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on behalf of themselves and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

KYLE E. PETTY and CORINA ANGELA MACIAS, individuals on behalf of themselves and others similarly situated , Plaintiffs, vs. RADIOLOGY PARTNERS MANAGEMENT, LLC, a Delaware limited liability company; and DOES 1 through 50, inclusive, Defendant,	Case No. 24STCV05436 <u>Assigned To:</u> Hon. Elihu M. Berle Dept.: 6 **NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT AGREEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [filed concurrently with Declaration of Enoch J. Kim; and [Proposed] Order] Hearing Date: May 19, 2025 Time: 11:00 a.m. Department: 6

TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 19, 2025, at 11:00 a.m., or as soon thereafter as the matter may be heard in Department 6 at Spring Street Courthouse of the Superior Court for the County of Los Angeles located at 312 N Spring St, Los Angeles, CA 90012, Plaintiffs Kyle E. Petty and Corina Angela Macias ("Plaintiffs"), on behalf of themselves, the State of California, and other similarly aggrieved employees (the "Aggrieved Employees") of Defendant Radiology Partners Management, LLC ("Defendant") (Plaintiffs and Defendant collectively referred to herein as "the Parties"), will and hereby does move this Court for entry of an order: (1) approving the representative action settlement embodied in the Parties' PAGA Settlement Agreement ("Settlement Agreement"); (2) approving PAGA Counsel's application for attorney's fees and litigation costs and costs for the Administrator; and (3) entering judgment approving the Settlement Agreement (the "Motion").

The grounds for this Motion, as set forth in the attached Memorandum of Points and Authorities and supporting 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).

Defendant does 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.

Plaintiffs also note that as of this date, Defendant has not executed the Settlement Agreement negotiated at length by counsel despite exhaustive efforts by counsel for both Parties to get Defendant to comply with its obligations under the Parties' executed Memorandum of Understanding (upon which the Settlement Agreement is based) and execute the Settlement Agreement. As such, Plaintiffs respectfully request that the Court set an OSC re Defendant's failure to execute the Settlement Agreement for April 25, 2025 or at the earliest available opportunity thereafter. Plaintiffs will submit the fully executed Settlement Agreement upon receipt of Defendant's signature on the Settlement Agreement.

DATED: April 18, 2025

D.LAW, INC.

By: ______________________

Enoch J. Kim
Attorneys for KYLE E. PETTY and CORINA ANGELA MACIAS and Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this Motion, Plaintiffs Kyle E. Petty and Corina Angela Macias ("Plaintiffs") request that the Court grant approval of the parties' PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") reached between Plaintiffs and Defendant Radiology Partners Management, LLC ("Defendant") (Plaintiffs and Defendant collectively referred to herein as "the Parties") to resolve claims brought exclusively under the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*. ("PAGA") seeking civil penalties for various violations of the California Labor Code and Industrial Wage Commission's Wage Orders.

Pursuant to the Settlement Agreement, Defendant will pay a gross settlement amount of $**95,000.00.** (Declaration of Enoch J. Kim ("Kim Decl."), Exhibit 1, ¶ I.M.) For purposes of the Settlement, the group of aggrieved employees included in the Settlement is defined as "all persons employed by Defendant in hourly or non-exempt positions in California at any time during the PAGA Period." (Exhibit 1, ¶ I.C.) ("Aggrieved Employees"). (Kim Decl., Exhibit 1, ¶ V.A.) The PAGA Period is defined as the period from March 5, 2023, through the date of entry of the Court's order granting final approval of the Settlement and entering judgment ("Final Approval"). (*Id*., Exhibit 1, ¶ I.V., I.C.)

As further explained below, Plaintiffs and their counsel ("PAGA Counsel") believe that the Settlement is fair, reasonable, and in the best interests of the State and the Aggrieved Employees. Accordingly, Plaintiffs request that the Court "review and approve" the Settlement pursuant to Labor Code § 2699(*l*)(2). If the Court deems the Settlement fair and acceptable, Plaintiffs request that the Court enter an order approving the Settlement in the form lodged herewith and ordering the Parties and Administrator to carry out the terms of the Settlement Agreement and enter a Final Judgment thereon.[1]

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[1] Plaintiffs have submitted the Settlement and this Motion to the LWDA by uploading it on the LWDA's website concurrently with the filing of this Motion as required by Labor Code § 2699(*1*)(2). (Kim Decl., ¶ 44, Exhibit 6.)

