

1 Brian J. Mankin, Esq. [CSB No. 216228]

brian@lmlfirm.com

2 Peter J. Carlson, Esq. [CSB No. 295611]

peter@lmlfirm.com

3 LAUBY, MANKIN & LAUBY LLP

4590 Allstate Drive

Riverside, CA 92501

Tel: (951) 320-1444 | Fax: (951) 320-1445

5 Attorneys for Plaintiff, on Behalf of the State of California and Aggrieved Employees

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN BERNARDINO

10
11 ZACHARY LOPEZ, on behalf of all
12 Aggrieved Employees and the State of
California;

13 Plaintiff,

14 vs.

15 JBGC, INC., a California Corporation; and
16 DOES 1 through 20, inclusive;

Case No.: CIVDS 2013277

*[Assigned to Hon. Judge David Cohn, Dept. S26,
for all purposes]*

**PLAINTIFF'S UNOPPOSED MOTION TO
APPROVE THE SETTLEMENT PURSUANT
TO THE PRIVATE ATTORNEY GENERAL
ACT OF 2004; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION OF
BRIAN MANKIN IN SUPPORT THEREOF;
[PROPOSED] ORDER**

Hearing

Date: July 21, 2021

Time: 10:00 a.m.

Dept.: S26

Complaint filed: June 15, 2020

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

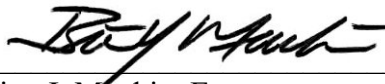
2 PLEASE TAKE NOTICE that on July 21, 2021, at 10:00 a.m. or as soon thereafter as the
3 matter may be heard by the Honorable David Cohn in Department S26 of the San Bernardino County
4 Superior Court, located at 247 West Third Street San Bernardino CA 92415, Plaintiff Zachary Lopez
5 will and hereby does move this Court for an order approving a settlement pursuant to the Private
6 Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (the “PAGA”).

7 This unopposed motion is based upon this the Memorandum of Points and Authorities; the
8 Declaration of Plaintiff’s counsel (Brian Mankin) in support thereof; the PAGA Settlement Agreement
9 and Release of PAGA Claims (the “Settlement Agreement”); the proposed Order granting Approval of
10 the PAGA Settlement; all other records, pleadings, and papers filed in this action; and upon such other
11 evidence or argument as may be presented to the Court at the hearing of this motion.
12

13 Dated: May 14, 2021

LAUBY, MANKIN & LAUBY LLP

14
15 BY:



16 Brian J. Mankin, Esq.
17 Attorneys for Plaintiff, the State of California and
18 Aggrieved Employees
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND AND PROCEDURAL HISTORY	3
III.	THE PAGA AND ITS REQUIREMENTS	4
IV.	THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES	5
A.	Terms of the Settlement and Distribution of PAGA Penalties	5
B.	Payment and the Notice	6
C.	Settlement Allocation to the Aggrieved Employees.....	7
D.	The Release.....	7
V.	THE SETTLEMENT IS FAIR AND REASONABLE, AND WARRANTS COURT APPROVAL	8
A.	Evaluation of the PAGA Settlement	8
B.	Plaintiff’s Separate Individual Settlement is Proper	10
VI.	THE REQUESTED ATTORNEYS’ FEES AND LITIGATION COSTS ARE FAIR AND REASONABLE	12
A.	Plaintiff’s Counsel are Entitled to Recover Attorney’s Fees Under The Common Fund Doctrine In This Qui Tam Action.....	12
B.	The Percentage Fee of the Gross Settlement Amount Is fair And Reasonable, and Less than Counsel’s Lodestar	15
C.	A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award.....	16
D.	The Requested Litigation Costs are Fair and Reasonable	17
VII.	SUBMISSION TO THE LWDA	18
VIII.	THE SETTLEMENT ADMINISTRATOR.....	18
IX.	CONCLUSION.....	18

TABLE OF AUTHORITIES

CASES

<i>Amalgamated Transit Union Local 1309 v. Laidlaw Transit Servs.</i> , (C.D. Cal 2009) U.S. Dist. LEXIS 69842	9
<i>Amaral v. Cintas Corp.</i> , 163 Cal.App.4th 1157 (2008).....	9
<i>Arias v. Sup. Ct.</i> (2009) 46 Cal. 4th 969	11
<i>Arias v. Superior Court</i> , 46 Cal.4th 969 (2009)	2, 4, 5, 7
<i>Bank of America v. Cory</i> (1985) 164 Cal.App.3d 66.....	13
<i>Bell v. Farmers Insurance Exchange</i> (2004) 115 Cal.App.4th 715.....	14
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472	13, 14
<i>Caliber Bodyworks, Inc. v Superior Court</i> , (2005) 134 Cal.App.4th 365	11
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	14
<i>Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.</i> (2005) 127 Cal.App.4th 387	14
<i>Dunk v. Ford Motor, Co.</i> (1996) 48 Cal.App.4th 1794	14
<i>ess v. Lucky Stores, Inc.</i> (1983) 34 Cal.3d 311	16
<i>Harris v. Marhoefer</i> (9th Cir. 1994) 24 F.3d 16.....	17
<i>Iskanian v. CLS Transp. Los Angeles, LLC</i> (2014) 59 Cal.4 th 348	1, 2, 12
<i>Jutkowitz v. Bourns, Inc.</i> (1981) 118 Cal.App.3d 102.....	14
<i>Laffitte v. Robert Half Int'l. Inc.</i> (2016) 1 Cal.5 th 480	13, 15
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19	14
<i>Mills v. Electric Auto-Lite Co.</i> (1970) 396 U.S. 375	14
<i>People ex rel. Stratham v. Acacia Research Corp.</i> (2012) 210 Cal.App.4 th 487.....	12
<i>PLCM Group, Inc. v. Drexler</i> (2000) 22 Cal.4th 1084.....	16
<i>Sanders v. City of Los Angeles</i> (1970) 3 Cal.3d 252	14
<i>Serrano III v. Priest</i> (1977) 20 Cal.3d 25	13
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	14
<i>Six (6) Mexican Workers v. Arizona Citrus Growers</i> (9 th Cir. 1990) 904 F.2d 1301	13
<i>Staton v. Boeing Co.</i> (9 th Cir. 2003) 327 F.3d 938	13
<i>Vizcaino v. Microsoft Corp.</i> (9 th Cir. 2002) 290 F.3d 1043	15
<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4th 224.....	14
<i>ZB, N.A. v. Superior Court</i> (2019) 8 Cal. 5th 175	10, 11

