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10
11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF RIVERSIDE**

13 * * *

14 ASHLEY MCCORD, individually, and on behalf
of all similarly situated,

15 Plaintiff,

16 vs.

17 DEVELOPMENTAL CLIENT CARE,
18 INDUSTRIES, INC., and DOES 1 through 100,
inclusive,

19 Defendants.
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Case No.: RIC1612928
[Assigned to Hon. Craig Reimer,
Dept. 10]

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

Hearing Date: February 15, 2019
Time: 8:30 a.m.
Dept.: 05
Reservation#: RES86688

Complaint Filed: October 4, 2016

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on February 15, 2019 at 8:30 a.m. in Department 05 of the
3 Riverside County Superior Court, located at 4050 Main Street, Riverside, CA 92501, Plaintiff
4 Ashley McCord will and hereby does move this Court for an order approving a settlement pursuant
5 to the Private Attorneys General Act of 2004, California Labor Code § 2698 et seq. (the "PAGA").

6 This motion is brought upon the grounds that good cause exists for approval of the
7 settlement.

8 This Court will make a tentative ruling on the merits of this matter by 3:00 p.m. on the
9 court day prior to the hearing. The tentative ruling, and the telephone number(s) to give notices to
10 the court of intent to appear, may be obtained by calling (760) 904-5722. Tentative rulings will also
11 be available on the Internet. To view go to: <http://www.riverside.courts.ca.gov> and click on the
12 tentative ruling link. The tentative ruling shall become the ruling of the Court unless, by 4:30 p.m.
13 on the court day before the scheduled hearing, a party gives notice of intent to appear to all parties
14 and the court. The notice of intent to appear must be given either in person or by telephone. Where
15 notice of intent to appear has been properly give, or upon direction of the Court, oral argument will
16 be permitted.

17 **CROSNER LEGAL, P.C.**

18 Dated: _____

19 _____
20 Zachary Crosner
21 Attorneys for Plaintiff, the State of California
22 and Aggrieved Employees
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Ashley McCord (“Plaintiff”) hereby respectfully submits this Motion for Approval of PAGA Settlement. Pursuant to the California Labor Code section 2699(1)(2) with Defendant Developmental Client Care Industries, Inc. (“DCCI” or “Defendant”), Plaintiff seeks entry of a proposed order granting approval of the PAGA Settlement, including (1) finding that the PAGA Settlement is fair and reasonable in light of the facts and evidence; (2) approving the form and method of settlement check administration to the alleged aggrieved employees; (3) approving the attorneys’ fees and costs requested; (4) approving Plaintiff’s service award; (5) finding that all procedural requirements of a PAGA Settlement have been met; and (6) dismissing the action with prejudice as to Plaintiff and the State, and without prejudice as the aggrieved employees.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

On May 30, 2016, Plaintiff submitted a certified letter to the California Labor Workforce Development Agency (the “LWDA”) notifying it of Plaintiff’s claims under the PAGA. (Declaration of Zachary Crosner filed concurrently hereto is hereinafter referred to as “Crosner Decl.” ¶ 2.) Thereafter, the LWDA did not assert jurisdiction over Plaintiff’s PAGA claims during the 65 day waiting period, so on October 4, 2016, Plaintiff filed a PAGA-only action against Defendant in this Court, alleging claims arising out of Defendant’s alleged violations of the Labor Code: (1) Failure to Pay Minimum Wages/Split Shift Wages; (2) Failure to Pay on a Timely Bi-Weekly Basis; (3) Failure to Maintain Accurate Records; (4) Failure to Provide Accurate and Itemized Wage Statements; and (5) other derivative violations of the California Labor Code, as described herein. *Id.*

Defendant retained counsel, fully denied the allegations and vigorously defended against them. The Parties agreed to submit the matter to an early mediation in order to resolve the Plaintiff’s alleged claims. In preparation for the mediation, the Parties exchanged legal briefs,

1 documents, and information that allowed both sides to calculate the potential damages and
2 evaluate potential risk. During this process, Plaintiff and her counsel analyzed, researched, and
3 investigated the potential issues, including matters related to the calculation of damages, trial,
4 and appellate issues and risks. (Crosner Decl. ¶ 3.)

5 The mediation took place on October 18, 2017, with mediator Jeff Winikow, one of the
6 more experienced class and PAGA action mediators in Southern California. The Parties reached
7 a tentative agreement at mediation, but were required to continue serious arms-length
8 negotiations on the entirety of the terms of settlement thereafter. The Parties initially
9 memorialized the terms of the settlement in a long-form Settlement Agreement on or about
10 December 29, 2017. (Crosner Decl. ¶ 4.)

11 Plaintiff filed a Motion for Approval of the PAGA Settlement and supportive documents
12 thereof on or about February 5, 2018. In its tentative ruling, the Court requested supplemental
13 briefing in accordance with its Case Management Order, and took issue with certain terms of the
14 Settlement Agreement. Thereafter, the Parties met and conferred, and agreed to several revisions
15 of the Settlement Agreement in order to address the Court's concerns. More specifically, the
16 Parties agreed to: (1) Plaintiff's filing of a First Amended Complaint incorporating her individual
17 (non-PAGA) wage and hour claims which formed the basis of the PAGA cause of action, and to
18 a release of her non-PAGA claims; (2) clarified that each PAGA Employee's individual share of
19 PAGA penalties payment will be treated as non-wage income and reported by the Settlement
20 Administrator on IRS Form 1099 to the respective PAGA Employee and applicable
21 governmental authorities; (3) limited the release of the PAGA claims to Plaintiff, but have
22 requested the Final Order shall be binding on the PAGA Employees as to the Released Claims,
23 including the PAGA Representative Claims and Labor Code § 558; (4) incorporated the material
24 terms of the Settlement Agreement into the Final Order; and (5) removed any request of the
25 Court for *res judicata* or collateral estoppel effect of the final judgment. (Crosner Decl. ¶ 5.)
26 Plaintiff also presented supplemental briefing and in its supportive declaration of Zachary
27 Crosner to address the Court's tentative ruling and the relevant portions of its Case Management
28 Order. *Id.*

1 On May 21, 2018, the Court issued a tentative ruling on Plaintiff's Motion to Approve the
2 PAGA Settlement providing guidance on its position relating to dismissal of the Action (as
3 opposed to a Judgment). The Court also requested supplemental briefing primarily relating to the
4 amount of and estimated exposure of the alleged Labor Code violations, Plaintiff's ability to
5 recover the requested service award, Plaintiff's Counsel's request for reimbursement of costs,
6 and the Settlement Administrator's request for administration fees—which was provided in
7 Plaintiff's Counsel's supplemental declaration filed on June 19, 2018. (Crosner Decl. ¶ 6.)

