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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

MICHELE C. WARE, on behalf of herself and all others similarly situated, Plaintiffs, v. INCENTIVE PROMOTIONS, INC. d/b/a "Mar-Val Food Stores," a California corporation; and Does 1 to 50, inclusive, Defendants.	Case No. STK-CV-UOE-2024-0007646 **NOTICE OF MOTION AND MOTION FOR APPROVAL OF PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** *[filed concurrently with Declaration of Enoch J. Kim; Declaration of Plaintiff Michele C. Ware; Declaration of Michael Bui; and [Proposed] Order and Judgment]* PAGA Approval Hearing: Date: Time: Dept.: 11A Honorable Esmeralda Zendejas Department 11A Action filed: June 28, 2024 Trial date: None Set

TO THE COURT AND DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on _________________ at _______________ in Department 11A of the above-entitled Court, located at 180 E. Weber Ave, Stockton, CA 95202, Plaintiff Michele C. Ware ("Plaintiff" or "PAGA Representative"), on behalf of herself, 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 Plaintiff and Defendant Incentive Promotions, Inc. d/b/a "Mar-Val Food Stores" ("Incentive Promotions") ("Defendant", Plaintiff and Defendant collectively referred to as the "Parties") which will accomplish the following: approve the representative action settlement embodied in the PAGA Settlement Agreement ("Settlement Agreement"); approve PAGA Counsel's application for attorney's fees and litigation costs; and enter judgment approving the Settlement Agreement.

The grounds for this Motion, as set forth in the attached Memorandum of Points and Authorities and supporting declarations, are that this is a fair and reasonable settlement that benefits the Aggrieved Employees and the State and was the product of informed, non-collusive negotiations by 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 do not oppose this Motion. Plaintiff bases this Motion on this Notice and the accompanying Memorandum of Points and Authorities, the Declaration of Enoch J. Kim ("Kim Decl."), and Declaration of Plaintiff Michele C. Ware ("Ware Decl."), the complete pleadings, records and files in the case, and such other further oral and documentary evidence which may be submitted at or before the hearing on this Motion.

DATED: August 17, 2026 D.LAW, INC.

By: ________________________________

Enoch J. Kim, Esq.
Attorneys for Michele C. Ware on behalf of herself and Aggrieved Employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this motion, Plaintiff Michele C. Ware ("Plaintiff") requests 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, Defendant Incentive Promotions, Inc. d/b/a "Mar-Val Food Stores" ("Defendant") will pay the Gross Settlement Amount of $140,000.00 on non-reversionary basis. (Declaration of Enoch J. Kim ("Kim Decl."), **Exhibit 1**, ¶ 3.1.)

As further explained below, Plaintiff and her counsel ("PAGA Counsel") believe that the Settlement is fair, reasonable and in the best interests of the State and the Aggrieved Employees. Accordingly, Plaintiff requests that the Court "review and approve" the Settlement pursuant to Labor Code § 2699(*l*)(2). If the Court deems the Settlement fair and acceptable, Plaintiff requests 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 June 28, 2024, Plaintiff commenced this Action by filing a Class Action Complaint against Defendant alleging: (1) Failure to Pay All Wages; (2) Failure to Pay All Wages Due to Illegal Rounding; (3) Failure to Pay All Overtime Wages at the Legal Overtime Pay Rate; (4) Failure to Provide All Meal Periods; (5) Failure to Authorize and Permit all Paid Rest Periods; (6) Failure to Pay Premium Wages at the Legal Pay Rate; (7) Illegal Wage Deductions; (8) Failure to Fully

[1] Plaintiff has submitted the Settlement Agreement and this Motion to the LWDA by uploading it on the LWDA's website concurrently with the filing of this Motion as required by Labor Code § 2699(*l*)(2). (Declaration of Enoch J. Kim ("Kim Decl.") ¶ 41, **Exhibit 7**.)

Reimburse Work Expenses; (9) Failure to Timely Furnish Accurate Itemized Wage Statements; (10) Violations of Labor Code §§ 201-202; and (11) Violation of Business and Professions Code § 17200 *et seq*. Simultaneously, Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice pursuant to Labor Code § 2699.3(a). (Kim Decl., ¶ 4.) On September 3, 2024, Plaintiff filed a First Amended Complaint, adding a cause of action for PAGA penalties under Labor Code §§ 2698 *et seq*. (*Id.*)

Between October 2024 and April 2025, the parties engaged in extensive motion practice regarding the validity and applicability of the Collective Bargaining Agreement ("CBA") governing Plaintiff's employment with her employer. The Court ultimately determined that it could not enforce the agreement as to Plaintiff's claims. (Kim Decl., ¶ 5.) However, subsequent to this motion practice, Defendant executed a retroactive amendment to the CBA, which Defendant claimed corrected the issues pointed out by the court, and indicated that it would renew its motion to compel arbitration in light of this change. *(Id.; Oswald v. Murray Plumbing & Heating Corp.* (2022) 82 Cal.App.5th 938.) After further meet and confer discussions, the Parties agreed to mediate Plaintiff's PAGA claim and her individual wage and hour claims, which the Parties agreed would be the only claims remaining if Defendant prevailed on its planned renewed motion to compel arbitration.

