $470,240.00 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 at D.Law, Inc., Kingsley & Kingsley, APC, and Abramson Labor Group, are experienced employment attorneys with expertise in wage and hour class and representative actions. (Kim Decl., ¶¶ 27-33, Declaration of Kelsey M. Szamet ("Szamet Decl.") at ¶ 15-36, and Declaration of William Abramson ("Abramson Decl.").) 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., ¶ 21.) 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 Plaintiff is requesting here. (*Id*. at ¶¶ 23-24.)

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").

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

D. Law PAGA Counsel worked at least 174.5 hours on this matter and calculated the base lodestar at $126,954 at rates reflecting those currently earned in the marketplace. (Kim Decl. ¶ 25.) Attorney Roman Shkodnik's records indicate at least 42.5 hours on this matter with an hourly rate of $1,045. (*Id*. at ¶ 35.) Attorney Enoch Kim's records indicate at least 14.2 hours on this matter with an hourly rate of $1,045. (*Id*.) Managing Partner David Yeremian's records indicate at least 15 hours on this matter with an hourly rate of $1,375. (*Id*.) Attorney Amanda Fazio's records indicate at least 1.2 hours on this matter with an hourly rate of $475. (*Id*.) Attorney Emma Geesaman's records indicate at least 62.6 hours on this matter with an hourly rate of $475. (*Id*.) Attorney Antonia McKee's records indicate at least 20.8 hours on this matter with an hourly rate of $475. (*Id*.) Attorney Mason Doidge's records indicate at least 0.4 hours on this matter with an hourly rate of $475. (*Id*.) Former D. Law Attorney Robert Payaslyan records indicate at least 7.8 hours on this matter with an hourly rate of $475. (*Id*.) Paralegal Jose Lopez's records indicate at least 9.9 hours on this matter with an hourly rate of $300. (*Id*.) Paralegal Jonathan Morataya's records indicate at least 0.1 hours on this matter with an hourly rate of $275. (*Id*.)

Kingsley & Kingsley, APC and Abramson Labor Group PAGA Counsel worked at least 37 hours on this matter and calculated the base lodestar for this matter at $29,612.00 at rates reflecting those currently earned in the marketplace. (Kim Decl. ¶ 37.) (*See also* Szamet Decl. at ¶ 15-36, and Abramson Decl.). Therefore, the total lodestar for PAGA Counsel is **$155,566** ($126,954 for D.Law and $29,612.00 for Kingsley & Kingsley, APC and Abramson Labor Group.

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 $156,746.67 in fees, which requires **a 1.001X multiplier**.

D.Law, Kingsley & Kingsley, APC and Abramson Labor Group PAGA Counsel have a joint prosecution agreement where 50% of awarded attorney's fees shall go to Kingsley & Kingsley, APC and Abramson Labor Group, and the other 50% to D.Law. Both clients have given informed and written consent to the joint prosecution agreement. (Kim Decl., ¶ 40.)

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

The litigation expenses incurred by PAGA Counsel in this Action are also to be reimbursed under the Settlement Agreement. PAGA Counsel seek **$27,669.18** in reimbursement for litigation costs (Kim Decl., ¶ 19, Exhibit 3, Szamet Decl., ¶ 43, Exhibit D.) 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 $27,669.18 which is less than the amount allocated in the Settlement.

VII. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION

The parties agreed to use CPT Group as the third-party settlement administrator in this case. (Kim Decl., ¶ 55.) CPT 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*.) CPT capped its fees at $11,000.00 for administering the Settlement, and based on PAGA Counsel's experience in other class and PAGA settlements, CPT's costs for administering this Settlement are fair and reasonable. (*Id*.)

VIII. CONCLUSION

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 the 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: October 22, 2025

D.LAW, INC

By ______________________

Emil Davtyan
David Yeremian
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Enoch J. Kim
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Antonia McKee
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