

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444 | Fax: (951) 320-1445

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

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

Plaintiff,

vs.

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

Case No.: CIVDS 2013277

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

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION TO
APPROVE SETTLEMENT PURSUANT TO
THE PRIVATE ATTORNEY GENERAL ACT
OF 2004**

Hearing

Date: July 21, 2021

Time: 10:00 a.m.

Dept.: S26

Complaint filed: June 15, 2020

1 I, Brian J. Mankin, state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of California. I
3 represent the Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of
4 all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion to Approve
5 Settlement Pursuant to the Private Attorney General Act of 2004 (the "PAGA"). If called as a witness,
6 I could and would competently testify thereto.

7 **COUNSEL'S EXPERIENCE**

8 2. I have been a member, in good standing, of the State Bar of California since 2001. I am
9 admitted to practice in the United States District Courts for the Central and Southern District of
10 California and the Ninth Circuit Court of Appeal and have tried cases in various courts in California.

11 3. I have handled approximately 400 to 500 employee vs. employer litigation matters during
12 my nearly 20 years in practice. Over the last 15 years, my practice has almost entirely consisted of
13 representing employees, the majority of which has included class action and representative action wage
14 and hour matters. In total, I have handled over 200 class action and representative action wage/hour
15 cases, and have been appointed by the court as class counsel and have received final court approval and
16 judgment in close to half of those actions to date, and anticipate receiving final approval in many more
17 of those in the future.

18 4. As part of these settlements and judgments, I have recovered in excess of \$200 million
19 in damages for my clients and the class members (who often work as nurses, ambulance drivers,
20 technicians, warehouse workers, truck drivers, sales, professional occupations and countless other
21 trades). As of the end of 2018, my team and I held the record for the largest known PAGA-only case in
22 California's history as of that time - a \$12.5 million-dollar court approved settlement, which followed
23 extensive litigation, summary adjudication and writs to the CA Supreme Court against a Fortune 50
24 company (*Garcia v. Macy's*, San Bernardino Superior Court).

25 5. I have tried two major class and PAGA cases against Fortune 100 companies. In 2018,
26 I was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior Court
27 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against Walmart
28 that we tried to the jury in District Court, wherein the jury awarded Plaintiffs over \$6 million.

6. Over the last few years, I have been consecutively selected by my peers as a “Super Lawyer” in Employment Litigation.

PROCEDURAL BACKGROUND

7. My firm began investigating this matter in the spring of 2020. Defendant owns and operates three funeral homes in the Inland Empire, and Plaintiff and those similarly situated worked for Defendant at these business in California between April 11, 2019 and May 22, 2021 (the “Aggrieved Employees”). After being retained by Plaintiff, we sent a letter to Defendant requesting the production of his personnel and timekeeping records in order to further evaluate his wage and hour claims.

8. At the same time, on April 8, 2020, my office submitted a claim for civil penalties under the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, et seq.) to the California Labor Workforce and Development (“LWDA”), which is attached hereto as **Exhibit A**. The LWDA did not respond or assume jurisdiction of the claims, thereby deferring the prosecution of these violations to Plaintiff and his attorneys.

9. After the 65- day waiting period elapsed without the LWDA asserting jurisdiction, Plaintiff filed this PAGA-only complaint on June 15, 2020.

10. This action focused on three primary claims, which were brought on behalf of the group of approximately 29 Aggrieved Employees during the PAGA Period.

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

1 12. Defendant retained counsel and vowed to vehemently oppose the claims. Additionally,
2 Defendant quickly corrected many of its practices and made payments and other Aggrieved Employees
3 for unpaid wages and meal and rest period violations under Labor Code § 226.7. Despite the disputed
4 nature of the claims, the Parties nevertheless agreed to table formal discovery and attempt an early
5 resolution.

6 13. In preparation for the mediation, the Parties exchanged documents and information that
7 allowed both sides to calculate the potential damages and evaluate potential risk. During this process,
8 Plaintiff and his counsel analyzed, researched, and investigated the potential issues, including matters
9 related to the calculation of damages, trial, and appellate issues and risks. During this exchange of
10 information, pursuant to Plaintiff counsel's informal requests, Defendant produced documents and pay
11 records that enabled Plaintiff to conduct a full analysis of the alleged unpaid wage, meal/rest break
12 violations and other claims. In sum, the data showed that there were only 418 allegedly violative pay
13 periods, with a corresponding maximum PAGA penalties for all claims totaling \$271,700.

14 14. While preparing for mediation, the Parties discussed engaging in direct negotiations
15 given the small number of Aggrieved Employees as well as the undisputed facts underlying certain
16 claims. The Parties agreed to try direct negotiations, but also left the mediation on calendar should
17 negotiations be unsuccessful. Ultimately, the Parties reached a settlement via direct negotiations on
18 March 2, 2021, after multiple rounds of offers and demands, including a settlement of Plaintiff's separate
19 individual claims. Thereafter, the Parties memorialized the terms of the settlement in a long-form
20 Settlement Agreement, which is attached hereto as **Exhibit B**.

21 **THE SETTLEMENT IS FAIR, JUST AND REASONABLE**

22 15. The settlement requires Defendant to pay \$120,000 inclusive of payments for Plaintiff's
23 attorneys' fees (\$40,000) and litigation costs (\$2,206.83), and third party administrator
24 ("Administrator") costs (\$2,000).

25 16. After these payments, the remainder of approximately \$75,793.17 will form the PAGA
26 Penalties and, pursuant to Labor Code § 2699(i), 75 percent shall be paid to the LWDA (which shall be
27 used to assist in the enforcement of labor laws and education of employers and employees about their
28 rights and responsibilities under the Labor Code), and the remaining 25 percent being paid to the

1 Aggrieved Employees on a pro rata basis. The following chart reflects the estimated payments from the
2 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

10
11 17. As such, the LWDA will receive approximately \$56,844.88 (75 percent of the PAGA
12 Penalties) and the 29 Aggrieved Employees will collectively receive approximately \$18,948.29 (25
13 percent), which will be paid on a pro-rata basis according to the number of pay periods worked during
14 the PAGA Period. The average payment to the Aggrieved Employees is approximately \$653.39. The
15 portion of each PAGA Penalties share will be treated as non-wage income and reported by the Settlement
16 Administrator on IRS Form 1099 to the respective Aggrieved Employee and applicable governmental
17 authorities.

