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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MONTGOMERY NICHOLAS MANIBOG an individual, on behalf of himself and others similarly situated Plaintiff, vs. SBH RESTAURANT ASSOCIATES, LLC, a California limited liability company; WOLFGANG PUCK FINE DINING GROUP LLC, a California limited liability company; WOLFGANG PUCK WORLDWIDE, INC., a Delaware corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. 24STCV20420 PAGA ACTION *Assigned for All Purposes To*: Hon. David S. Cunningham III Dept.: 11 **NOTICE OF MOTION AND MOTION TO APPROVE PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT UNDER CALIFORNIA LABOR CODE §§ 2698 et seq.; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** [*filed concurrently with Declarations of William Tran, Alvin B. Lindsay, and Jodey Lawrence; and [Proposed] Order and Judgment*] Hearing Date: January 6, 2026 Time: 10:30 a.m. Department: 11 Original Complaint Filed: August 13, 2024 First Amended Complaint Filed: October 17, 2024 Trial: None Set

TO THE COURT AND DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 6, 2026 in Department 15 of the above-entitled Court, located at Stanley Mosk Courthouse, 312 North Spring Street Los Angeles, CA 90012. Plaintiff Montgomery Nicholas Manibog ("Plaintiff" or "PAGA Representative"), on behalf of himself, the State of California, and similarly situated hourly non-exempt Aggrieved Employees, will and hereby does move this Court pursuant to California Labor Code § 2698 *et seq*. for an order approving the Private Attorneys General Act ("PAGA") Settlement Agreement between Plaintiff and Defendants SBH Restaurant Associates, LLC; Wolfgang Puck Fine Dining Group LLC; and Wolfgang Puck Worldwide, Inc. ("Defendants"), which will approve the representative action settlement embodied in the Settlement Agreement, approve PAGA Counsel's application for attorney's fees and litigation costs, and enter judgment approving the PAGA 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 PAGA aggrieved employees 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).

Defendants do not oppose this Motion. Plaintiff bases this Motion on this Notice and the accompanying Memorandum of Points and Authorities, the Declarations of William Tran, Alvin B. Lindsay, and Jodey Lawrence in support thereof, 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: December 10, 2025

D.LAW, INC.

By: ______________________

William Tran
Alvin B. Lindsay
Attorneys for Montgomery Nicholas Manibog on behalf of himself and others similarly situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Through this motion, Plaintiff Montgomery Nicholas Manibog ("Plaintiff") respectfully requests that the Court grant approval of the Private Attorneys General Act Settlement Agreement ("Settlement" or "Settlement Agreement") reached between the parties to resolve claims brought exclusively under the Private Attorneys General Act of 2004, Labor Code § 2698, *et seq*. ("PAGA") seeking civil penalties for various violations of the California Labor Code and Industrial Wage Commission's Wage Orders. Pursuant to the Settlement, Defendants SBH Restaurant Associates, LLC; Wolfgang Puck Fine Dining Group LLC; and Wolfgang Puck Worldwide, Inc. ("Defendants") will pay the Gross Settlement Amount of **$147,500.00**. (Declaration of William Tran ("Tran Decl."), at Exhibit 1, Settlement Agreement, ¶ 3.1.)

For purposes of the Settlement, the PAGA Members are defined as: "all current and former hourly-paid non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period." ("PAGA Members"). (Tran Decl., Exhibit 1, ¶ 1.4.) The PAGA Period is defined as: "the period from August 13, 2023, through the date the Court enters the Order granting approval of the Agreement." (Tran Decl., Exhibit 1, ¶ 1.19.)

The Parties agree that the Settlement is fair, reasonable, and appropriate as the result of a rigorous, arms-length negotiation conducted during mediation with a mediator highly experienced in wage and hour matters. The resolution was reached only after Plaintiff conducted comprehensive informal discovery and Defendant provided comprehensive data, numbers, and documents, allowing for a well-informed assessment of the claims and potential recovery. Plaintiff, without opposition from Defendant, respectfully requests that the Court enter an order approving the Settlement, directing the Parties and Administrator to implement its terms, and entering Final Judgment.[1]

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[1] Plaintiff has concurrently submitted this Motion and Memorandum to the LWDA by uploading it on the LWDA's website at the time of filing of this Motion as required by Labor Code § 2699(*1*)(2). (Declaration of William Tran ("Tran Decl.") ¶ 26, Exhibit 3.)

