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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JOSE MAGDALENO, on behalf of himself
and others similarly situated,

Plaintiff,

vs.

SAN PEDRO CONVALESCENT HOME,
INC. dba LOS PALOS POST-ACUTE
CARE CENTER dba LOS PALOS
CONVALESCENT HOSPITAL, a
California corporation; SEACREST
CONVALESCENT HOSPITAL, INC. dba
SEACREST POST-ACUTE CARE
CENTER, a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 24STCV16244

Assigned for All Purposes To:
Hon. David S. Cunningham III
Dept.: 11

**NOTICE OF MOTION AND PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AGREEMENT AND
RELEASE; MEMORANDUM OF POINTS AND
AUTHORITIES**

*[filed concurrently with Declarations of Enoch J.
Kim, Michael Sutherland, and Jarrett Gorlick; and
[Proposed] Order]*

Hearing Date: November 14, 2025
Time: 10:30 a.m.
Department: 11

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

2 **PLEASE TAKE NOTICE** that on November 14, 2025, at 10:30 a.m., or as soon thereafter
3 as the matter may be heard in Department 11 at Spring Street Courthouse of the Superior Court
4 for the County of Los Angeles located at 312 North Spring Street, Los Angeles, CA 90012,
5 Plaintiff Jose Magdaleno (“Plaintiff”), on behalf of himself and other similarly situated employees
6 of San Pedro Convalescent Home, Inc. dba Los Palos Convalescent Hospital (“Defendant”)
7 (“Plaintiff and Defendant collectively referred to herein as “the Parties”) will and hereby does
8 move this Court for entry of an order: (1) approving the representative action settlement embodied
9 in the Parties’ PAGA Settlement Agreement and Release (“Settlement Agreement”); (2) approving
10 Plaintiff’s Counsel’s application for attorney’s fees and litigation costs and costs for the Settlement
11 Administrator; and (3) entering judgment approving the Settlement Agreement (the “Motion”).

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

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

23 DATED: September 17, 2025

D.LAW, INC.

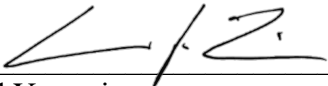
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25 By: 
26 David Yeremian
27 Enoch J. Kim
28 Arianna N. Razi
Attorney for Jose Magdaleno and Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Through this Motion, Plaintiff Jose Magdaleno (“Plaintiff”) requests that the Court grant
4 approval of the Parties’ PAGA Settlement Agreement and Release (“Settlement” or “Settlement
5 Agreement”) reached between Plaintiff and defendant San Pedro Convalescent Home, Inc. dba Los
6 Palos Convalescent Hospital (“Defendant” or “Los Palos”) (“Plaintiff and Defendant collectively
7 referred to herein as “the Parties”) to resolve claims brought exclusively under the Private Attorneys
8 General Act of 2004, Labor Code § 2698, *et seq.* (“PAGA”) seeking civil penalties for various
9 violations of the California Labor Code and Industrial Wage Commission’s Wage Orders. Pursuant
10 to the Settlement, Defendant will pay a gross settlement amount of **\$123,000.00** (“Gross Settlement
11 Amount” or “GSA”). (Declaration of Enoch J. Kim (“Kim Decl.”), Exhibit 1, ¶ I.8.)

12 For purposes of the Settlement, the group of aggrieved employees included in the Settlement
13 is defined as: “all current and former non-exempt hourly employees who worked at least one pay
14 period for Los Palos in California at any time during the PAGA Period from June 20, 2023 through
15 March 31, 2025” (Kim Decl., ¶ 15, Exhibit 1, ¶¶ I.2, I.15.) (“Aggrieved Employees”).

16 As further explained below, Plaintiff and his counsel (“Plaintiff’s Counsel”) believe that the
17 Settlement is fair, reasonable, and in the best interests of the State and the Aggrieved Employees.
18 Accordingly, Plaintiff requests that the Court “review and approve” the Settlement pursuant to Labor
19 Code § 2699(I)(2). If the Court deems the Settlement fair and acceptable, Plaintiff requests that the
20 Court enter an order approving the Settlement in the form lodged herewith ordering the Parties and
21 Settlement Administrator to carry out the terms of the Settlement Agreement and enter a Final
22 Judgment thereon.¹

23 ///

24 ///

25 ///

26
27 ¹ Plaintiff has submitted the Settlement Agreement and this Motion to the LWDA by uploading it on the LWDA’s
28 website concurrently with the filing of this Motion as required by Labor Code § 2699(I)(2). (Kim Decl., ¶ 53,
Exhibit 5.)