8 On June 26, 2018, this Court issued a tentative ruling on Plaintiff's Motion to Approve
9 the PAGA Settlement in light of Plaintiff's Counsel's June 19th supplemental declaration. In its
10 tentative, the Court indicated its approval of a service award to Plaintiff in an amount not to
11 exceed \$3,000 and its approval of Settlement Administration fees not to exceed \$3,300. The
12 Court also requested further briefing on the Plaintiff's Counsel's requested reimbursement of
13 costs, specifically filing fees to be separated from courier fees, and also reiterated its position that
14 the dispositive document following a PAGA settlement is an Order which shall not bind non-
15 party aggrieved employees. (Crosner Decl. ¶ 7.) In his November 26, 2018 supplemental
16 declaration, Plaintiff's Counsel provided further briefing on its filing fees, adjusting its request
17 for reimbursement accordingly. Counsel for Plaintiff also attached to its supplemental declaration
18 a fully executed revised version of the Settlement Agreement and [Proposed] Order which did
19 not bind the non-party aggrieved employees which reflected the Court's position. Specifically,
20 (1) Paragraph 5 of the [Proposed] Order was revised to state that "Plaintiff Ashley McCord's
21 claim pursuant to Labor Code Section 2699, et seq. (PAGA) is dismissed with prejudice as to
22 Plaintiff Ashley McCord and without prejudice to all other Aggrieved Employees," and (2) the
23 Settlement Agreement removed all language indicating that the Settlement would bind any non-
24 party aggrieved employees, which had previously been incorporated into Paragraph 13 of the
25 settlement agreement. (Crosner Decl. ¶ 8.)

26 The Court's most recent tentative ruling on November 28, 2018 denied approval of the
27 PAGA Settlement based solely on its request that the [Proposed] Order reflect its approval of
28 Plaintiff's service award for \$3,000 and informed Plaintiff's Counsel that it would approve a

1 request for expense reimbursement in an amount of \$6,093.02. On December 12, 2018, Counsel
2 for Plaintiff filed a supplemental declaration informing the Court that the Parties had revised the
3 [Proposed] Order to reflect an amount of \$3,300 for Plaintiff's service award and an amount of
4 \$6,093.02 for Plaintiff's Counsel's request for reimbursement of litigation expenses. Plaintiff's
5 Counsel also concurrently filed with the Court a revised version of the [Proposed] Order.
6 (Crosner Decl. ¶ 9.)

7 On January 9, 2019, the Court held a status conference relating to Plaintiff's Motion for
8 Approval wherein Counsel for Plaintiff was instructed by the Court to seek approval of the most
9 recent version of the PAGA Settlement and [Proposed] Order by and through a motion for
10 approval. As such, Plaintiff hereby respectfully submits this Motion for Approval of PAGA
11 Settlement. (Crosner Decl. ¶ 10.)

12 **a. SUMMARY OF PLAINTIFF'S CLAIMS**

13 Plaintiff contends that Defendant schedules its non-exempt employees, primarily
14 consisting of caregivers, to work split shifts without compensating them a one-hour premium of
15 at least minimum wage, as required by the applicable Wage Order 5-2001, Section 4(C); Cal.
16 Code Regs., tit. 8, § 11040, subd. 2(Q). Plaintiff alleges that her work schedule was always set by
17 Defendant and was consistently interrupted by non-paid, non-working periods other than "bona
18 fide" rest or meal periods. The interruptions in her work schedule, which were representative of
19 the PAGA Employees, were significantly more than one hour in duration. In its 12/11/2002
20 Opinion Letter "Hours Worked-Split Shift", the Division of Labor Standards Enforcement
21 ("DLSE") has taken the position that any break in excesses of one hour should be treated as a
22 split shift. Further, the total amount paid to Plaintiff and the PAGA Employees in excess of
23 minimum wage for a work day did not cover all of their hours worked plus an additional hour of
24 pay at minimum wage (see *Aleman v. Airtouch Cellular* (2012) 209 Cal.App.4th 556, 576 [146
25 Cal.Rptr.3d 849], "an employer must pay employees who work a split shift at least the minimum
26 wage for the hours actually worked and, in addition, for one additional hour as a result of
27 requiring a split shift.... [¶].) For example, on 11/13/15, Plaintiff's work schedule was interrupted
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1 by an approximately four-hour interruption wherein she worked an initial shift from 11:00 a.m.
2 to 12:00 a.m. and a second shift from 4:01 p.m. to 12:00 a.m. while being compensated at an
3 hourly rate of \$9.25. For her eight hour and fifty-nine minute shift, Plaintiff was paid just shy of
4 \$83.25, which is significantly less than what is owed to her when incorporating the one-hour split
5 shift premium at minimum wage, which would amount to a total of approximately \$90. Plaintiff
6 was also regularly required to work overnight shifts which ended on the same work day when she
7 began another shift with a significant break of time between the end of the overnight shift and the
8 beginning of the next shift. Plaintiff alleges that these shifts meet the definition of a “split shift”
9 and are also deserving of a one-hour premium. (Declaration of Zachary Crosner previously filed
10 on April 25, 2018 hereinafter referred to as “Crosner April 25th Decl.”, ¶ 7.)

11 Plaintiff further contends that Defendant’s failure to pay split shift premiums is
12 tantamount to a minimum wage violation. (see *Aleman v. Airtouch Cellular* (2012) 209
13 Cal.App.4th 556, 581 [146 Cal.Rptr.3d 849], a "split shift" claim is not the same as a claim for
14 rest or meal period violations. Thus, an action for recovery of split shift compensation is
15 governed by section 1194 and accordingly is not subject to section 218.5.) Plaintiff further
16 contends that the applicable Wage Order’s additional hour of pay requirement is the equivalent
17 of a premium wage, not a penalty. “The statute's plain language, the administrative and
18 legislative history, and the compensatory purpose of the remedy compel the conclusion that the
19 "additional hour of pay" (ibid.) is a premium wage intended to compensate employees, not a
20 penalty.” (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [56
21 Cal.Rptr.3d 880, 155 P.3d 284].) As a result, Plaintiff argues that Defendant did not pay all
22 wages due and owing upon separation of employment in violation of Labor Code § 201 - 203,
23 and also did not provide accurate itemized wage statements that included all information under
24 Labor Code § 226(a). (Crosner April 25th Decl. ¶ 8.)

25 Additionally, Plaintiff contends that Defendant was systematically late in compensating
26 its employees their wages. Wages earned between the 1st and 15th days, inclusive, of any calendar
27 month must be paid no later than the 26th day of the month during which the labor was
28 performed, and wages earned between the 16th and last day of the month must be paid by the

1 10th day of the following month. Other payroll periods such as weekly, biweekly (every two
2 weeks) or semimonthly (twice per month) when the earning period is something other than
3 between the 1st and 15th, and 16th and last day of the month, must be paid within seven calendar
4 days of the end of the payroll period within which the wages were earned. (See Labor Code
5 section 204.) Plaintiff alleges that Defendant had a policy and practice of paying wages to its
6 employees thirteen days following the end of the previous pay period, resulting in late payment
7 in virtually every pay period. This is evidenced on the face of Plaintiff and the PAGA
8 Employees' wage statements which display their pay date as nearly always being thirteen days
9 following the end of a pay period. For example, Plaintiff's wage statement with the pay period
10 ending on 11/14/15 displays a pay date of 11/27/15, which exceeds the deadline of the 26th day of
11 the month set forth in Labor Code section 204. Plaintiff's wage statement with a pay period
12 ending on 4/16/15 displays a pay date of 4/29/15, which is six days later the statutory deadline
13 for payment. (Crosner April 25th Decl., ¶ 9.)

