

BOKHOUR LAW GROUP, P.C.

Mehrdad Bokhour, CA Bar No. 285256
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

MELMED LAW GROUP P.C.

Jonathan Melmed, CA Bar No. 290218
jm@melmedlaw.com
1801 Century Park East, Suite 850
Los Angeles, California 90067
Tel: (310) 824-3828; Fax: (310) 862-6851

Attorneys for Plaintiff and the Aggrieved Employees

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

GLADYS OAJACA, an individual, on behalf
herself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

SUNSTONE HOTEL PROPERTIES, INC., a
Colorado Corporation; INTERSTATE
HOTELS & RESORTS, INC., a Delaware
Corporation; EMBASSY SUITES LAX
NORTH, an Unknown Entity; and DOES 1
TO 20,

Defendants.

CASE NO: 20STCV24133

Assigned to the Hon. Carolyn B. Kuhl

**NOTICE OF MOTION AND MOTION TO
APPROVE SETTLEMENT PURSUANT TO
THE PRIVATE ATTORNEY GENERAL
ACT OF 2004; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: February 11, 2021
Time: 1:30 p.m.
Dept.: 12
Judge: Hon. Carolyn B. Kuhl

1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that on February 11, 2021 at 1:30 p.m. or as soon thereafter as
4 this matter may be heard by the Hon. Carolyn B. Kuhl in Department 12 of the Spring Street
5 Courthouse, 312 North Spring Street, Los Angeles, California 90012, Plaintiff Gladys Oajaca
6 (“Plaintiff”) will and hereby does move this court for an order approving a settlement pursuant to
7 the Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698 through
8 2699.6 (“PAGA”). Additionally, contingent on the court’s approval of the PAGA settlement,
9 Plaintiff requests that the court dismiss her remaining non-PAGA class claims without prejudice.

10 This motion is based on the included Memorandum of Points and Authorities; the
11 Declaration of Jonathan Melmed; the PAGA Settlement Agreement and Release (the “Settlement
12 Agreement”); the proposed order granting approval of the Settlement Agreement; all other records,
13 pleadings, and papers filed in this action; and upon such other evidence or argument as may be
14 presented to the court at the hearing of this motion.

15 Dated: January 21, 2021

16 **MELMED LAW GROUP P.C.**
17 **BOKHOUR LAW GROUP, P.C.**

18 

19 Jonathan Melmed
20 Mehrdad Bokhour
21 Attorney for Plaintiff and the Aggrieved
22 Employees
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Notice of Motion and Motion2

Table of Contents3

Table of Authorities5

Memorandum of Points and Authorities9

I. Introduction9

II. Factual Background and Procedural History.....11

III. PAGA and Its Requirements12

IV. The Settlement and Distribution of PAGA Penalties14

A. Terms of the Settlement and Distribution of PAGA Penalties 14

B. Payment and the Notice..... 15

C. Settlement Allocation to the Aggrieved Employees..... 16

D. The Release..... 17

V. The Settlement Is Fair and Reasonable, and Warrants Court Approval18

A. Standards for Approval of a PAGA Settlement..... 18

B. The Civil Penalties are Appropriate Under the Circumstances 19

1. *Summary of Plaintiff’s Claims*..... 19

2. *Defendant’s Defenses* 21

3. *The PAGA Settlement Agreement is Reasonable*..... 23

VI. The Requested Attorneys’ Fees and Litigation Costs Are Fair and Reasonable.25

A. Plaintiff’s Counsel Are Entitled to Recover Attorneys’ Fees under the
Common Fund Doctrine in This Qui Tam Action.....25

B. A Fee of One-Third of the Gross Settlement Amount Is Fair and Reasonable
Based upon the Factors Developed by the Courts and Serves the Public Policy
of Attracting Competent Counsel to Litigate These Cases.....28

C. The Requested Litigation Costs Are Fair and Reasonable32

VII. Submission to the LWDA.....33

VIII. The Settlement Administrator.....33

1	IX. Conclusion33
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

TABLE OF AUTHORITIES

CASES

<i>Amaral v. Cintas Corp. No. 2</i> (2008) 163 Cal.App.4th 1157	23
<i>Arias v. Superior Court</i> (2009) 46 Cal.4th 969	10, 12, 13, 14, 17
<i>Bank of America v. Cory</i> (1985) 164 Cal.App.3d 66	26, 27
<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715	28
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472 [100 S.Ct. 745].....	27
<i>Boyd v. Bank of America Corp.</i> (C.D. Cal., Nov. 18, 2014, No. SACV 13-0561-DOC) 2014 WL 6473804	31
<i>Cabrera v. Advantage Sale & Marketing, LLC</i> (Super. Ct. L.A. County, March 12, 2013) Case No. BC485259, 2013 WL 1182822.....	24
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	23
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43.....	28
<i>Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America</i> (2006) 141 Cal.App.4th 46	24
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794.....	28
<i>Fleming v. Covidien Inc.</i> (C.D. Cal., Aug. 12, 2011, No. (OPX)) 2011 WL 7563047	22, 23
<i>Flores v. Starwood Hotels & Resorts Worldwide, Inc.</i> (C.D. Cal. 2017) 253 F.Supp.3d 1074	14
<i>Harris v. Marhoefer</i> (9th Cir. 1994) 24 F.3d 16.....	32
<i>In re Activision Securities Litigation</i> (N.D. Cal. 1989) 723 F.Supp. 1373.....	30
<i>In re Mego Financial Corp. Securities Litigation</i> (9th Cir. 2000) 213 F.3d 454.....	31
<i>Iskanian v. CLS Transportation Los Angeles, LLC</i> (2014) 59 Cal.4th 348.....	9, 10, 18, 26
<i>Keres Romero v. Producers Dairy Foods, Inc.</i> (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841	30
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	19
<i>Laffitte v. Robert Half Internat. Inc.</i> (2016) 1 Cal.5th 480.....	27, 28, 29, 30
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19	27

1	<i>Martin v. FedEx Ground Package System, Inc.</i> (N.D. Cal., Dec. 31, 2008, No. C 06-6883 VRW)	
2	2008 WL 5478576	30
3	<i>McClellan v. Chase Home Finance LLC</i> (C.D. Cal. Aug. 31, 2015, No. SACV 12-1331-JGB)	
4	2015 U.S. Dist. LEXIS 118005	30, 31
5	<i>McCrary v. Elations Company, LLC</i> (C.D. Cal., Feb. 25, 2016, No. EDCV130242JGBSPX)	
6	2016 WL 769703	30
7	<i>Miller v. CEVA Logistics USA, Inc.</i> (E.D. Cal., Aug. 10, 2015, No. 2:13-CV-01321-TLN) 2015	
8	WL 4730176	31
9	<i>Mills v. Electric Auto-Lite Co.</i> (1970) 396 U.S. 375 [90 S.Ct. 616]	27
10	<i>Miranda v. Anderson Enterprises, Inc.</i> (2015) 241 Cal.App.4th 196	32
11	<i>Munoz v. Chipotle Mexican Grill, Inc.</i> (2015) 238 Cal.App.4th 291	32
12	<i>Penaloza v. PPG Industries Inc.</i> (Super. Ct. L.A. County, May 20, 2013) Case No. BC471369,	
13	2013 WL 2917624	24
14	<i>People ex rel. Strathmann v. Acacia Research Corp.</i> (2012) 210 Cal.App.4th 487	26
15	<i>Petersen v. CJ America, Inc.</i> (S.D. Cal., Sept. 30, 2016, No. 14-CV-2570 DMS JLB) 2016 WL	
16	5719823	30
17	<i>Rider v. County of San Diego</i> (1992) 11 Cal.App.4th 1410	32
18	<i>Romero v. Producers Dairy Foods, Inc.</i> (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007	
19	WL 3492841	31
20	<i>Sanders v. City of Los Angeles</i> (1970) 3 Cal.3d 252	28
21	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	27, 28, 32
22	<i>Shahbazian v. Fast Auto Loans, Inc.</i> (C.D. Cal., June 20, 2019, No. 218CV03076ODWKSX)	
23	2019 WL 8955420	31
24	<i>Singer v. Becton Dickinson and Co.</i> (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010	
25	WL 2196104	31
26	<i>Singh v. Roadrunner Intermodal Services, LLC</i> (E.D. Cal., Jan. 24, 2019, No.	
27	115CV01497DADBAM) 2019 WL 316814	31
28		