II. <u>RELEVANT BACKGROUND AND PROCEDURAL HISTORY</u>

A. Litigation Overview and Procedural History

On August 13, 2024, Plaintiff filed a putative Class Action complaint against Defendants asserting various wage and hour violations, including (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 Labor Code § 226.7; (4) Rest-Break Liability Labor Code § 226.7; (5) Failure to Pay Reporting 8 CCR § 11040(5); (6) Failure to Pay for On-call Time Under Labor Code §§ 204, 510, 1194; (7) Violation Labor Code § 351; (8) Failure To Provide One Day's Rest In Seven - Labor Code § § 551, 552; (9) Violation of Labor Code § 226(a); (10) Violation of Labor Code § 221; (11) Violation of Labor Code § 204; (12) Violation of Labor Code § 203; (13) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (14) Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; and (15) Violation of Business & Professions Code § 17200 *et seq*. (Tran Decl., ¶ 3.) On the same day, Plaintiff submitted his PAGA letter to the California Labor & Workforce Development Agency ("LWDA") and Defendant. (*Id*. at ¶ 4; see also Tran Decl. ¶ 25, Exh. 2, confirmation email from LWDA regarding submission of Plaintiff's PAGA Notice Letter.) On October 17, 2024, Plaintiff filed a First Amended Complaint adding a sixteenth cause of action for violations of PAGA ("Operative Complaint"). (*Id*.)

Before filing the lawsuit, PAGA Counsel investigated and researched the facts and circumstances underlying the pertinent issues and applicable law. (Tran Decl., ¶ 5.) This required thorough discussions and interviews between PAGA Counsel and Plaintiff, as well as preliminary research into the various legal issues involved in the case. (*Id*.) After conducting initial investigation, PAGA Counsel determined that Plaintiff's claims were well-suited for representative action adjudication owing to what appeared to be a common course of conduct affecting a similarly situated and aggrieved group of employees. (*Id*.)

After filing of the Operative Complaint, the parties' counsel met and conferred regarding the conduct of this Action and formal and informal discovery as well as the arbitration agreement signed by Plaintiff at the outset of his employment with Defendants, and agreed to schedule a mediation in an effort to arrive at an amicable early informal resolution. (Tran Decl., ¶ 6.)

B. Mediation and Settlement

In advance of mediation, PAGA Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting informal discovery, and meeting and conferring with defense counsel about same; (2) reviewing and analyzing a sampling of time and pay records, Defendants' Employee Handbook, and Plaintiff's personnel files; (3) researching the applicable law and potential defenses; (4) constructing damage models based on interpretations of California law; and (5) reviewing information provided by Defendant at the mediation. (Tran Decl., ¶ 7.) After analyzing the relevant documents and other gathered data, PAGA Counsel believed that this case was appropriate for resolution via mediation. (*Id*.)

On April 23, 2025, the Parties participated in a full-day mediation facilitated by mediator Lou Marlin, who is highly experienced in wage and hour and PAGA matters. (Tran Decl., ¶ 8.) During mediation, the Parties engaged in a good faith, arms-length negotiations that resulted in a Mediator's Proposal, which was accepted by both Parties. (*Id*.) The general terms of the settlement were first memorialized via acknowledgement of the Mediator's Proposal, then later formalized in the long-form Settlement Agreement now before the Court for approval. (*Id*.) Plaintiff also provided a general release of his individual wage and hour claims in a separate individual settlement, and the parties have carved out Plaintiff's remaining claims under his Right to Sue Letter. Pursuant to the Settlement Agreements, Plaintiff filed a Rule 3.770 Request for Dismissal and the Court entered an Order on September 10, 2025 dismissing the class claims without prejudice and Plaintiff's individual wage and hour claims with prejudice. The PAGA claims addressed herein are all that remain and their Settlement is before the Court for approval. (*Id*.).

From PAGA Counsel's review of the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and PAGA Counsel's own prior litigation experience, PAGA Counsel believes that the recovery for each Aggrieved Employee is fair and reasonable taking into consideration the amounts received in other PAGA actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Aggrieved Employee's claim to the settlement award he or she will receive. (Tran Decl., ¶ 11). Further, and based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating PAGA actions, the Settlement Agreement was the product of a non-collusive settlement process in which the parties agreed to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit. (Tran Decl., ¶ 11). Moreover. PAGA Counsel believes that the Settlement confers real benefits upon Plaintiff and the Aggrieved Employees and that an independent review of the Settlement by the Court in the approval process will confirm this conclusion. (*Id*. at 12.)