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In this case involving wage and hour claims on behalf of a group of non-exempt workers (aka
4 “Aggrieved Employees”), Plaintiff Zachary Lopez – individually and serving as the representative for
5 the State of California – and his counsel sought civil penalties against his former employer, Defendant
6 JBGC, Inc. (“Defendant”) under the Labor Code Private Attorneys General Act of 2004, California
7 Labor Code § 2698 *et seq.* (commonly referred to as “PAGA”). A PAGA action is a type of qui tam
8 action filed on behalf of the state to assist it with labor law enforcement. *Iskanian v. CLS Transp. Los*
9 *Angeles, LLC* (2014) 59 Cal.4th 348, 380-382. As such, the state is the real party in interest in a PAGA
10 action. *Id.* at 382. The State of California was timely served with a copy of the Settlement Agreement
11 and this Motion to Approve the Settlement.

12 Plaintiff brought the operative claims against Defendant on behalf of all other similarly situated
13 current and former non-exempt employees of Defendant in California at any time from April 11, 2019
14 through May 22, 2021 (the “Aggrieved Employees”). Plaintiff and the Aggrieved Employees worked
15 at Defendant’s funeral home(s), and this action focused on three primary claims, which were brought on
16 behalf of the group of approximately 29 Aggrieved Employees during the PAGA Period.

17 First, Plaintiff alleges that Defendant paid the Aggrieved Employees on an hourly basis plus
18 additional compensation in the form of commissions and/or bonuses. However, on the occasions when
19 the Aggrieved Employees worked overtime and earned additional non-hourly compensation, Defendant
20 failed to include this in the calculations for the “regular rate of pay” and therefore failed to pay all
21 required overtime. Second, Plaintiff alleges that Defendant required Plaintiff and the Aggrieved
22 Employees to remain “on-call” after hours (and while off the clock) to answer the phone and assist
23 individuals with funeral planning and other tasks. Because this was time spent under the direction and
24 control of Defendant, Plaintiff argues that it should have been compensated, leading to unpaid minimum
25 wages and/or overtime because Defendant did not provide any compensation for this time. Third,
26 Plaintiff claimed that he and the Aggrieved Employees were denied compliant meal periods and rest
27 breaks due to the nature of the work. (Mankin Decl. ¶ 11).

28 ///

1 Following informal discovery and a robust exchange of data and documents, the Parties
2 scheduled a mediation for April 2021. However, during the lead-up to mediation, the Parties decided to
3 also attempt direct negotiations given the limited number of pay periods and Aggrieved Employees at
4 issue. After multiple rounds of negotiations, the Parties resolved this PAGA action via direct
5 negotiation, and thereafter drafted and finalized the Settlement Agreement. (Mankin Decl. ¶¶ 13-14).

6 Now, with a comprehensive Settlement Agreement that resolves the claims alleged in this case,
7 Plaintiff seeks (and Defendant does not oppose), this Court's approval of a \$120,000 settlement
8 involving only 29 total employees and 418 PAGA pay periods. After payment of Plaintiff's attorneys'
9 fees of \$40,000 (1/3 of the settlement) and actual costs (\$2,206.83), as well as the administration
10 expenses (\$2,000), approximately \$75,793.17 will be allocated to PAGA Penalties, of which 75% will
11 be paid to the LWDA (\$56,844.88). The remaining 25% (\$18,948.29) will be paid to the Aggrieved
12 Employees, resulting in a very high average PAGA-only payment of \$653.39, despite that there is no
13 release of individual damage or statutory penalties.

14 The settlement merits full approval because it fulfills the purpose of PAGA (i.e., to deter
15 violations of the Labor Code and secure obedience of California's labor laws; to end ongoing violations
16 of the Labor Code either through injunctive relief or a defendant's voluntary changes in light of a PAGA
17 action; and to provide relief that is genuine, meaningful, and consistent with California's goal of
18 benefitting the public through enforcement of labor laws).

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

27 For these reasons and those discussed below, the Parties seek Court approval of the Settlement.

28 ///

1 **II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

2 Plaintiff performed services for Defendant from November 2019 through April 2020 as a funeral
3 arranger. After retaining counsel, Plaintiff submitted an April 8, 2020 letter to the California Labor &
4 Workforce Development Agency (“LWDA”) and Defendant regarding the alleged violations. (Mankin
5 Decl. ¶ 8, Exhibit A to Mankin Decl.). This notice is required under Labor Code § 2699.3(a)(1)(A) as a
6 prerequisite to bringing a PAGA claim against an employer. Then, after the 65-day waiting period
7 elapsed without the LWDA asserting jurisdiction, Plaintiff filed this PAGA-only Complaint on June 15,
8 2020. (Mankin Decl. ¶ 9).

9 Defendant retained counsel and vowed to vehemently oppose the claims. Additionally,
10 Defendant quickly corrected many of its practices and made payments and other Aggrieved Employees
11 for unpaid wages and meal and rest period violations under Labor Code § 226.7. Despite the disputed
12 nature of the claims, the Parties nevertheless agreed to table formal discovery and attempt an early
13 resolution. (Mankin Decl. ¶ 12).