1	<i>Stuart v. Radioshack Corp.</i> (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645	
2		30, 31
3	<i>Thurman v. Bayshore Transit Management, Inc.</i> (2012) 203 Cal.App.4th 1112.....	22
4	<i>Villalobos v. Calandri Sonrise Farm LP</i> (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX)	
5	2015 WL 12732709.....	19
6	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043.....	29
7	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	28
8	<i>Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.</i> (E.D. Cal., Mar. 27, 2020, No.	
9	117CV00853DADEPG) 2020 WL 1492672.....	31
10	<i>ZB, N.A. v. Superior Court</i> (2019) 8 Cal.5th 175.....	22
11		
12	STATUTES	
13	Bus. & Prof. Code, § 17200.....	9
14	Bus. & Prof. Code, § 17210.....	9
15	Lab. Code § 2699.....	14
16	Lab. Code, § 1194.....	9, 21
17	Lab. Code, § 1194.2.....	9
18	Lab. Code, § 1197.....	9
19	Lab. Code, § 1197.1.....	9
20	Lab. Code, § 1198.....	9
21	Lab. Code, § 1199.....	9
22	Lab. Code, § 201.....	9, 21, 22
23	Lab. Code, § 202.....	9, 21, 22
24	Lab. Code, § 203.....	9, 23
25	Lab. Code, § 204.....	9, 20
26	Lab. Code, § 210.....	23
27	Lab. Code, § 226.....	9
28	Lab. Code, § 226.3.....	9

1	Lab. Code, § 226.7.....	9
2	Lab. Code, § 2698.....	12
3	Lab. Code, § 2699.....	9, 10, 13, 19, 22, 23, 25, 26, 27, 33, 34
4	Lab. Code, § 2699.3.....	11, 13, 27
5	Lab. Code, § 2699.5.....	20
6	Lab. Code, § 2699.6.....	12
7	Lab. Code, § 510.....	9, 21
8	Lab. Code, § 512.....	9
9	Lab. Code, § 90.5.....	13
10		
11	OTHER AUTHORITIES	
12	2003–2004 Sen. Daily J., Vol. 3.....	19
13		
14	REGULATIONS	
15	Cal. Code Regs., tit. 8, § 11050.....	9
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This PAGA representative action arises out of Plaintiff's allegations against Defendants
4 Sunstone Hotel Properties, Inc., Interstate Hotels & Resorts, Inc., and Embassy Suites LAX North
5 (collectively "Defendants"), for violations of: Labor Code sections 201, 202, 203, 204, 226, 226.3,
6 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, and 1199; Industrial Welfare Commission
7 ("IWC") Wage Order No. 5-2001 (Cal. Code Regs., tit. 8, § 11050); and California's Unfair
8 Competition Law ("UCL") pursuant to Business and Professions Code sections 17200 through
9 17210 (collectively, the "Alleged Violations"). Plaintiff has alleged these violations as having
10 been experienced by, among others, all current and former employees of Defendants who were
11 employed at a Covered Hotel (as that term is defined below) from the limited time period of
12 January 15, 2019, through October 31, 2019 (the "Aggrieved Employees").

13 For these Alleged Violations, Plaintiff, as a private attorney general for the State of
14 California, sought civil penalties under PAGA. PAGA actions are a type of *qui tam* action filed
15 on behalf of the state to assist it with labor law enforcement. (*Iskanian v. CLS Transportation Los*
16 *Angeles, LLC* (2014) 59 Cal.4th 348, 380–382.) As such, the state is the real party in interest in a
17 PAGA action. (*Id.* at 382.) Accordingly, and pursuant to PAGA, the Labor and Workforce
18 Development Agency ("LWDA") was timely served with a copy of the Settlement Agreement
19 concurrently with this motion to approve the PAGA settlement (this "Motion"). (Lab. Code, §
20 2699, subd. (l)(2); Melmed Decl., ¶ 41.)

21 Plaintiff and the Aggrieved Employees contend that between January 15, 2019, and
22 October 31, 2019 (the "PAGA Period"), Defendants committed the Alleged Violations.
23 Defendants have denied and continue to deny every material factual allegation and alleged claim
24 asserted in this case and denies that Plaintiff or any other alleged Aggrieved Employee has been
25 harmed based on the allegations raised in the Plaintiff's complaint. Plaintiff and Defendants
26 (collectively, the "Parties") vigorously dispute the merits of the claims and defenses.

27 The Parties agreed to mediate the claims asserted in Plaintiff's complaint. In preparation
28 for mediation, the Parties exchanged various documents and information that allowed both sides

1 to evaluate the potential exposure and potential risk, such as a review of Defendants' employee
2 handbook, the assigned schedules for the Aggrieved Employees, thousands of pages of wage
3 statements, and written copies evidencing Defendants' policies and practices. During this process,
4 Plaintiff's counsel analyzed, researched, and investigated the potential issues, including matters
5 related to the calculation of PAGA damages, interviews of Plaintiff, trial management, and
6 appellate issues and risks.

7 On December 9, 2020, the Parties attended a virtual all-day mediation with experienced
8 wage-and-hour mediator Tripper Ortman, Esq. There, the Parties reached an agreement in
9 principle to resolve the Action and spent the next few weeks proposing and revising settlement
10 terms. Now, with a comprehensive Settlement Agreement that resolves the claims alleged in this
11 case, Plaintiff seeks this Court's approval of a \$340,000 PAGA settlement involving
12 approximately 707 Aggrieved Employees. The settlement merits full approval because it fulfills
13 the purpose of PAGA (i.e., to deter violations of the Labor Code and secure obedience of
14 California's labor laws; to end ongoing violations of the Labor Code either through injunctive
15 relief or a defendant's voluntary changes in light of a PAGA action; and to provide relief that is
16 genuine, meaningful, and consistent with California's goal of benefitting the public through
17 enforcement of labor laws).

18 Because this is a PAGA-only settlement, the process for approval is fairly straight-forward:
19 "The superior court shall review and approve any settlement of any civil action filed pursuant to
20 this part." (Lab. Code, § 2699, subd. (1)(2).) Based on the California Supreme Court's holdings
21 in *Arias v. Superior Court* (2009) 46 Cal.4th 969 and *Iskanian v. CLS Transportation Los Angeles,*
22 *LLC* (2014) 59 Cal.4th 348, there is no requirement under PAGA for Plaintiff to establish the
23 requirements of class certification (i.e. numerosity, typicality, commonality and adequacy) nor is
24 there the usual two-step preliminary and final approval process as found in class actions. Rather,
25 this PAGA-only settlement merely requires a one-step review and approval process.

26 For these reasons and those discussed below, the Parties now seek the court's approval of
27 the Settlement Agreement.
28

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On January 15, 2020, Plaintiff submitted a letter to the LWDA to notify it, pursuant to PAGA, of Plaintiff's intent to seek civil penalties under PAGA for the Alleged Violations. (Declaration of Jonathan Melmed ("Melmed Decl."), ¶ 10.) This notice letter is required under Labor Code section 2699.3, subdivision (a)(1)(A), as a prerequisite to bringing a PAGA representative claim against an employer. The LWDA did not respond to this notice within 65 calendar days, thus allowing Plaintiff to file the instant lawsuit. (Lab. Code, § 2699.3, subd. (a)(2)(A); Melmed Decl., ¶ 10.)

On June 24, 2020, Plaintiff filed a class and PAGA representative action complaint in the Superior Court of California for the County of Los Angeles (the "Action") asserting, among other things, a representative claim for civil penalties payable to herself, other aggrieved employees, and the State of California pursuant to PAGA seeking penalties for Defendants' Alleged Violations. (Melmed Decl., ¶ 11.)

Although Defendants denied the allegations and vowed to vigorously defend against them, the parties agreed to attend mediation. (Melmed Decl., ¶ 13.) In preparation for mediation, the Parties exchanged various documents and information that allowed both sides to evaluate the potential exposure and potential risk, such as a review of Defendants' employee handbook, the assigned schedules for the Aggrieved Employees, thousands of pages of wage statements, and written copies evidencing Defendants' policies and practices. (Melmed Decl., ¶ 14.) During this process, Plaintiff's counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of PAGA damages, interviews of Plaintiff, trial management, and appellate issues and risks. (Melmed Decl., ¶ 14.)