III. PAGA ACTIONS AND THE REQUIREMENTS

A. The PAGA Statutory Scheme

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

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

The PAGA provides for statutory 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, the PAGA provides the Court with discretion when it finds liability and awards these penalties as part of a judgment. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Here, Defendants deny each and all of Plaintiff's allegations in their entirety and maintain that their policies complied with California law. (Tran Decl., Exhibit 1, ¶ 10.1.) Defendant contentions against Plaintiff's claims – particularly those based on off-the-clock work, time spent waiting in line to clock in and undergoing COVID-19 tests, meal and rest breaks, overtime, reporting time pay and on-call pay – would have faced significant hurdles at trial given Defendant's policies prohibiting off-the-clock work and ensuring compliance with wage and hour laws. While Defendants are confident in their defenses, settlement provides a more efficient resolution, avoiding the uncertainties and costs of litigation.

The Parties agree that the Court, in assessing the Settlement, should consider the risk assessment, and the post-judgment prerogative the Court possesses to lower penalties had Plaintiff prevailed at trial. The Parties believe that, based on these factors, the Court will find that this Settlement is fair and reasonable.

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 Private Attorneys 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. PAGA Counsel seeks one-third (33%) of the Gross Settlement Amount, or **$49,166.67** in fees and **$20,091** in actual litigation costs. Pursuant to PAGA, Labor Code § 2699(l)(2), Plaintiff will be providing the LWDA notice of the Settlement and this Motion upon its filing. (Tran Decl., ¶ 26). The LWDA will have the opportunity to object or otherwise comment on the terms of the Settlement.

IV. THE SETTLEMENT

Pursuant to the Settlement Agreement, Defendants will pay the Gross Settlement Amount of **$147,500** in full and final settlement of the PAGA claim as alleged in the Operative Complaint and PAGA Notice Letter to the LWDA. (Tran Decl., Exh. 1, ¶ 3.1).

Pending Court approval, the Gross Settlement Amount will be allocated as follows: (a) attorneys' fees of up to one-third of the Gross Settlement Amount, which is **$49,166.67** ("PAGA Counsel Fees Payment") (Tran Decl., Exh. 1, ¶ 3.2.1); (2) actual litigation costs incurred in this matter in the amount of **$20,091.00** ("PAGA Counsel Litigation Expenses Payment") (*Id.*); (3) settlement administration costs of **$3,750.00** to be paid to the Settlement Administrator, Phoenix Class Action Administration Solutions ("Phoenix"), for sending notices and for calculating settlement shares and preparing all checks and mailings ("Administration Expenses Payment") (*Id.*) (See also concurrently filed Declaration of Jodey Lawrence of Phoenix ("Lawrence Decl."); and (4) PAGA Penalties in the amount of **$74,492.33**, with 65% (**$48,420.01**) allocated to the LWDA ("LWDA PAGA Payment") and 35% (**$26,072.32**) allocated to providing Individual PAGA Payments to the Aggrieved Employees ("Individual PAGA Payment"). (*Id.*) The Individual PAGA Payments for each Aggrieved

Employe will be calculated based on the number of Pay Periods they worked during the PAGA Period. (Tran Decl., Exhibit 1, ¶ 3.2.3.1.)

Based on its records, Defendant estimated that at the time of executing the Settlement Agreement there were 150 Aggrieved Employees who worked a total of 3,200 pay periods during the PAGA Period. (Tran Decl., Exhibit 1, ¶ 4.1.) The Aggrieved Employees will receive $8.14 per pay period for an average of approximately $173.81 per person ($26,072.32 divided by 150 Aggrieved Employees) for their shares of the Individual PAGA Payment. (Tran Decl., ¶ 10.)

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 and final approval. Nonetheless, to comply with the requirements of Labor Code § 2699, Plaintiff submits this Motion and the Settlement Agreement for Court approval.