14 **b. SUMMARY OF DEFENDANTS' DEFENSES**

15 In what DCCI refers to as a case of first impression in several respects, it raised numerous
16 defenses and vigorously defended against the claims. A summary of some of the defenses are set
17 forth below.

18 First, as a starting point, Defendant argues that any overnight shift ending on the same
19 work day as the start of a subsequent shift does not amount to a bona fide split shift, particularly
20 when nearly all of the PAGA Employees' overnight shifts ended within five to ten minutes of
21 midnight. Defendant points to *Securitas Security Services USA, Inc. v. Superior Court (Holland)*,
22 No. B227950 (Cal. Ct. App. July 7, 2011) in which the California Court of Appeals held that
23 "employees working uninterrupted overnight shifts on consecutive days do not work a split shift
24 and are not entitled to split-shift pay under the wage order." Plaintiff asserts that this decision can
25 be distinguished from the facts in the present case because in *Securitas* employees worked shifts
26 from 12:00 a.m. to 12:00 a.m. which resulted in the plaintiffs' shifts occasionally being divided
27 between two workdays, and here the PAGA Employees did not simply work one, continuous 24-
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1 hour shift, but rather worked a portion of an overnight shift on the same day that a second shift
2 started and was completed. Nevertheless, Defendant presents a strong argument that this is a
3 distinction without a difference because “a single continuous shift that begun on one workday
4 and ended on the following workday does not result in a split shift,” but rather can be attributed
5 to the day it began, and thus would not constitute a bona fide interruption under the Wage Order.
6 *Id.* Thus, Defendant contends that this would be an issue of first impression in California, that the
7 Court would be precluded from imposing liability against Defendant and even if any Court were
8 to ever support Plaintiff’s theory that Defendant should not be subjected to civil penalties when it
9 had no knowledge of any such violations. (Crosner April 25th Decl. ¶ 10.)

10 Second, as to the claim for Labor Code section 203 penalties, Defendant relies on *Ling v.*
11 *P.F. Chang's China Bistro, Inc.* and *Kirby v. Immoos Fire Protection, Inc.* to argue that a failure
12 to pay a split shift premium does not result in waiting time penalties. “Section 203, subdivision
13 (b) tethers the waiting time penalty to a separate action for wages. Because a section 203 claim is
14 purely derivative of 'an action for the wages from which the penalties arise,' it cannot be the basis
15 of a fee award when the underlying claim is not an action for wages.” *Id.* Although the *Ling* and
16 *Kirby* courts were interpreting meal period premiums in their holdings, Defendant underscores
17 the similarities between a one-hour meal period premium and a one-hour split shift premium, as
18 defined by the Wage Order. Defendant further argues that Plaintiff’s claim for a derivative wage
19 statement violation also hinges on whether split shift premiums are classified as a wage or
20 penalty because Labor Code section 226 only requires accurate and complete gross and net
21 wages (not penalties) (Crosner April 25th Decl. ¶ 11.)

22 Third, regarding Plaintiff’s claim for late payment of wages per Labor Code section 204,
23 Defendant argues that this claim rests entirely on the presumption that the “pay date” displayed
24 on the PAGA Employees’ wage statements was the precise date wages were paid. Defendant
25 maintains that there is no authority for such presumption, and in fact it had regularly
26 compensated its employees prior to the pay date on the wage statements depending on whether
27 paychecks were mailed or directly deposited. As such, Defendant contends that Plaintiff’s claims
28 require an incredibly fact intensive and individualized inquiry that is not manageable in a PAGA

1 context. (Crosner April 25th Decl. ¶ 12.)

2 DCCI's defenses noted above (as well as many others) challenged liability issues, but
3 DCCI also intended to raise additional defenses in Court that pertain to damages, including the
4 proper measure of civil penalties and the appropriate discount to place on any assessment of such
5 penalties. Defendant contends that many of Plaintiff's claims are merely derivative of other
6 claims, such as the wage statement, and failure to timely pay final wage claims that are all
7 derivative of the split shift/minimum wage claim. Thus, if Defendant were liable, Defendant
8 argues that a substantial discount should be applied to the civil penalties for these derivative (i.e.,
9 "stacked") violations. (Crosner April 25th Decl. ¶ 13-14.)

10 Defendant points to the reluctance of courts to award the maximum penalty under PAGA,
11 where there exists a lack of malicious intent on the part of Defendant. Cal. Lab. Code §
12 2699(e)(2) (giving trial courts discretion to reduce PAGA penalties when it would be "unjust" or
13 "oppressive" to impose the full amount). This was the case in *Cotter*, where the court found that
14 a significant reduction of PAGA penalties was warranted because, "[t]his does not appear to be a
15 case where a company has deliberately sought to evade the law." *Cotter*, 176 F. Supp. 3d. at 941.
16 Indeed, *Cotter* reasoned that imposing even a PAGA penalty equal to one-third of the maximum
17 potential penalty could be considered "unjust" absent a showing of bad faith. *Id.* Plaintiff
18 acknowledges the similarity to *Cotter* in that, "[t]his does not to be a case where a company has
19 deliberately sought to evade the law." *Cotter*, 176 F. Supp 3d. at 941. Here, several of the alleged
20 Labor Code violations, such as untimely payment of compensation at each pay period (section
21 204) and maintaining time keeping records (section 1174) do not result in any actual wage theft
22 or underpayment to the employees, nor do these violations contain any statutory penalties
23 provision. *Id.*

24 Further, there remains several questions as the type and amount of civil penalties that can
25 be assessed against Defendant. In its risk analysis, Plaintiff also considered Defendant's position
26 that an aggrieved employee shall not obtain the higher civil PAGA penalty of \$200 for every
27 violation after the first one, or whether recovery under the higher penalty is limited until after
28 notice has been given and received by Defendant. (Crosner April 25th Decl. ¶ 14.)

1 Until the employer has been notified that it is violating a Labor Code provision ... the
2 employer cannot be presumed to be aware that its continuing underpayment of employees is a
3 ‘violation’ subject to penalties.... However, after the employer has learned its conduct violates
4 the Labor Code, the employer is on notice that any future violations will be punished just the
5 same as violations that are willful or intentional—i.e., they will be punished at twice the rate of
6 penalties that could have been imposed or that were imposed for the initial violation (*Patel v*
7 *Nike Retail Servs.* (ND Cal 2014) 58 F Supp 3d 1032, 1042). (Crosner April 25th Decl. ¶ 13-14.)
8 If the Court were to follow the reasoning in *Patel*, Plaintiff’s civil penalties would be
9 substantially reduced due to the fact that its PAGA Notice was not served on Defendant until on
10 or near mid-May 2016. This would likely limit the PAGA period for purposes of calculating
11 subsequent \$200 penalties to a mere six months.