II. RELEVANT BACKGROUND AND PROCEDURAL HISTORY

A. Litigation Overview and Procedural History

Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Jose Magdaleno gave timely written notice to Defendant, Seacrest Convalescent Hospital, Inc. dba Seacrest Post-Acute Care Center, and California’s Labor and Workforce Development Agency (“LWDA”) by sending his PAGA Notice on June 20, 2024 (LWDA-CM-1035203-24). (Kim Decl., ¶ 4.) The LWDA did not respond to the PAGA Notice and did not notify Plaintiff that it intended to investigate Plaintiff’s allegations. (*Id.*)

On June 28, 2024, Plaintiff filed a class action complaint in the Los Angeles County Superior Court, Case No. 24STCV16244, against Defendant and Seacrest Convalescent Hospital, Inc. dba Seacrest Post-Acute Care Center (“Seacrest”) alleging claims under the California Labor Code for (1) Failure to Pay Minimum Wages; (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) Failure to Pay Vacation Wages; (6) Failure to Comply with Labor Code §§ 245 *et seq.* and 246; (7) Violation of Labor Code § 226(a); (8) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (9) Failure to Produce Requested Employment Records Under Labor Code §§ 226 and 1198.5; (10) Penalties Pursuant to Labor Code § 203; and (11) Violation of Business & Professions Code § 17200 *et seq.* (the “Action”). (*Id.* at ¶ 5.)

On August 26, 2024, 65 days after Plaintiff’s submission of the PAGA Notice, Plaintiff filed a First Amended Class Action Complaint, alleging a twelfth cause of action for civil penalties under PAGA, Labor Code § 2698 *et seq.* (*Id.* at ¶ 6.)

The Parties agree that Plaintiff’s representative PAGA claims against Seacrest are barred by a separate settlement reached in *Carol Bodden Guerrero v. Seacrest Post-Acute Care Center*, Los Angeles Superior Court Case No. 21LBCV00492 (“Guerrero”), because the PAGA settlement in Guerrero covered the entire period Plaintiff was employed by Seacrest. As a result, the PAGA settlement only applies to Defendant San Pedro Convalescent Home, Inc. dba Los Palos Convalescent Hospital, and as part of the PAGA settlement, Plaintiff filed a Request for Dismissal of Class Allegations Without Prejudice and Dismissal of Defendant Seacrest Convalescent Hospital, Inc. dba

Seacrest Post-Acute Care Center Without Prejudice on September 10, 2025. (*Id.* at ¶ 7.)

After initiating the Action, the Parties met and conferred about the claims and issues in this case, including the existence of an arbitration agreement between the Parties, and agreed to explore resolution of this case through mediation with a highly respected mediator. (*Id.* at ¶ 10.)

B. Mediation and Settlement

Prior to mediation, Defendant provided data, numbers, and documents, including an Aggrieved Employee List (by employee number), a company handbook entitled “Los Palos Post-Acute Care Center Employee Handbook”, a sampling of Aggrieved Employee’s timekeeping and payroll data, information and documentation regarding Defendant’s wage and hour policies, Plaintiff’s wage statements and personnel file, meal period and rest period information, and signed meal period waivers. (Kim Decl., ¶ 10.) Defendant also provided information relating to the number of Aggrieved Employees and PAGA pay periods. (*Id.*) The information and data exchanged by Plaintiff and Defendant prior to and during mediation and settlement negotiations were sufficient to reliably assess the merits of the Parties’ respective positions, to compromise the issues on a fair and equitable basis, and to devise a formula for distribution of civil penalties among the Aggrieved Employees that took into consideration the strength of the PAGA claims. (*Id.* at ¶ 11.)

With the assistance of a highly respected wage and hour mediator, the Parties agreed to the general terms for settling this Action and finalized the long-form PAGA Settlement Agreement and Release. (Kim Decl., ¶ 13.) Plaintiff also provided a general release of his individual claims and waiver of rights under California Civil Code Section 1542 to Defendant in a separate settlement agreement between the Parties. (*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., ¶ 14.) Plaintiff’s 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 attorney generals 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. S19”850), *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

1 with the notice requirements and properly pled a PAGA claim. (Kim Decl. ¶ 4.)