On December 9, 2020, the Parties attended a virtual all-day mediation with experienced wage-and-hour mediator Tripper Ortman, Esq. of Ortman Mediation. (Melmed Decl., ¶ 15.) During the mediation it became clear that, due to the existence of prior class action settlements involving Defendants, as well as arbitration agreements containing a class action waiver, proceeding on a class basis was untenable. (Melmed Decl., ¶ 15.) Nevertheless, the Parties were able to reach an agreement in principle to resolve the Action on a PAGA-only basis and spent the

1 next few weeks proposing and revising settlement terms. (Melmed Decl., ¶ 15.) Thereafter, the
2 Parties negotiated and finalized the terms of the settlement memorialized in a long-form Settlement
3 Agreement, which was executed on or about December 28, 2020. (Melmed Decl., ¶ 16.)

4 The Parties concluded that there were benefits associated with settling the Action and
5 concluded, after taking into account the sharply disputed factual and legal issues involved in this
6 litigation, the risks associated with further prosecution, the substantial benefits to be received as
7 set forth in the Settlement Agreement, as well as Plaintiff’s individual claims, that settlement was
8 in the best interests of all parties involved. (Melmed Decl., ¶ 17.) The Parties believe that
9 settlement on the terms set forth in the Settlement Agreement is in the best interest of the Plaintiffs,
10 the LWDA, the Aggrieved Employees covered by PAGA, and Defendants, and is fair and
11 reasonable. The Parties now present the Settlement Agreement to this court for approval.
12 (Melmed Decl., ¶ 17.)

13 **III. PAGA AND ITS REQUIREMENTS**

14 PAGA provides an enforcement mechanism for California’s labor laws by enlisting
15 individual plaintiffs as private attorneys general to recover civil penalties for the state, with a share
16 also going to the individual plaintiffs and other aggrieved employees. (Lab. Code, §§ 2698–
17 2699.6.) Due to the lack of financing for California’s agencies, and the substantial number of
18 Labor Code violations by California employers, the California Legislature found that it was in the
19 public interest to allow aggrieved employees to act as “private attorneys general” to enforce and
20 recover civil penalties on behalf of the State of California for Labor Code violations committed by
21 employers. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.) As the Legislature that adopted
22 PAGA observed, “the only meaningful deterrent to unlawful conduct is the vigorous assessment
23 and collection of civil penalties as provided in the Labor Code.” (Stats. 2003, ch. 906, § 1(b).)

24 Moreover, the Labor Code’s primary purpose is to “ensure employees are not required or
25 permitted to work under substandard unlawful conditions . . . and to protect employers who
26 comply with the law from those who attempt to gain a competitive advantage at the expense of
27 their workers by failing to comply with minimum labor standards.” (Lab. Code, § 90.5, subd. (a).)
28 Therefore, the Legislature determined that “adequate financing of labor law enforcement was

1 necessary to achieve maximum compliance with state labor laws, that staffing levels for labor law
2 enforcement agencies had declined and were unlikely to keep pace with the future growth of the
3 labor market, and that it was therefore in the public interest to allow aggrieved employees, acting
4 as private attorneys general, to recover civil penalties for Labor Code violations, with the
5 understanding that labor law enforcement agencies were to retain primacy over private
6 enforcement efforts.” (*Arias v. Superior Court, supra*, 46 Cal.4th at p. 980.) Thus, Plaintiff, acting
7 as a private attorney general and proxy for the State of California, filed this action seeking civil
8 penalties for Defendants’ alleged violations of the Labor Code.

9 Penalties recovered under PAGA “shall be distributed as follows: 75 percent to the Labor
10 and Workforce Development Agency for enforcement of labor laws and education of employers
11 and employees about their rights and responsibilities under this code and 25 percent to the
12 aggrieved employees.” (Lab. Code, § 2699, subd. (i).)

13 Before filing a PAGA action, an aggrieved employee must first provide written notice to
14 the LWDA and the employer of the particular Labor Code violations the aggrieved employee
15 alleges the employer has violated. (Lab. Code, § 2699.3, subd. (a)(1).) This notice provides the
16 LWDA with the opportunity to investigate and prosecute the claim, if it so chooses. The employee
17 may only sue on the state’s behalf if the LWDA fails to respond to the notice within 65 days,
18 responds that it does not intend to investigate, or investigates and does not issue a citation within
19 185 days. (Lab. Code, §§ 2699, 2699.3, subd. (a)(2).) In this case, Plaintiff provided the LWDA
20 with a notice letter advising it of the alleged Labor Code violations, but the LWDA deferred the
21 prosecution of these violations to Plaintiff and her attorneys by failing to respond to Plaintiff’s
22 notice within 65 days. (Melmed Decl., ¶ 10.) Accordingly, the Settlement Agreement and the
23 \$340,000.00 common fund created by it for the benefit of the State of California and the Aggrieved
24 Employees, is solely the result of the work performed by Plaintiff and her attorneys on this case—
25 all while the Aggrieved Employees will preserve their own separate individual claims should they
26 wish to pursue them.

27 Any settlement of a PAGA action brought by an aggrieved employee must be approved by
28 the court. (Lab. Code § 2699, subd. (l)(2).) In 2009, the California Supreme Court considered the

PAGA approval process and, more specifically, whether an aggrieved employee needs to meet class certification requirements. (*Arias v. Superior Court*, *supra*, 46 Cal.4th 969, 980–986.) After a substantial review of the legislative history of PAGA, the Court held that an aggrieved employee’s PAGA representative action brought on behalf of the State of California and other aggrieved employees against an employer does not need to meet the requirements for class certification nor does there need to be notice to the other employees. (*Id.* at pp. 975, 980–988.) As the court held, a plaintiff bringing suit under PAGA does so as the proxy or agent of California’s labor law enforcement agencies. (*Id.* at p. 986.) Thus, the court simply reviews the settlement and approves it if it is deemed to be fair and adequate in view of the purposes and policies of PAGA. (See *Flores v. Starwood Hotels & Resorts Worldwide, Inc.* (C.D. Cal. 2017) 253 F.Supp.3d 1074, 1077 [reviewing a PAGA settlement to determine whether it was “fair and adequate in view of the purposes and policies of the statute”].)

IV. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

The following is a summary of the principal terms of the Settlement Agreement.

A. TERMS OF THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

The settlement provides that Defendants will pay a non-reversionary settlement amount of three hundred and forty thousand dollars (\$340,000.00) (the “Gross Settlement Amount”), inclusive of payments to the LWDA and Aggrieved Employees, attorneys’ fees and litigation costs, Plaintiff’s enhancement award, and third-party administrator fees. (The Settlement Agreement is attached as **Exhibit 1** to Melmed Decl.) After payment of the attorneys’ fees and costs, Plaintiff’s enhancement award, and third-party administrator fees, the remaining funds—i.e., the “Net Settlement Amount”—is approximately \$200,443.42

Seventy-Five Percent (75%) of the Net Settlement Amount shall be distributed to the LWDA consistent with the Settlement Agreement. The Settlement Agreement provides for a fair and equitable means of allocating the remaining twenty-five percent (25%) of the Net Settlement Amount to the Aggrieved Employees. The allocation among the Aggrieved Employees shall be determined by dividing the number of pay periods he or she worked during the PAGA Period by

1 the total aggregate number of pay periods worked by all Aggrieved Employees during the PAGA
2 Period and then multiplying this amount by the 25% of the Net Settlement Amount allocated to
3 the Aggrieved Employees. (Settlement Agreement, § III, ¶ 5(a).)

4 **B. PAYMENT AND THE NOTICE**

5 Within seven business days of the “Effective Date,” which is defined as the date that this
6 court orders approval of the Settlement Agreement (Settlement Agreement, § I, subd. (6)),
7 Defendants are required to provide the settlement administrator with information about the
8 Aggrieved Employees. (Settlement Agreement, § IV, ¶ 2.) This information will include each
9 Aggrieved Employee’s full name, last known mailing address, last known telephone number, start
10 date(s) of employment, end date(s) of employment, and Social Security numbers, to the extent that
11 information is known to Defendants. (Settlement Agreement, § IV, ¶ 2.) The settlement
12 administrator will then use this information to calculate the amount to be received by each
13 Aggrieved Employee. (Settlement Agreement, § IV, ¶ 3.) The settlement administrator will
14 maintain the list in confidence, and access shall be limited to those with a need to use the list as
15 part of the administration of the Settlement. (Settlement Agreement, § IV, ¶ 2.) Upon receipt of
16 the information for Aggrieved Employees, the Settlement Administrator will perform a search on
17 the National Change of Address database to ensure the Aggrieved Employees’ addresses are up-
18 to-date. (Settlement Agreement, § IV, ¶ 3.)