18 18. In exchange for these payments and benefits, the Aggrieved Employees will narrowly
19 release the civil penalties claims alleged under Labor Code § 2699.

20 **THE REQUESTED ATTORNEY'S FEES AND COSTS ARE FAIR AND REASONABLE**

21 19. In accordance with the Settlement, the Parties agreed that my office would receive one-
22 third of the settlement amount as attorneys' fees in recognition of the work performed by my office and
23 the results we achieved for the State and Aggrieved Employees – all of which is less than my firm's
24 lodestar, resulting in a *negative multiplier*.

25 20. At my office, this case was primarily handled by Peter Carlson and me. Mr. Carlson is a
26 7-year attorney and Senior Associate in the firm who works exclusively with me on employment law
27 matters. He bills at the hourly rate of \$540/hour. I have been in practice for 20 years, with most of those
28 years handling complex litigation and for over the last 15 years, my practice has almost entirely consisted

1 of representing employees with most of that time devoted to handling class action and wage and hour
2 matters. My billing rate is \$695/hour. I believe these rates are consistent with Plaintiff and Defense
3 attorneys who handle complex class action litigation, if not somewhat lower (i.e., the Laffrey Matrix at
4 www.laffreymatrix.com indicates that the benchmark rate for a 4-year attorney to be \$455/hour and a 12-
5 year attorney at \$742/hour). According to a **2014** article in the National Law Journal, in Los Angeles,
6 partners charge an average of \$665, while the average associate rate is \$401.)¹

7 21. The table below includes a summary of the hours worked, plus additional hours that I
8 will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and
9 working with the administrator and defense counsel to finalize this matter. My firm's lodestar totals
10 approximately \$56,805 through the conclusion of this matter, resulting in a **negative** multiplier, as
11 follows:

12 **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

17
18 22. In the course of prosecuting this action, Plaintiff's counsel has incurred expenses that
19 were incidental and necessary to the effective representation of the Class. These expenses included but
20 were not limited to: court filings, copying and management of documents, messenger services, postage,
21 fax transmission expenses, transportation, and other incidental expenses directly related to this action.
22 The Settlement Agreement authorized Plaintiff's Counsel to recover litigation costs not to exceed
23 \$5,000. The costs through the approval hearing are \$2,206.83 (see **Exhibit C** attached hereto), which
24 is the amount requested. Defendant does not oppose this request.

25 ///

26
27 ¹ The article notes that at Irell & Manella, the average partner rate is \$890/hr; Mannatt, Phelps & Phillips is \$740/hr;
28 O'Melveny & Meyers is \$715/hr; and Jeffer Mangels Butler & Mitchell is \$690/hr. *Id.*

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
- 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

EXHIBITS AND CONCLUSION

24. A true and correct copy of the LWDA letter is attached hereto as **Exhibit A.**

25. The PAGA Settlement Agreement and Release of PAGA Claims is attached hereto as **Exhibit B.**

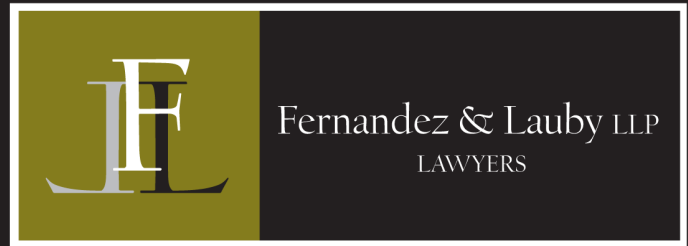
25. The PAGA Settlement Agreement and Release of PAGA Claims is attached hereto as **Exhibit B.**

27. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as **Exhibit D**.

29. For the foregoing reasons, it is respectfully requested that the Court approve the settlement.

By: Brian J. Mankin
Brian J. Mankin

EXHIBIT “A”



April 8, 2020

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Please see attached Service List

Re: PAGA Civil Penalty Claim
Zachary Lopez v. JBGC Inc., Mr. Billy Pratt, and Ms. Cynthia Pratt

To the Labor and Workforce Development Agency (“LWDA”), JBGC Inc., Mr. Billy Pratt, and Ms. Cynthia Pratt:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Zachary Lopez (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), JBGC Inc. and/or any affiliated entities, and/or the respective owner of said companies (Mr. Billy Pratt and Ms. Cynthia Pratt) (collectively the “Company”), for violations of Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately November 2019 through April 2020. Claimant alleges that, at all relevant times, he and all other nonexempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and violations to which Claimant was subjected during his employment.

At all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages for multiple reasons. For instance, Claimant and the Aggrieved Employees were routinely required to be “on-call” to receive phone calls and perform other tasks after hours (*e.g.* from 5:00 pm to 8:30 am the next morning). However, despite that the Aggrieved Employees were “engaged to wait” and on-call, the Company did not provide any wages for this compensable time. The Company also failed to pay for the actual time spent by the Aggrieved Employees for tasks performed after hours. In other words, when an “on-call” Aggrieved Employee fielded phone calls between the hours of 5:00 pm and 8:30 am, the Aggrieved Employee did not receive any compensation for actual time spent performing work for the Company. In addition to the on-call claims, the Aggrieved Employees were also frequently ordered to perform tasks before

clocking in and/or after clocking out without compensation. Moreover, Claimant and the Aggrieved Employees did not receive proper minimum and overtime wages due to the Company's failure to accurately record and compensate for all hours worked. These violations resulted in unpaid minimum, overtime, and doubletime wages. Claimant raised bona fide complaints to the Company regarding these issues, yet the Company chose to terminate him for raising complaints about unlawful wage practices, a retaliatory and illegal act under Labor Code §§ 98.6 and 1102.5.