II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

A. Litigation Overview and Procedural History

On March 04, 2024, Plaintiff Petty filed his proposed class action complaint against Defendant, asserting the following causes of action: (1) Failure to Pay Minimum Wages and for all Hours Worked; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability under Labor Code § 226.7; (4) Rest-Break Liability under Labor Code § 226.7; (5) Violation of Labor Code § 226(a) and 226.2; (6) Violation of Labor Code § 204; (7) Violation of Labor Code § 203; (8) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (9) Failure to Produce Requested Employment Records under Labor Code §§ 226, 1198.5; (10) Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; and (11) Violation of Business & Professions Code § 17200 *et seq*. ("the Action") (Kim Decl., ¶ 4).

On March 5, 2024, Plaintiff Petty filed a claim online with the California Labor & Workforce Development Agency (the "LWDA") pursuant to Labor Code § 2699.3(a)(1) and gave notice to the Defendant ("PAGA Notice"). (Kim Decl., ¶ 5.) The PAGA Notice sought civil penalties and alleged claims against Defendant for failure to pay minimum wages, failure to pay wages and overtime, failure to provide meal and rest breaks, unlawfully collecting or receiving wages in violation of Labor Code § 221, failure to issue accurate wage statements, failure to issue semimonthly payments in violation of Labor Code § 204, failure to maintain records in accordance with Labor Code §1174, failure to pay waiting time penalties, failure to provide paid sick days, and failure to reimburse business expenses Labor Code § 2802. (*Id.*) The LWDA did not respond to the PAGA Notice and did not notify Plaintiff Petty that it intended to investigate Plaintiff's allegations. (*Id.*)

On April 5, 2024, Defendant removed the Action to the United States District Court for the Central District of California before the Honorable Judge Stanley Blumenfeld, Jr. (Kim Decl., ¶ 6.) However, after conferring and reviewing an arbitration agreement between Plaintiff Petty and Defendant, the Parties filed a joint stipulation agreeing to voluntarily dismiss Plaintiff's class claims without prejudice, remand Plaintiff Petty's remaining claims to state court, and compel Plaintiff's individual claims to arbitration. As a result, the Action was remanded to state court on May 7, 2024. (*Id.*)

On May 22, 2024, 65 days after Plaintiff Petty's submission of the PAGA Notice, Plaintiff Petty filed a First Amended Complaint, alleging a twelfth cause of action for civil penalties under PAGA. (Kim Decl., ¶ 7.) In doing so, Plaintiff Petty's counsel inadvertently revived the class claims. The Parties thereafter filed a Joint Stipulation and Proposed Order to Dismiss Plaintiff's Class Claims Without Prejudice and to Mediate Plaintiff's Individual Claims and Representative PAGA Claims, which the Court granted on June 7, 2024. (*Id.*)

The Parties thereafter mediated this matter before Tripper Ortman III, a well-respected employment law mediator, on December 20, 2024 and reached a settlement. (Kim Decl., ¶ 8.) As part of the Parties' settlement, the Parties have agreed Plaintiffs would file a Second Amended Complaint ("SAC") to include Corina Angela Macias as a named plaintiff to the Action. Plaintiffs subsequently submitted an amended letter notifying the LWDA about Plaintiff's intent to file an SAC, adding Plaintiff Corina Angela Macias as a named Plaintiff and her claims to the Action. (*Id.*)

When the 65-day period ran, Plaintiffs and Defendant filed a Joint Stipulation and Proposed Order to Continue the Filing Deadline and For Leave for Plaintiff to file a Second Amended Complaint while having Plaintiffs' class claims remain dismissed pursuant to the Court's Order dated June 7, 2024. (Kim Decl., ¶ 9.) The Court issued an order granting Plaintiff leave to file the SAC, and as a result, Plaintiff filed a SAC ("Operative Complaint"), adding Plaintiff Corina Angela Macias as a named plaintiff and her claims to the Action on April 1, 2025.