19 Within five business days of receiving the Aggrieved Employees’ information from
20 Defendants, the settlement administrator will circulate to counsel for both Parties an anonymized
21 spreadsheet containing the anticipated individual PAGA payments to each Aggrieved Employee
22 and the data used to calculate said payments. (Settlement Agreement, § IV, ¶ 2.)

23 Within 30 calendar days of the Effective Date, Defendants are required to deposit the Gross
24 Settlement Amount with the settlement administrator. (Settlement Agreement, § III, ¶ 2.)
25 Thereafter, and within seven calendar days of receiving approval from counsel of the payment
26 calculations as described above, the settlement administrator will mail copies of an explanatory
27 letter, which has been mutually approved by the Parties, along with individual PAGA payments to
28 all Aggrieved Employees via regular First-Class U.S. Mail. (Settlement Agreement, § IV, ¶ 3.)

1 In the event that an Aggrieved Employee's letter and check mailed by the settlement
2 administrator is returned as non-deliverable on or before the check-cashing deadline (defined by
3 the Settlement Agreement as 180 days after issuance), it will be sent promptly via regular First-
4 Class U.S. Mail to the forwarding address affixed thereto. (Settlement Agreement, § IV, ¶ 4.) If
5 no forwarding address is provided, the settlement administrator will promptly attempt to determine
6 the correct address using a skip-trace or other search using the name, address or Social Security
7 number of the Aggrieved Employee involved and will perform a single re-mailing. (Settlement
8 Agreement, § IV, ¶ 4.) If a better address is not found or the undeliverable package is ultimately
9 returned without a forwarding address, neither the Settlement Administrator, Defendants, or
10 Plaintiff's counsel shall be required to take further action. (Settlement Agreement, § IV, ¶ 4.)

11 Funds represented by checks returned as undeliverable after a re-mailing, and funds
12 represented by checks remaining uncashed for more than 180 days after issuance, will be tendered
13 by the settlement administrator to the Los Angeles Regional Food Bank as a *cy pres* recipient.
14 (Settlement Agreement, § IV, ¶ 4.) If for any reason the court does not approve this *cy pres*
15 recipient, the remaining funds will be tendered to another mutually agreeable *cy pres* recipient or
16 the State Controller's office in the name of the Aggrieved Employee. (Settlement Agreement, §
17 IV, ¶ 4.)

18 Finally, within two business days of receiving approval from counsel of the payment
19 calculations, the settlement administrator will distribute the following additional payments: (1) the
20 75% share of the Net Settlement Amount to the LWDA; (2) court-approved attorneys' fees and
21 costs to Plaintiff's counsel; (3) court-approved enhancement award to Plaintiff; and (4) court-
22 approved administration costs to the settlement administrator. (Settlement Agreement, § IV, ¶ 5.)

23 C. SETTLEMENT ALLOCATION TO THE AGGRIEVED EMPLOYEES

24 As noted, twenty-five percent (25%) of the PAGA Penalties will be allocated to the
25 Aggrieved Employees. (Settlement Agreement, § I, ¶ 12.) Based on the numbers provided by
26 Defendants, approximately 707 current and former employees will share in this fund. (Settlement
27 Agreement, § I, ¶ 2.) The Settlement Agreement provides a fair and equitable means of allocating
28 this fund. The allocation among the Aggrieved Employees shall be determined by dividing the

1 number of pay periods he or she worked during the PAGA Period by the total aggregate number
2 of pay periods worked by all Aggrieved Employees during the PAGA Period and then multiplying
3 this amount by the Aggrieved Employee's portion of the Net Settlement Amount. (Settlement
4 Agreement, § III, ¶ 5(a).) The portion of each Aggrieved Employee's share will be treated as non-
5 wage income and reported by the settlement administrator on IRS Form 1099, as required by law.
6 (Settlement Agreement, § IV, ¶ 7.)

7 **D. THE RELEASE**

8 The California Supreme Court has explained that a judgment in “a representative action
9 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of
10 2004 . . . is binding not only on the named employee plaintiff but also on government agencies and
11 any aggrieved employee not a party to the proceeding.” (*Arias v. Superior Court, supra*, 46 Cal.4th
12 969, 985.) In accordance with this rule, the PAGA claims released by the Aggrieved Employees
13 narrowly includes only the claims under PAGA that were pled in Plaintiff's complaint, or which
14 could have been pled in her complaint under PAGA based on the factual allegations in the Action,
15 that arose during the PAGA Period. (Settlement Agreement, § I, ¶ 14.)

16 In accordance with *Arias*, the order that the Parties request this court enter is intended to
17 be binding not only on the named employee plaintiff but also on government agencies and any
18 aggrieved employee not a party to the proceeding. (Settlement Agreement, § III, ¶ 7.) The release
19 in the Settlement Agreements includes:

20 “[C]laims pursuant to PAGA that are pled in Plaintiff's Complaint, or which could
21 have been pled under the PAGA as to Aggrieved Employees at the Covered Hotels
22 during the PAGA Period, based on the factual allegations in Plaintiff's PAGA letter
23 and the Action” (Settlement Agreement, § III ¶ 7.)

24 The phrase “Covered Hotels” is defined by the Settlement Agreement to mean the
25 following six hotels: Embassy Suites LAX North; Hilton Garden Inn Los Angeles/Hollywood;
26 Residence Inn Beverly Hills; Courtyard Los Angeles; Sheraton Cerritos at Towne Center; and
27 Westin San Diego. (Settlement Agreement, § I ¶ 4.)
28

1 Plaintiff has executed an additional general release, partially in exchange for her
2 enhancement award of \$7,500.00, which includes all claims, whether known or unknown, under
3 federal law or state law (including her individual wage and hour claims). (Settlement Agreement,
4 § III, ¶¶ 4(b), 6.) This general release does not bind other aggrieved employees.

5 **V. THE SETTLEMENT IS FAIR AND REASONABLE, AND WARRANTS COURT**
6 **APPROVAL**

7 **A. STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT**

8 The legislative history of PAGA makes little mention of the approval requirements in
9 Labor Code section 2699, subdivision (l). The original version of PAGA did not contain the court
10 approval requirement now codified in subdivision (l). That subdivision was added as part of the
11 amendments to PAGA that became effective on August 11, 2004. (Stats. 2004, ch. 221 (S.B.1809),
12 § 3, eff. Aug. 11, 2004.) Senator Joseph L. Dunn authored both the original PAGA bill (S.B. 796)
13 and the amendments (S.B. 1809). On July 29, 2004, during the consideration of the amendments
14 in S.B. 1809, Senator Dunn sent a letter addressed to the President Pro Tempore of the Senate,
15 which was published in the Senate Daily Journal, “to clarify the intent of subdivision (l)” of Labor
16 Code section 2699. (2003–2004 Sen. Daily J., Vol. 3, at pp. 4754–4755 (July 29, 2004)¹.) In the
17 letter, Senator Dunn stated:

18 “The purpose of the court review of penalties in subdivision (l) is to ensure that
19 settlements involving penalties arising under Labor Code Section 2699 do not
20 undercut the dual statutory purposes of punishment and deterrence, or result in
21 unjust, arbitrary and oppressive, or confiscatory settlements.” (*Id.* at pp. 4754–
22 4755.)

23 These broad criteria appear to give the Court wide latitude in determining whether to
24 approve the penalties proposed as part of a PAGA settlement. Interestingly, the criteria focus on
25 the effect the penalties may have on the defendant-employer rather than the LWDA or the
26 aggrieved employees who will receive the penalties. (See *Iskanian v. CLS Transportation Los*
27 *Angeles, LLC*, *supra*, 59 Cal.4th 348, 383 [while the state has an interest “in receiving the proceeds

28 ¹ Available at <http://leginfo.ca.gov/pdf/SenateJournal-03-04v3.pdf>.

of civil penalties,” the penalties are “used to deter violations.”].) This is different than the analysis of a class action settlement, which typically focuses on the amount received by the class and compares that to the reasonable range of potential outcomes in this case. (See, e.g., *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.) Moreover, “there is not requirement that the Court certify a PAGA claim for representative treatment” as in a class action. (*Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal., July 22, 2015, No. CV122615PSGJEMX) 2015 WL 12732709, at *5.)

