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10 Employees

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

11 RUBY CORONADO, CINDY JANTES, and
12 ANGELICA JANTES, individually, and on
13 behalf of all similarly situated current and
14 former employees;

15 Plaintiffs,

16 vs.

17 GLOBAL ONE LOGISTICS, a California
18 Corporation; and DOES 1 through 10,
19 inclusive,

20 Defendants.
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Case No.: CIVDS 1606686

[Assigned for all purposes to the Hon. Gilbert
Ochoa, Dept. S33]

**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: December 4, 2018

Time: 8:30 a.m.

Dept.: S33

Complaint Filed: April 29, 2016

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 4, 2018, at 8:30 a.m. or as soon thereafter as the
3 matter may be heard in Department S-33 of the San Bernardino County Superior Court, located at 247
4 West Third Street, San Bernardino, California 92415-0210, Plaintiffs Ruby Coronado, Cindy Jantes,
5 and Angelica Jantes, by and through their counsel of record, will and hereby do move this Court for an
6 order approving a settlement pursuant to the Private Attorneys General Act of 2004, California Labor
7 Code § 2698 *et seq.* (the "PAGA").

8 This motion is based upon this the Memorandum of Points and Authorities; the Declaration of
9 Plaintiffs' counsel (Brian Mankin) in support thereof; the Stipulation of Settlement and Release, and
10 Amendment to Stipulation (collectively, the "Settlement Agreement"); the proposed Order granting
11 Approval of the PAGA Settlement and entry of Judgment thereon; all other records, pleadings, and
12 papers filed in this action; and upon such other evidence or argument as may be presented to the Court
13 at the hearing of this motion.

14 Dated: October 24, 2018

FERNANDEZ & LAUBY LLP

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16 BY: 

Brian J. Mankin, Esq.
Attorneys for Plaintiffs, the State of California
and Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In this case involving claims for unpaid wages, failure to provide rest breaks and meal periods,
4 and related claims on behalf all similarly situated non-exempt employees, Plaintiffs Ruby Coronado,
5 Cindy Jantes, and Angelica Jantes – serving as the representative for the State of California – and their
6 counsel sought civil penalties against Defendant Global One Logistics, Inc., and its individual owners
7 (collectively, “Defendant” or “Global One”) under the Labor Code Private Attorneys General Act of
8 2004, California Labor Code § 2698 *et seq.* (commonly referred to as “PAGA”). The PAGA action is
9 a type of qui tam action filed on behalf of the state to assist it with labor law enforcement. *Iskanian v.*
10 *CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380-382. As such, the state is the real party in
11 interest in a PAGA action. *Id.* at 382. The State of California was timely served with a copy of the
12 Settlement Agreement in this case and this Motion to Approve the Settlement.

13 Plaintiffs and the similarly situated employees employed by Global One in California between
14 April 29, 2015, and June 25, 2018 (the “Aggrieved Employees”) worked at Defendant’s warehouse in
15 Ontario, California, and provided inbound and outbound distribution services to ship products to
16 Global One’s customers. Plaintiffs alleged that they received cash payments at their base hourly rate
17 in exchange for working overtime hours, and further alleged that they and other Aggrieved
18 Employees did not receive all meal and rest breaks, as required by California law. Defendant
19 vigorously refuted these allegations and contends that the claims have no merit. Thus, the Parties
20 fully disputed the merits of the claims and defenses.

21 As this Court is aware, this case was originally filed as a class action and PAGA action, but on
22 December 15, 2017, the Court issued an order denying certification as to all Class Action Claims,
23 except for the claims for failure to provide a third rest break. However, because the third rest break
24 claim primarily arose out of alleged off-the-clock work occurring in shifts exceeding 10 hours,
25 Defendants argued that this claim could not proceed on a class-wide basis because the proof necessary
26 to establish shifts in excess of 10 hours involved evidence of an off-the-clock practice, which the Court
27 considered and denied certification as to the other class claims.

28 Following these discovery and discussions, as well as the exchange of informal discovery, the

1 parties engaged in a full session of mediation on June 7, 2018 with the Hon. Michael Marcus (Ret.) as
2 mediator. The case did not resolve on the day of mediation, but settled shortly thereafter. In
3 accordance with the Settlement, the Parties stipulated to decertify the rest break claim for the reasons
4 mentioned above, and resolve the PAGA Claims and Plaintiffs and Claimants¹ individual claims.