Before filing the lawsuit, PAGA Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. (Kim Decl., ¶ 10.) This required thorough discussions and interviews between PAGA Counsel and Plaintiffs, as well as preliminary research into the various legal issues involved in the case. (*Id.*) As a result of these efforts, PAGA Counsel determined that Plaintiffs' claims were well-suited to proceed on a representative basis owing to what appeared to be a common course of conduct affecting a similarly situated group of employees. (*Id.*)

B. Mediation and Settlement

Prior to mediation, Plaintiffs conducted comprehensive informal discovery and Defendant provided data, numbers, and documents, including an Aggrieved Employee List (by employee number), an employee handbook entitled "Radiology Partners Teammate Handbook," a sampling of employee's timekeeping and payroll data, and Plaintiffs' wage statements. (Kim Decl., ¶ 11.) Defendant also provided information relating to the number of Aggrieved Employees and pay periods. (*Id.*) The information and data exchanged by Plaintiffs and Defendant prior to and during mediation and settlement negotiations were sufficient to reliably assess the merits of the Parties' respective positions, to compromise the issues on a fair and equitable basis, and to devise a formula for distribution of civil penalties among the Aggrieved Employees that took into consideration the strength of the PAGA claims. (Kim Decl., ¶ 12.)

On December 20, 2024, the Parties attended an all-day mediation with Tripper Ortman III, Esq. (Kim Decl., ¶ 13.) During mediation, the Parties exchanged further information and discussed all aspects of the case, including Plaintiffs' claims, Defendant's defenses, and the prospects of further litigation. (*Id.*) The Parties recognized that the issues presented in the Action are likely only to be resolved with extensive and costly pretrial and trial proceedings and that further litigation would lead to inconvenience, distraction, disruption, delay, and expense disproportionate to the potential benefits of litigation. (*Id.*) The Parties took into account the risk and uncertainty of the outcome inherent in any litigation. (*Id.*)

With the assistance of a highly respected wage and hour mediator, the Parties agreed to the general terms for settling this Action in a Memorandum of Understanding ("MOU") which provided, among other things, that the Parties would cooperate in drafting and executing a long-form settlement agreement. (Kim Decl., ¶ 14.) PAGA Counsel and counsel for Defendant thereafter drafted, negotiated, and agreed upon the Settlement Agreement[2], which includes the material terms agreed upon by the Parties in the MOU. (*Id.*)

Plaintiffs believe that the Settlement provides for a fair, adequate, and reasonable resolution

[2] As noted above in the Notice of Motion and Motion, Defendant has not yet executed the Settlement Agreement. Plaintiffs will submit the fully executed Settlement Agreement upon receipt of Defendant's signed Settlement Agreement.

of the Action and have arrived at the Settlement after extensive, arm's length negotiations, considering all relevant factors, present and potential. (Kim Decl., ¶ 15.) PAGA Counsel believes that the Settlement confers real benefits upon the State and Aggrieved Employees and that an independent review of the Settlement by the Court in the approval process will confirm this conclusion. (*Id.*)

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 do not — bring a PAGA claim simply on his or her own behalf as an individual claim, but "as the proxy or agent of the state's labor law enforcement agencies." *Id*., at 986; *see also Reyes v. Macy's, Inc*. (2011) 202 Cal. App. 4th 1119, 1123-1124; *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. When an aggrieved employee brings a PAGA claim, "the government is always the real 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. ¶¶ 5, 8.)

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

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

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

PAGA provides for the recovery of reasonable attorneys' fees and costs. Labor Code § 2699(g)(1) ("Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid…"). The monetary settlement and programmatic relief make Plaintiff a "prevailing party." *Folsom v. Butte County Ass'n of Gov'ts* (1982) 32 Cal. 3d 668,671; *Santisas v. Goodin* (1998) 17 Cal.4th 599, 621. Even if Labor Code § 2699(g)(1) did not authorize fees, Plaintiffs 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. <u>THE SETTLEMENT</u>

Pursuant to the Settlement Agreement, Defendant will pay the total amount of $95,000.00 ("Gross Settlement Amount") in full and final settlement of the PAGA claim alleged in the Action. (Kim Decl., ¶ 25, Exhibit 1, ¶ IV.(A.)