Additionally, on the occasions when Claimant and the Aggrieved Employees worked in excess of 8 and/or 12 hours per day and/or 40 hours per week failed to pay proper overtime compensation for the hours worked in excess of 8 and/or 12 per day and/or 40 per week. As one such example, Claimant and the Aggrieved Employees were paid on an hourly-plus-commission basis. However, when Claimant and the Aggrieved Employees worked overtime hours and accrued earned commission wages, the Company failed to include the commission wages in the calculations for the regular rate of pay and corresponding overtime wages owed.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by the hectic workload. Additionally, Claimant was often not permitted to leave the premises for his rest breaks, in violation of California law. Also, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, expenses related to the use of personal vehicles for Company business, as well as acquiring and maintaining a smart phone and related data plan to communicate with the Company via phone and text message.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, and meal and rest period premiums. And the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Moreover, at all relevant times, the Company provided inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of JBGC Inc., Mr. Billy Pratt and Ms. Cynthia Pratt and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that JBGC Inc., Mr. Billy Pratt and Ms. Cynthia Pratt acted as a single employer of Claimant and the Aggrieved

Employees. Furthermore, on information and belief, JBGC Inc., Mr. Billy Pratt and Ms. Cynthia Pratt are an integrated enterprise and should be treated as a single employer because JBGC Inc., Mr. Billy Pratt and Ms. Cynthia Pratt share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief JBGC Inc., Mr. Billy Pratt and Ms. Cynthia Pratt share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that Mr. Billy Pratt and Ms. Cynthia Pratt are now and at all relevant times were the owners of JBGC Inc., and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times Mr. Billy Pratt and Ms. Cynthia Pratt had the authority, in the interest of JBGC Inc., to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that JBGC Inc., Mr. Billy Pratt, and Ms. Cynthia Pratt are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, JBGC Inc., Mr. Billy Pratt, and Ms. Cynthia Pratt were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that JBGC Inc., Mr. Billy Pratt, and Ms. Cynthia Pratt were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, JBGC Inc. has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which Mr. Billy Pratt and Ms. Cynthia Pratt have conducted their personal affairs. Adherence to the fiction of the separate existence of JBGC Inc. would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to JBGC Inc. should be imposed jointly and severally against Mr. Billy Pratt and Ms. Cynthia Pratt.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, Mr. Billy Pratt and Ms. Cynthia Pratt are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

///

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

Claimant and the Aggrieved Employees were not paid all minimum, regular wages, and/or overtime wages for time spent subject to the control of the Company, including instances of underpayment due to the violations discussed above. Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and the Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties, as outlined above. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

Furthermore, Labor Code § 2802(b) states that “[a]ll awards made by a Court for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing her rights granted pursuant to Labor Code § 2802.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimant and all Aggrieved Employees due to the: failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state total hours worked; failure to accurately state the applicable overtime rate, and; failure to accurately state the corresponding number of hours worked at each hourly rate. As a result of these violations, civil penalties may be assessed under Labor Code §§ 226.3 and/or 2699, and Claimant may recover attorneys’ fees and costs.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**
(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES
(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code §

202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 256.) Labor Code § 2699 also imposes a penalty.

PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS
(Labor Code §§ 1174, 1174.5, 1198, and § 7 of the IWC Wage Orders)

Labor Code § 1174(d), and § 7 of the IWC Wage Orders require employers to maintain accurate employment records, including accurate payroll records showing the total number of regular and overtime hours worked each day by employees, including meal periods, and the gross wages earned by the employee, including all applicable pay rates and the corresponding number of hours worked at each pay rate, among other requirements.

Here, the Company failed to maintain accurate employment records as mandated by California law. Therefore, in addition to recovering the amount of attorneys’ fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code §§ 1174(d), 1174.5, 1199, and 2699.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company’s violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS’ FEES, INTEREST, AND PENALTIES
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys’ fees, and costs of suit. Additionally, Claimant seeks the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 256,

California Labor and Workforce Development Agency
JBGC Inc. / Mr. Billy Pratt / Ms. Cynthia Pratt
Re: Lopez v. JBGC Inc., et al.
April 8, 2020
Page 7 of 8

1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimant is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

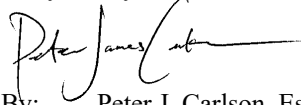
Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimant's notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Peter J. Carlson", with a long horizontal flourish extending to the right.

By: Peter J. Carlson, Esq.

E-mail: PJC@fernandezlauby.com

www.California-EmploymentLawyers.com

Service List

JBGC Inc.
405 E. Industrial Road
San Bernardino, CA 92408

Billy J. Pratt
405 E. Industrial Road
San Bernardino, CA 92408

Cynthia A. Pratt
405 E. Industrial Road
San Bernardino, CA 92408

EXHIBIT “B”

PAGA SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS

This Settlement Agreement and Release of Private Attorney General Act (“PAGA”) Claims is made and entered into by and between Plaintiff Zachary Lopez (“Plaintiff”), as an individual, representative for the Labor and Workforce Development Agency of the State of California and on behalf of all similarly situated individuals (“Aggrieved Employees”), and Defendant JBGC, Inc. (“Defendant”), and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court’s approval.

A. Definitions.

1. “Agreement,” “PAGA Agreement” or “PAGA Settlement Agreement” shall mean this Settlement Agreement and Release of PAGA Claims, including any attached Exhibits.
2. “Aggrieved Employee(s)” means and refers to all similarly situated individuals who are current and former non-exempt employees of Defendant in the State of California at any time from April 11, 2019 through May 22, 2021. Defendant represents that as of the date it executes this PAGA Agreement, a total of approximately 29 Aggrieved Employees worked at least one Eligible Pay Period during the Statutory Period.
3. “Aggrieved Employees List” means a spreadsheet containing a list of all Aggrieved Employees including each Aggrieved Employee’s: (1) full name; (2) last known address; (3) social security number; and (4) the number of Eligible Pay Periods he or she worked during the Statutory Period.
4. “Aggrieved Employees Settlement Proceeds” means the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the Aggrieved Employees.
5. “Complaint” (also referred to as the “PAGA Action”) means and refers to the operative complaint filed on June 15, 2020, in the Superior Court, County of San Bernardino, entitled “*Zachary Lopez v. JBGC, Inc., et al.*,” Case No. CIVDS2013277 which alleges PAGA claims 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.
6. “Court” (or “Judge”) means the California Superior Court, County of San Bernardino.
7. “Defendant” means and refers to JBGC, Inc.
8. “Defendant’s Counsel” means and refers to Medina McKelvey LLP.
9. “Effective Date” means the date the Court enters the Final Order.
10. “Eligible Pay Period” means any pay period worked by an Aggrieved Employee in California during the PAGA Release Period, April 11, 2019 through May 22, 2021. The calculation of an Aggrieved Employee’s pay periods and a determination as to whether an Aggrieved Employee was actively employed in California in a particular pay period shall be construed from Defendant’s records.