14 In preparation for the mediation, the Parties exchanged documents and information that allowed
15 both sides to calculate the potential damages and evaluate potential risk. During this process, Plaintiff
16 and his counsel analyzed, researched, and investigated the potential issues, including matters related to
17 the calculation of damages, trial, and appellate issues and risks. During this exchange of information,
18 pursuant to Plaintiff counsel’s informal requests, Defendant produced documents and pay records that
19 enabled Plaintiff to conduct a full analysis of the alleged unpaid wage, meal/rest break violations and
20 other claims. (Mankin Decl. ¶ 13).

21 While preparing for mediation, the Parties discussed engaging in direct negotiations given the
22 small number of Aggrieved Employees as well as the undisputed facts underlying certain claims. The
23 Parties agreed to try direct negotiations, but also left the mediation on calendar should negotiations be
24 unsuccessful. Ultimately, the Parties reached a settlement via direct negotiations on March 2, 2021,
25 after multiple rounds of offers and demands. (Mankin Decl. ¶ 14). Thereafter, the Parties memorialized
26 the terms of the settlement in a long-form Settlement Agreement, which is now presented to this Court
27 for approval. (Mankin Decl. ¶ 14; Exhibit B to Mankin Decl.).

28 ///

1 **III. THE PAGA AND ITS REQUIREMENTS**

2 PAGA provides an enforcement method for California's Labor Code by enlisting individual
3 plaintiffs as private attorneys general to recover civil penalties for the state, with a share also going to
4 the individual plaintiffs and other employees. Prior to the enactment of PAGA in 2003, the recovery of
5 civil penalties for violations of certain Labor Code provisions were solely within the province of the
6 California Department of Labor. *Arias*, 46 Cal.4th at 980.

7 However, due to the lack of financing for California's agencies, and the substantial number of
8 Labor Code violations by California employers, the California Legislature found that it was in the public
9 interest to allow aggrieved employees to act as "private attorneys general" to enforce and recover civil
10 penalties on behalf of the State of California for Labor Code violations committed by employers. *Id.*
11 As the Legislature that adopted PAGA observed, "the only meaningful deterrent to unlawful conduct is
12 the vigorous assessment and collection of civil penalties as provided in the Labor Code." Stats. 2003
13 ch. 906, § 1(b). Moreover, the Labor Code's primary purpose is to "ensure employees are not required
14 or permitted to work under substandard unlawful conditions ... and to protect employers who comply
15 with the law from those who attempt to gain a competitive advantage at the expense of their workers by
16 failing to comply with minimum labor standards." Labor Code § 90.5(a). Therefore, the Legislature
17 determined that "adequate financing of labor law enforcement was necessary to achieve maximum
18 compliance with state labor laws, that staffing levels for labor law enforcement agencies had declined
19 and were unlikely to keep pace with the future growth of the labor market, and that it was therefore in
20 the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil
21 penalties for Labor Code violations, with the understanding that labor law enforcement agencies were
22 to retain primacy over private enforcement efforts."

23 Penalties recovered under PAGA "shall be distributed as follows: 75 percent to the Labor and
24 Workforce Development Agency for enforcement of labor laws and education of employers and
25 employees about their rights and responsibilities under this code ...; and 25 percent to the aggrieved
26 employees." Lab. Code § 2699(i).

27 Before filing a PAGA action, an aggrieved employee must first provide written notice to the
28 LWDA and the employer of the particular Labor Code violations the aggrieved employee alleges the

1 employer has violated. Labor Code § 2699.3(a)(1). This notice provides the LWDA with the opportunity
2 to investigate and prosecute the claim. The employee may only sue on the state's behalf if the LWDA
3 fails to respond to the notice within 65 days, responds that it does not intend to investigate, or investigates
4 and does not issue a citation within 185 days. Labor Code §§ 2699.3(a)(2), 2699(h). In this case, Plaintiff
5 provided the LWDA with a notice letter advising it of the alleged Labor Code violations, but the LWDA
6 deferred the prosecution of these violations to Plaintiff and his attorneys. (Mankin Decl. ¶ 8-9).
7 Accordingly, the Settlement and the common fund created by it for the benefit of the State and Aggrieved
8 Employees, is solely the result of the work performed by Plaintiff and his attorneys on this case.

9 Any settlement of a PAGA action brought by an aggrieved employee must be approved by the
10 court. Lab. Code § 2699(1)(2). In 2009, the California Supreme Court considered the PAGA approval
11 process and, more specifically, whether an aggrieved employee needs to meet class certification
12 requirements. *Arias*, 46 Cal.4th at 976. After a substantial review of the legislative history of PAGA,
13 the Court held that an aggrieved employee's representative action brought on behalf of the state and
14 other aggrieved employees against an employer for PAGA violations *does not* need to meet the
15 requirements for class certification nor does there need to be notice to the other employees. *Id.* at 975,
16 980-88. As the Court held, a plaintiff bringing suit under PAGA does so as the proxy or agent of
17 California's labor law enforcement agencies. *Id.* at 986. Thus, the Court simply reviews the settlement
18 and approves it if it is deemed to be fair and reasonable.

19 Accordingly, the Parties to this PAGA action have reached such an agreement and now seek this
20 Court's approval of the settlement.