Pending Court approval, the Gross Settlement Amount will be allocated as follows: (1)

attorneys' fees of 35% of the Gross Settlement Amount, which is **$31,666.66** ("Attorneys' Fee Payment"); (2) actual litigation costs incurred in this matter in the amount of $19,143.29 **("**Litigation Expenses Payment"); (3) settlement administration costs of up to **$4,750.00** to be paid to the Settlement Administrator, Apex Class Action LLC ("Apex"), for sending notices and for calculating settlement shares and preparing all checks and mailings ("Administration Expenses Payment"); and (4) the PAGA Settlement Payment in the amount of $39,440.05, with 75% ($29,580.04) allocated to the LWDA ("LWDA PAGA Payment") and 25% ($9,860.01) allocated to the Aggrieved Employees ("Individual PAGA Payments"). (Kim Decl., ¶ 17.) The Individual PAGA Payments will be calculated based on the number of pay periods the Aggrieved Employee worked during the PAGA Period of March 5, 2023, through the date of entry of the Court's order granting final approval of the Settlement and entering judgment ("PAGA Pay Periods"). (Kim Decl., Exhibit 1, ¶¶ I.V., I.C.)

Based on its records, Defendant represents that there are approximately 92 Aggrieved Employees and approximately 2,800 PAGA Pay Periods in the aggregate from March 5, 2023 through December 20, 2024. (Kim Decl., ¶ 16, Exhibit 1, ¶ V.A.) In the event that the total PAGA Pay Periods are greater than 3,080 PAGA Pay Periods prior to Final Approval, either the PAGA Period will end on the date in which the number of PAGA Pay Periods reaches 3,080 or the Gross Settlement Amount will increase proportionately to the number of total PAGA Pay Periods in excess of that number (i.e., if the final number of total PAGA Pay Periods for the PAGA Period increases by 15% over 2,800 PAGA Pay Periods, the amount of the Gross Settlement Amount will increase by 5%.). (*Id.*)

Based on this information, Plaintiffs estimate that the average payment to the Aggrieved Employees will be approximately $107.17 ($9,860.01 divided by 92 which is the approximate number of Aggrieved Employees based on the data given at the time of mediation). (Kim Decl., ¶ 17.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 Plaintiffs' PAGA Claim

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

Plaintiffs estimated that the maximum potential exposure on the PAGA claim is $280,000.00, calculated by multiplying the total number of PAGA Pay Periods (2,800) by $100 per violation. (Kim Decl., ¶ 22.) Plaintiffs' calculation of the total potential exposure on the PAGA claim was based on one PAGA penalty per PAGA Pay Period (i.e., Plaintiffs did not stack the PAGA penalties in 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.*)

The Gross Settlement Amount of $95,000.00 is approximately 33.93% of the maximum potential exposure of $280,000.00. (*Id.* at ¶ 25.) The Gross Settlement Amount therefore represents a strong value at approximately $33.93 per PAGA 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 the State and Aggrieved Employee is fair and reasonable. (*Id.*)

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

Defendant denied and continues to deny all of the claims made by Plaintiffs in this Action and contends that it acted at all relevant times in conformance with the law. (*Id.* at ¶ 20.) Defendant contends that Plaintiffs and Aggrieved Employees were paid for all hours worked and that any alleged "off-the-clock" work was de minimis and performed without Defendant's knowledge; that Defendant provided Plaintiffs and the Aggrieved Employees with the opportunity to take compliant meal periods and rest breaks and advised them to do so according to their policies; 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 Plaintiffs 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) 165 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 $95,000.00 Gross Settlement Amount in this case, Plaintiffs considered various reasons why the Court may reduce any eventual recovery at its discretion and considered that PAGA penalties are not mandatory but permissive. (Kim Decl., at ¶ 20.) Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (*See also Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (reducing PAGA penalties by 30% under this provision).