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

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

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

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

21 **IV. THE SETTLEMENT**

22 Pursuant to the Settlement Agreement, Defendants will pay the Gross Settlement Amount of
23 \$123,000.00 on a non-reversionary basis. (Kim Decl., ¶ 16, Exhibit 1, ¶ I.8.) Payment of the Gross
24 Settlement Amount shall be made by Defendant to the Settlement Administrator in two installments
25 as follows: (1) fifty percent (\$61,500.00) within thirty (30) days of court approval of the Settlement;
26 and (2) fifty percent (\$61,500.00) within sixty (60) days of court approval of the Settlement. (*Id.*)

27 Pending Court approval, the Gross Settlement Amount will be allocated as follows: (1)
28

attorneys' fees in the amount of one-third of the Gross Settlement Amount, which is **\$41,000.00** ("Attorneys' Fees"); (2) actual litigation costs incurred in this matter in the amount of **\$12,615.62** ("Attorneys' Costs"); and (3) settlement administration costs of up to **\$4,990.00** 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 Costs"). (*Id.*) The remaining settlement amount of **\$64,394.38** ("Net Settlement Amount") shall be allocated between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699(i), with 65% (\$41,856.35) allocated to the LWDA and 35% (\$22,538.03) allocated to the Aggrieved Employees on a pro-rata basis ("Individual PAGA Payments"). (*Id.*)

The Individual PAGA Payments will be calculated according to the number of pay periods the Aggrieved Employee worked for Defendant in California during the PAGA Period. (Kim Decl., Exhibit 1, ¶ III.4.) Based on its records, Defendant estimates that there are approximately 4,100 pay periods worked by Aggrieved Employees in California ("Affected Pay Periods") from June 20, 2023 through March 31, 2025. (Kim Decl., ¶ 15, Exhibit 1, ¶ III.2.) If the actual number of Affected Pay Periods from June 20, 2023 through March 31, 2025 is more than 10% greater than this number (i.e., if there are more than 4,510 Affected Pay Periods from June 20, 2023 through March 31, 2025), Defendant Los Palos will increase the GSA in proportion to the increase in Affected Pay Periods over 4,100 (e.g., if the number of Affected Pay Periods from June 20, 2023 through March 31, 2025 is 12% greater than 4,100, Defendant Los Palos will increase the GSA by 2%).² (*Id.*)

Based on its records, Defendant estimates that there are approximately 156 Aggrieved Employees. (Kim Decl., ¶ 15.) Based on this information, and using a straight average, Plaintiff estimates that each Aggrieved Employee will receive a payment of approximately \$144.47 (\$22,538.03 divided by 156 Aggrieved Employees). (*Id.*)

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² Defendant has represented that the escalator clause has not been triggered. Thus, the Gross Settlement Amount remains \$123,000.00.

1 **V. ARGUMENT**

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

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

9 **B. The Risks of Moving Forward with Plaintiff's PAGA Claim**

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

14 Plaintiff estimated that the maximum potential exposure on the PAGA claim is \$410,000.00,
15 calculated by multiplying the total number of PAGA pay periods (4,100) by \$100 per violation. (Kim
16 Decl., ¶ 21.) Plaintiff's calculation of the total potential exposure on the PAGA claim was based on
17 one PAGA penalty per PAGA pay period (i.e., Plaintiff did not stack the PAGA penalties in their
18 damages calculation). (*Id.*) Case law supports the notion that it is inappropriate to "stack" penalties
19 for multiple violations, particularly when those violations all stem from the same alleged "injury."
20 (*Id.* at ¶ 22.)

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

22 Defendant denied and continues to deny all of the claims made by Plaintiff in this Action and
23 contend that it acted at all relevant times in conformance with the law. (*Id.* at ¶ 19.) Defendant
24 contends that Plaintiff and Aggrieved Employees were required to report and all hours worked and
25 were paid for all hours worked, that any alleged off-the-clock work was performed without
26 Defendant's knowledge and was de minimis, and that Defendant paid all wages at the proper rates;
27 that Defendant provided Plaintiff and Aggrieved Employees with the reasonable opportunity to take
28

compliant meal periods and rest breaks and that any deviations were at the voluntary election of Plaintiff and Aggrieved Employees; that Defendant paid all wages due on a timely basis and using Labor Code compliant instruments; and that Defendant's wage statements complied with the law. (*Id.*) As a result, Plaintiff's 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 Defendants 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(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).

In departing from the \$100/pay period calculation to arrive at the \$123,000.00 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., ¶ 23.) Based on those considerations, Plaintiff applied a discount of 60% to the maximum potential exposure (which equates to \$40 penalty per pay period) to get a realistic potential exposure of \$164,000.00 (4,100 pay periods x \$40 penalty per pay period). (*Id.*)

The Gross Settlement Amount of \$123,000.00 is 75% of the realistic potential exposure of \$164,000.00. (*Id.* at ¶ 24.) Plaintiff's 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. (*Id.*)

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

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

3 Plaintiff's Counsel is requesting an award of Attorneys' Fees in the amount of **\$41,000.00**
4 and Attorneys' Costs of **\$12,615.62** for litigation costs incurred, which is less than the allocated
5 amount of \$25,000.00 in the Settlement Agreement. (Kim Decl., ¶ 25.)