5 Now with a comprehensive Settlement Agreement that resolves the claims alleged in this case,
6 Plaintiffs seek this Court's approval of a \$140,000 settlement involving the PAGA Claims. The
7 settlement merits full approval because it fulfills the purpose of PAGA (i.e., to deter violations of the
8 Labor Code and reinforce obedience of California's labor laws; to address alleged ongoing violations
9 of the Labor Code either through injunctive relief or a defendant's voluntary action in light of a PAGA
10 claim; and to provide relief that is genuine, meaningful, and consistent with California's goal of
11 benefitting the public through enforcement of labor laws).

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

21 For these reasons and those discussed below, the Parties now seek the Court's approval of the
22 Settlement.

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28 ¹ During litigation, two additional former employees came forward and requested that Plaintiffs' counsel pursue their
claims: Milagros Ibarra and Juan Gustavo Del Cid Del Cid ("Claimants"). The Claimants were not added as Plaintiffs, but
their individual claims were investigated and resolved at mediation.

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

2 Plaintiffs and Claimants employed by Defendant as office and warehouse workers. Plaintiffs
3 contends that they and other Aggrieved Employees were required to work overtime hours off-the-clock
4 and were paid for such hours in cash at the normal hourly rate of pay, rather than at the proper
5 overtime rate. This cash overtime practice in turn led to other alleged violations, including: (a)
6 inaccurate wage statements in violation of Labor Code § 226, and (b) failure to pay all wages due and
7 owing at separation of employment in violation of Labor Code §§ 201 – 203. In addition, Plaintiffs
8 claimed that Defendant failed to provide its employees with all mandated rest breaks and meal periods.

9 On March 26, 2016, Plaintiffs' counsel sent a letter via certified mail to the California Labor &
10 Workforce Development Agency ("LWDA") and Defendant regarding the alleged violations.
11 (Declaration of Brian J. Mankin ("Mankin Decl."), ¶ 8.) This notice is required under Labor Code §
12 2699.3(a)(1)(A) as a prerequisite to bringing a PAGA claim against an employer. The LWDA never
13 responded to this notice, thus allowing Plaintiffs to file the instant lawsuit. Lab. Code §
14 2699.3(a)(2)(A).

15 On April 29, 2016, Plaintiffs filed a complaint that included a) class action claims, including:
16 Failure to Pay Overtime Wages; Failure to Provide Paid Rest Breaks; Failure to Timely Pay Wages;
17 Failure to Provide Accurate Itemized Wage Statements; and Unfair and Unlawful Competition
18 (collectively, the "Class Action Claims"), and b) representative "PAGA Claims" for civil penalties on
19 behalf of the Aggrieved Employees and State of California, including the following causes of action:
20 (1) PAGA Assessment for Failure to Pay Overtime Wages; (2) PAGA Assessment for Failure to
21 Provide Paid Rest Breaks; (3) PAGA Assessment for Failure to Timely Pay Wages; and (4) PAGA
22 Assessment for Failure to Provide Accurate Itemized Wage Statements, which include claims for
23 alleged violations of California Labor Code §§ 204, 210, 218.6, 221, 224, 226, 226.3, 510, 558, 1174,
24 1174.2, 1174.5, 1194, and 2699 *et seq.* to the extent they arise out of the underlying Labor Code claims
25 against Defendant.

26 In response, Defendant retained counsel, fully denied the allegations and vowed to vigorously
27 defend against them. Defendant denied asserted that it properly paid overtime wages, as required by
28 California law, and provided all required breaks to the employees.

1 On July 10, 2017, Plaintiffs' filed a motion to certify the Class Action Claims and on
2 December 15, 2017, the Court issued an order denying certification as to all Class Action Claims,
3 except for the third rest break claim. However, as noted above, because the rest break claim arose out
4 of an alleged failure to provide third rest breaks for shifts exceeding 10 hours, Defendants believed
5 that this claim could not proceed on a class-wide basis because the proof necessary to establish shifts
6 in excess of 10 hours involved evidence of an off-the-clock practice, which the Court considered and
7 denied certification as to the other class claims. For these reasons, the Parties stipulated as part of the
8 mediation to decertify the rest break claim as part of this Settlement, and only resolve the PAGA
9 Claims and Plaintiffs/Claimants individual claims. (See Settlement Agreement ¶ 22, which is attached
10 to the Mankin Decl., as Exhibit "A"). The Parties are seeking to have the Class Action Claims
11 dismissed without prejudice. Since there has not been a notice sent to the putative class regarding the
12 certification ruling or the stipulation to decertify, and no individual claims of the putative class are
13 being released or dismissed, the putative class will not suffer any prejudice as a result of the dismissal
14 of Class Action Claims without prejudice.