B. THE CIVIL PENALTIES ARE APPROPRIATE UNDER THE CIRCUMSTANCES

1. Summary of Plaintiff’s Claims

Plaintiff’s claims stemmed from two core Labor Code violations: **(1)** Defendants’ failure to pay timely wages, and **(2)** Defendants’ failure to pay overtime at the correct legal rate. (Melmed Decl., ¶ 20.) The remaining Labor Code claims plead were derivative—in some form or another—of these two core violations. (Melmed Decl., ¶ 20.)

Labor Code section 204 expressly requires that “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Pursuant to Labor Code section 204, subdivision (d), all wages must be paid within seven calendar days after the close of the payroll period. Violations of Labor Code section 204 are non-curable under PAGA pursuant to Labor Code section 2699.5.

Here, a review of the wage statements issued to the Aggrieved Employees revealed that Defendants regularly paid Plaintiff and a subgroup of the Aggrieved Employees late. (Melmed Decl., ¶ 21.) For example, in many of the issued wage statements, it was apparent that Defendants did not pay Plaintiff and the Aggrieved Employees until *eight or more* days after the close of the payroll period. (Melmed Decl., ¶ 21.)

However, through informal discovery, Plaintiff learned that only six of Defendants’ 112 hotels paid their employees late in the manner described above. (Melmed Decl., ¶ 22.) These hotels are the Covered Hotels defined above (i.e., Hilton Garden Inn Los Angeles, the Embassy

1 Suites LAX North, the Residence Inn Beverly Hills, the Courtyard Los Angeles, the Sheraton
2 Cerritos Towne Center, and the Westin San Diego). (Melmed Decl., ¶ 22.) Further, during
3 informal discovery, Plaintiff discovered that the late payment issue was fixed (or “cured”) starting
4 on October 31, 2019, further limiting the scope of recoverable penalties. (Melmed Decl., ¶ 22.)

5 As to Plaintiff’s claim for unpaid overtime wages, Labor Code section 510 requires an
6 employer to compensate an employee who works more than eight (8) hours in one workday, forty
7 (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day
8 no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code
9 section 510 obligates employers to compensate employees at no less than twice the regular rate of
10 pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours
11 on the seventh consecutive day of work. In accordance with Labor Code section 1194, Plaintiff
12 and the other Aggrieved Employees could not agree to work for a lesser wage. Pursuant to section
13 3 of the Wage Order, employees shall not be employed more than eight (8) hours in any workday
14 or more than 40 hours in any workweek unless the employee receives one and one-half (1½) times
15 such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.

16 In this case, Plaintiff alleged that during the PAGA Period, Defendants had a consistent
17 policy of failing to pay overtime wages at the proper amounts to Plaintiff and the Aggrieved
18 Employees. (Melmed Decl., ¶ 23.) Specifically, Defendants failed to include all compensation
19 when calculating the regular rate of pay used in overtime calculations and when paying overtime.
20 (Melmed Decl., ¶ 23.) For example, although Defendants consistently and regularly paid
21 employees various nondiscretionary bonuses and other forms of payment, Defendants omitted
22 such bonuses when calculating the regular rate of pay used in overtime calculations and when
23 paying overtime to Plaintiff and the other Aggrieved Employees. (Melmed Decl., ¶ 23.)

24 Plaintiff argued that due to Defendants’ failure to pay to Plaintiff and the Aggrieved
25 Employees the correct amount of overtime wages, the wage statements issued by Defendants
26 arguably do not indicate the correct amount of gross wages earned, the correct hourly rate in effect
27 during overtime hours worked, or the correct net wages earned. (Melmed Decl., ¶ 24.)
28

1 Plaintiff also argued that, under Labor Code sections 201 and 202, an employer must
2 provide an employee wages at the time of discharge or within up to seventy-two (72) hours of their
3 resignation. (Melmed Decl., ¶ 25.) Labor Code section 203 provides “if an employer willfully
4 fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the
5 employee shall continue as a penalty” for up to 30 days. (Lab. Code, § 203.) As described above,
6 Defendants failed to pay the Aggrieved Employees whose employment ended during the relevant
7 period all overtime wages owed within the time constraints proscribed in Labor Code sections 201
8 and 202 at the time of their separation. Thus, as result of Defendants’ faulty policies described
9 above, Plaintiff and the Aggrieved Employees whose employment ended without being
10 compensated for each and every hour worked at the appropriate overtime rate are owed waiting
11 time penalties (or at least are owed PAGA penalties for Defendant’s failure to pay all wages due
12 upon termination). (Melmed Decl., ¶ 25.)

13 **2. Defendant’s Defenses**

14 While Plaintiff believes the claims are meritorious and that they would have recovered
15 unreduced penalties, Defendants asserted numerous defenses to the claims. (Melmed Decl., at ¶
16 26.) For the following reasons, Plaintiff believes this settlement to be reasonable.

17 First, Defendants argued that they fully complied with the law, but even if any Aggrieved
18 Employees were paid late, those late payments were unintentional on Defendants’ part and had
19 minimal, if any, effect on the Aggrieved Employees. (Melmed Decl., at ¶ 27.) Defendants argued
20 that the first notice it had of any alleged violation was Plaintiff’s PAGA notice, which was received
21 shortly after January 15, 2020. (Melmed Decl., at ¶ 27.) Defendants argued they immediately
22 began work to resolve the pay cycle discrepancy. (Melmed Decl., at ¶ 27.)

23 Second, Defendants argued the lack of willfulness or intent to commit violations of the
24 Labor Code is key in this case because the court has discretion to adjust the award of PAGA
25 penalties “if, based on the facts and circumstances of the particular case, to do otherwise would
26 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Lab. Code, § 2699,
27 subd. (e)(2); Melmed Decl., at ¶ 28.) Defendants thus argued that, given there is no evidence
28 Defendants willfully, knowingly, or intentionally violated California law, it is exceedingly

1 unlikely that the court would award the full amount (if any) of the civil penalties Plaintiff seeks
2 for the above-noted alleged violations. (Melmed Decl., at ¶ 28.)

3 Third, Defendants argued that the potential penalties are minimal. (Melmed Decl., at ¶ 29.)
4 Defendants argued that Labor Code section 210 provides the statutory penalty for an alleged
5 penalty under Labor Code section 204. (Melmed Decl., at ¶ 29.) PAGA does not provide an
6 additional penalty, because, by its terms, it only applies a penalty if there is no other penalty (i.e.,
7 there should be no “stacking” of penalties). (Melmed Decl., at ¶ 29.) Under Labor Code section
8 210 the potential penalty is: **(1)** For any initial violation, one hundred dollars (\$100) for each
9 failure to pay each employee; **(2)** For each subsequent violation, or any willful or intentional
10 violation, two hundred dollars (\$200) for each failure to pay each employee. In addition to the
11 argument discussed above that no “subsequent” violation can apply until a violation has been
12 noticed and adjudicated, there also is an argument that, the Aggrieved Employees were technically
13 only paid late on their first pay period and were thereafter paid regularly bi-weekly, there is thus
14 arguably no subsequent violation. (Melmed Decl., at ¶ 29.)

15 Defendants maintained that, given their good faith and *de minimis* defenses, this court
16 would exercise its discretion to substantially reduce any PAGA penalties if it were to find
17 Defendants liable for any of Plaintiff’s claims. (Melmed Decl., at ¶ 30; see also Lab. Code §§ 203,
18 2699, subd. (e)(2); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112,
19 1136 [“We conclude that the trial court reasonably determined that an award of the maximum
20 penalty amount would be unjust under the facts and circumstances of this case.”] disapproved on
21 other grounds by *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175; *Fleming v. Covidien Inc.* (C.D.
22 Cal., Aug. 12, 2011, No. (OPX)) 2011 WL 7563047, at *4 [reducing PAGA penalties for wage
23 statement violations from \$2,800,000 to \$500,000, because “the aggrieved employees suffered no
24 injury” as a result of the violations, the defendants “were not aware” their wage statements violated
25 the law, and the defendants “took prompt steps to correct all violations once notified.”].)