21 **IV. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES**

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

23 **A. TERMS OF THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES**

24 The settlement provides that Defendant will pay a non-reversionary settlement amount of One
25 Hundred Twenty Thousand Dollars (\$120,000) (the "Settlement Amount"), inclusive of payments to the
26 LWDA and Aggrieved Employees, attorneys' fees and litigation costs, as well as third party
27 administrator ("Administrator") costs. (Settlement Agreement ["S.A."] ¶ 35, attached as Exhibit B to
28 Mankin Decl.) After payment of the attorneys' fees/costs and administration costs, the remainder of

approximately \$75,793.17 will form the PAGA Penalties and, pursuant to Labor Code § 2699(i), 75 percent shall be paid to the LWDA (which shall be used to assist in the enforcement of labor laws and education of employers and employees about their rights and responsibilities under the Labor Code), and the remaining 25 percent being paid to the Aggrieved Employees on a pro rata basis. (*Id.*)

The following chart reflects the estimated payments from the Settlement Agreement:

	Amount
<i>Settlement Amount</i>	\$ 120,000.00
Attorneys' Fees	\$ 40,000.00
Actual Litigation Costs	\$ 2,206.83
Administrator Costs	\$ 2,000.00
<i>Net Settlement Amount (PAGA Penalties)</i>	\$ 75,793.17
75% to the LWDA	\$ 56,844.88
25% to Aggrieved Employees	\$ 18,948.29
Balance	\$0

As such, the LWDA will receive approximately \$56,844.88 (75 percent of the PAGA Penalties) and the 29 Aggrieved Employees will collectively receive approximately \$18,948.29 (25 percent), which will be paid on a pro-rata basis according to the number of pay periods worked during the PAGA Period. The average payment to the Aggrieved Employees is approximately \$653.39. (Mankin Decl. ¶¶ 17).

B. PAYMENT AND THE NOTICE

Defendant will wire the Settlement Amount to the Administrator within 60 calendar days of the Effective Date, which is defined as the date the Court enters the Final Order. (S.A. ¶¶ 9, 49). The payment to the Aggrieved Employees, the LWDA, and Plaintiff's counsel will be issued 10 days after the Administrator receives the Settlement Amount, and the Aggrieved Employees will then have 120 days to cash their checks. If for any reason a check is un-cashed, then the check will be voided and the funds issued to the California State Controller in the name of the Aggrieved Employee who may claim the funds at a later date. (S.A. ¶ 51.) The check to the LWDA will be issued on December 1, 2021.

A Notice informing the Aggrieved Employees of the nature of the payment will be provided with the settlement check. (See Exhibit E to Mankin Decl.).

///

1 **C. SETTLEMENT ALLOCATION TO THE AGGRIEVED EMPLOYEES.**

2 As noted, twenty-five percent (25%) of the PAGA Penalties will be allocated to the Aggrieved
3 Employees. Based on the numbers provided by Defendant, approximately 29 workers will share in this
4 fund on a pro rata basis according to the number of pay periods worked during the statutory period. The
5 portion of each Aggrieved Employees share will be treated as non-wage income and reported by the
6 Settlement Administrator on IRS Form 1099, as required by law. (S.A. ¶ 40(f)).

7 **D. THE RELEASE.**

8 The California Supreme Court has explained that a judgment in “a representative action brought
9 by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding
10 not only on the named employee plaintiff but also on government agencies and any aggrieved employee
11 not a party to the proceeding.” *Arias*, 46 Cal. 4th at 985-986. The release in the Settlement Agreement
12 narrowly binds the Aggrieved Employees for civil penalty claims brought in the Action. (S.A. ¶ 42), as
13 follows:

14 Upon the Effective Date and except as to such rights or claims as may be
15 created by this PAGA Settlement Agreement, Plaintiff, as an individual,
16 representative for the State of California, and representative of the
17 Aggrieved Employees, hereby forever, finally, and completely releases and
18 discharges the Released Parties of any and all of the Released Claims, and
19 thus, Plaintiff, Aggrieved Employees, and the State of California will be
20 forever barred from pursuing any and all Released Claims defined herein.
21 The Parties understand and agree that this release is limited to the PAGA
22 Claims and does not otherwise impact the individual rights or claims of the
23 Aggrieved Employees.

24 The Settlement Agreement at Paragraph 23 defines “Released Claims” as follows:

25 [A]ny and all rights and claims for civil penalties that were asserted or could
26 have been asserted, assessed upon or collected from the Released Parties by
27 or on behalf of Plaintiff, the Aggrieved Employees and/or the State of
28 California under the Private Attorney General Act, Cal. Lab. Code §§ 2698
 et seq., or the California Labor Code, based on the facts and/or violations
 alleged in the Complaint, including but not limited to the penalties sought
 in Plaintiff’s PAGA causes of action for: (1) failure to pay minimum wages,
 (2) failure to pay overtime wages, (3) failure to provide meal periods, (4)
 failure to provide rest breaks, (5) failure to reimburse for business expenses,
 (6) failure to failure to timely pay wages each period, (7) failure to timely
 pay final wages, and (8) failure to provide accurate itemized wage
 statements, and all other PAGA claims alleged in the LWDA letter, which
 include claims for alleged violations of California Labor Code §§ 200, 201,

1 202, 203, 204, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 256, 510, 512,
2 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, and Sections 3, 4, 9,
3 11 and 12 of the applicable Wage Order, arising during the Statutory Period.

4 As the release is narrowly related to the claims alleged, the Parties contend that the release is
5 proper and reasonable.

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

8 In 2016, PAGA was amended to require the Court to “review and approve any settlement of any
9 civil action filed pursuant to this part.” (Labor Code § 2699(l)(2).) The amendment also required that
10 the “proposed settlement shall be submitted to the agency at the same time that it is submitted to the
11 court.” As such, the Settlement and this Motion have been concurrently submitted to the LWDA in
12 accordance with this section. (Mankin Decl. ¶ 23; Exhibit D to Mankin Decl.).

13 **A. EVALUATION OF THE PAGA SETTLEMENT**

14 Although PAGA and its legislative history do not seem to require a Court to analyze a PAGA
15 settlement in comparison to the “value” of the claims, the penalties herein are reasonable when
16 considered in this context as well.