15 In accordance with the foregoing and the settlement following mediation with Judge Marcus
16 (Ret.), the Parties memorialized the terms of the settlement in a long-form Settlement Agreement
17 (Mankin Decl., Exhibit "A"), which the Parties now present to this Court for approval.

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

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

24 However, due to the lack of financing for California's agencies, and the substantial number of
25 Labor Code violations by California employers, the California Legislature found that it was in the
26 public interest to allow aggrieved employees to act as "private attorneys general" to enforce and
27 recover civil penalties on behalf of the State of California for Labor Code violations committed by
28 employers. *Id.* As the Legislature that adopted PAGA observed, "the only meaningful deterrent to

1 unlawful conduct is the vigorous assessment and collection of civil penalties as provided in the Labor
2 Code.” Stats. 2003 ch. 906, § 1(b). Moreover, the Labor Code’s primary purpose is to “ensure
3 employees are not required or permitted to work under substandard unlawful conditions ... and to
4 protect employers who comply with the law from those who attempt to gain a competitive advantage at
5 the expense of their workers by failing to comply with minimum labor standards.” Labor Code §
6 90.5(a). Therefore, the Legislature determined that “adequate financing of labor law enforcement was
7 necessary to achieve maximum compliance with state labor laws, that staffing levels for labor law
8 enforcement agencies had declined and were unlikely to keep pace with the future growth of the labor
9 market, and that it was therefore in the public interest to allow aggrieved employees, acting as private
10 attorneys general, to recover civil penalties for Labor Code violations, with the understanding that
11 labor law enforcement agencies were to retain primacy over private enforcement efforts.”

12 Thus, Plaintiffs, acting as a private attorney general and proxy for the State of California, now
13 seek civil penalties for Defendant’s alleged violations of the Labor Code.

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

18 Before filing a PAGA action, an aggrieved employee must first provide written notice to the
19 LWDA and the employer of the particular Labor Code violations the aggrieved employee alleges the
20 employer has violated. Labor Code § 2699.3(a)(1). This notice provides the LWDA with the
21 opportunity to investigate and prosecute the claim. The employee may only sue on the state’s behalf if
22 the LWDA fails to respond to the notice within 65 days, responds that it does not intend to investigate,
23 or investigates and does not issue a citation within 185 days. Labor Code §§ 2699.3(a)(2), 2699(h). In
24 this case, Plaintiffs provided the LWDA with a notice letter advising it of the alleged Labor Code
25 violations, but the LWDA deferred the prosecution of these violations to Plaintiffs and their attorneys.
26 (Mankin Decl. ¶ 8.) Accordingly, the Settlement and the common fund created by it for the benefit of
27 the State and Aggrieved Employees, is solely the result of the work performed by Plaintiffs and their
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1 attorneys on this case – all while the Aggrieved Employees will preserve their own separate individual
2 claims should they wish to pursue them.

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

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

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

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

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

18 The settlement provides that Defendant will pay a non-reversionary settlement amount of One
19 Hundred Thousand Dollars (\$140,000) (the "Settlement Amount"), inclusive of payments to the
20 LWDA and Aggrieved Employees, attorneys' fees and litigation costs², as well as third party
21 administrator ("Administrator") costs,³ and Plaintiffs/Claimants individual settlements. (Settlement
22 Agreement ¶ 26.) After payment of the Plaintiffs/Claimants individual settlements, attorneys' fees and
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26 ² A total of \$23,000 will be paid to Plaintiffs/Claimants for their individual wage and hour claims. Plaintiffs'
27 Counsel will seek a substantially reduced fee of \$69,000 which is approximately one-half of its lodestar, plus
28 reimbursement of actual litigation costs of \$8,000, both of which will be paid on a payment plan.

³ The Parties selected Phoenix as the Administrator, and its costs shall not exceed \$4,000 will be deducted from the Settlement Amount.

costs, and Administrator costs, approximately \$36,000 will remain as the estimated net proceeds (the “Net Settlement Amount”). (Settlement Agreement ¶ 26(e).)