On January 22, 2026, the Parties attended an all-day mediation with mediator Christopher Panetta, Esq. (Kim Decl., ¶ 7.) With the assistance of a highly respected wage and hour mediator, the Parties agreed to the general terms for settling this Action that were first memorialized in a Memorandum of Understanding and thereafter in the long-form PAGA Settlement Agreement now before the Court for approval. (*Id.*)

PAGA Counsel represents that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement. (Kim Decl., ¶ 51.)

III. <u>TERMS OF THE SETTLEMENT</u>

A. Key Financial Terms of the Settlement

Gross Settlement Amount: Pursuant to the Settlement Agreement, Defendant will pay a maximum, non-reversionary settlement amount of $140,000.00 in full and final settlement of all claims alleged in the Operative Complaint and PAGA Notices ("Gross Settlement Amount"). (Kim

Decl., **Exh. 1**, ¶ 3.1).

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

a) Attorneys' fees in the amount of 1/3 (One-Third) of the Gross Settlement Amount, which is currently estimated to be $46,666.67 ("PAGA Counsel Fees Payment"), and litigation costs of not more than $18,434.87 ("Litigation Expenses Payment"); (Kim Decl., **Exh. 1**, ¶ 3.2.2.)

b) Administration costs in the amount of $5,510.00 to be paid to the Administrator ("Administration Expenses Payment"), Simpluris, for sending notices and for calculating settlement shares and preparing all checks and mailings; (Kim Decl., **Exh. 1**, ¶ 3.2.3.);

c) Plaintiff's Service Award payment in the amount of $5,000.00 to be paid to Plaintiff; (Kim Decl., **Exh. 1**, ¶ 3.2.1.); and

d) The remainder of the Gross Settlement Amount (the "Net Settlement Amount" or "PAGA Penalties") after deducting the above costs is approximately $64,388.46 and shall be designated as PAGA Penalties to be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 65% ($41,852.50) being paid to the LWDA (the "LWDA PAGA Payment") and 35% ($22,535.96) being paid to the Aggrieved Employees on a pro-rata basis ("Individual PAGA Payment"). (Kim Decl., **Exh. 1**, ¶ 3.2.4.)

B. Other Material Terms of the Settlement

Aggrieved Employees: means a person employed by Defendant as a non-exempt employee in California and who worked for Defendant during the PAGA Period (Kim Decl., **Exh.1**, ¶ 1.4.)

PAGA Period: means the period from June 28, 2023, through January 1, 2024. (Kim Decl., **Exh. 1**, ¶ 1.20.)

Escalator Clause: Based on its records, Defendant estimates that, as of January 1, 2024, there were approximately 712 Aggrieved Employees who worked 6,970 Pay Periods during the PAGA Period. If the actual number of Pay Periods worked during the PAGA Period is more than

5% greater than 6,970, Defendant shall increase the Gross Settlement Amount on a proportional basis above a 5% increase (i.e., if there is an 6% increase in the number of Pay Periods during the PAGA Period, Defendant agrees to increase the Gross Settlement Amount by 1%). If the Gross Settlement Amount is increased pursuant to this provision, the PAGA Counsel Fees Payment shall be one-third of the increased Gross Settlement Amount. (Kim Decl., **Exh. 1**, ¶ 8.)