11. "Final Approval Order" refers to the order of the Court granting final approval of this PAGA Settlement Agreement on substantially the terms provided herein or as may be modified by subsequent agreement of the Parties and entry of judgment.

12. "Gross Settlement Amount" or "Settlement Amount" is the sum of One Hundred Twenty Thousand Dollars and No cents (\$120,000.00), which represents the total amount payable under this PAGA Settlement Agreement by Defendant, and includes the Aggrieved Employees' Settlement Proceeds payable to the Aggrieved Employees, the LWDA Settlement Proceeds payable to the LWDA, Court-Awarded attorneys' fees (not to exceed \$40,000.00) and litigation costs (not to exceed \$5,000.00) to Plaintiff's Counsel, and Settlement Administration Costs (not to exceed \$2,000).

13. "Individual Share" means an Aggrieved Employee's allocation of the Net Settlement Amount, as defined in Section 40 (3)(ii) below.

14. "LWDA Settlement Proceeds" means the seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the Labor Workforce and Development Agency pursuant to Labor Code section 2699(i).

15. "Net Settlement Amount" is defined as the Settlement Amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts are subtracted from the Gross Settlement Amount: (a) attorneys' fees and litigation costs advanced by Plaintiff's Counsel, and (b) Settlement Administrator costs.

16. "Notice" means the notice that will be sent to the Aggrieved Employees with payment after the Final Order is entered by the Court.

17. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*

18. "PAGA Claim Period" means April 11, 2019 through May 22, 2021.

19. "PAGA Release Period" means April 11, 2019 through May 22, 2021.

20. "Parties" or "Settling Parties" means Plaintiff, the Aggrieved Employees, and Defendant, collectively.

21. "Plaintiff" or "PAGA Representative" means Zachary Lopez.

22. "Plaintiff's Counsel" is Brian Mankin and Peter Carlson of Lauby Mankin Lauby LLP.

23. "Released Claims" or "Released PAGA Claims" means and refers to any and all rights and claims for civil penalties that were asserted or could have been asserted, assessed upon or collected from the Released Parties by or on behalf of Plaintiff, the Aggrieved Employees and/or the State of 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, 202, 203, 204, 208, 210, 218.6, 221, 222, 223, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, and Sections 3, 4, 9, 11 and 12 of the applicable Wage Order, arising during the Statutory Period.

24. “Released Parties” means Defendant and its past, present and/or future officers, directors, shareholders, employees, agents, attorneys, insurers, parent companies, affiliated companies, subsidiaries, predecessors, successors, partners, joint venturers, assigns or other related entities.

25. “Release” shall mean the release and discharge, as of the Effective Date occurring and Defendant’s funding of the Gross Settlement Amount, of the Released Claims by Plaintiff and all of the Aggrieved Employees.

26. “Settlement Administrator” means and refers to Phoenix Settlement Administrators, the third-party entity selected by the Parties who will administer the settlement, subject to approval by the Court, in accordance with this PAGA Settlement Agreement.

27. “Settlement Administration Costs” means the costs payable from the Settlement Amount to pay the Settlement Administrator for administering this Settlement, including fees and expenses reasonably incurred by the Claims Administrator as a result of the procedures and processes expressly required by this Agreement, and shall include all costs of administering the Agreement, including, but not limited to, all tax document preparation, custodial fees, and accounting fees incurred by the Claims Administrator; all costs and fees associated with preparing, issuing and mailing any and all notices and other correspondence to Aggrieved Employees; and all costs and fees associated with communicating with Aggrieved Employees.

B. General.

28. On or about April 8, 2020, Plaintiff gave written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant of alleged violations of California Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 and/or applicable sections of the California Industrial Welfare Commission Wage Orders for wage and hour penalty claims. The LWDA did not assert jurisdiction over the claims, so on about June 15, 2020, Plaintiff filed the PAGA Action.

29. On March 2, 2021, the Parties reached a settlement of the PAGA Claims, as well as Plaintiff’s separate individual (non-PAGA) claims. At all times, the Parties’ settlement negotiations have been non-collusive, adversarial, and at arm’s length.

30. The Parties agree that neither the Parties’ settlement, this PAGA Settlement Agreement, nor the acts to be performed or judgment to be entered pursuant to the terms of the settlement and PAGA Settlement Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of any statute or law or liability on the claims or allegations in the Action.

31. Defendant denies all of the allegations in the Action, including all PAGA Claims, and denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind and further deny that this PAGA Action is appropriate for PAGA representative treatment for any purpose other than settling this Action. Defendant has denied and continues to deny each and every material factual allegation and alleged claims asserted against it in the PAGA Action.

32. Defendant denies all claims as to liability, damages, liquidated damages, penalties, interest, fees, restitution, injunctive relief and all other forms of relief asserted in the Action. Defendant has agreed to resolve the asserted PAGA claims in the Action via this Agreement, but to the extent this Agreement is deemed void or the Final Approval Date does not occur, Defendant does not waive, but rather expressly reserves, all rights to challenge all such claims and allegations in the Action upon all procedural and factual grounds, including, without limitation, the ability to challenge class or collective treatment on any grounds, as well as to assert any and all other potential defenses or privileges.