17 Here, Plaintiff estimated that Defendant’s maximum potential penalty exposure in this case was
18 \$271,700. But, as discussed below, the risks that continued litigation would entail show that the
19 Settlement is a reasonable compromise of the disputed claims at issue and resulted from extensive arm’s
20 length negotiations. Further, Defendants dispute that any liability exists, and if any does exist, asserts
21 the court would likely use its discretion to reduce the penalties since it claims that any issues were
22 unintentional and inconsequential.

23 During the course of discovery and based on Plaintiff’s counsel’s extrapolation of data and
24 information that Defendants provided prior to mediation, Plaintiff estimates that were approximately
25 29 employees who worked approximately 418 pay periods during the Statutory Period.

26 In terms of the assessment of civil penalties, the PAGA provides that the civil penalty is \$100
27 for each aggrieved employee per pay period for the initial violation and (generally) \$200 for each
28 aggrieved employee per pay period for each subsequent violation. Labor Code § 2699(f)(2). Relying
on *Amaral v. Cintas Corp.*, 163 Cal.App.4th 1157 (2008), Plaintiff argued that the trial court should

1 assess a \$200 civil penalty for each violation that occurred after Plaintiff submitted his PAGA letter to
2 the LWDA, thereby informing Defendant of his claim. However, Defendant vehemently objected to
3 this argument, relying on a later district court case construing *Amaral*, holding that the trial court can
4 only assess a \$200 civil penalty for “subsequent” violations after the date that “a court or commission”
5 notifies the employer of a violation. *Amalgamated Transit Union Local 1309 v. Laidlaw Transit Servs.*,
6 (C.D. Cal 2009) U.S. Dist. LEXIS 69842, *26. Defendant argued that it had not been previously cited
7 for a wage statement violation and, therefore, the \$200 violation rate did not apply. Plaintiff’s
8 three primary claims (overtime, on-call violations, and meal/rest violations) yielded a maximum
9 potential penalty of \$167,200 based on 418 violative pay periods for each Labor Code violation. Plaintiff
10 also alleged that Defendant failed to provide accurate itemized wage statements, in violation of Labor
11 Code § 226, on 418 occasions, which carries a maximum potential penalty of \$104,500. Therefore, in
12 total, Plaintiff alleged that Defendant would be liable for a maximum penalty of \$271,700. (Mankin
13 Decl. ¶ 13).

14 However, this maximum amount fails to take into account the various risks and defenses to the
15 claims herein. Additionally, Defendant argued that, even if the claims were proven, this figure fails to
16 acknowledge that courts have wide latitude to reduce the amount of civil penalties “based on the facts
17 and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust,
18 arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h). Moreover, Defendant argued against
19 the merits of the underlying claims and particularly that the “wilfulness” standard and/or “good faith”
20 defenses mitigated the civil penalty claims and rendered any such penalties as uncertain. Defendant also
21 argued that it is improper to stack civil penalty claims on top of the underlying claim. For these reasons,
22 the Parties submit that the agreed-upon PAGA penalties is fair and reasonable.

23 Despite these defenses, Plaintiff still obtained a settlement of 44.2% of the total maximum value
24 – a great result that is extremely reasonable in light of the risks and uncertainties associated with the
25 PAGA claims in this case. The Settlement commits Defendant to pay almost \$56,844.88 in PAGA
26 penalties (after fees/costs and other expenses). This is sufficient to accomplish the objectives of PAGA
27 while not being unjust, arbitrary and oppressive, or confiscatory.

28 ///

1 **B. PLAINTIFF’S SEPARATE INDIVIDUAL SETTLEMENT IS PROPER**

2 Plaintiff separately resolved his individual claims with Defendant in a confidential settlement.
3 Notably, the California Labor Code specifically permits a Plaintiff to separately resolve claims for
4 individual damages from PAGA claims on behalf of aggrieved employees. The PAGA statute at Labor
5 Code § 2699(g)(1) provides that “[n]othing in this part shall operate to limit an employee’s right to
6 pursue or recover *other remedies available under state or federal law, either separately or concurrently*
7 *with an action taken under this part*”). The rule permitting employees to pursue separate individual
8 claims while maintaining a PAGA claim aligns perfectly with the general understanding that PAGA
9 claims (which seek civil penalties on behalf of Aggrieved Employees) are separate and distinct from
10 individual claims for unpaid wages and statutory penalties.

11 The California Supreme Court explained this principal in the landmark *Iskanian* decision,
12 holding that “[t]he civil penalties recovered on behalf of the state under the PAGA *are distinct* from the
13 statutory damages to which employee may be entitled in their individual capacities.” *Iskanian v. CLS*
14 *Transportation, LLC*, (2014) 59 Cal.4th 348, 381 (hereinafter “*Iskanian*”). In fact, *Iskanian* directly
15 discussed the separation between individual and PAGA claims, and held that when an employee pursues
16 both types of cases, a defendant must respond to *both* cases: “*Iskanian* must proceed with bilateral
17 arbitration on his individual damages claims, and CLS must answer the representative PAGA claims in
18 some forum.” *Id.* at 391. In the event of a bifurcation of individual and PAGA actions one case may
19 proceed first, while the other case is stayed. *Id.*

20 In addition, the California Supreme Court recently expounded upon this position in *ZB, N.A. v.*
21 *Superior Court* (2019) 8 Cal.5th 175. There, when discussing the difference between statutory
22 damages/penalties (for an individual) versus civil penalties (under PAGA), the court clearly held that
23 “[p]ursuing civil penalties does not prevent an employee from separately or concurrently pursuing
24 unpaid wages and other remedies already available to her.” *Id.* at 187.

25 This concurrent framework discussed in *Iskanian* is exactly what happened in this case. Plaintiff
26 initially filed a PAGA case, and while the PAGA case was pending, he prepared to file a separate
27 individual case. However, the Parties ultimately settled the individual claims prior to litigation.