26 Fourth, Defendants argued that Plaintiff could only seek PAGA penalties at the \$100
27 “initial” violation rate, as opposed to the \$200 “subsequent” violation rate, as before Plaintiff
28 initiated this action, Defendants had never been put on notice by a court or the Labor

1 Commissioner that its practices violated the Labor Code. (Melmed Decl., at ¶ 31; *Amaral v. Cintas*
2 *Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1209 [finding “initial” violation rate applies until
3 employer has been notified that it is violating a Labor Code provision].) As a result, in determining
4 Defendants’ *maximum* exposure, Plaintiff gave Defendants the benefit of the initial \$100 per pay
5 period violation rate as opposed to the \$200 subsequent per violation rate in calculating penalties.
6 (Melmed Decl., at ¶ 31.) In light of the foregoing, Plaintiff’s counsel took into consideration the
7 defenses raised and applied the appropriate discounts to ascertain Defendants’ *realistic* exposure.
8 (Melmed Decl., at ¶ 31.)

9 **3. The PAGA Settlement Agreement is Reasonable**

10 Here, the penalties are appropriate when considered in light of the principles discussed in
11 Senator Dunn’s letter, discussed above. Plaintiff contends that a non-reversionary Gross
12 Settlement Amount of \$340,000.00 represents an excellent recovery that is large enough to punish
13 or deter Defendants, while not being so great as to be unjust, arbitrary, oppressive, or confiscatory.
14 The proposed Settlement Agreement provides a fair and reasonable monetary recovery for the
15 LWDA and the Aggrieved Employees in the face of hotly-disputed claims. (Melmed Decl., at ¶
16 32.)

17 As mentioned above, courts can, and regularly do, exercise their discretion to reduce the
18 amount of PAGA penalties. (See, e.g., *Fleming v. Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No.
19 (OPX)) 2011 WL 7563047, at *4.) For example, in *Carrington v. Starbucks Corp.* (2018) 30
20 Cal.App.5th 504, the California Court of Appeals deemed it reasonable to award just five dollars
21 per PAGA violation. (*Id.* at 517.) Here, with 12,000 pay periods at issue, under *Carrington* an
22 appropriate settlement amount could be as low as \$60,000. (Melmed Decl., at ¶ 33.) Instead,
23 despite the risks of the case identified through mediation and exchange of documents and
24 information with opposing counsel, the Gross Settlement Amount of \$340,000 represents a \$28.33
25 penalty for each PAGA violation assuming a 100% violation rate for all pay periods in the PAGA
26 period. (Melmed Decl., at ¶ 34.) Accordingly, the proposed settlement reflects a better result than
27 some actual PAGA trials that were litigated to completion. Thus, the PAGA settlement amount is
28 reasonable in light of significant risks and uncertainties associated with the PAGA claims in this

1 case.

2 Moreover, the scope of the release of the PAGA Settlement is necessarily strictly confined
3 to those PAGA civil penalties that were or could have been alleged in the operative complaint.
4 (Melmed Decl., at ¶ 35.) The released claims do not, for example, release any Aggrieved
5 Employee's non-PAGA claims for alleged violations of the Labor Code. (Settlement Agreement,
6 § III, ¶ 7.) Individual Aggrieved Employees who believe they have been denied, for example,
7 minimum wage or overtime, can maintain those rights and pursue those claims in another
8 proceeding. In that respect, the Settlement Agreement also requires that each Aggrieved Employee
9 receive a notice that describes this litigation and the Settlement sum. (Settlement Agreement, §
10 IV, ¶ 3.) The Parties agree that this notice will educate Aggrieved Employees as to the
11 requirements of the Labor Code, something that is in the public interest and consistent with
12 PAGA's purposes. (See Lab. Code, § 2699, subd. (j) [stating that civil penalties recovered under
13 PAGA shall be distributed to the LWDA for, among other things, "education of employers and
14 employees about their rights and responsibilities under this code"].)

15 Additionally, the proposed Settlement, even with deductions, provides a substantial sum of
16 approximately \$150,332.56 to the State of California and \$50,110.86 to Aggrieved Employees.
17 The Settlement Agreement secured by Plaintiff and her counsel here is greater than other PAGA
18 penalty awards approved by California state courts, which often range between \$7,500.00 and
19 \$15,000.00 for PAGA claims impacting hundreds or thousands of individuals, resulting in much
20 lower PAGA penalty payments on a per capita basis. (See, e.g., *Penaloza v. PPG Industries Inc.*
21 (Super. Ct. L.A. County, May 20, 2013) Case No. BC471369, 2013 WL 2917624 at *2 [approving
22 PAGA penalties of \$5,000.00 to class of 667 members]; *Cabrera v. Advantage Sale & Marketing,*
23 *LLC* (Super. Ct. L.A. County, March 12, 2013) Case No. BC485259, 2013 WL 1182822
24 [approving PAGA penalties of \$10,000.00 for class of approximately 3,000 members]; Melmed
25 Decl., at ¶ 36.)

26 Finally, public policy strongly favors the settlement of litigation. (*Consumer Advocacy*
27 *Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.) Because the
28 proposed Settlement Agreement is neither unjust nor ignores the public interest, it should be

1 approved. (Melmed Decl., at ¶ 37.)

2 Accordingly, the gross PAGA penalty payment is extremely reasonable in light of the risks
3 and uncertainties associated with the PAGA claims in this case. (Melmed Decl., at ¶ 38.) The
4 Settlement Agreement commits Defendants to pay at least \$200,443.42 in PAGA penalties (after
5 fees and costs), which is large enough to punish Defendants for alleged violations and to deter
6 such alleged conduct in the future. (Melmed Decl., at ¶ 38.) At the same time, in light of the
7 alleged violations and defenses thereto, it is not so large as to be unjust, oppressive or confiscatory.
8 (Melmed Decl., at ¶ 38.) Based upon the foregoing, the proposed settlement is fair, reasonable,
9 and in the best interest of the state of California and the PAGA Members. (Melmed Decl., at ¶
10 38.)

11 **VI. THE REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS ARE FAIR**
12 **AND REASONABLE**

13 For their efforts and the risk that they undertook in obtaining a common fund settlement
14 that benefits the LWDA and Aggrieved Employees, the Parties allocated one-third of the Gross
15 Settlement Amount to Plaintiff's Counsel for reasonable attorneys' fees, plus actual litigation
16 costs. These fees are warranted under the law and within the range of fees commonly awarded in
17 similar cases.

18 **A. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER ATTORNEYS'**
19 **FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM**
20 **ACTION**

21 PAGA provides that a Plaintiff is entitled to recover reasonable attorneys' fees, expenses,
22 and costs under Labor Code section 2699, subdivision (g)(1), which states that, "Any employee
23 who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs,
24 including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or
25 subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3." As discussed below, in
26 a *qui tam* action, reasonable attorneys' fees and costs are typically awarded under the common
27 fund doctrine where, as here, the litigation creates a common fund of money in a specific amount
28 for the benefit of others.

1 “A qui tam action is one brought under a statute that allows a private person to sue as a
2 private attorney general to recover damages or penalties, all or part of which will be paid to the
3 government.” (*People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487,
4 491–492.) “A qui tam action ‘is a type of private attorney general lawsuit’ [citation], in which ‘the
5 qui tam plaintiff stands in the shoes of the state or political subdivision [citation].’” (*Id.* at p. 501.)

6 As the name of the PAGA statute makes clear (i.e., the “Labor Code Private Attorneys
7 General Act”), a PAGA action is a qui tam action because the statute allows the employee-plaintiff,
8 acting as the proxy of the state’s labor law enforcement agency, to sue his or her employer for
9 Labor Code violations and recover civil penalties that otherwise could only have been assessed
10 and collected by the LWDA. (*Iskanian v. CLS Transportation Los Angeles, LLC, supra*, 59 Cal.4th
11 348, 380.) “A PAGA representative action is therefore a type of qui tam action.” (*Id.* at p. 382.)
12 Indeed, the majority of the civil penalties recovered in a PAGA action are paid to the State of
13 California, with a smaller portion paid to the aggrieved employees (e.g., 75% paid to the state;
14 25% paid to the aggrieved employees). (Lab. Code, § 2699, subd. (i).)