12 Defendant also points to open questions as to whether PAGA civil penalties may be
13 “stacked” so to permit Plaintiff to either (1) assert a claim for multiple PAGA civil penalties in a
14 case in which there are multiple Labor Code violations alleged; (2) incorporate the penalties
15 provided under the Labor Code violation, such as section 226 and 203 penalties, in addition to
16 the civil PAGA penalties; or (3) include the one-hour split shift premiums as “wage” damages
17 under Labor Code section 558, in addition to civil PAGA penalties. And, even if so permitted, a
18 secondary consideration is whether the Court would in fact award stacked PAGA penalties. This
19 is particularly salient when, as here, several of the Labor Code violations are likely to be
20 construed as non-intentional and do not relate to the underpayment of actual wages.

21 Lastly, a primary mitigating factor in Plaintiff’s evaluation of prospective settlement was
22 Defendant’s ability to pay due to its present financial condition. As previously indicated, Plaintiff
23 requested and Defendant produced financial documentation, including three years of tax returns;
24 three years of profit and loss statements; available credit lines; and company-owned assets,
25 which was reviewed by Plaintiff’s retained financial analyst, Van Diochoso, CPA. *Id.* Mr.
26 Diochoso concluded that the settlement amount neared the maximum Defendant could afford to
27 pay given its overall financial condition as well as its need for a reasonable amount of on-going
28 capital to continuing running its business. Mr. Diochoso also confirmed the necessity for two

1 installment payments over an extended period of time in order to minimize the risk of an inability
2 to pay or default on payment by Defendant. (Crosner April 25th Decl. ¶ 15.)

3 In sum, each aspect of the case was vigorously contested by the parties and the risk
4 analysis conducted by Plaintiff's counsel indicated that the value of the case is commensurate to
5 the penalty amount on which the parties ultimately agreed.

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

7 PAGA provides an enforcement method for California's Labor Code by enlisting
8 individual plaintiffs as private attorneys general to recover civil penalties for the state, with a
9 share also going to the individual plaintiffs and other employees. Prior to the enactment of
10 PAGA in 2003, the recovery of civil penalties for violations of certain Labor Code provisions
11 were solely within the province of the California Department of Labor. *Arias*, 46 Cal.4th at 980.
12 However, due to the lack of financing for California's agencies, and the substantial number of
13 Labor Code violations by California employers, the California Legislature found that it was in
14 the public interest to allow aggrieved employees to act as "private attorneys general" to enforce
15 and recover civil penalties on behalf of the State of California for Labor Code violations
16 committed by employers. *Id.* As the Legislature that adopted PAGA observed, "the only
17 meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil
18 penalties as provided in the Labor Code." Stats. 2003 ch. 906, § 1(b). Moreover, the Labor
19 Code's primary purpose is to "ensure employees are not required or permitted to work under
20 substandard unlawful conditions ... and to protect employers who comply with the law from
21 those who attempt to gain a competitive advantage at the expense of their workers by failing to
22 comply with minimum labor standards." Labor Code § 90.5(a). Therefore, the Legislature
23 determined that "adequate financing of labor law enforcement was necessary to achieve
24 maximum compliance with state labor laws, that staffing levels for labor law enforcement
25 agencies had declined and were unlikely to keep pace with the future growth of the labor market,
26 and that it was therefore in the public interest to allow aggrieved employees, acting as private
27 attorneys general, to recover civil penalties for Labor Code violations, with the understanding
28

1 that labor law enforcement agencies were to retain primacy over private enforcement efforts.”
2 Thus, Plaintiff Ashley McCord, acting as a private attorney general and proxy for the State of
3 California, filed this action seeking civil penalties for Defendant’s violations of the Labor Code.
4 Penalties recovered under PAGA “shall be distributed as follows: 75 percent to the Labor and
5 Workforce Development Agency for enforcement of labor laws and education of employers and
6 employees about their rights and responsibilities under this code... ; and 25 percent to the
7 aggrieved employees.” Lab. Code § 2699(i).

8 Before filing a PAGA action, an aggrieved employee must first provide written notice to
9 the LWDA and the employer of the particular Labor Code violations the aggrieved employee
10 alleges the employer has violated. Labor Code § 2699.3(a)(1). This notice provides the LWDA
11 with the opportunity to investigate and prosecute the claim. The employee may only sue on the
12 state’s behalf if the LWDA fails to respond to the notice within 65 days, responds that it does not
13 intend to investigate, or investigates and does not issue a citation within 185 days. Labor Code §§
14 2699.3(a)(2), 2699(h). In this case, Plaintiff provided the LWDA with a notice letter advising it
15 of the alleged Labor Code violations, but the LWDA deferred the prosecution of these violations
16 to Plaintiff and his attorneys. (Crosner Decl. ¶ 5.) Accordingly, the Settlement and the \$151,137
17 common fund created by it for the benefit of the State and PAGA Employees, is solely the result
18 of the work performed by Plaintiff and her attorneys on this case - all while the PAGA
19 Employees will preserve their own separate individual claims should they wish to pursue them.

20 Any settlement of a PAGA action brought by an aggrieved employee must be approved
21 by the court. Lab. Code § 2699(1)(2). In 2009, the California Supreme Court considered the
22 PAGA approval process and, more specifically, whether an aggrieved employee needs to meet
23 class certification requirements. *Arias*, 46 Cal.4th at 976. After a substantial review of the
24 legislative history of PAGA, the Court held that an aggrieved employee’s representative action
25 brought on behalf of the state and other aggrieved employees against an employer for PAGA
26 violations does not need to meet the requirements for class certification nor does there need to be
27 notice to the other employees. *Id.* at 975, 980-88. As the Court held, a plaintiff bringing suit
28 under PAGA does so as the proxy or agent of California’s labor law enforcement agencies. *Id.* at

1 986. Thus, the Court simply reviews the settlement and approves it if it is deemed to be fair and
2 reasonable.

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

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

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

7 **a. TERMS OF THE SETTLEMENT AND DISTRIBUTION OF PAGA**
8 **PENALTIES**

9 The settlement provides that Defendant will pay a non-reversionary settlement amount of
10 One Hundred Fifty-One Thousand Dollars One Hundred Thirty-Seven Dollars and Zero Cents
11 (\$151,137.00) (the "Settlement Amount"), inclusive of payments to the LWDA and PAGA
12 Employees, attorneys' fees and litigation costs¹, Plaintiff's service award, as well as third party
13 administrator ("Administrator") costs². After payment of the attorneys' fees and costs, Plaintiff's
14 service award and Administrator costs, approximately \$88,364.98 will remain as the estimated
15 net proceeds (the "Net Settlement Amount"). (Crosner Decl. ¶ 10.)