28 ///

1 This approach – settling the separate and distinct PAGA and individual claims – has been
2 accepted and approved by courts throughout California. See *ZB, N.A., supra*, 8 Cal.5th at 187 (“Pursuing
3 civil penalties does not prevent an employee from separately or concurrently pursuing unpaid wages and
4 other remedies already available to her”). For instance, in *Caliber Bodyworks, Inc. v Superior Court*,
5 (2005) 134 Cal.App.4th 365, the Court confirmed the appropriateness of bringing PAGA claims and
6 individual claims, noting that in addition to PAGA claims, an employee may bring claims directly
7 against an employer for *statutory penalties* and *unpaid wages* while PAGA permits an aggrieved
8 employee to initiate a private civil action on behalf of himself or herself and other current or former
9 employees to recover *civil penalties* if the LWDA does not do so. *Id.* at 370-374. This is because the
10 goals of these two actions are very different. The individual action permits the employees to recover
11 individual damages, whereas PAGA has the stated goal of improving enforcement of existing Labor
12 Code obligations. *Id.* Thus, “[i]n a lawsuit brought under [PAGA], the employee plaintiff represents
13 the same legal right and interest as state labor law enforcement agencies – namely, recovery of *civil*
14 *penalties* that otherwise would have been assessed and collected by the Labor Workforce Development
15 Agency.” *Arias v. Sup. Ct.* (2009) 46 Cal. 4th 969, 986. A PAGA action “is fundamentally a law
16 enforcement action designed to protect the public and not to benefit private parties” and represents “a
17 dispute between an employer and the *state*, which alleged directly or
18 through its agents – either [the Agency] or aggrieved employees – that the employer has violated the
19 Labor Code.” *Iskanian, supra*, 59 Cal. 4th at 381, 386-87 (emphasis in original). As such, PAGA
20 actions “directly enforce *the state’s* interest in penalizing and deterring employers who violate
21 California’s labor laws” and, the State of California is the “real party in interest.” *Id.* at 387 (emphasis
22 in original). This is entirely distinct from an individual claim, whereby an employee seeks individual
23 relief for Labor Code violations.

24 Because Plaintiff is permitted to resolve his individual and the PAGA claims, Plaintiff
25 respectfully submits that this Court should approve the Settlement Agreement.

26 ///

27 ///

28 ///

1 **VI. THE REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS ARE FAIR AND**
2 **REASONABLE**

3 For their efforts and the risk they undertook in obtaining a common fund settlement that benefits
4 the LWDA and Aggrieved Employees, the Parties allocated \$40,000 to Plaintiff's Counsel for
5 reasonable attorneys' fees, which is one third of the Settlement Amount. Additionally, the Parties agreed
6 to reimburse Plaintiff's Counsel for their actual litigation costs. These fees are warranted under the law
7 and within the range of fees commonly awarded in similar cases.

8 **A. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER ATTORNEY'S FEES UNDER THE**
9 **COMMON FUND DOCTRINE IN THIS QUI TAM ACTION**

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

17 "A qui tam action is one brought under a statute that allows a private person to sue as a private
18 attorney general to recover damages or penalties, all or part of which will be paid to the government."
19 *People ex rel. Stratham v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 491-492. "A qui tam
20 action 'is a type of private attorney general lawsuit' [citation], in which 'the qui tam plaintiff stands in
21 the shoes of the state or political subdivision [citation].'" *Id.* at p. 501. As the name of the PAGA statute
22 makes clear (e.g. "Labor Code Private Attorney General Act"), a PAGA action is a qui tam action
23 because the statute allows the employee plaintiff, acting as the proxy of the state's labor law enforcement
24 agency, to sue his or her employer for Labor Code violations and recover civil penalties that otherwise
25 would have been assessed and collected by the Labor and Workforce Development Agency (LWDA).
26 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. "A PAGA representative action
27 is therefore a type of *qui tam* action." *Id.* at p. 382. Indeed, the majority of the civil penalties recovered
28 in a PAGA action are paid to the state, with a smaller portion paid to the aggrieved employees (e.g. 75%

1 paid to the state; 25% paid to the aggrieved employees). See Lab. C. 2699(i).

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

11 "Those benefiting from the recovery of the fund, in this case some
12 depositors and eventually the People of the State of California, must bear
13 their share of the cost of litigation. Fees for taxpayers' attorneys will be
14 deducted from the judgment, and each claimant's share reduced
15 proportionately. To the extent the judgment relies upon section 1021.5 for
recovery of attorney fees, it must be modified to confine the award of fees
to the common fund theory." *Id.* at p. 91.

16 In this case, the PAGA Settlement created a common fund for the benefit of the employees and
17 the State of California. Thus, these beneficiaries must bear their share of the costs and attorney's fees,
18 which fees and costs must be deducted from the settlement amount under the common fund theory. *Id.*
19 Moreover, such fees are deducted as a percentage of the settlement amount. *Boeing Co. v. Van Gemert*
20 (1980) 444 U.S. 472, 478-482; *Six (6) Mexican Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904
21 F.2d 1301, 1311; *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027;
22 *Staton v. Boeing Co.*(9th Cir. 2003) 327 F.3d 938, 967.

23 The California Supreme Court recently upheld the use of the common fund theory of recovery
24 for attorney's fees in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506. In *Laffitte*, the settlement
25 created a common fund of \$19 million dollars. This ruling is consistent with the Court's prior rulings
26 recognizing that "when a number of persons are entitled in common to a specific fund, and an action
27 brought by ... plaintiffs for the benefit of all results in the creation or preservation of that fund, such ...
28 plaintiffs may be awarded attorneys' fees out of the fund." *Serrano III v. Priest* (1977) 20 Cal.3d 25, 34;

1 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“[A] lawyer who recovers a common fund . . . is
2 entitled to reasonable attorneys’ fees from the fund as a whole;” *Mills v. Electric Auto-Lite Co.* (1970)
3 396 U.S. 375, 393-394 [discussing the acceptance of awarding attorneys’ fees and expenses from a
4 settlement where “litigation has conferred a substantial benefit on the members of an ascertainable
5 class”]; see also *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26 “[f]ee spreading
6 occurs when a settlement or adjudication results in the establishment of a separate or so-called common
7 fund for the benefit of the class.”).).