15 As here, where a common fund is created in a qui tam action by the successful litigation of
16 a plaintiff and her attorneys, the plaintiff’s attorneys are entitled to recover their fees from the
17 common fund. (*Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89–91.) In *Bank of America*,
18 California taxpayers compelled the State Controller to enforce the Unclaimed Property Law
19 against banks who were retaining accounts that should have been turned over to the State. Because
20 of the success of the taxpayers’ lawsuit, a common fund was created in favor of some depositors
21 and the State of California. (*Id.* at pp. 89–91.) When the taxpayers’ attorneys sought recovery of
22 their attorney’s fees from the judgment under the common fund doctrine, the Controller opposed
23 the request. The Court of Appeal affirmed the trial court’s fee award to the taxpayers’ counsel
24 under the common fund doctrine stating:

25 “Those benefiting from the recovery of the fund, in this case some depositors and
26 eventually the People of the State of California, must bear their share of the cost of
27 litigation. Fees for taxpayers’ attorneys will be deducted from the judgment, and
28 each claimant's share reduced proportionately. To the extent the judgment relies

1 upon section 1021.5 for recovery of attorney fees, it must be modified to confine
2 the award of fees to the common fund theory.” (*Id.* at pp. 90–91.)

3 Likewise, in this case, through the successful efforts of Plaintiff and his attorneys, a
4 common fund was created in the amount of \$340,000 for the benefit of the Aggrieved Employees
5 and the State of California. Thus, these beneficiaries must bear their share of the costs and
6 attorney’s fees, which fees and costs must be deducted from the \$340,000.00 Gross Settlement
7 Amount under the common fund theory. (*Id.* at pp. 89–91.)

8 The California Supreme Court recently upheld the use of the common fund theory of
9 recovery for attorney’s fees in *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480. In
10 *Laffitte*, the settlement created a common fund of \$19 million dollars. The court approved the
11 award of attorneys’ fees in the amount of one-third of the gross \$19 million-dollar settlement (e.g.
12 awarded \$6.33 million in attorney’s fees) under the common fund theory of recovery. (*Id.* at pp.
13 505–506.)

14 The *Laffitte* ruling is consistent with the California Supreme Court’s other cases
15 recognizing that “when a number of persons are entitled in common to a specific fund, and an
16 action brought by . . . plaintiffs for the benefit of all results in the creation or preservation of that
17 fund, such . . . plaintiffs may be awarded attorneys’ fees out of the fund.” (*Serrano v. Priest* (1977)
18 20 Cal.3d 25, 34; see also *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 [100 S.Ct. 745,
19 749] “[A] lawyer who recovers a common fund for the benefit of persons other than himself or
20 his client is entitled to a reasonable attorney’s fee from the fund as a whole.”]; *Mills v. Electric*
21 *Auto-Lite Co.* (1970) 396 U.S. 375, 393–394 [90 S.Ct. 616, 626] [discussing the acceptance of
22 awarding attorneys’ fees and expenses from a settlement where “litigation has conferred a
23 substantial benefit on the members of an ascertainable class”]; *Lealao v. Beneficial California,*
24 *Inc.* (2000) 82 Cal.App.4th 19, 26 “[f]ee spreading occurs when a settlement or adjudication
25 results in the establishment of a separate or so-called common fund for the benefit of the class.”].)
26 Moreover, the common fund doctrine allows a court to award attorneys’ fees based on a percentage
27 of the total fund that is created for the satisfaction of beneficiaries’ claims when the fund consists
28 of a “‘certain or easily calculable sum of money.’” (*Dunk v. Ford Motor Co.* (1996) 48

1 Cal.App.4th 1794, 1809.)

2 California law has long upheld, and continues to uphold, the percentage of the recovery
3 method for awarding attorneys' fees where a fund is established. (See, e.g., *Serrano v. Priest*
4 (1977) 20 Cal.3d 25, 34; *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726; *Chavez*
5 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 63 ["fees based on a percentage of the benefits are in
6 fact appropriate in large class actions"]; *Sanders v. City of Los Angeles* (1970) 3 Cal.3d 252,
7 261, 263 [affirming award of attorneys' fees based on percentage of recovery]; *Wershba v. Apple*
8 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 ["courts recognize two methods for calculating
9 attorney fees in class actions: the lodestar/multiplier method and the percentage of recovery."],
10 cited with approval in *Laffitte v. Robert Half Internat. Inc.*, *supra*, 1 Cal.5th 480, 502.)

11 In light of the foregoing, awarding attorneys' fees based on a one-third percentage of the
12 gross settlement amount is favored by California courts when a fund established for the common
13 benefit of others is involved, such as here. Accordingly, awarding fees on this basis in the amount
14 of one-third of the \$340,000.00 gross settlement amount is reasonable and appropriate.

15 **B. A FEE OF ONE-THIRD OF THE GROSS SETTLEMENT AMOUNT IS**
16 **FAIR AND REASONABLE BASED UPON THE FACTORS DEVELOPED**
17 **BY THE COURTS AND SERVES THE PUBLIC POLICY OF**
18 **ATTRACTING COMPETENT COUNSEL TO LITIGATE THESE CASES**

19 When awarding attorneys' fees, courts have discretion to choose among two different
20 methods for calculating a reasonable attorneys' fees award: (1) the common fund approach, or
21 (2) the lodestar approach. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 504
22 ["The choice of a fee calculation method is generally one within the discretion of the trial court,
23 the goal under either the percentage or lodestar approach being the award of a reasonable fee to
24 compensate counsel for their efforts."]). In *Laffitte*, the California Supreme Court held that "[t]he
25 recognized advantages of the percentage method—including relative ease of calculation,
26 alignment of incentives between counsel and the class, a better approximation of market conditions
27 in a contingency case, and the encouragement it provides counsel *to seek an early settlement and*
28 *avoid unnecessarily prolonging litigation*—convince us the percentage method is a valuable tool

1 that should not be denied by our trial courts.” (*Id.* at p. 503, emphasis added). Similarly the Ninth
2 Circuit has found that counsel should not “receive a lesser fee for settling a case quickly.”
3 (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050 fn. 5).

4 An award of fees from the gross settlement amount under the common fund doctrine
5 prevents unjust enrichment of those who benefit from the common fund created through the
6 successful efforts of Plaintiff’s counsel and furthers the important goal of attracting competent
7 counsel to handle representative actions enforcing minimum labor standards. (*Laffitte v. Robert*
8 *Half Internat. Inc.*, *supra*, 1 Cal.5th 480, 503.)

9 Among the factors considered in determining whether the requested fee percentage is
10 reasonable are: **(1)** the results achieved; **(2)** the risk of further litigation; **(3)** the skill required of
11 plaintiff’s counsel and the quality of work performed by plaintiff’s counsel; **(4)** the contingent
12 nature of the fee and the financial burden carried by the plaintiff; and **(5)** awards made in similar
13 cases. (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048–1050.) All these factors
14 support an award here of one-third of the common fund.

15 First, Plaintiff’s counsel’s efforts resulted in a common fund settlement amount of
16 \$340,000.00. This is an excellent PAGA settlement considering the contested issues.

17 Second, Plaintiff and her counsel faced significant risks going forward with the litigation.
18 As discussed above, Defendants raised various defenses and, as such, Plaintiff faced risky issues
19 going forward with this litigation, as well as the fact that it would have taken significant time to
20 realize any recovery in this action along with the possibility of post-trial appeals. Moreover,
21 Plaintiff’s counsel took this case on a contingency basis. (Melmed Decl., at ¶ 40.) There are
22 always risks attendant to billing cases on a contingency basis. It is not a foregone conclusion that
23 every case taken on a contingency fee basis will result in a recovery or that the attorneys’ fees
24 recovered will actually compensate the attorneys’ firm for the amount of time expended in an
25 action. And, even when successful, a PAGA representative action contingency law firm may only
26 receive a small percentage of the amount of attorneys’ fees incurred during the prosecution of a
27 case. Where plaintiffs’ counsel does succeed, therefore, it is appropriate to compensate the firm
28 for the risks the firm regularly undertakes. There is also always the possibility that the plaintiff

1 will not prevail and PAGA Counsel will not receive any compensation for its services or that the
2 defendant will declare bankruptcy or lack the assets necessary to satisfy any judgment obtained
3 against it—as has happened in cases handled by Plaintiff’s counsel’s firm. (Melmed Decl., at ¶
4 42.)

5 Third, Plaintiff’s counsel are experienced representative and class action litigators, and
6 have previously achieved significant PAGA and class action awards. This experience and
7 expertise, combined with the high-quality of work performed in this case by Plaintiff’s counsel,
8 resulted in the settlement achieved.