The Net Settlement Amount will then be allocated to PAGA Penalties. 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. (*Id.*) A following chart reflects the estimated payments from the Settlement Agreement (which may increase slightly based on the actual costs being less than permitted):

	Amount
Settlement Amount	\$140,000
Individual Settlements	\$23,000
Attorneys’ Fees (1/3)	\$69,000
Litigation Costs	\$8,000
Administrator Costs	\$4,000
Net Settlement Amount	\$36,000
PAGA Penalties	\$36,000
75% to the LWDA (\$27,000)	
25% to Aggrieved Employees (\$9,000)	
Balance	\$0

As such, the LWDA will receive approximately \$27,000 and the Aggrieved Employees will split approximately \$9,000 from the Net Settlement Amount. Each Aggrieved Employee shall receive an equal share of the PAGA Penalties, which will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 to the respective PAGA Employee and applicable governmental authorities. (*Id.*, at ¶¶ 26(e) and 41.)

B. PAYMENT AND THE NOTICE

Due to Defendant’s financial condition, the Settlement Amount will be paid in three installments. Defendant has agreed to issue the first payment within 10 days after the Court approves the Settlement and the Judgment becomes final, which will be in the amount of approximately \$50,000 and will fund the individual settlements, litigation costs and \$19,000 toward attorneys fees. (See Amendment to Stipulation at ¶ 38(a).) The second payment due on July 1, 2019 will fund the

1 remaining attorney fee balance. (*Id.*, at ¶ 38(b).) The final payment will fund administrator costs and
2 the PAGA Penalties, and will be due on September 1, 2019. (*Id.*, at ¶ 38(c).) Upon receipt of the
3 portion allocated to PAGA penalties, the Administrator will then issue payments to the LWDA,
4 Aggrieved Employees, and retain its share for administrator costs. (*Id.* at ¶ 39.) The Aggrieved
5 Employees will have 120 days to cash their checks, and if for any reason a check is un-cashed, that
6 share will be forwarded to the CA Department of Industrial Relations Unclaimed Property Division in
7 the name of the employee so that the employee can collect it at a later date. (*Id.* at ¶ 40.)

8 A Notice informing the Aggrieved Employees of the nature of the payment will be provided
9 with the settlement check. (See Mankin Decl., Exhibit “F”).

10 **C. THE RELEASE.**

11 The release of PAGA Claims in the Settlement Agreement is narrowly limited to the civil
12 penalty claims alleged in the action or that could have been alleged based on the facts assert in the
13 operative complaint. (“Released Claims”). (Settlement Agreement ¶ 28).

14 While Plaintiffs are releasing any and all claims against Defendant, as part of the resolution of
15 their individual (non-PAGA) claims, the Settlement Agreement and release protects the rights of the
16 aggrieved employees to separately bring their own individual claims should they wish. (Settlement
17 Agreement ¶¶ 28-33.) The period governing the release shall be from April 29, 2015, through June
18 25, 2018.

19 **V. THE SETTLEMENT IS FAIR AND REASONABLE, AND WARRANTS COURT**
20 **APPROVAL**

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

26 Although PAGA and its legislative history do not seem to require a comparison with the
27 “value” of the claims, the penalties are reasonable when considered in this context as well. There are
28 approximately 480 employees who will receive payments under the settlement. However, as noted

1 above, Defendant disputes that any liability exists, plus Defendant largely defeated class certification
2 on the same underlying claims that involve PAGA Claims.

3 Additionally, PAGA also gives the Court latitude award a lesser civil penalty than the
4 maximum penalty if “based on the facts and circumstances of the particular case, to do otherwise
5 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Labor Code §
6 2699(e)(2).)

7 The Settlement commits Defendant to pay approximately \$36,000 in PAGA penalties, which is
8 large enough to punish Defendant for alleged violations and to deter such alleged conduct in the future.
9 At the same time, in light of the alleged violations, it is not so large as to be unjust, oppressive or
10 confiscatory. For these reasons, the penalties are reasonable, and Plaintiffs request the Court approve
11 the Settlement in this regard.

12 **VI. THE REQUESTED ATTORNEYS’ FEES AND LITIGATION COSTS ARE FAIR AND**
13 **REASONABLE**

14 For their efforts and the substantial risk they undertook in obtaining a settlement that benefits
15 the LWDA and Aggrieved Employees, the Parties agreed to allocate \$69,000 to Plaintiffs’ Counsel for
16 reasonable attorneys’ fees, plus actual litigation costs not to exceed \$8,000. These fees are warranted
17 under the law and are far less than Plaintiffs’ Counsel’s actual lodestar to date.