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

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

Plaintiff estimated that the maximum potential exposure on the PAGA claim is $320,000.00, calculated by multiplying the total number of Pay Periods (3,200) by $100 per violation. (Tran 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 their damages calculation). (*Id.*) Case law supports the notion that it is inappropriate to "stack" penalties for multiple violations, particularly when those violations all stem from the same alleged "injury." *Aguirre v. Genesis Logistics,* 2015 U.S. Dist. LEXIS 78748 (citing *Villacres v. ABM Indus., Inc.*, 189 Cal.App.4th 562, 577 (2010)). ("One injury gives rise to only one claim for relief…The violation of one primary right constitutes a single cause of action."; *Crowley v. Katleman*, 8 Cal. 4th 666, 681-82 (1994); *Li v. A Perfect Day Franchise, Inc.*, 2012 WL 2236752, *17 (N.D. Cal.2012) ("There is no authority that "would permit double recovery of essentially the same penalties.") (Tran Decl., ¶ 17.)

The Gross Settlement Amount of $147,500.00 is approximately 46.09% of the maximum potential exposure of $320,000.00. (Tran Decl., ¶ 19.) The Gross Settlement Amount therefore represents a value at approximately $46.09 per Pay Period. (*Id.*) From PAGA Counsel's review of the facts, strengths, and weaknesses of the case, and the risks and delays posed by further litigation, PAGA Counsel believes that the recovery for each Aggrieved Employee is fair and reasonable. (*Id.*)

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

Defendants denied and continue to deny all of the claims made by Plaintiff in this Action and contends that they acted at all relevant times in conformance with the law. (Tran Decl. at ¶ 14.) Defendants contend that Plaintiff and the Aggrieved Employees were paid for all hours worked, including overtime, reporting time, and on-call time; provided at least one day's rest during a seven day workweek; provided lawfully compliant meal periods and that any deviations were at the voluntary election of the Plaintiff and/or the Aggrieved Employees and not at the request of Defendants or due to work; provided all gratuities owed; that Defendants paid all wages due on a timely basis; that Defendants paid all wages due on a timely basis and using Labor Code compliant instruments; that Defendants' wage statements complied with the law; and that neither Plaintiff nor any of the Aggrieved Employees incurred reasonable business related expenses for which they were not reimbursed. (*Id.*) In light of Defendants denials and arguments, PAGA Counsel carefully evaluated and negotiated a settlement that ensures a fair and equitable recovery for the affected employees. (*Id.*)

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

PAGA penalties are permissive rather than mandatory. (Tran Decl. at ¶ 18.) Labor Code § 2699(e)(2) states that "a court <u>may award</u> 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 (substantially reducing PAGA penalties by 30% under this provision) (emphasis added); 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).). (Tran Decl. at ¶ 18.) In departing from the $100/pay period calculation to arrive at the $147,500.00 Gross Settlement Amount in this case, PAGA Counsel considered various reasons why the Court may reduce any eventual recovery at its discretion and considered that PAGA penalties are not mandatory but permissive. (*Id*.)

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

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

Pursuant to the Settlement Agreement, PAGA Counsel is requesting an award of attorneys' fees in the amount of **$49,166.67** and an award of litigation costs to PAGA Counsel of **$20,091.00** (*See* Declaration of Alvin B. Lindsay ("Lindsay Decl.") ¶ 2.)

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

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

As previously indicated, this is *not* a class action. However, like a class action, it is a representative action where instead of a class, the 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 $147,500.00 common fund created for the benefit of the public is, with Plaintiff as 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. (Tran Decl., ¶¶ 20; *see also* Declaration of Alvin B. Lindsay ("Lindsay Decl.") ¶¶ 33-44). Through 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 against a corporation represented by a reputable defense firm. (Lindsay Decl. at ¶ 5.) 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.*) When PAGA Counsel takes contingent cases, they must pay careful attention to the economics involved or one bad case can destroy years of work. (*Id.* at ¶ 6.) Accordingly, in such cases, PAGA Counsel anticipates that they shall, if successful, receive a fee that exceeds their normal hourly rate; otherwise the risk is often too great to bear. Even when they work long hours, the number of hours in a day is limited. (*Id.*)