IV. SUMMARY OF THE CLAIMS, DISCOVERY AND MEDIATION

A. Summary of the Claims

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

- Failed to pay the Aggrieved Employees minimum wages and overtime by requiring Plaintiff and Aggrieved Employees to work through rest breaks and meal periods. Furthermore, Plaintiff and Aggrieved Employees were also consistently required to perform work "off-the-clock" both before and after their shifts, including conversing with supervisors about work tasks before their scheduled shifts. (Kim Decl., ¶ 14.)
- Failed to provide the Aggrieved Employees with compliant meal periods because they were frequently interrupted during meal periods and regularly had to work through their meal periods. (*Id.*) Furthermore, Defendants failed to pay Plaintiff and Aggrieved Employees premium pay wages at their appropriate regular rates of pay for each meal and rest period denied. (*Id.*)
- Failed to provide the Aggrieved Employees with compliant rest periods as they frequently required to work through their rest breaks. (*Id.*)
- Failed to reimburse the Aggrieved Employees for business expenses, including the purchase of uniform items. (*Id.*)

B. Discovery, Mediation, and Settlement

Prior to mediation, Plaintiff conducted comprehensive informal and formal discovery and Defendant provided data and numbers and documents, including a 33.7% sampling of timekeeping records and wage statements relating to Plaintiff and Aggrieved Employees, documents containing Defendant's wage and hour policies, practices and procedures. (Kim Decl., ¶ 6.) 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. (*Id.*)

As discussed above, on January 22, 2026, the Parties attended an all-day mediation with Christopher Panetta, Esq. (Kim Decl., ¶ 7.) With the assistance of a highly respected wage and hour mediator, the Parties agreed to the general terms for settling this Action that were first memorialized in a Memorandum of Understanding and thereafter in the long-form PAGA Settlement Agreement now before the Court for approval. (*Id.*)

V. THE SCOPE OF THE RELEASE

The Settlement Agreement defines "Released Parties" as "Defendant and each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates." (Kim Decl., ¶ 11; **Exh. 1**, ¶ 1.29.) Subject to this Court's approval of the Settlement Agreement, and effective on the date when Defendant fully fund the entire Gross Settlement Amount, Plaintiff and Aggrieved Employees will release claims against all Released Parties as follows:

Release by Aggrieved Employees: All Aggrieved Employees, including Plaintiff, are deemed to release the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and PAGA Notice, including alleged violations of California Labor Code§§ 201,202,203,204, 210,218.6, 223,225.5, 226,226.3, 226.7, 256,510,512,558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., and 2802, and §§ 3, 11 and 12 of the applicable Industrial Welfare Commission Wage Order ("Released PAGA Claims"). The Released PAGA Claims are limited to those claims arising during the PAGA Period. (Kim Decl., ¶ 12(a); **Exh. 1**, ¶ 5.1.)

VI. 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. 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, Plaintiff complied with the notice requirements and properly pled a PAGA claim. (Kim Decl. ¶ 4.)

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, 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.

VII. ARGUMENT

A. The Court Should Approve the Settlement Agreement.

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

B. The Settlement is Fair and Adequate

Settlements to resolve PAGA Claims require court approval. Labor Code § 2699(l)(2). Further, in accordance with the statutory requirement, Plaintiff provided a copy of the Settlement Agreement to the LWDA on the same day she filed the instant motion with this Court. (Kim Decl., ¶ 50; **Exh. 7**.) PAGA civil penalties recovered on the State's behalf are intended to "remediate present violations and deter future ones, not to redress employees' injuries." *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 542. The standard for evaluating a PAGA settlement is not whether the employees are fully compensated for their injuries, but "whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.,* (2021) 72 Cal.App.5th 56, 77, *disapproved of on other grounds by Turrieta v. Lyft, Inc.,* 16 Cal. 5th 664 (2024).

Here, as discussed above, Defendant must pay the Gross Settlement Amount of $140,000.00 in full and final settlement of all claims alleged in the Operative Complaint and PAGA Notice. (Kim Decl., **Exh. 1**, ¶ 3.1.) This settlement payment would purportedly remediate any alleged labor law violations and deter future violations.

In addition, the settlement amount is fair to those affected because it accounts for a realistic assessment of the PAGA exposure on the claims as well as the significant possibility of the Court awarding only a fraction of the PAGA penalties sought by Plaintiff if Plaintiff prevailed on the merits due to the Court's discretion to substantially reduce PAGA penalties under Labor Code § 2699(e)(2). Indeed, PAGA settlements for as little as $0 have been approved. *See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated $0 to PAGA claim). Courts have also approved settlements for $20,000 or less. *See, e.g., Hicks v. Toys 'R' Us-Delaware, Inc.,* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in $4 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of $7,500 in $6.9 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 ($10,000 PAGA settlement in $300,000 settlement).

A review of the approval criteria demonstrates a substantial basis for granting this Motion.

C. The Risks of Moving Forward with Plaintiff's PAGA Claim

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

Plaintiff estimated that the maximum potential exposure on the PAGA claim is $697,000.00, calculated by multiplying the total number of PAGA Pay Periods (6,970) by $100 per violation. (Kim

Decl., ¶ 16.) 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 ¶ 17.)