8 Accordingly, the common fund doctrine allows a court to award attorneys’ fees based upon a
9 percentage of the total fund that is created for the satisfaction of beneficiaries’ claims when the fund
10 consists of a “certain or easily calculable sum of money.” *Dunk v. Ford Motor, Co.* (1996) 48
11 Cal.App.4th 1794, 1809; *Jutkowitz v. Bourns, Inc.* (1981) 118 Cal.App.3d 102, 1,282.91 [application of
12 the percentage of the fund recovery depended on “[t]he critical point” that “a fund was created from
13 which attorneys’ fees could be paid”]; A. Conte & H. Newberg, *Newberg on Class Actions*, § 14:6 (4th
14 ed. 2002).

15 California law has long upheld, and continues to uphold, the percentage of the recovery method
16 for awarding attorneys’ fees where a fund is established. See e.g., *Serrano v. Priest* (1977) 20 Cal.3d
17 25, 34; *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726; *Chavez v. Netflix, Inc.*
18 (2008) 162 Cal.App.4th 43, 563 [“fees based on a percentage of the benefits are in fact appropriate in
19 large class actions...”]; *Sanders v. City of Los Angeles* (1970) 3 Cal.3d 252, 261, 263
20 [affirming award of attorneys’ fee based on percentage of recovery]; *Chavez v. Netflix, Inc., supra*, 162
21 Cal.App.4th at pp. 65-66; see also *Consumer Cause, Inc. v. Mrs. Gooch’s Natural Food Markets, Inc.*
22 (2005) 127 Cal.App.4th 387, 397 [the common fund doctrine is “frequently applied in class actions when
23 the efforts of the attorney for the named class representatives produce monetary benefits for the entire
24 class”]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254 [“courts recognize two
25 methods for calculating attorney fees in class actions: the lodestar/multiplier method and the percentage
26 of recovery”].

27 Based on the foregoing, awarding attorneys’ fees of one-third of the Settlement Amount is fair
28 and warranted in light of the PAGA settlement that was reached on behalf of the State of California and

1 Aggrieved Employees. Accordingly, awarding fees on this basis in this amount is reasonable and
2 appropriate.

3 **B. THE PERCENTAGE FEE OF THE GROSS SETTLEMENT AMOUNT IS FAIR AND**
4 **REASONABLE, AND LESS THAN COUNSEL’S LODESTAR**

5 An award of fees from the gross settlement amount under the common fund doctrine prevents
6 unjust enrichment of those who benefit from the common fund created through the successful efforts of
7 plaintiff’s counsel and furthers the important goal of attracting competent counsel to handle
8 representative actions enforcing minimum labor standards. *Laffitte v. Robert Half Int’l. Inc.* (2016) 1
9 Cal.5th 480, 503. In affirming the use of the common fund doctrine in California, the California Supreme
10 Court summarized the benefits of the percentage method of recovery stating: “The recognized
11 advantages of the percentage method—including relative ease of calculation, alignment of incentives
12 between counsel and the class, a better approximation of market conditions in a contingency case, and
13 the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
14 the litigation [citations]—convince us the percentage method is a valuable tool that should not be denied
15 our trial courts.” *Id.*

16 Among the factors considered in determining whether the requested fee percentage is reasonable
17 are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of plaintiff’s counsel
18 and the quality of work performed by plaintiff’s counsel; (4) the contingent nature of the fee and the
19 financial burden carried by the plaintiff; and (5) awards made in similar cases.
20 *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-50.

21 All these factors support an award here of one-third of the common fund. First, Plaintiff’s
22 counsel achieved a good PAGA settlement in a case that involved highly contested issues that were
23 primarily related to small periods of time that were allegedly unpaid, as well as meal and rest break
24 violations. Second, Plaintiff faced significant risks going forward with the litigation. As discussed
25 above, Defendant raised various defenses and, as such, Plaintiff faced risky issues going forward with
26 this litigation, and it would have taken significant time to realize any recovery in this action. Third,
27 Plaintiff’s Counsel are experienced representative action litigators, including having been selected as a
28 “Super Lawyer” in employment litigation, and have achieved some of the largest PAGA awards.

1 (Mankin Decl. ¶¶ 2-6.) This experience and expertise, combined with the high quality of work
2 performed in this case by Plaintiff’s Counsel, resulted in the settlement achieved in this case. Fourth, as
3 discussed above and as set forth in the Declaration of Plaintiff’s Counsel, the request for attorney’s fees
4 falls well within the norms accepted by state and federal courts in California in comparable wage and
5 hour actions actually handled by Plaintiff’s Counsel.

6 For all of the above reasons, a fee award here in the amount of one-third of the Gross Settlement
7 Amount is fair and reasonable.

8 **C. A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF THE FEE AWARD**

9 Despite recognized limitations of the so-called lodestar method, some California and federal
10 courts acknowledge the utility of a lodestar “cross-check.”¹ (*Lealao, supra*, 82 Cal.App.4th at 46-47.)
11 Under the “lodestar multiplier” method of cross-checking the reasonableness of attorneys’ fees in class
12 actions, the court ascertains Class counsel’s total “lodestar” amount by multiplying the number of hours
13 reasonably expended by each attorney or legal staff member by their hourly rates, and then enhances or
14 reduces this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty or
15 difficulty of the case, its contingent nature, and the degree of success achieved. *PLCM Group, Inc. v.*
16 *Drexler* (2000) 22 Cal.4th 1084, 1095-96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao,*
17 *supra*, 82 Cal.App.4th at 43 [court has discretion to use a multiplier to ensure that the “fee awarded is
18 within the range of fees freely negotiated in the legal marketplace in comparable litigation”].)