16 The Net Settlement Amount will then be paid as civil penalties, in satisfaction of the
17 PAGA claims brought in Plaintiff's Complaint and LWDA Notice. Pursuant to California Labor
18 Code § 2699(i), 75 percent shall be paid to the LWDA (which shall be used to assist in the
19 enforcement of labor laws and education of employers and employees about their rights and
20 responsibilities under the Labor Code), and the remaining 25 percent being paid to the PAGA
21 Employees based the number of wage statements each PAGA Employee received during the
22 Statutory Period. (*Id.*) The following chart reflects the estimated payments from the Settlement
23 Agreement:

24

	Total Amount
Settlement Amount	\$151,137.00
Attorneys' Fees (1/3)	\$50,379.00
Litigation Costs	\$6,093.02

25
26

27 ¹ Plaintiff's Counsel will seek a standard fee of one-third (\$50,379) of the Settlement Amount, and reimbursement of
actual litigation costs of \$6,093.02

28 ² The Parties selected Phoenix as the Administrator, and its costs shall not exceed \$3,300.00 to be deducted from the
Settlement Amount.

Administrator Costs	\$3,300.00
Plaintiff's Service Award	\$3,000.00
<i>Net Settlement Amount</i>	\$88,364.98
Penalties Allocation:	
75% to the LWDA (\$66,273.73)	
25% to the PAGA Employees (\$22,091.25)	
	\$88,364.98
	\$0

(Crosner Decl. ¶ 11.)

As such, the LWDA will receive over \$66,000 and the PAGA Employees will receive over \$22,000 from the Net Settlement Amount. Each PAGA Employee's share of the civil penalties 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.

(Crosner Decl. ¶ 12.)

A true and correct copy of the Parties' revised Settlement Agreement is attached hereto as

Exhibit A.

b. PAYMENT AND THE NOTICE

The Parties have agreed to distribute the settlement funds to the LWDA, PAGA Employees, Plaintiff and her counsel within 14 days following the funding of the settlement. The PAGA Employees will have 180 days to cash their checks, and if for any reason a check is uncashed, that share will be forwarded to the CA Department of Industrial Relations Unclaimed Property Division in the name of the employee so that the employee can collect it at a later date.

(Crosner Decl. ¶ 13.)

A Notice informing the PAGA Employees of the nature of the payment will be provided with the settlement check. A true and correct copy of the Notice is attached hereto as **Exhibit B.**

(Crosner Decl. ¶ 14.)

c. SETTLEMENT ALLOCATION TO THE PAGA EMPLOYEES.

As noted, twenty-five (25) percent of the civil penalties will fund the PAGA Employees' share of the settlement proceeds. ("PAGA Employee Fund") Based on the numbers provided by Defendant for mediation, there were approximately 221 current and former employees who worked a total of 4,798 pay periods who would share in this fund. (Crosner April 25th Decl. ¶

18.) The Settlement Agreement provides a very fair and equitable means of allocating this fund. First, the Settlement Administrator will add up the total number of eligible pay periods worked by all PAGA Employees during the statutory period (“Multiplier”) and each PAGA Employee’s pro rata share of the PAGA Employee’s Fund will be determined by multiplying the eligible pay periods that the PAGA Employee worked by the Multiplier.

d. THE RELEASE.

In accordance with the Court’s Case Management Order and tentative rulings, the release in the revised Settlement Agreement and [Proposed] Order narrowly binds the named Plaintiff only for civil penalty claims she brought under Labor Code § 2699 and Labor Code § 558 in the Action, including but not limited to, claims for DCCI’s (i) failure to pay split shift premiums; (ii) failure to timely pay wages after the close of each pay period; (iii) inaccurate wage statements, as a result of unpaid split shift premiums; (iv) failure to pay all outstanding wages at separation, as a result of unpaid split shift premiums; and (v) the alleged violation of, or claims for relief pursuant to, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 512, 558, and 1174, as well as California Code of Regulations, Title 8, section 11050(4)(C) and IWC Wage Order 5-2001, Section 4(C) (“Released Claims”). (Settlement Agreement ¶ 40). The release does not bind any other (non-party) aggrieved employees. (Crosner Decl. ¶ 15.)

While Plaintiff is separately releasing any and all claims against Defendant, as part of the resolution of her individual (non-PAGA) claims, the Settlement Agreement and release protects the rights of the aggrieved employees to separately bring their own individual claims should they wish. (*Id.*)

For these reasons, the Parties contend that the release narrowly applies only to the claims alleged, and only binds the named Plaintiff as to the PAGA claims. (*Id.*)

A true and correct copy of the Parties’ revised [Proposed] Order is attached hereto as **Exhibit C** and is also filed concurrently herewith.

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

1 In 2016, PAGA was amended to require the Court to “review and approve any settlement
2 of any civil action filed pursuant to this part.” (Labor Code § 2699(1)(2).) The amendment also
3 required that the “proposed settlement shall be submitted to the agency at the same time that it is
4 submitted to the court.” As such, the Settlement and this Motion have been concurrently
5 submitted to the LWDA in accordance with this section.

6 This Court issued its Case Management Order (“CMO”) requesting certain information to
7 evaluate the facts and claims underlying any proposed PAGA settlement. Therefore, pursuant to
8 the Court’s CMO ¶ E, Plaintiff provides the following analysis of the facts and claims underlying
9 this proposed PAGA settlement.

10 **a. NATURE OF THE ALLEGED VIOLATIONS [CMO ¶ E(2)(A)]**

11 Plaintiff alleges three sets of claims in action, as follows: Split Shift Claims, Late
12 Payment Claims and Derivative Claims (i.e., derivative penalties).

13 First, Plaintiff brought claims for failure to pay one-hour premiums for split shifts (“Split
14 Shift Claims”). These claims are based on significant interruptions in the PAGA Employees’
15 work schedules during the same 24-hour work day. Plaintiff alleges that these interruptions,
16 which generally occurred during the middle of the 24-hour work day amount to a bona fide split
17 shift as they were well in excess of one hour and did not relate to meal or rest periods. Plaintiff
18 also alleges that Defendant failed to pay split shift one-hour premiums when PAGA Employees
19 were required to work overnight shifts in which a small portion of the overnight shift occurred
20 within the same 24-hour work day as a subsequent shift.

21 Second, Plaintiff brings claims that are entirely derivative of the split shift violations
22 discussed above. Specifically, Plaintiff characterizes split shift premiums as a “wage” and alleges
23 that Defendant’s failure to pay split shift premiums is tantamount to a minimum wage violation,
24 resulting in a: violation of Labor Code § 558, failure to provide accurate itemized wage
25 statements pursuant to Labor Code § 226(a), failure to maintain time keeping records for the start
26 and stop times of split shifts as required by Labor Code section 1174 and the applicable IWC
27 Wage Order, and failure to pay all wages due and owing upon separation of employment (the
28

1 “Derivative Claims”).