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

15 1) Plaintiff's Counsel Are Entitled to Fees from the Civil Penalties Recovered

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

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

Id. at p. 573. Here, the \$123,000.00 common fund created for the benefit of the public is, with

1 Plaintiff as a proxy for the State, not unlike the fund created in class action settlements, with the
2 public the equivalent of the class referenced in *Laffitte*.

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

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

9 *Id.* at 573.

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

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

21 Plaintiff’s Counsel at D.Law, Inc. are experienced employment attorneys with expertise in
22 wage and hour class and representative actions. (Kim Decl., ¶¶ 39-48). Throughout this case,
23 Plaintiff’s Counsel have borne, and continue to bear, the entire risk and cost of litigation associated
24 with this Action on a purely contingency basis. (Kim Decl., ¶ 29-30.) As a result, Plaintiff’s Counsel
25 have yet to receive any compensation for the amount of time and money invested in the case to date.
26 (*Id.*) Moreover, courts in this county and others have approved attorneys’ fees awards in other PAGA
27 settlements on a common fund basis at higher percentages than the one-third Plaintiff is requesting
28

1 here. (*Id.*)

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

5 3) Plaintiff's Counsel's Fee Request Is Reasonable Under the Lodestar
6 Crosscheck.

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

15 Throughout this case, Plaintiff's Counsel have borne, and continue to bear, the entire risk
16 and cost of litigation associated with this Action on a purely contingency basis. (Kim Decl., ¶ 27.)
17 As a result, Plaintiff's Counsel have yet to receive any compensation for the amount of time and
18 money invested in the case to date. (*Id.*)

19 Contingent-fee cases present the very real risk of working hundreds if not thousands of
20 hours that may never be entirely compensated. (Kim Decl., ¶ 28.) Moreover, while the case is
21 being litigated, counsel must pay overhead (salaries, rent, etc.), provide for their own expenses,
22 and in most cases pay the out-of-pocket expenses incurred on the plaintiff's behalf. (*Id.*) And the
23 prospect of a court-awarded fee does not greatly reduce the risk posed by these cases. (*Id.*) In many
24 cases, the prospect is nothing more than a potential that never materializes. (*Id.*) First, you must
25 win the case to get a court-awarded fee; even those cases that seem strongest at the onset can be
26 lost and sometimes are lost (*Id.*). Second, there are always pitfalls and unforeseen obstacles that
27 arise along the way, such as settlement offers that the client may accept without ensuring that we
28

1 receive a reasonable fee or changes in the law that substantially affect the merits of the case, or
2 other uncertainties involving the client. (*Id.*) Finally, there is the great risk inherent in advancing
3 tens if not hundreds of thousands of dollars in out-of-pocket expenses. (*Id.*) If that money were to
4 be invested in some sort of financial investment, one would expect a reasonable rate of return on
5 that investment. (*Id.*) Here, however, the best we can hope to recover is our money, and then only
6 if we are substantially successful; if we are not, all or part of this “investment” can be lost. (*Id.*)

7 Plaintiff’s Counsel is well acquainted with the contingent fee market throughout California,
8 particularly as it pertains to PAGA and class action litigation. (Kim Decl., ¶ 29.) Plaintiff’s Counsel
9 has negotiated numerous contingency-fee agreements with plaintiffs, both as individuals and as
10 representatives in class-action and PAGA suits. (*Id.*) Many of those agreements required that
11 counsel receive a fee under certain scenarios that exceed one-third of the recovery. (*Id.*) Plaintiff’s
12 Counsel’s recent attorneys’ fees awards in similar wage-and-hour class and PAGA actions have
13 been one-third of the recovery. (*Id.*)

14 Moreover, Plaintiff’s Counsel spent substantial time on this matter. Aside from drafting the
15 initial complaint, Plaintiff’s Counsel conducted informal discovery, reviewed and analyzed time and
16 pay records, employment handbooks, Plaintiff’s personnel file, relevant policies, and other
17 documentation, researched the applicable law and potential defenses, constructed damage models
18 based on interpretations of California law, reviewed information provided by Defendant at the
19 mediation, engaged in meet and confer efforts with Defendant, drafted and revised the Memorandum
20 of Understanding and Settlement Agreement, and drafted this Motion. (Kim Decl., ¶ 34.)