D. 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 they acted at all relevant times in conformance with the law. (Kim Decl., ¶ 20.) Defendant contend 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.*) Defendant further contends that their above defenses are supported by their written policies applicable to Plaintiff and Aggrieved Employees. (*Id.*) As a result, PAGA Counsel had to appropriately discount the amount recoverable from Defendant in a settlement. (*Id.*)

E. 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 Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (reducing PAGA penalties by 30% under this provision); see also *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (affirming penalty reduction of 90% for practice that resulted in meal periods occasionally starting minutes after the fifth hour of work); *Sanchez v. McDonald's Corp.* (2017), LASC Case No. No. BC 499888 (98% reduction from $41 million to $775,000); *Ghrdilyan v. RJ Financial* (2012), LASC Case No. BC430633 (94% reduction from $5.4 million to $325,000); *Fleming v. Covidien*, Inc. (2011), USDC Case No. ED CV 10-01487-RGK (OPx) (87% reduction from $2.8 million to $375,000).).

In departing from the $100/pay period calculation to arrive at the $140,000.00 Gross Settlement Amount in this case, Plaintiff considered what the realistic potential exposure could be and why the Court may reduce any eventual recovery at its discretion, including Defendant's defenses to the claims and the potential manageability issues with PAGA claims at trial. (Kim Decl., at ¶ 19.) Based on those considerations, Plaintiff applied a discount of 70% to the maximum potential exposure (which equates to $30 penalty per pay period) to get a realistic potential exposure of $209,100.00 (6,970 pay periods x $30 penalty per pay period). (*Id.*)

The Gross Settlement Amount of $140,000.00 is 67% of the realistic potential exposure of $209,100.00. PAGA Counsel submits that this is an excellent result for the State and Aggrieved Employees in light of the strengths and weaknesses of the case and the risks and delays posed by further litigation.

VIII. <u>THE SETTLEMENT ADMINISTRATION PROCESS</u>

A. Selection of Administrator

After soliciting and reviewing three bids from potential administrators, the Parties selected Simpluris ("Simpluris" or the "Administrator") to handle the notice and administration of the Settlement based on the competitiveness of their bid, their competency in administering settlements, and their responsiveness to the Parties' counsel. (Kim Decl., ¶ 10.; **Exhibit 5** to the Kim Decl. [Declaration of Michael Bui of Simpluris, Inc.].) Pursuant to the Settlement Agreement, the administration costs shall not exceed $5,510.00. (Kim Decl., ¶ 10(b).)

B. Administration Process

Within fourteen (14) calendar days of the Court filing the Approval Order, Defendant will deliver the Aggrieved Employee Data (identifying information in Defendant's possession including the Aggrieved Employee's full name, last-known mailing address, and Social Security number, and information necessary to determine the estimated settlement allocation to each Aggrieved Employee) to the Administrator in the form of a Microsoft Excel spreadsheet. (Kim Decl., **Exh. 1**, ¶ 4.2.)

Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator no later than twenty (20) days after the Effective Date.[2] (Kim Decl., **Exh. 1**, ¶ 4.3.)

Thereafter, within fourteen (14) days of Defendants' funding the Gross Settlement Amount, the Administrator will mail checks for all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the PAGA Counsel Expenses Payment, and Plaintiff's Service Award payment. (Kim Decl., **Exh. 1**, ¶ 4.4.) For all Aggrieved Employees whose checks are returned undelivered without USPS forwarding address, the Administrator must conduct an Aggrieved Employee Address Search and re-mail checks within three days to the USPS forwarding address provided. (Kim Decl., **Exh. 1**, ¶ 4.4.2.) The checks issued by the Administrator will be voided after 180 days if remained uncashed, and the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee. (Kim Decl., **Exh. 1**, ¶ 4.4.1-4.4.3.)

IX. THE REQUEST FOR ATTORNEYS' FEES AND COSTS

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

Pursuant to the Settlement Agreement, PAGA Counsel is requesting an award of attorneys' fees in the amount of **$46,666.67** and an award of litigation costs to PAGA Counsel of **$18,434.87**. (Kim Decl., ¶ 10.)

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

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[2] Effective Date means the date the Court enters a Judgment on its Order Approving the PAGA Settlement. (Kim Decl., **Exh. 1**, ¶ 1.9.)

were hampered in their enforcement of civil penalties by inadequate funding and staffing constraints. *Iskanian*, *supra*, 59 Cal.4th at 379. To facilitate broader enforcement, the Legislature enacted PAGA, authorizing "aggrieved employees" to pursue civil penalties on the state's behalf. Labor Code § 2699(a). In creating PAGA, the Legislature expressly provided that the private counsel retained by the Plaintiff to represent the public's interest can recover fees if the Plaintiff is the prevailing party. Labor Code § 2699(g)(1).