2 Third, Plaintiff also alleged a violation of Labor Code section 204 for late payment of
3 wages due to its policy and/or practice of compensating the PAGA Employees thirteen days after
4 the close of a pay period. This is directly evidenced by the wage statements issued by Defendant
5 which always displayed a pay date approximately thirteen days following the end of the previous
6 pay period, which resulted in a systematic late payment of wages.

7 **b. NUMBER OF ALLEGED VIOLATIONS AND TOTAL POTENTIAL PAGA**
8 **PENALTIES [CMO ¶ E(2)(B) AND (C)]**

9 During the negotiation process, Defendant provided information that it has employed 221
10 PAGA Employees in California since September 1, 2015 who worked a total of 4,798 pay
11 periods. (Crosner April 25th Decl. ¶ 18.) Furthermore, Defendant provided data indicating
12 approximately 1,540 pay periods with prospective split shift violations for the PAGA Employees.
13 In terms of determining the total number of potential violations, Defendant’s standard practice
14 was to pay its employees bi-weekly or semi-monthly. Based on the foregoing data, Plaintiff
15 evaluates Defendant’s maximum total exposure is \$3,619,600, which breaks down as follows:

16 As to the Split Shift Claims, there were approximately 1,819 pay periods with split shift
17 violations, resulting in a maximum exposure of \$363,600 in civil PAGA penalties (\$100
18 maximum initial PAGA penalty + 1,818 pay periods * \$200 maximum subsequent PAGA
19 penalty).

20 As to the Late Payment Claims, based on the total pay periods in the statutory PAGA
21 period (4,798), Defendant may be liable for up to \$959,500 (\$100 maximum initial PAGA
22 penalty + 4,797 pay periods * \$200 maximum subsequent PAGA penalty).

23 As to the Derivative Claims, Defendant’s maximum exposure for record keeping
24 violations (Labor Code section 1174) and wage statement violations (Labor Code section 226)
25 would also be \$959,500, respectively (\$100 maximum initial PAGA penalty + 4,797 pay periods
26 * \$200 maximum subsequent PAGA penalty). Lastly, waiting time penalties would likely be
27 assessed as a one-time penalty amounting to \$13,900 as it only impacts the final paycheck (70
28

1 total former employees; \$100 max. initial exposure + 69 former employees * 200 subsequent
2 max. exposure). *Id.*

3 **c. ANTICIPATED TRIAL RESULT, WEIGHT OF EVIDENCE, CLARITY OF**
4 **CONTROLLING LAW, AND DEFENDANT’S DEFENSES [CMO , E(2)(D)]**

5 *1. The Split Shift Claims*

6 Plaintiff’s strongest claim is for unpaid split shift premiums and has a maximum value of
7 \$363,600 (a total of 1,818 pay periods with split shifts * \$200 maximum subsequent PAGA
8 penalty), but as noted, Defendant raised several defenses, including that Plaintiff’s exposure
9 analysis presumed split shift violations for any interruptions in a 24-hour work day without due
10 regard to conflicting authority and the actual offset credited for payments in excess of minimum
11 wage. As previously indicated, Defendant argues that any interruption in the work day that was a
12 result of an overnight shift does not amount to a bona fide split shift. Defendant points to
13 *Securitas Security Services USA, Inc. v. Superior Court (Holland)* in support of its defense.
14 While Plaintiff is confident in prevailing on liability at trial for overall split shifts, based on the
15 defense put forth by Defendant, Plaintiff believes that his odds of proving split shift violations
16 relating to the overnight shifts is significantly lower (estimate 20% to 30% odds in prevailing).
17 Even if Plaintiff were to prevail in this regard, Plaintiff also believes that any penalty that would
18 be assessed will likely be reduced in the Court’s discretion under Labor Code § 2699(e)(2) and
19 *Cotter v. Lyft*, largely because the violation arose out of a previously unsettled legal obligation.
20 In *Cotter v. Lyft, Inc.*, (N.D. Cal.2016) 193 F.Supp.3d 1030, 1017, the court found that a
21 “significant” reduction in the amount of civil penalties was “appropriate” because (i) the
22 employer did not “deliberately evad[e] a clear obligation to provide legally required pay and
23 benefits to employees,” (ii) the employer did not “negligently fail to learn about its obligations
24 under the wage and hour laws,” and (iii) the employer’s disclosure obligations were “genuinely
25 unclear” because “there is no straight answer to the question.”) (Crosner April 25th Decl. ¶ 19.)

26 *2. The Late Payment Claims*

27
28 As noted, Plaintiff’s late payment claim points to the “pay date” on Defendant’s issued

1 wage statements as evidence that Defendant systematically compensated its employees thirteen
2 days after the end of their pay period, resulting in late payment violations under Labor Code
3 section 204. However, Defendant puts forth three arguments attacking both the substantive and
4 procedural aspects of this claim: (1) its “pay date” on the wage statement was automated and did
5 not represent the actual date checks and/or direct deposits were issued, and Plaintiff cannot point
6 to any authority affording them a presumption on the basis of the pay date on the wage statement;
7 (2) to meet its burden Plaintiff would have to obtain proof of actual dates of payment which
8 would require incredibly fact-intensive and individualized inquiries that render this claim
9 unmanageable for the Court to administer an efficient trial; and (3) any violations would be
10 tempered by the high probability that the Court will not characterize these as subsequent
11 violations for any time period prior to when the PAGA Notice, which would limit PAGA
12 penalties to \$100 for at least half the statutory period, notwithstanding the possibility of
13 additional reductions in the penalties amount. For these reasons, Plaintiff believes that there is a
14 risk factor of at least 65% to 75% of the maximum exposure amount. (Crosner April 25th Decl. ¶
15 20.)

16 3. *The Derivative Claims*

17 The Derivative Claims are true to their name, and either live or die by the result of the
18 Split Shift Claims. However, there is additional risk factors to consider in assessing the waiting
19 time and wage statement violations claims. As explained above, Defendant offers persuasive
20 authority to argue that split shift premiums should not be characterized as “wages” and therefore
21 do not meet the criteria necessary to trigger sections 203 or 226 penalties. (See *Ling v. P.F.*
22 *Chang's China Bistro, Inc.* and *Kirby v. Immoos Fire Protection, Inc.*) Therefore, Plaintiff
23 anticipates a 30% or less likelihood of success on the Derivative Claims at trial, assuming that
24 Plaintiff prevails in the above-described Split-Shift Claims. (Crosner April 25th Decl. ¶ 21.)

25 In regard to CMO ¶ E(2)(f), which asks if the Labor Code § 226 violations were knowing
26 and intentional, Defendant argued that these violations were not knowing or intentional because
27 they are based on one-hour premium penalties, not “wages”, and many of these penalties are for
28

1 overnight split-shifts which arise out of a conflicting interpretation of the law. (Crosner April 25th
2 Decl. ¶ 22.)