9 Fourth, as discussed above, the request for attorney’s fees in the amount of one-third of the
10 common fund falls well-within the norms accepted by state and federal courts in California in
11 comparable wage and hour actions. (See, e.g., *Laffitte v. Robert Half Internat. Inc.*, *supra*, 1
12 Cal.5th 480, 503; see also *Martin v. FedEx Ground Package System, Inc.* (N.D. Cal., Dec. 31,
13 2008, No. C 06-6883 VRW) 2008 WL 5478576, at *8 [federal district court approved attorneys’
14 fees of one-third of the common fund]; *Stuart v. Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No.
15 C-07-4499 EMC) 2010 WL 3155645, at *6 [approving fee award of one-third of the total
16 maximum settlement and noting that the fee award of one-third of the total settlement was “well
17 within the range of percentages which courts have upheld as reasonable”]; *Keres Romero v.*
18 *Producers Dairy Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL
19 3492841, at *4 [awarding fees of one-third of common fund in a wage and hour class action,
20 noting: “[f]ee awards in class actions average around one-third of the recovery.”]; *McCrary v.*
21 *Elations Company, LLC* (C.D. Cal., Feb. 25, 2016, No. EDCV130242JGBSPX) 2016 WL 769703,
22 at *10; *Petersen v. CJ America, Inc.* (S.D. Cal., Sept. 30, 2016, No. 14-CV-2570 DMS JLB) 2016
23 WL 5719823, at *1; *McClellan v. Chase Home Finance LLC* (C.D. Cal. Aug. 31, 2015, No. SACV
24 12-1331-JGB) 2015 U.S. Dist. LEXIS 118005, at *20 [explaining that, while the attorneys’ fee
25 award that approximated 32% of all sums paid under the settlement was reasonable after citing
26 numerous other cases, finding that an award of 33% of the common fund was common in class
27 actions]; *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1377 [“nearly
28 all common fund awards range around 30%”].)

1 In reaching its decision in *McClellan*, the court recognized that courts in California
2 “routinely award attorneys’ fees in the range of 30–40% in class actions that result in the recovery
3 of a common fund under \$10 million.” (*McClellan v. Chase Home Finance LLC*, *supra*, 2015
4 U.S. Dist. LEXIS 118005, at *20 [quoting *Miller v. CEVA Logistics USA, Inc.* (E.D. Cal., Aug.
5 10, 2015, No. 2:13-CV-01321-TLN) 2015 WL 4730176, at *8, and citing *In re Mego Financial*
6 *Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454, 463]; see also *Romero v. Producers Dairy*
7 *Foods, Inc.* (E.D. Cal., Nov. 14, 2007, No. 1:05CV0484 DLB) 2007 WL 3492841, at *4 [awarding
8 33% of the settlement fund in a wage-and-hour case involving allegations of unpaid wages after
9 explaining that “fee awards in class actions average around one-third of the recovery.”]; *Stuart v.*
10 *Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645, at *6
11 [noting that a fee award of one-third of the settlement was “well within the range of percentages
12 which courts have upheld as reasonable in other class action lawsuits.”]; *Singer v. Becton*
13 *Dickinson and Co.* (S.D. Cal., June 1, 2010, No. 08-CV-821-IEG (BLM)) 2010 WL 2196104, at
14 *8 [approving fee award of 33.33% of the common fund]; *Boyd v. Bank of America Corp.* (C.D.
15 Cal., Nov. 18, 2014, No. SACV 13-0561-DOC) 2014 WL 6473804, at *12 [awarding a 33.34%
16 fee on a \$5,800,000 settlement]). Although this case is a PAGA representative action, and not a
17 class action, there is no reason for the attorney fee standards to deviate from the norms established
18 in class action cases. (See, e.g., *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* (E.D. Cal., Mar.
19 27, 2020, No. 117CV00853DADEPG) 2020 WL 1492672, at *9 [awarding attorneys’ fees of one-
20 third the gross settlement amount, which included both PAGA penalties and class damages]; *Singh*
21 *v. Roadrunner Intermodal Services, LLC* (E.D. Cal., Jan. 24, 2019, No. 115CV01497DADBAM)
22 2019 WL 316814, at *11 [same]; *Shahbazian v. Fast Auto Loans, Inc.* (C.D. Cal., June 20, 2019,
23 No. 218CV03076ODWKSX) 2019 WL 8955420, at *2 [preliminarily approving the same]).

24 Plaintiff’s counsel’s diligent and efficient litigation of this action resulted in the creation
25 of an ascertainable gross settlement amount of \$340,000 that will substantially benefit the State of
26 California and the Aggrieved Employees. As explained above, and based on Plaintiff’s counsel’s
27 extensive experience in litigating PAGA representative actions, Plaintiff’s counsel’s request is
28 consistent with fee awards in other similar cases. (Melmed Decl., at ¶ 46.) Consistent with

1 numerous cases, including those identified above, Plaintiff's counsel's seeks approval of an award
2 of attorneys' fees in the amount of \$113,333.33 representing one-third of the gross settlement
3 amount. (Melmed Decl., at ¶ 46.) Of note, only a portion of the requested award will be paid to
4 each firm, as this attorneys' fee award is to be split between two firms—Bokhour Law Group, P.C.
5 and Melmed Law Group P.C.—as compensation for their joint efforts in litigating this case.
6 (Melmed Decl., at ¶ 46.)

7 For all of the above reasons, a common fund fee award here in the amount of one-third of
8 the \$340,000.00 common fund created by Plaintiff and his attorneys is fair and reasonable.

9 **C. THE REQUESTED LITIGATION COSTS ARE FAIR AND REASONABLE**

10 Plaintiff's counsel requests reimbursement of their actual out-of-pocket expenses incurred
11 to prosecute this action. These expenses were incidental and necessary to the effective
12 representation of the employees. (See *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.)
13 Plaintiff's counsel are permitted to recover their litigation costs and expenses under PAGA as well
14 as the common fund doctrine. (Lab. Code, § 2699, subd. (g)(1) ["Any employee who prevails in
15 any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing
16 fee paid"]; *Munoz v. Chipotle Mexican Grill, Inc.* (2015) 238 Cal.App.4th 291, 311 ["A
17 prevailing PAGA plaintiff may recover his or her attorney fees and costs as well."]; *Miranda v.*
18 *Anderson Enterprises, Inc.* (2015) 241 Cal.App.4th 196, 202 fn. 4 [same]; *Serrano v. Priest, supra*,
19 20 Cal.3d 25, 35 [common fund doctrine permits recovery of fees and costs from the fund]; *Rider*
20 *v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 fn.6 [costs are recoverable from the
21 common fund "[o]f necessity, and for precisely the same reasons discussed above with respect to
22 the recovery of attorneys' fees by . . . [Plaintiffs'] attorneys".])

23 The Settlement Agreement authorizes Plaintiff's counsel to recover litigation costs not to
24 exceed \$15,000. The actual litigation costs in this case by Plaintiff's counsel to date amounts to
25 no less than \$11,223.25 with \$5,652.25 expended by Melmed Law Group P.C. and \$5,571.00
26 expended by Bokhour Law Group, P.C.

1 **VII. SUBMISSION TO THE LWDA**

2 The Settlement Agreement and this Motion are concurrently being submitted to the LWDA
3 in accordance with Labor Code section 2699, subdivision (1)(2). The proof of electronic
4 submission is attached as **Exhibit 2** to Melmed Decl.

5 **VIII. THE SETTLEMENT ADMINISTRATOR**

6 The Parties have agreed to use Simpluris as the settlement administrator. (Settlement
7 Agreement, § IV, ¶ 1.) The settlement administrator will be responsible for processing the
8 settlement payments and providing notice to the Aggrieved Employees. (Settlement Agreement,
9 § IV.)

10 **IX. CONCLUSION**

11 For the foregoing reasons, Plaintiff requests the court approve the Settlement Agreement.
12 Plaintiff further requests, contingent on the court's approval of the Settlement Agreement, that the
13 remainder of Plaintiff's class claims be dismissed without prejudice.

14 Dated: January 21, 2021

**MELMED LAW GROUP P.C.
BOKHOUR LAW GROUP, P.C.**

16 

17 Jonathan Melmed
18 Mehrdad Bokhour
19 Attorneys for Plaintiff and the Aggrieved
20 Employees
21
22
23
24
25
26
27
28