19 As set forth in the declaration of Plaintiff’s Counsel submitted herewith, the actual aggregated
20 lodestar between the attorneys that worked on this case is \$56,805. This results in a **negative** multiplier,
21 which clearly demonstrates that the requested fee is justified, reasonable and appropriate. The total
22 lodestar is summarized in the following table and in the declaration of Plaintiff’s counsel:

23 ///

24 ///

25 ///

27 ¹ In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of
28 manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient hours have been
expended. Herr, David F., *Manual for Complex Litigation*, § 14.121 (1988); *See also In re Activision* (N.D. Cal 1989) 723
F.Supp 1373.

Lodestar Summary

Attorney	Experience	Hourly Rate	Hours	Total
Brian Mankin	20	\$695	39 ²	\$27,105
Peter Carlson	7	\$540	55	\$29,700
TOTAL				\$56,805

(See Mankin Decl. ¶ 21)

The hourly rates above are comparable to those of other attorneys with equal or similar experience. (*Id.*) The starting point in determining the appropriate hourly fee is to discern the prevailing rate for similar work in the pertinent geographic region. See Herr, *Manual for Complex Litigation*, § 14.122 (1984) (“reasonable fees ... are to be calculated according to the prevailing market rates in the relevant community.”)

According to the 2014 article in the National Law Journal, in Los Angeles, the average of partners **in 2014** was \$665, while the average associate rate was \$401 in 2014. (Sloan, *\$1,000 Per Hour Isn't Rare Anymore; Nominal Billing Levels Rise, But Discounts Ease Blow (2014)* Nat. Law Journal.) At Irell & Manella, the average hourly partner rate is \$890; at Mannatt, Phelps & Phillips, the average hourly partner rate is \$740; at O'Melveny & Myers, the average hourly partner rate is \$715; and at Jeffer Mangels Butler & Mitchell, the average hourly partner rate is \$690. *Id.*

Thus, not only are Plaintiff's Counsel's rates reasonable and typical, but the attorneys' fees requested are in line with the lodestar, which confirms that the fee request is fair and reasonable.

D. THE REQUESTED LITIGATION COSTS ARE FAIR AND REASONABLE

Plaintiff's Counsel requests reimbursement of their actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the employees. See *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19. Plaintiff's Counsel are permitted to recover their litigation costs and expenses under the common fund doctrine. See *Serrano III*, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the fund); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund “[o]f

² Includes an estimated 20 hours of additional work in preparation for and attending the hearing, as well as work that is anticipated to be performed after the hearing with counsel, administrator, employees, and the court.

1 necessity, and for precisely the same reasons discussed above with respect to the recovery of attorneys'
2 fees by . . . [Plaintiffs'] attorneys"). Furthermore, Plaintiff's Counsel are entitled to recover "those out-
3 of-pocket expenses that would normally be charged to a fee-paying client." *Harris v. Marhoefer* (9th
4 Cir. 1994) 24 F.3d 16, 19.)

5 The Settlement Agreement authorized Plaintiff's Counsel to recover litigation costs up to \$5,000.
6 However, the actual costs through the approval hearing are projected to be \$2,206.83, which is the
7 amount requested. (Mankin Decl. ¶ 22; Exhibit C to Mankin Decl.). The balance will be paid to the
8 LWDA and Aggrieved Employees. These costs are reasonable, uncontested, and should be approved.

9 **VII. SUBMISSION TO THE LWDA**

10 As set forth in the Mankin Declaration at ¶ 23, the settlement and this motion are concurrently
11 being submitted to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of electronic
12 submission is attached as Exhibit D to the Mankin Declaration.

13 **VIII. THE SETTLEMENT ADMINISTRATOR**

14 Phoenix will serve as the Settlement Administrator and will be responsible for processing the
15 settlement payments and providing notice to the Aggrieved Employees. Phoenix provided an all-in bid
16 to administrator the Settlement for \$2,000, which is the amount that will be paid from the Settlement
17 Amount.

18 **IX. CONCLUSION**

19 For the foregoing reasons, Plaintiff requests, and Defendant does not oppose, the Court's
20 approval of the Settlement under the PAGA.

21 Dated: May 14, 2021

LAUBY, MANKIN & LAUBY LLP

22
23 BY:



24 Brian J. Mankin, Esq.
25 Attorneys for Plaintiff, the State of California and
26 Aggrieved Employees
27
28

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

[illegible]

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 4590 Allstate Drive, Riverside, California 92501.

On May 14, 2021, I caused to be served the foregoing document(s) described as follows:

**PLAINTIFF’S UNOPPOSED MOTION TO APPROVE THE SETTLEMENT PURSUANT TO THE
PRIVATE ATTORNEY GENERAL ACT OF 2004; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF BRIAN MANKIN IN SUPPORT THEREOF; [PROPOSED]
ORDER**

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[] **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

[] (By Overnight Service) I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

[X] By Email or Electronic Transmission: Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

[] **(By Certified Mail-Return Receipt Requested)** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California.

By Personal Service I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

[X] **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 14, 2021, Riverside, California.

[] Federal I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Tracie Chiarito
Tracie Chiarito, Declarant

SERVICE LIST

Alexander M. Medina, Esq.
MEDINA McKELVEY LLP
925 Highland Pointe Drive, #300
Roseville, CA 95678
916-960-2211
916-742-5488-fax
alex@medinakelvey.com
Attorneys for JBGC INC. AND BILLY AND CYNTHIA PRATT