21 Plaintiff’s Counsel worked at least **88.4** hours on this matter and calculated the base lodestar
22 at **\$56,354.00** at rates reflecting those currently earned in the marketplace. (Kim Decl., ¶¶ 35-36.)
23 Senior Attorney Enoch J. Kim’s records indicate at least 5.2 hours on this matter with an hourly rate
24 of \$1,045. (*Id.*) Senior Attorney Roman Shkodnik’s records indicate at least 20 hours on this matter
25 with an hourly rate of \$1,045. (*Id.*) Associate Attorney Emma Geesaman’s records indicate at least
26 15.3 hours on this matter with an hourly rate of \$475. Associate Attorney Mason Doidge’s records
27 indicate at least 30.7 hours on this matter with an hourly rate of \$475. Associate Attorney Arianna N.

1 Razi's records indicate at least 17.2 hours on this matter with an hourly rate of \$475. (Kim Decl., ¶¶
2 35-36.) Thus, consideration of the lodestar method as a cross-check to the percentage figure sought
3 strongly supports the reasonableness of the requested fee award. (Kim Decl., ¶ 37.)

4 Multiplying the total hours billed by Plaintiff's Counsel to the litigation by their reasonable
5 hourly rates yields a lodestar of \$56,354.00, which is more than the \$41,000.00 in attorneys' fees
6 Plaintiff's Counsel are requesting, therefore eliminating the need to use a multiplier. (Kim Decl., ¶
7 38.) This disparity is important to note because when plaintiffs seek an amount in fees that is less
8 than what they actually billed, the requested fee amount is generally considered reasonable. (*Chun-*
9 *Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F. Supp. 2d 848, 854 [finding that, if the court is
10 asked to apply a negative multiplier, it "suggests the negotiated fee award is reasonable and fair
11 valuation of the services rendered to the class by Plaintiff's Counsel."].) (*Id.*) As such, Plaintiff's
12 Counsel respectfully request the Court grant their request for \$41,000.00 in attorneys' fees.

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

14 The litigation expenses incurred by Plaintiff's Counsel in this Action are also to be
15 reimbursed under the Settlement Agreement. (Kim Decl., ¶ 16.a.) Plaintiff's Counsel incurred
16 \$12,615.62 in expenses in litigating this Action. (Kim Decl., ¶ 25.) The lion's share of these costs
17 were incurred in connection with mediation, and the others listed were all reasonably incurred and
18 necessary to the prosecution of this Action. (*Id.*) Thus, Plaintiff's Counsel respectfully request the
19 Court approve their request for reimbursement in the amount of \$12,615.62.

20 **VII. THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION AND**
21 **NOTICE**

22 The parties agreed to use Apex as the third-party settlement administrator in this case. (Kim
23 Decl., ¶ 50.) Apex will be responsible for updating Aggrieved Employees' addresses, mailing a notice
24 of Settlement, and calculating and distributing the settlement checks, among other duties. (*Id.*) Apex
25 capped its fees at \$4,990.00 for administering the Settlement and based on Plaintiff's Counsel's
26 experience in other class and PAGA settlements, Apex's costs for administering this Settlement are
27 fair and reasonable. (*Id.*)

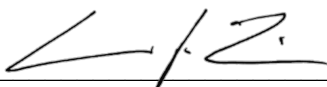
1 The Settlement Administrator will mail the Individual PAGA Payment along with an
2 explanatory letter providing notice of the Settlement and release of claims to Aggrieved Employees
3 (*Id.* at ¶ 51.) The explanatory letter includes, among other things, an explanation of PAGA, a
4 description of the allegations in the Action and the scope of released claims, and a statement of the
5 Gross Settlement Amount and payment allocations from the Gross Settlement Amount. (*Id.*)

6 **VIII. CONCLUSION**

7 Plaintiff and Plaintiff's Counsel submit that the proposed Settlement as documented in the
8 Settlement Agreement, is fair, adequate, reasonable, and in the best interest of Plaintiff, Defendant,
9 Aggrieved Employees, and the State of California. Plaintiff respectfully requests that the Court
10 approve the Settlement and order the Parties to carry out the Settlement according to the terms of the
11 Settlement Agreement and enter the concurrently filed [Proposed] Order Granting Approval and
12 Judgment to that end.

13
14 DATED: September 17, 2025

D.LAW, INC

15
16 By 
17 David Yeremian
18 Enoch J. Kim
19 Arianna N. Razi
20 Attorneys for Plaintiff Jose Magdaleno on
21 behalf of himself and Aggrieved Employees
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