33. The Parties have conducted a thorough investigation into the facts of the PAGA Action. This included conducting extensive informal discovery, and exchanging information and documents relating to the Released Claims. Based on the foregoing data and on their own independent investigation and evaluation, Plaintiff's Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this PAGA Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the LWDA and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay, uncertainty associated with litigation, various defenses asserted by Defendant, and numerous potential appellate issues. Defendant and Defendant's Counsel also agree that the settlement is fair and in the best interest of the LWDA and Aggrieved Employees. The Parties desire to completely dispose of the Action by this PAGA Settlement Agreement and the separate individual Confidential Settlement Agreement (as outlined below in Section E). The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

34. This Agreement and all associated exhibits or attachments are made for the sole purpose of settling the PAGA claims asserted in the Action. This Agreement and the settlement it evidences are made in compromise of disputed claims. The Parties enter into this Agreement and associated settlement on a conditional basis in order for the Court to evaluate and approve the settlement. If the Court does not enter an order approving the Agreement, this Agreement shall be deemed null and void; it shall be of no force or effect whatsoever; it shall not be referred to or utilized for any purpose whatsoever; and the negotiation, terms and entry of the Agreement shall remain subject to the provisions of California Evidence Code Sections 1119 and 1152, Federal Rule of Evidence 408, and any other analogous rules of evidence that may be applicable.

35. Under California Law, the State may assess and collect civil penalties from employers for violations of certain provisions of the Labor Code. (See Cal. Lab. Code §§ 2699 *et seq.*) Under PAGA, however, if an "aggrieved employee" "give[s] written notice by certified mail to the [State] and the employer of the specific provision of the [Labor Code] alleged to have been violated," and the State thereafter decides not to investigate, as was the case here, or does investigate and determines that a citation against the employer should not issue, the employee may, "as an alternative" to enforcement by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties "on behalf of himself or herself and other current or former employees." *Id.* "[C]ivil penalties recovered by

aggrieved employees shall be distributed as follows: 75 percent to the state and 25 percent to the aggrieved employees.” *Id.*

36. California Labor Code § 2699(1)(2) provides that “The superior court shall review and approve any settlement of any civil action filed pursuant to this part.”

37. In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

C. Terms of Settlement.

38. Subject to submission of this PAGA Settlement Agreement to the Labor and Workforce Development Agency by Plaintiff and subject to the Court’s approval of the Settlement pursuant to Labor Code § 2699(1)(2), which counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement and disposal of the entire Action.

39. The financial terms of the settlement are as follows:

(a) **Gross Settlement Amount:** The Parties agree to settle this PAGA Action for the Gross Settlement Amount of \$120,000.00 in consideration and exchange for the releases described in Section D. The Gross Settlement Amount is inclusive of all settlement payments to the State of California and Aggrieved Employees; Plaintiff’s Counsels’ attorneys’ fees and litigation costs, and Settlement Administrator costs, and represents the maximum that Defendant will be required to pay under this PAGA Agreement (excluding Plaintiff’s separate Individual Settlement Agreement). In no event will Defendant be required to pay more than the Gross Settlement Amount.

(b) **Net Settlement Amount:** The Parties agree that the Net Settlement Amount shall be distributed to the LWDA and Aggrieved Employees as set forth in section (e) below.

(c) **Settlement Administrator Costs:** The costs associated with settlement administration (e.g. NOCA searches, preparing and mailing payments/notices to LWDA and Aggrieved Employees, tax documentation, etc.) shall be paid from the Settlement Amount and shall not exceed \$2,000. The difference between any actual administration costs and the allocated amount shall be added to the Net Settlement Amount.

(d) **Attorneys’ Fees and Costs:** The Parties agree that, subject to the Court’s review and approval, Plaintiff’s Counsel will be paid up to one-third of the Gross Settlement Amount as attorneys’ fees (\$40,000), plus actual litigation costs not to exceed \$5,000. In the event the Court approves a payment of less than \$40,000 for attorneys’ fees and/or \$5,000 for actual litigation costs, the difference will be a part of the Net Settlement Amount. Defendant agrees not to oppose any request by Plaintiff’s counsel for attorneys’ fees under the common fund doctrine. The Settlement Administrator will report these payments on an IRS Form 1099 issued to Plaintiff’s Counsel.

(e) **Allocation of Net Settlement Amount:** After deducting the amounts specified in items (c) and (d) from the Gross Settlement Amount, the balance remaining will form the Net Settlement Amount and will be paid to the Labor and Workforce Development Agency (“LWDA”) and the Aggrieved Employees in the following proportion: 75 percent to the LWDA

(“LWDA Settlement Proceeds”) and 25 percent to the Aggrieved Employees (“The Aggrieved Employees Settlement Proceeds”). The Aggrieved Employees Settlement Proceeds will be distributed to the Aggrieved Employees on a *pro rata* basis according to the following formula:

- i. The Settlement Administrator will calculate the total number of Eligible Pay Periods worked by all Aggrieved Employees during the Statutory Period, and the resulting figure will be referred to as the “Divisor.”
- ii. Each Aggrieved Employee’s *pro rata* share of the Aggrieved Employees Settlement Proceeds will be determined by dividing the Eligible Pay Periods that each Aggrieved Employee worked by the Divisor and then multiplying that product or fraction by the Aggrieved Employees Settlement Proceeds. The product of the foregoing formula shall be referred to as the Aggrieved Employee’s “Individual Share.” Payment to Aggrieved Employees of their Individual Share will not require the submission of any claim form.

(f) **Taxes and Reporting:** Each Aggrieved Employee’s Individual Share shall be allocated for disputed civil penalties (i.e., non-wage income) for all purposes and reported by the Settlement Administrator on IRS Form 1099 to the respective Aggrieved Employee and applicable governmental authorities. No portion of the Aggrieved Employees Settlement Proceeds is or shall be construed as wages. Nothing in this PAGA Settlement Agreement is intended to constitute legal advice regarding federal, state and/or local tax obligations or legal requirements for attribution of settlement proceeds. Plaintiff and Aggrieved Employees will be solely responsible for correctly characterizing any compensation received under the settlement on his/her personal income tax returns for tax purposes, and paying all appropriate taxes due for any and all amounts paid to them under the settlement. Plaintiff, Defendant, Plaintiff’s Counsel, and Defendant’s Counsel make no representations or warranties with respect to tax consequences of any payment under this PAGA Settlement Agreement, do not intend anything contained in this PAGA Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this PAGA Settlement Agreement be relied upon as such. To the extent that this PAGA Settlement Agreement or any of its attachments is interpreted to contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant, Defendant’s Counsel, Plaintiff and Plaintiff’s Counsel are not responsible for any employee tax obligations arising out of the Aggrieved Employee’s Individual Share.