3 **d. FACTORS SUPPORTING A REDUCTION IN TOTAL PENALTY AMOUNT**
4 **[CMO, E(2)(H) AND (K)]**

5 The PAGA gives the court wide latitude to reduce the amount of civil penalties “based on
6 the facts and circumstances of a particular case” and if “to do otherwise would result in an award
7 that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h). Some factors
8 courts have considered in reducing the amount of civil penalties include whether (1) the violation
9 arises from an unsettled legal obligation (*Cotter v. Lyft, Inc.*, (N.D. Cal. 2016) 193 F.Supp.3d
10 1030, 1037); and (2) the employer’s willingness to fix the violation. (*Fleming v. Covidien*, (CD.
11 Cal. 2011)2011Us. Dist. LEXIS 154590, *8-9). For instance, in the *Lyft* case, the Court found
12 that a \$1 Million Dollar PAGA settlement was fair and reasonable in light of the unsettled nature
13 of the law, which awarded \$2.52 per pay period (397,110 pay periods / \$1M PAGA settlement),
14 which was a 97.5% reduction from the maximum penalty. In *Fleming v. Covidien*, the Court
15 reduced the potential penalties by over 82 percent, awarding \$500,000 for 28,742 pay periods at
16 issue. Similarly, in *Sanchez v. McDonald’s Restaurants of California*, BC499888, Los Angeles
17 Superior Court entered summary adjudication against McDonald’s for violating the overtime
18 laws, but the Court’s tentative ruling at trial was to award only \$750,000 in PAGA penalties
19 against McDonald’s, despite a substantial number of violations at issue.

20 Here, Defendant argues that each of these factors weigh in favor of the Court utilizing a
21 significant reduction in penalties. Regarding the Split-Shift Claims, if Plaintiff prevailed on her
22 theory, she anticipates that the Court would apply a discount to the PAGA penalties because a
23 portion of the violations are based on an unsettled area of the law, and Defendant’s obligations
24 were (and are) genuinely unclear regarding payment of a one-hour premium to employees
25 working overnight shifts. Plaintiff’s acknowledge that *Securitas Security Services*, supra,
26 provides strong arguments in defense of the Split-Shift Claims. Defendant correctly points out
27 that there is no clear authority outside of the statutory language within the Wage Order
28

1 supporting Plaintiff's theory that one-hour premiums shall be applied to overnight shifts which
2 slightly bled into a workday in which a subsequent shift began. Since this is an unsettled area of
3 the law, Plaintiff applied a 50% discount in civil penalties based on the Court's discretion.
4 (Crosner April 25th Decl. ¶ 23.)

5 Plaintiff also anticipates that the Court may exercise as discretion and discount the Late
6 Payment Claims. Of course, Defendant will likely offer witnesses and declarations at trial or
7 prior thereto in order to show that all employee payments, or a portion thereof, were actually paid
8 on different dates than those depicted on the issued wage statements. If Defendant is able to
9 produce adequate proof, Plaintiff believes there is a serious risk that the Court would consider
10 this Claim too individualized to manage in the context of a trial. Any such proof would also
11 potentially reduce the amount of violations, in addition to the strong possibility that the \$100
12 initial and/or \$200 subsequent PAGA civil penalty amounts are reduced by the discretion of the
13 Court. Based on these facts, Plaintiff believes that the Court may apply approximately a 65%
14 reduction in civil penalties for Plaintiff's Late Payment Claims. (Crosner April 25th Decl. ¶ 24.)

15 Finally, the Derivative Claims are subject to the defenses and arguments for reduction as
16 the primary claims discussed above, as well as several additional defenses/arguments, as put
17 forth herein. Therefore, Plaintiff believes that the Court would find that the majority of claims
18 arise out of an unsettled legal obligation and would discount the Derivative Claims by
19 approximately 85% in line with the other cases noted herein, potentially considering arguments
20 by Defendant that it should not be assessed as strongly since it was already assessed for the direct
21 violations. (Crosner April 25th Decl. ¶ 25.)

22 e. **MAXIMUM POTENTIAL PAGA PENALTIES AT TRIAL [CMO, E(2)(G)]**

23 Applying all defenses and risks of litigation discussed above, and factoring in the Court's
24 discretion to reduce the civil penalties, Plaintiff assesses a realistic trial value as requested in the
25 Court's CMO, which assumes that Plaintiff prevails on each claims and established a violation
26 for nearly every bi-weekly violation, as follows:

27 Split-Shift Claims: \$45,450 (75% reduction for risk of prevailing on liability and
28

1 additional 50% for potential reduction in PAGA civil penalties);

2 Late Payment Claims: \$143,925 (70% reduction for risk in prevailing on liability and
3 additional 50% for potential reduction in PAGA civil penalties);

4 Derivative Claims: \$86,980 (70% reduction for risk in prevailing on liability and
5 additional 85% for potential reduction in PAGA civil penalties);

6 Therefore, Plaintiff's estimation of the total potential penalties for trial assessment is
7 \$276,355. Of course, if Plaintiff lost any claim or did not establish a violation every period, then
8 the amount would be reduced further, plus the Court could further reduce the penalties in its
9 discretion. For instance, if the Court elected to adopt Defendant's argument that derivative
10 penalties should not be stacked, and then the total assessment would only be \$232,552. (Crosner
11 April 25th Decl. ¶ 26.)

12 Considering these issues, defenses, and the risks, a \$151,137 settlement is a very good
13 result, particularly in light of the Defendant's substantial liabilities and inability to to allocate a
14 significantly larger amount towards settlement and remain solvent. Plaintiff's counsel retained
15 expert, Van Dichoso, CPA, to evaluate the financial condition of the Defendant and to express an
16 opinion as to the realistic range in which Defendant could potentially settle this case based on its
17 available financial resources, and in a manner that would also allow Defendant to continue in
18 operation such that class members currently employed by Defendants' entities would not also
19 lose their employment. Mr. Dichoso has significant experience in the area of financial statement
20 auditing, which is an area of expertise not all CPAs can perform. Mr. Dichoso had the
21 opportunity to review a range of Defendant's financial documents and tax filings, which
22 included: 2015 Unaudited Balance Sheet, Unaudited Income Statement and Corporate Tax
23 Returns for the year ended ; 2016 Unaudited Balance Sheet, Unaudited Income Statement and
24 Corporate Tax Returns for the year ended; 2017 Unaudited Balance Sheet, Unaudited Income
25 Statement for the period ending 8/31/17; 2017 Bank Reconciliation Report and Wells Fargo
26 Bank Statement (#2878937214) ending 8/31/17; Wells Fargo Business Credit/Loan Agreement
27 dated 2/3/16; and 2017 Business Loan Billing Statements as of 8/15/17. Mr. Dichoso's review of
28 Defendant's financial documents confirmed that Defendant has substantial liabilities that

1 compromise its ability to allocate a significant amount of cash towards settlement and remain
2 solvent. Based on his professional opinion, Mr. Dischoso concluded that a settlement in excess of
3 \$151,157 paid no earlier than July 2018 may result in financial harm to Defendant, including but
4 not limited to its ability to continue in operation, and if this case were to continue and Plaintiff
5 were to secure a verdict for damages in excess of this amount, it is likely that Defendants would
6 become insolvent and efforts by Plaintiff to collect on the verdict would be very difficult, and
7 would likely require significant time and additional expenditure of resources. (Crosner April 25th
8 Decl. ¶ 27.)