18 As set forth in the declaration of Plaintiffs’ Counsel submitted herewith, the actual aggregated
19 lodestar between the attorneys that worked on this case is approximately \$180,675 through the
20 conclusion of this matter, resulting in a *negative* multiplier. The aggregated lodestar is summarized in
21 the following table, and in the submitted declaration of Plaintiffs’ counsel:
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Lodestar Summary⁴

Attorney	Experience	Rate/hr	Hours	Total
Brian Mankin	17	\$675	95 ⁵	\$64,125
Peter Carlson	4	\$450	259	\$116,550
TOTAL				\$180,675

(See Mankin Decl., ¶¶ 19-21). 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 & Meyers, the average hourly partner rate is \$715; and at Jeffery Mangels Butler & Mitchell, the average hourly partner rate is \$690. *Id.*

Thus, not only are Plaintiffs' Counsel's rates reasonable and typical, but the attorneys' fees requested at a negative multiplier confirms that the fee request is fair and reasonable.

Additionally, Plaintiffs' 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. Plaintiffs'

⁴ Plaintiffs' Counsel kept time-sheets, and the summary is based on those time records. Notably, a lodestar calculation need not be supported by detailed time records, but can be made based on reasonable estimates. *Wershba v. Apple Computer*, 91 Cal.App.4th 224, 255 (2001) (“California case law permits fee awards in the absence of detailed time sheets”). Declarations by counsel as to time spent, even if only estimates, are enough. *See Id.* (“Here plaintiff's attorneys submitted declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case”); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1810 (1996) (lodestar calculation can be based on counsel's estimate of time spent). “An experienced trial judge is in a position to assess the value of the professional services rendered in his or her court.” *Wershba*, 91 Cal.App.4th at 255.

⁵ 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, Searle Counsel and the court.

1 Counsel are permitted to recover their litigation costs and expenses under the common fund doctrine.
2 See *Serrano* III, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the
3 fund); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable
4 from the common fund “[o]f necessity, and for precisely the same reasons discussed above with
5 respect to the recovery of attorneys’ fees by . . . [Plaintiffs’] attorneys”). Furthermore, Plaintiffs’
6 Counsel are entitled to recover “those out-of-pocket expenses that would normally be charged to a fee-
7 paying client.” *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.)

8 The Settlement Agreement authorized Plaintiffs’ Counsel to recover litigation costs up to
9 \$8,000. (Settlement Agreement ¶ 26(d)). Plaintiffs’ Counsel’s actual costs exceed \$8,000, so the
10 requested costs is the \$8,000 cap. (Mankin Decl. ¶ 22.) These costs include mediation fees, filing
11 fees, online research, and other costs that include Attorney Service charges, deposition costs, parking
12 charges, CourtCall charges, and process service fees. (*Id.*) These costs are reasonable and
13 uncontested, and should be approved.

14 **VII. SUBMISSION TO THE LWDA**

15 As set forth in the Mankin Declaration at ¶ 24, the settlement and this motion are concurrently
16 being submitted to the LWDA in accordance with Labor Code § 2699(l)(2). The proof of electronic
17 submission is attached as Exhibit “E” to the Mankin Declaration.

18 **VIII. THE COURT SHOULD APPOINT PHOENIX AS ADMINISTRATOR**

19 Subject to the Court’s approval, the parties stipulated to Phoenix serving as the Settlement
20 Administrator who will process the settlement payments and provide notice to the Aggrieved
21 Employees. Phoenix is highly experienced in administering class/PAGA settlements. Phoenix
22 provided an all-in proposal to administer the settlement for \$4,000, which was also the lowest bid
23 obtained from other potential administrators. (Mankin Decl., ¶ 22.)
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1 **IX. CONCLUSION**

2 For the foregoing reasons, Plaintiffs request that the Court approve the Settlement under the
3 PAGA.

4 Dated: October 24, 2018

FERNANDEZ & LAUBY LLP

5
6 BY:


Brian J. Mankin, Esq.
Attorneys for Plaintiff, the State of California and
Aggrieved Employees

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

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 October 24, 2018, I caused to be served the foregoing document(s) described as follows:

**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.

☐ **(By Email)** I sent the above documents by electronic mail to each of the email addresses of the parties listed on the attached service list.

☐ **(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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 24, 2018, 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, Declarant

SERVICE LIST

jeffreyhoward@mindspring.com

Jeffrey M. Howard

LAW OFFICES OF JEFFREY M. HOWARD

48701 Shady View Drive

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