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

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

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

Id. at p. 573.

Here, the $140,000.00 common fund created for the benefit of the public is, with Plaintiff 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 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. are experienced employment attorneys with expertise in wage and hour class and representative actions. (Kim Decl., ¶¶ 32-44.) 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., ¶ 24.) 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 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 ¶¶ 28-29.)

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 <u>less</u> 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.

Senior Counsel Arsiné Grigoryan's current billing rate is $1,042.00 (9 years out of law school), and she spent approximately 36.1 hours in this matter with a lodestar amount of $37,616.20. (Kim Decl., ¶ 30.) Of Counsel Vanessa Ruggles' current billing rate is $1,485.00 (19 years out of law school), and she spent approximately 41.9 hours in this matter with a lodestar of $62,221.50. Former Associate Attorney Guido Toscano's billing rate was $1,121.00 (17 years out of law school) and he spent approximately 29.3 hours in this matter with a lodestar of $32,845.30. Former Senior Litigation Analyst Gregg Lander's billing rate was $1,779.00 (28 years out of law school), and he spent approximately 27.5 hours in this matter with a lodestar of $48,922.50. Associate Attorney Aram Boyadjian current billing rate is $750.00 (5 years out of law school), and he spent approximately 25.7 hours in this matter with a lodestar amount of $19,275.00. (*Id.*) Associate Attorney Bradford Smith's current billing rate is $625.00 (4 years out of law school) and he spent approximately 30.4 hours in this matter with a lodestar of $19,000.00. Senior Attorney Enoch J. Kim's current billing rate is $1,350.00 (19 years out of law school), and I spent approximately 12.8 hours in this matter with a lodestar amount of $17,280.00. (*Id.*) Former Associate Attorney Taylor B. Keaster's billing rate was $750.00 (5 years out of law school), and he spent approximately 4.8 hours in this matter with a lodestar amount of $3,600.00. (*Id.*) The total lodestar for PAGA Counsel is $240,760.50 above the fee request of $46,666.67 and requires **no multiplier**. (*Id.*)

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 **$18,434.87** in reimbursement for litigation costs (Kim Decl., ¶ 10.) 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 $18,434.87.

X. THE REQUEST FOR PLAINTIFF'S SERVICE AWARD PAYMENT

Plaintiff is entitled to a reasonable service payment for her efforts and initiative in bringing and helping to prosecute this action. (Kim Decl., ¶ 45.) Plaintiff initiated this litigation on behalf of State of California and Aggrieved Employees who will now be entitled to receive payment from the Agreement. (*Id.*) By initiating and pursuing the Action, Plaintiff stepped into the shoes of the State of California and undertook the responsibilities of serving in representative capacity. Plaintiff spent significant time better apprising herself of her rights, deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and contacting PAGA Counsel, who spent many hours with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only her own rights but also those of other aggrieved employees by filing a representative action lawsuit. (*Id.*)

Both before and after the filing of this lawsuit, Plaintiff conferred with PAGA Counsel to discuss every aspect of her case. (Kim Decl., ¶ 46.) Plaintiff provided PAGA Counsel with information about Defendant and about the industry generally, produced and reviewed documents, identified witnesses, consulted with PAGA Counsel regarding litigation strategy, participated in the mediation process, monitored the progress of the litigation with PAGA Counsel, and reviewed and signed the Settlement Agreement. (*Id.*)

In light of the foregoing, PAGA Counsel believes that Plaintiff's Service Award payment of $5,000.00 is fair and reasonable. (Kim Decl., ¶ 47.)

XI. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION

The parties agreed to use Simpluris as the third-party settlement administrator in this case. (Kim Decl., ¶ 48.) Simpluris will be responsible for updating the addresses for the Aggrieved Employees, mailing the Notice of PAGA Settlement and Release of Claims ("Notice of Settlement") and calculating and distributing the settlement checks, among other duties. (*Id.*) Simpluris capped its fees at $5,510.00 for administering the Settlement, and based on PAGA Counsel's experience in other class and PAGA settlements, Simpluris' costs for administering this Settlement are fair and reasonable. (*Id*.)

XII. 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.

DATED: August 17, 2026

D.LAW, INC

By ______________________________
Enoch J. Kim, Esq.
Bradford Smith, Esq.
Attorneys for Plaintiff Michele C. Ware on behalf of herself and Aggrieved Employees