Contingent-fee cases present the very real risk of working hundreds if not thousands of hours that may never be entirely compensated. (Lindsay Decl. at ¶ 7.) Moreover, while the case is being litigated, counsel must pay overhead (salaries, rent, etc.), provide for their own expenses, and in most cases pay the out-of-pocket expenses incurred on the plaintiff's behalf. And the prospect of a court-awarded fee does not greatly reduce the risk posed by these cases. In many cases, the prospect is nothing more than a potential that never materializes. First, you must win the case to get a court-awarded fee; even those cases that seem strongest at the onset can be lost and sometimes are lost. Second, there are always the pitfalls and unforeseen obstacles that arise along the way, such as settlement offers that the client may accept without ensuring that we receive a reasonable fee or changes in the law that substantially affect the merits of the case, or other uncertainties involving the client. Finally, there is the great risk inherent in advancing tens if not hundreds of thousands of dollars in out-of-pocket expenses. If that money were to be invested in some sort of financial investment, one would expect a reasonable rate of return on that investment. Here, however, the best we can hope to recover is our money, and then only if we are substantially successful; if we are not, all or part of this "investment" can be lost. (*Id.*)

PAGA Counsel is well acquainted with the contingent-fee market throughout California, particularly as it pertains to wage-and-hour and PAGA action litigation. (Lindsay Decl. at ¶ 8.) PAGA Counsel has negotiated numerous contingency-fee agreements with plaintiffs, both as individuals and as representatives in class-action and PAGA suits. Many of those agreements required that counsel receive a fee under certain scenarios that exceeds one-third of the recovery. Moreover, courts in this county and others have approved attorneys' fees awards in other PAGA settlements on a common fund basis at a commensurate percentage to what Plaintiff and PAGA Counsel are requesting here. (Lindsay Decl. at ¶ 8.)

Counsel in contingency-fee cases typically receive attorneys' fees equal to or greater than forty percent of the gross settlement amount. *See Crandall v. U-Haul* (Los Angeles County Super. Ct., Case No. BC178775), the Honorable Steven Czuleger awarded a 40% attorney fee request; in *Bushnell v. Cremar, Inc.* (Orange County Sup. Ct., Case No. 657778), the Honorable Donald E. Smallwood awarded attorneys' fees in the amount of a 38%; in *Abzug v. Kerkorian* CA000981 (Los Angeles County Super. Ct., November 1990), the Honorable R. William Schoettler awarded a 45% fee; in *Elliott v. Clothestime* (Orange County Super. Ct., Case No. 01-CC00333) the Honorable Jonathan Cannon awarded a 40% fee; in both *Rippee v. Boston Market Corporation*, Case No.: 05 CV 1359 BTM (JMA) and *Barile v. Boston Market Corporation*, Case No.: 05 CV 1360 BTM (JMA), the Honorable Barry T. Moskowitz awarded attorneys' fees in the amount of a 40% fee. (*Id.* at ¶ 9.)

The fees requested in this case are less than fees routinely awarded in other wage and hour class action and PAGA action settlements. In light of the foregoing, the fee request in an amount equal to one-third of the settlement ($49,166.67) in this case is well within the bounds that have been established by the above-cited authority. (*Id.* at ¶ 10.)

3) <u>PAGA Counsel's Fee Request Is Reasonable Under the Lodestar Crosscheck.</u>

In settlements where a definite monetized fund is created, it is appropriate for courts to evaluate the lodestar amount as a percentage of the recovery and adjust it accordingly if the lodestar differs from the range of percentage fees freely negotiated in comparable litigation. *See Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 49-50. (Lindsay Decl. at ¶ 11.)

PAGA Counsel's lodestar calculation supports the requested attorneys' fees. (Lindsay Decl. at ¶ 12.) The lodestar calculation typically proceeds in three steps. First, a trial court must determine a baseline guide or "lodestar" figure based on the time spent and reasonable hourly compensation for each attorney involved in the case. *Serrano v. Priest* (1975) 20 Cal.3d 25, 48. (Lindsay Decl. at ¶ 12.) The court then sets a reasonable hourly fee to apply to the time expended, with reference to the prevailing rates in the geographical area in which the action is pending. *Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997. Finally, a "multiplier" is selected with reference to the following factors: (1) the novelty and difficulty of issues involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, and (4) the contingent nature of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the award. *Serrano, supra,* 20 Cal.App.3d at 49. (*Id.*)

The rates charged by PAGA Counsel are commensurate with the prevailing market rates in the Los Angeles and San Francisco areas for attorneys of comparable experience and skill handling complex litigation. Aside from being warranted by our skill, experience and ability, PAGA Counsel's rates that were used in application of the lodestar cross check in this case are supported by the Laffey Matrix. (Lindsay Decl. at ¶ 13, *See* Exhibit 1.)