(g) **No Additional Contribution by Defendant:** Defendant’s monetary obligation under this Agreement is limited to the Gross Settlement Amount as described above. All other costs and expenses arising out of or in connection with the performance of this Agreement shall be paid from the Gross Settlement Amount, unless expressly provided otherwise herein.

40. The Parties agree that the settlement is fair and reasonable and will so represent to the Court. The Parties agree that should the Court deny approval of the settlement based on the allocation of the settlement amount or the Net Settlement Amount, the Parties agree to re-negotiate the allocation of funds in good faith in an effort to obtain approval of the settlement.

D. Release by Plaintiff and the Aggrieved Employees as to the PAGA Claims.

41. Upon the Effective Date and except as to such rights or claims as may be created by this PAGA Settlement Agreement, Plaintiff, as an individual, representative for the State of

California, and representative of the Aggrieved Employees, hereby forever, finally, and completely releases and discharges the Released Parties of any and all of the Released Claims, and thus, Plaintiff, Aggrieved Employees, and the State of California will be forever barred from pursuing any and all Released Claims defined herein. The Parties understand and agree that this release is limited to the PAGA Claims and does not otherwise impact the individual rights or claims of the Aggrieved Employees.

42. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, 985, a judgment in “a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding,” which the Final Order shall so reflect. In accordance with *Arias*, the Final Order shall be binding on the Aggrieved Employees as to the Released Claims, including the PAGA Claims.

E. Separate Release and Individual Settlement by Plaintiff.

43. In addition to this PAGA Agreement, Plaintiff has entered into separate Confidential Settlement Agreement and General Release of Individual Claims (the “Individual Settlement Agreement”) with Defendant for all of his separate individual (non-PAGA) claims arising out of his employment with Defendant, in exchange for a full release of those claims. The Parties acknowledge and agree that the Individual Settlement Agreement and the covenants, promises and released claims contained therein shall not serve to modify or limit Plaintiff’s right to continue with this Action and seek the Court’s approval of this PAGA Settlement; however, Plaintiff shall have no right to be the representative of a class action lawsuit against Defendant. The Parties further agree that if for any reason the Effective Date does not occur with regard to this PAGA Settlement Agreement and/or the Final Order is not entered, then the Individual Settlement Agreement shall be null and void.

F. Interim Stay of Proceedings.

44. Pending completion of the settlement process, the Parties agree to a stay of all proceedings in the Action except such as are necessary to implement the PAGA Settlement Agreement itself.

G. Settlement Approval and Implemental Procedures.

45. Plaintiff’s Counsel shall prepare a motion for approval of the settlement pursuant to California Labor Code § 2699(1)(2), advocating that the Settlement is fair, adequate, and reasonable, and Plaintiff’s Counsel shall send a draft of the motion to Defendant’s Counsel allowing sufficient time for review and revisions prior to filing. Plaintiff will then move the Court for approval of the PAGA Settlement Agreement, including the allocation of the Net Settlement Amount, Plaintiff’s Counsel’s attorneys’ fees and costs, and Settlement Administrator costs, which Defendant will not oppose. Plaintiff’s Counsel will serve the Motion on Defendant’s Counsel and submit it to the LWDA. Pursuant to California Labor Code section 2698, *et seq.*, Plaintiff’s Counsel shall undertake all required submissions and disclosures to the LWDA and the Court to obtain approval of the settlement.

46. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, resolving any disputes regarding the calculation or

application of the formula for determining the Individual Shares, drafting and mailing the settlement checks to Aggrieved Employees, issuing 1099 forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders. Any disputes relating to administration of the settlement by the Settlement Administrator shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this PAGA Settlement Agreement, until all payments and obligations contemplated by this PAGA Settlement Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Aggrieved Employees, and Plaintiff's Counsel any 1099, or other tax forms as may be required by law for all amounts paid pursuant to this PAGA Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax accounts and forwarding all payments to the appropriate government authorities.

47. Upon the Court's entry of the Final Order, the Settlement Administrator will perform all settlement administration duties, including (i) performing a National Change of Address ("NCOA") search on all Aggrieved Employees to update the addresses of the Aggrieved Employees, (ii) issuing the Notice and payments to the Aggrieved Employees, (iii) issuing any required IRS forms, and (iv) issuing payment to the LWDA and Plaintiff's Counsel. Within ten (10) calendar days after the Effective Date, the Settlement Administrator shall send counsel for Defendant electronic wiring instructions to fund the Gross Settlement Amount.

48. Within twenty (21) calendar days after the Effective Date, Defendant will send to the Settlement Administrator the Aggrieved Employees List. This information shall be treated as and remain confidential and shall be used solely by the Settlement Administrator to manage the notice and payment process described herein, shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendant, the individual in question, or by order of the Court.

Within sixty (60) calendar days after the Effective Date, Defendant shall wire the Gross Settlement Amount in accordance with the written instructions from the Settlement Administrator.

49. Within ten (10) days of receiving each wire transfer from Defendant, the Settlement Administrator shall mail the respective settlement checks to the Aggrieved Employees, Plaintiff's Counsel and LWDA, as set forth in the payment plan herein. The settlement checks mailed to the Aggrieved Employees will be accompanied with the Notice letter explaining the payment and deadline to cash the check. The Notice to LWDA shall comply with any legal requirements and in compliance with the Final Order.

50. Aggrieved Employees shall have 120 calendar days after mailing to cash their settlement checks. If any Aggrieved Employee's check is not cashed within that period, the check will be voided and a stop-payment will be issued. The release nevertheless will be binding upon all Aggrieved Employees who do not cash their checks within the 120 day period. In the event that any settlement check is returned to the Settlement Administrator within 120 days of mailing, the Settlement Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defendant's Counsel and Plaintiff's Counsel of the results. If a new address is located by these means, the Administrator will have ten (5) business days to issue the check. Any funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be paid to the California State Controller in

the name of the Aggrieved Employee who did not cash the check from which the Aggrieved Employee may claim the funds. The Settlement Administrator will issue such payment within 21 days of the Aggrieved Employee's deadline to cash checks, or as otherwise required by operation of law. Neither Defendant, Defense Counsel, Plaintiff's Counsel nor Plaintiff will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, unauthorized negotiation of settlement checks or failure to timely cash a settlement check within the 180-day period.