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

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

PAGA Counsel is requesting an Attorneys' Fee Payment of **$31,666.66** and a Litigation Expenses Payment of **$**19,143.29, which is lower than the requested $25,000.00 "not-to-exceed" amount allocated in the Settlement Agreement**.** (Kim Decl., at ¶ 17(a).)

Prior to the enactment of PAGA, when the State had the resources to seek civil penalties on behalf of the public, it paid its employees (including their attorneys) their salaries and benefits for pursuing such penalties. The Legislature enacted PAGA because the Labor Commissioner and other agencies were hampered in their enforcement of civil penalties by inadequate funding and staffing constraints. *Iskanian*, *supra*, 59 Cal.4th at 379. To facilitate broader enforcement, the Legislature enacted PAGA, authorizing "aggrieved employees" to pursue civil penalties on the state's behalf. Labor Code § 2699(a). In creating PAGA, the Legislature expressly provided that the private counsel retained by the Plaintiffs to represent the public's interest can recover fees if the Plaintiffs are 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 client is 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 $95,000.00 common fund created for the benefit of the public is, with Plaintiffs as a proxy for the State, not unlike the fund created in class action settlements, with the public the equivalent of the class referenced in *Laffitte*.

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

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

Id. at 573.

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

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

PAGA Counsel at D.Law, Inc. are experienced employment attorneys with expertise in wage and hour class and representative actions. (Kim Decl., ¶¶ 35-39.) Throughout this case, PAGA Counsel have borne, and continue to bear, the entire risk and cost of litigation associated with this Action on a purely contingency basis. (Kim Decl., ¶¶ 28-31.) 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 35% Plaintiffs are requesting here. (*Id*.)

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 less than the amount warranted by lodestar analysis; therefore, the factors warranting positive multipliers do not come into play, even though they were apparent in this case.

PAGA Counsel worked at least **150.10** hours on this matter and calculated the base lodestar at $87,777.00 at rates reflecting those currently earned in the marketplace. (Kim Decl.,¶¶ 32-33.) Senior Attorney Alvin B. Lindsay's records indicate at least 26.3 hours on this matter with an hourly rate of $800. (*Id.*) Associate Attorney Melissa Rodriguez's records indicate at least 31.60 hours on this matter with an hourly rate of $400. (*Id.*) Associate Attorney Jean Power's records indicate at least 77.80 hours on this matter with an hourly rate of $550. (*Id.*) Senior Attorney Enoch Kim's records indicate at least 9.40 hours on this matter with an hourly rate of $750. Managing Attorney David Yeremian's records indicate at least 5 hours on this matter with an hourly rate of $850. (Kim Decl.,¶¶ 32-33.) 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 their request for $**31,666.66** 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. The Parties, in their Settlement Agreement, agreed to an amount of up to $25,000.00 for Litigation Expenses Payment, which Defendant does not oppose. (Kim Decl., ¶ 26.) The lion's share of these costs were incurred in connection with mediation, and the others listed were all reasonably incurred and necessary to the prosecution of this Action. (*Id.*) Thus, PAGA Counsel respectfully requests the Court approve their request for reimbursement in the amount of $19,143.29.

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

The Parties agreed to use Apex Class Action Administration ("Apex") as the third-party settlement administrator in this case. (Kim Decl., ¶ 42.) Apex will be responsible for updating the addresses of Aggrieved Employees, mailing a notice of Settlement, and calculating and distributing the settlement checks, among other duties. (*Id.*) Apex capped its fees at $4,750.00 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.*)

The Settlement Administrator will mail the Individual PAGA Payment along with a letter providing notice of the Settlement and release of claims to Aggrieved Employees ("Notice of PAGA Settlement and Release of Claims"). (*Id.* at ¶ 43.) The Notice of PAGA Settlement and Release of Claims includes, among other things, an explanation of PAGA, a description of the allegations in the Action and the scope of released claims, and a statement of the Gross Settlement Amount and payment allocations from the Gross Settlement Amount. (*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 Plaintiffs, Defendant, 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: April 18, 2025

D.LAW, INC

By ______________________________
Enoch J. Kim
Attorney for Plaintiffs on behalf of themselves and Aggrieved Employees