California Courts have applied the Laffey Matrix with adjustments to the specific California locality where the Counsel's office is located based on "Locality Pay Tables." (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 695-696 [affirming fee award based on Laffey Matrix with upward 9 percent rate adjustment from D.C. area compared to San Francisco Bay Area based on Locality Pay Tables]; *In re HPL Techs., Inc., Secs. Litig.* (N.D. Cal. April 22, 2005, No. C-02-3510 VRW) 365 F.Supp.2d 912, 921-922 [using Laffey Matrix with upward adjustment of 9 percent for San Francisco based on difference between D.C. Area's +15.98 locality pay compared to San Francisco's +26.39 percent locality pay differential from the federal courts' "Judiciary Salary Plan Pay Tables."].) (Lindsay Decl. at ¶ 14.)

PAGA counsel asserts that their stated hourly rates are reasonable and appropriate for California attorneys with comparable expertise, experience, and qualifications. (Lindsay Decl. at ¶ 15.) As explained below, the lodestar crosscheck yields a modest lodestar when rates from the Los Angeles locality adjusted Laffey Matrix are used. The hourly rates found in the 2024-2025 adjusted

Laffey Matrix[2] focus on the costs of legal services within the Washington-Baltimore-Arlington area and therefore adjustments based on differences in cost of legal services in different localities allows for better assessment of reasonableness. (Lindsay Decl. at ¶ 16.)

PAGA Counsel arrived at a locality adjustment rate of 1.1 by comparing the locality payment adjustments to the Judiciary Salary Plan for Federal judiciary employees. Locality payment adjustments are made to the base pay of Federal workers in localities where the base pay is generally lower than the rates paid for the same levels of work by non-Federal workers in the same locality, so that the wages of Federal workers would roughly be on par with employees within the locality performing similar levels of work.[3] Because this metric is designed specifically to equalize wages given for different market rates in different localities, a comparison of the adjustment rate between the Washington-Baltimore-Arlington area, San Jose-San Francisco-Oakland, and Los Angeles-Long Beach area is an excellent measure for determining locality adjustment to the Laffey Matrix. (Lindsay Decl. at ¶ 17.)

The Judiciary Salary Plan (referred to in *In re HPL Techs., Inc.*) and Locality Pay Table for San Jose-San Francisco-Oakland locality include a 46.34% locality adjustment and a 36.47% locality adjustment for Los Angeles-Long Beach. (Lindsay Decl. at ¶18, **Exhibits 2-5,** The Judiciary Salary Plan and the 2025 Locality Pay Table for San Jose-San Francisco-Oakland, CA; the Judiciary Salary Plan and the 2025 Locality Pay Table for Los Angeles-Long Beach, CA.) In comparison, the Judiciary Salary Plan and Locality Pay Table for Washington-Baltimore-Arlington locality include a 33.94% locality adjustment (*Id.*, **Exhibits 6-7**, The Judiciary Salary Plan and the 2025 Locality Pay Table for Washington-Baltimore-Arlington.) The Locality Pay Area Definitions defining counties within San Jose-San Francisco-Oakland, CA and Los Angeles-Long Beach, CA (*Id.*, **Exhibit 8**.) This means that legal workers in the San Jose-San Francisco-Oakland area made roughly 12.4% more, and legal workers in the Los

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[2] "Adjustment Factor" as used in the Laffey Matrix refers to nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics and does not mean the Matrix is adjusted for locality differences in pay.

[3] 5 U.S. §5302(6)

Angeles-Long Beach area made roughly 2.5% more, than comparable legal workers in the Washington-Baltimore-Arlington area (46.34% - 33.94% and 36.47%-33.94%). (Lindsay Decl. at ¶19.) Therefore, an averaged adjustment rate of 1.1 to the Laffey Matrix provides a satisfactory adjustment to the Laffey Matrix to adjust for locally prevalent rates of pay in California. (*Id.*)

In applying the locality adjustment rate of 1.1 to the Laffey Matrix for attorneys working in Alameda County, Calaveras County, Contra Costa County, Marin County, Merced County, Monterey County, Napa County, San Benito County, San Francisco County, San Joaquin County, San Mateo County, Santa Clara County, Santa Cruz County, Solano County, Sonoma County, Stanislaus County, and Los Angeles-Long Beach County over the Washington-Baltimore-Arlington area stated in the Laffey Matrix, the 2024-2025 Adjusted Laffey Matrix hourly rates adjusted for this case are:

Year	**Adj. Factor ****	**1-3**	**4-7**	**8-10**	**11-19**	**20+**
6/1/24-5/31/25	1.080182	$520.40	$639.10	$922.90	$1,042.80	$1,255.10

(Lindsay Decl. at ¶ 20.) As discussed above, PAGA counsel is experienced employment attorneys with expertise in wage and hour class and representative actions. (Lindsay Decl. at ¶¶ 33-44). Thus, PAGA Counsel is aware of the experience and achievements of their attorneys involved in this matter as well as the rates which would be charged if their work was on an hourly basis. Based on this information, PAGA Counsel asserts that the rates of the attorneys at D.Law, Inc. are reasonable, appropriate, and fully consistent with the market rate for attorneys with comparable expertise, experience, and qualifications in Los Angeles. (*Id.* at ¶ 21.)

Attorney Alvin B. Lindsay spent approximately 61.5 hours on this matter, and his current billing rate is $1,260.00 (20+ years out of law school, Laffey Matrix rate of $1,141). (Lindsay Decl. at ¶ 23.) Attorney William Tran spent approximately 33.5 hours on this matter, and his current billing rate is $585.00 (4-7 years out of law school, Laffey Matrix rate of $581.00). (*Id.*) Attorney Jean Hopkins Power spent approximately 23.3 hours on this matter, and her current billing rate is $585.00 (4-7 years out of law school, Laffey Matrix rate of $581.00). (*Id.*) PAGA Counsel's timekeeping records for the Court's review are also provided and addressed by Mr. Lindsay at paragraphs 22-25 and Exhibits 9-11 to his Declaration.

The below table summarizes PAGA Counsel's total hours, billables, and costs:

Attorney/Firm	Total Hours	Hourly Rate	Total Lodestar Fees
Alvin B. Lindsay	$1,260	63.5	$80,010.00
William Tran	$585	33.5	$19,597.50
Jean Power	$585	23.3	$13,630.50
Totals:		120.3	$113,238.00

Multiplying the total hours billed by PAGA Counsel to the litigation by their reasonable hourly rates yields a lodestar of **$113,238.00**, which does not require a multiplier. (Lindsay Decl. at ¶ 25.) The additional hours PAGA counsel have and will invest in taking this action through settlement approval and administration and funding and distribution will result in no required multiplier. (*Id.*)

Multipliers routinely range from 3 to 5, and it is not uncommon that multipliers of between 5 and 10, or higher, are applied. (Lindsay Decl. at ¶ 26.) However, no multiplier is required here. PAGA counsel is requesting approval of **$49,166.67** in attorneys' fees. We have invested 120.3 hours in this Action for a lodestar total of **$113,238.00**, which is basically twice as much as we are requesting for a negative multiplier of **.43**. PAGA Counsel submits our fee request is therefore well within the reasonable range approved in lodestar crosschecks. (*Id.*)

As for the *Serrano* factors, all militate in favor of the requested fee award. (Lindsay Decl. at ¶ 27.) This case raised a number of complex and contested issues, and PAGA Counsel exhibited skill and creativity in prosecuting and presenting them. (*Id.*) Chief among these was the law relating to meal and rest periods, and failure to pay the PAGA members wages for off-the-clock work and final wages. (*Id.*) This case was not straightforward. (*Id.* at ¶ 28.) PAGA Counsel had to spend time researching and analyzing each of these claims and issues in order to adequately assess the liability of Defendant. (*Id.*) PAGA Counsel then had to develop the evidence necessary through informal discovery to establish Defendant's liability. (*Id.*) This was done through carefully sifting through hundreds of pages of documents. (*Id.*) PAGA Counsel have devoted a substantial amount of time on this case, including but not limited to researching various legal issues prior to and after filing this Action; drafting and reviewing pleadings; conducting informal discovery; meeting and conferring with defense counsel; reviewing and analyzing the documents produced by Defendant; regularly communicating with Plaintiff; preparing for and attending mediation; negotiating and finalizing the Settlement Agreement, including several revisions thereof; drafting documents for preliminary and final approval, including documents for the administration of the Settlement; and coordinating and overseeing the administration of the Settlement. (Lindsay Decl. at ¶ 28.)