51. Upon the Court's entry of the Final Order, Plaintiff and the Aggrieved Employees will: (i) be bound by the terms and conditions of this PAGA Agreement, and the releases set forth herein; (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the settlement and the Court's Final Order; and (iii) be entitled to receive their respective Individual Share of the Net Settlement Amount, as set forth herein.

52. The Settlement Administrator will provide the Parties with a declaration confirming that distribution of payments has been completed in accordance with the PAGA Settlement Agreement and the Court's Final Order, within ten (10) business days of distributing all payments under the settlement. Plaintiff's Counsel will file the declaration with the Court and any required papers (i.e., amended Judgment) or as otherwise ordered by the Court. This PAGA Settlement Agreement is expressly conditioned upon the Court entering the Final Order and entry of judgment, thereby disposing of the Action in its entirety. The Final Order and entry of judgment will not release or bar any claims other than the Released Claims as to Plaintiff, Aggrieved Employees, and State of California.

H. Miscellaneous Provisions.

50. **Voiding the PAGA Agreement:** The Court's refusal to enter a Final Order approving the Settlement and/or its making of a fundamental change of the Parties' settlement shall render the entire PAGA Settlement Agreement voidable and unenforceable as to all Parties herein at the option of either Party. If the Court does not approve the Settlement as described in this PAGA Agreement, the Parties agree to meet and confer to address the Court's concerns. If the Parties are unable to agree on a resolution, the Parties agree to seek the further assistance of a mutually agreed upon mediator to resolve any disputes.

51. **Waiver:** The waiver by one Party of any breach of this PAGA Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this PAGA Agreement.

52. **Parties' Authority:** The signatories hereto represent that they are fully authorized to enter into this PAGA Settlement Agreement and bind the Parties hereto to the terms and conditions hereof. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this PAGA Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this PAGA Settlement Agreement to effectuate its terms. The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement and/or mediation privileges and/or confidentiality provisions that otherwise might apply under federal or state law.

53. **Mutual Full Cooperation:** The Parties agree to fully cooperate with each other in good faith to accomplish the terms of this PAGA Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this PAGA Settlement Agreement. The Parties to this PAGA Settlement Agreement shall use their best efforts, including all efforts contemplated by this PAGA Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this PAGA Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this PAGA Settlement Agreement, Plaintiff's Counsel shall, with the assistance and cooperation of Defendant and Defendant's counsel, take all necessary steps to secure the Court's approval of the settlement, and the Final Order.

54. **No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this PAGA Settlement Agreement.

55. **No Admission:** Defendant denies any and all liability to Plaintiff and/or the Aggrieved Employees in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Complaint to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that they have asserted or could assert against Plaintiff, have determined that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and conditions set forth in this PAGA Agreement.

56. **Binding Settlement:** Nothing contained herein, nor the consummation of this PAGA Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this PAGA Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This PAGA Settlement Agreement is intended to and shall be fully binding, enforceable and subject to disclosure, including Evidence Code section 1123 and Code of Civil Procedure section 664.6.

57. **Enforcement Actions:** Except as otherwise provided in this PAGA Settlement Agreement, in the event that one or more of the Parties to this PAGA Settlement Agreement institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this PAGA Settlement Agreement or to declare rights and/or obligations under this PAGA Settlement Agreement, the successful Party or Parties shall be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs incurred in connection with any enforcement actions.

58. **Notices:** Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To Plaintiff:

Brian J. Mankin
Lauby Mankin Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444
Fax: (951) 320-1445
Email: brian@lmlfirm.com

To Defendant:

Alex Medina
Doug Leach
Medina McKelvey, LLP
983 Reserve Drive
Roseville, California 95678
Tel: (916) 960-2211
Fax: (916) 742-5488
Email: alex@medinamekelvey.com

59. **Construction:** The Parties hereto agree that the terms and conditions of this PAGA Settlement Agreement are the result of lengthy, intensive arms' length negotiations among the Parties and that this PAGA Settlement Agreement constitutes the entire agreement among Plaintiff and Defendant regarding actual or potential claims asserted by Plaintiff against Released Parties, except for the Individual Settlement executed by Plaintiff, which shall be construed to have been executed and effective concurrently herewith. This PAGA Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this PAGA Settlement Agreement. With the exception of the Individual Settlement, this PAGA Settlement Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims. No other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid. Plaintiff acknowledges that he has read this PAGA Settlement Agreement, that he fully understands his rights, privileges, and duties under the PAGA Settlement Agreement, and enters into this PAGA Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that he has had the opportunity to consult with his attorneys to explain the terms of this PAGA Settlement Agreement and the consequences of signing this PAGA Settlement Agreement.

60. **Captions and Interpretations:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this PAGA Settlement Agreement or any provision hereof. Each term of this PAGA Settlement Agreement is contractual and not merely a recital.

61. **Modification:** This PAGA Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto or their successors-in-interest or counsel for all Parties, and approved by the Court. This PAGA Settlement Agreement may not be

discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

62. **Choice of Law:** This PAGA Settlement Agreement shall be governed by and construed, enforced and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California, County of San Bernardino.

63. **Integration Clause:** This PAGA Settlement Agreement, together with the Individual Settlement Agreement, contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing. The Parties each acknowledge and represent that no promise or representation not contained in this PAGA Settlement Agreement has been made to them, and acknowledge and represent that this PAGA Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the Action and PAGA Released Claims.

64. **Successors.** This PAGA Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and to their respective heirs, trustees, executors, administrators, successors and assigns.

65. **Counterparts:** This PAGA Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed PAGA Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic delivery shall be deemed an original.

66. **Jurisdiction:** The Parties agree that upon approval of this PAGA Settlement Agreement submitted to the Court, this Settlement shall be enforceable by the Court, and the Court shall retain exclusive and continuing equity jurisdiction of this action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions, and obligations set forth in this Settlement. The Parties agree that if any provision of this Settlement is determined to be invalid, the invalid portion shall be deemed severed and the remaining Settlement deemed enforceable.