In sum, PAGA Counsel had to come up with creative approaches to these issues in litigating the case and, ultimately, negotiating and crafting the Settlement. (Lindsay Decl. at ¶ 29.) To this end, PAGA Counsel has devoted a tremendous amount of time and energy. As shown in the table above, PAGA Counsel have spent a substantial number of hours working on this case. This time commitment was necessary in order to research, construct and prosecute viable legal claims in the face of stiff opposition, but it has come at a cost. In particular, the time PAGA Counsel have devoted to this case has prevented them from investing that time in other cases that might have settled during the pendency of this litigation and yielded significant attorneys' fees. Despite these considerations, PAGA Counsel zealously represented Plaintiff and the PAGA members and have obtained a favorable result. (*Id.*) Such is not always the case. (*Id.* at ¶ 30.) PAGA Counsel has previously invested time and money into numerous cases, including other PAGA actions, that have fizzled for one reason or another, leaving PAGA Counsel completely without any compensation for their effort. Here, PAGA Counsel has achieved a beneficial settlement for Plaintiff and the PAGA members, but this was by no means a foregone conclusion; indeed, their efforts might well have been frustrated by any number of obstacles with which they were presented along the way. Nor could a PAGA trial guaranteed a better result. However, PAGA Counsel was able to navigate the shoals of unpredictability to achieve a desirable result, and they have done so without receiving any compensation to speak of thus far because they took this case on a contingency-fee basis. (*Id.*)

The rates of the attorneys at our firm are reasonable and appropriate fees for both Los Angeles and Bay Area Counties, and **lower than** the Laffey Matrix rates when applying the averaged locality adjustment rate of 1.1 to the Laffey Matrix rates. (Lindsay Decl. at ¶ 31.) From the foregoing analysis, PAGA Counsel's requested attorneys' fees for **$49,166.67** are fair and reasonable. (Lindsay Decl. at ¶ 31.)

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 seek **$20,091.00** in reimbursement for litigation costs in prosecuting this action to date and through approval. (Lindsay Decl. at ¶ 32, *See* **Exhibit 12** (D. Law's Costs Invoice)). The lion's share of the costs were reasonably incurred in connection with mediation and attendant expert analysis. The remaining costs were reasonably incurred and necessary for the prosecution of this Action. Therefore, PAGA Counsel respectfully requests the Court approve their request for reimbursement and an award of **$20,091.00** for their costs incurred in connection with this Action. (*Id.*)

VII. <u>THE COURT SHOULD APPROVE THE COSTS OF ADMINISTRATION</u>

The Parties agreed to use Phoenix Settlement Administrators ("Phoenix") as the third-party settlement administrator in this case. (Tran Decl., ¶ 22). Phoenix will be responsible for updating the addresses for the Aggrieved Employees, mailing the Notice of Settlement and calculating and distributing the settlement checks, among other duties. (Lawrence Decl., ¶¶ 12-16; Exhibit A.) Phoenix capped its fees at $3,750.00 (Lawrence Decl., Exhibit B.) for administering the Settlement and based on PAGA Counsel's experience in other class and PAGA settlements, Phoenix's costs for administering this Settlement are fair and reasonable. (*Id*.) Jodey Lawrence from Phoenix provides a concurrently filed Declaration in support of settlement approval addressing Phoenix's qualifications, the administration quotation they provided, and the support they will provide through funding and distribution.

Additionally, if the Court approves the Settlement Agreement, Plaintiff further requests the Court approve the Notice of PAGA Settlement and Release of Claims attached to the Settlement Agreement at **Exhibit A** for mailing with the disbursement of settlement payments to be completed by Apex. (Tran Decl., ¶ 24).

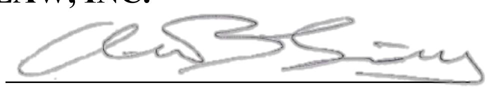
Furthermore, PAGA Counsel is not aware of any class or other representative action in any other court that asserts claims similar to those alleged in this action being settled. (Tran Decl., ¶ 27).

VIII. CONCLUSION

Plaintiff and PAGA Counsel submit that the proposed Settlement as documented in the Settlement Agreement is fair, adequate, reasonable, and in the best interest of Plaintiff, Defendant, the Aggrieved Employees, and the State of California. Plaintiff respectfully request that the Court approve the Settlement and order the Parties and Administrator 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: December 10, 2025

D.LAW, INC.

By 

Alvin B. Lindsay
William Tran
Attorneys for Plaintiff Montgomery Nicholas Manibog on behalf of himself and others similarly situated