IN WITNESS THEREOF, the Parties each acknowledge that she/he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

Dated: April ___, 2021

PLAINTIFF:

ZACHARY LOPEZ

Dated: April ___, 2021

PLAINTIFF'S COUNSEL:

LAUBY MANKIN LAUBY LLP

By: _____
BRIAN MANKIN

Dated: April ___, 2021

DEFENDANT JBGC, INC.

By: _____
Title: _____

Dated: April ___, 2021

DEFENDANT'S COUNSEL:

MEDINA MCKELVEY LLP

By: _____
ALEX MEDINA

END OF DOCUMENT

EXHIBIT “C”

Selection Criteria

Clie.Selection Include: Lopez v JBGC
Slip.Transaction Type Expense
Slip.Classification Open

Rate Info - identifies rate source and level

Slip ID Dates and Time Posting Status Description	Timekeeper Activity Client Phase/Task	Units DNB Time Est. Time Variance	Rate Rate Info Bill Status	Slip Value
582014 EXP 4/15/2020 WIP LWDA Check - #0552	SJA Court fees Lopez v JBGC	1	75.00 Do Not Bill	75.00
581991 EXP 4/30/2020 WIP Postage for the month of April 2020	SJA Postage Lopez v JBGC	1	23.40 Do Not Bill	23.40
584357 EXP 7/21/2020 WIP Complaint filing fee	TLG Court fees Lopez v JBGC	1	1435.00 Do Not Bill	1435.00
583222 EXP 9/9/2020 WIP 3 copies @ \$0.06 for POS to court	SJA Copying Lopez v JBGC	3	0.06 Do Not Bill	0.18
583223 EXP 9/9/2020 WIP Postage for the month of September 2020	SJA Postage Lopez v JBGC	1	0.50 Do Not Bill	0.50
583461 EXP 10/15/2020 WIP CourtCall ID #10899742 for 10-13-20 CMC	SJA Court fees Lopez v JBGC	1	94.00 Do Not Bill	94.00
583499 EXP 11/5/2020 WIP CourtCall ID #10940623 for 11-4-20 CMC	SJA Court fees Lopez v JBGC	1	94.00 Do Not Bill	94.00

5/7/2021
9:59 AM

Fernandez & Lauby LLP
Slip Listing

Page 2

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Phase/Task	Variance		
584259	EXP	SJA	4	0.06	0.24
2/26/2021		Copying			
WIP		Lopez v JBGC		Do Not Bill	
4 copies @ \$0.06 for Notice of Name Change					
584260	EXP	SJA	1	0.51	0.51
2/26/2021		Postage			
WIP		Lopez v JBGC		Do Not Bill	
Postage for the month of February 2021					
584502	EXP	TLG	1	90.00	90.00
4/19/2021		Court fees			
WIP		Lopez v JBGC		Do Not Bill	
Estimate fees for MFA					
584503	EXP	TLG	1	200.00	200.00
4/19/2021		Attorney Servic			
WIP		Lopez v JBGC		Do Not Bill	
Estimated costs for Bosco to file MFA					
584504	EXP	TLG	100	0.06	6.00
4/19/2021		Copying			
WIP		Lopez v JBGC		Do Not Bill	
Estimated costs for copies of MFA					
584505	EXP	TLG	1	188.00	188.00
4/19/2021		Court fees			
WIP		Lopez v JBGC		Do Not Bill	
Estimated costs for courtcall for MFA and addl hearings.					
Grand Total					
			Billable	0.00	0.00
			Unbillable	0.00	2206.83
			Total	0.00	2206.83

EXHIBIT “D”

EXHIBIT “E”

Settlement Administrator
(Address)
(Phone)

DATE OF MAILING

[Aggrieved Employee]

[Address]

[Address]

Re: Zachary Lopez v. JBGC, Inc.
San Bernardino County Superior Court Case No. CIVDS2013277

Notice of PAGA Settlement and Payment

Dear [Aggrieved Employee]:

According to the records of JBGC, Inc., (“Defendant”), you were employed as a non-exempt employee by JBGC, Inc., in the State of California at some point between April 11, 2019 and May 22, 2021 (the “Statutory Period”). Plaintiff Zachary Lopez is a funeral arranger for Defendant and sued Defendant under California’s Private Attorneys General Act of 2004 (“PAGA” at Labor Code § 2699), alleging that the company failed to pay all wages earned, failed to provide proper meal/rest breaks, failed to provide reimbursement for business expenses, and failed to provide proper wage statements and timely pay to workers during the Statutory Period. Lopez sought civil penalties on behalf of the State of California and all similarly situated individuals who performed services for JBGC, Inc. during the Statutory Period.

Defendant emphatically disputes that it violated any provisions of the California Labor Code and contends that their practices regarding the payment of wages, meal and rest breaks, and providing of wage statements complied with all requirements of California law. Nevertheless, without admitting any wrongdoing, Defendant agreed to resolve this case by way of settlement.

The Court approved the settlement on [REDACTED], 2021. Under California law, any settlement of a PAGA case results in 75 percent of the awarded penalty being paid to the State of California and 25 percent of the penalty being paid to the affected persons who worked during the Statutory Period. The settlement releases only claims for civil penalties alleged in the complaint under PAGA (Labor Code section 2699) for the period of April 11, 2019 through May 22, 2021. Your share of the PAGA settlement is the enclosed settlement check. You have 120 days to cash the settlement check.

For more information, you may inspect the Court’s files and the Settlement Agreement and Release of PAGA Claims at Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street San Bernardino CA 92415, during regular court hours. You may also contact Counsel or the Settlement Administrator using the contact information listed above for more information:

Counsel for Plaintiff and Employees:

Brian Mankin
Peter Carlson
Lauby, Mankin & Lauby LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444
brian@lmlfirm.com
peter@lmlfirm.com

Counsel for JBGC, Inc.:

Alexander Medina
Doug Leach
Medina McKelvey LLP
983 Reserve Drive
Roseville, CA 95678
Tel.: (916) 960-2211
alex@medinamckelvey.com
doug@medinamckelvey.com