9 **VI. THE REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS ARE**
10 **FAIR AND REASONABLE**

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

16 **a. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER ATTORNEY'S**
17 **FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM**
18 **ACTION**

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

27 "A qui tam action is one brought under a statute that allows a private person to sue as a
28

1 private attorney general to recover damages or penalties, all or part of which will be paid to the
2 government.” *People ex rel. Stratham v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487,
3 491- 492. “A qui tam action ‘is a type of private attorney general lawsuit’ [citation], in which
4 ‘the qui tam plaintiff stands in the shoes of the state or political subdivision [citation]. “ *Id* at p.
5 501. As the name of the PAGA statute makes clear (e.g. “Labor Code Private Attorney General
6 Act”), a PAGA action is a qui tam action because the statute allows the employee plaintiff, acting
7 as the proxy of the state’s labor law enforcement agency, to sue his or her employer for Labor
8 Code violations and recover civil penalties that otherwise would have been assessed and
9 collected by the Labor and Workforce Development Agency (LWDA). *Iskanian v. CLS Transp.*
10 *Los Angeles, LLC* (2014) 59 Cal.4th 348, 380. “A PAGA representative action is therefore a type
11 of qui tam action.” *Id* at p. 382. Indeed, the majority of the civil penalties recovered in a PAGA
12 action are paid to the state, with a smaller portion paid to the aggrieved employees (e.g. 75% paid
13 to the state; 25% paid to the aggrieved employees). See Lab. C. 2699(i).

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

24 “Those benefiting from the recovery of the fund, in this case some depositors and
25 eventually the People of the State of California, must bear their share of the cost of litigation.
26 Fees for taxpayers’ attorneys will be deducted from the judgment, and each claimant’s share
27 reduced proportionately. To the extent the judgment relies upon section 1021.5 for recovery of
28 attorney fees, it must be modified to confine the award of fees to the common fund theory.” *Id.* at

1 p. 91.

2 Likewise, in this case, through the successful efforts of Plaintiff and his attorneys, a
3 common fund was created in the amount of \$151,137 for the benefit of the employees and the
4 State of California. Thus, these beneficiaries must bear their share of the costs and attorney's
5 fees, which fees and costs must be deducted from the \$151,137 settlement amount under the
6 common fund theory. *Id.* Moreover, such fees are deducted as a percentage of the settlement
7 amount of \$121,137. *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478-482; Six (6) *Mexican*
8 *Workers v. Arizona Citrus Growers* (9th Cir. 1990) 904 F.2d 1301,1311; *Williams v. MGM-Pathe*
9 *Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027; *Staton v. Boeing Co.* (9th Cir. 2003)
10 327 F.3d 938, 967.

11 The California Supreme Court recently upheld the use of the common fund theory of
12 recovery for attorney's fees in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506. In
13 *Laffitte*, the settlement created a common fund of \$19 million dollars. The Court approved the
14 award of attorney's fees in the amount of one-third of the gross \$19 million-dollar settlement
15 (e.g. awarded \$6.33 million in attorney's fees) under the common fund theory of recovery. *Id.*
16 This ruling is consistent with the Court's prior rulings recognizing that "when a number of
17 persons are entitled in common to a specific fund, and an action brought by ... plaintiffs for the
18 benefit of all results in the creation or preservation of that fund, such ... plaintiffs may be
19 awarded attorneys' fees out of the fund." *Serrano III v. Priest* (1977) 20 Cal.3d 25,34; *Boeing*
20 *Co. v. Van Gemert*, 444 U.S. 472,478 (1980) ("[A] lawyer who recovers a common fund ... is
21 entitled to reasonable attorneys' fees from the fund as a whole;" *Mills v. Electric Auto-Lite Co.*
22 (1970) 396 U.S. 375, 393-394 [discussing the acceptance of awarding attorneys' fees and
23 expenses from a settlement where "litigation has conferred a substantial benefit on the members
24 of an ascertainable class"]; see also *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App 4th
25 19, 26 "[f]ee spreading occurs when a settlement or adjudication results in the establishment of a
26 separate or so-called common fund for the benefit of the class."].).

27 Accordingly, the common fund doctrine allows a court to award attorneys' fees based
28 upon a percentage of the total fund that is created for the satisfaction of beneficiaries' claims

1 when the fund consists of a “certain or easily calculable sum of money.” *Dunk v. Ford Motor*,
2 Co. (1996) 48 Cal.App 4th 1794, 1809; *Jutkowitz v. Bourns, Inc.* (1981) 118 Cal.App.3d 102,
3 110 [application of the percentage of the fund recovery depended on “[t]he critical point” that “a
4 fund was created from which attorneys’ fees could be paid”]; A. Conte & H. Newberg, *Newberg*
5 *on Class Actions*, § 14:6 (4th ed. 2002).

6 California law has long upheld, and continues to uphold, the percentage of the recovery
7 method for awarding attorneys’ fees where a fund is established. See e.g., *Serrano v. Priest*
8 (1977) 20 Cal.3d 25,34; *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App 4th 715, 726;
9 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App 4th 43, 563 [“fees based on a percentage of the
10 benefits are in fact appropriate in large class actions ... “]; *Sanders v. City of Los Angeles* (1970)
11 3 Cal.3d 252,261,263 [affirming award of attorneys’ fee based on percentage of recovery];
12 *Chavez v. Netflix, Inc.*, *supra*, 162 Cal.App 4th at pp. 65-66; see also *Consumer Cause, Inc. v.*
13 *Mrs. Gooch’s Natural Food Markets, Inc.* (2005) 127 Cal.App 4th 387, 397 [the common fund
14 doctrine is “frequently applied in class actions when the efforts of the attorney for the named
15 class representatives produce monetary benefits for the entire class”]; *Wershba v. Apple*
16 *Computer, Inc.* (2001) 91 Cal.App 4th 224, 254 [“courts recognize two methods for calculating
17 attorney fees in class actions: the lodestar/multiplier method and the percentage of recovery”].

18 A one-third common fund attorney fee award is also consistent with what courts have
19 awarded in other representative action cases. The following list shows PAGA actions that
20 Plaintiff’s Counsel have personally handled where attorney’s fees were awarded on a common
21 fund basis of 33.33% or more,

- 22 • *Miranda v. HomeDeliveryLink, Inc.*, San Bernardino County Superior Court, Case No.
23 CIVDS1505393 (48% fee awarded on a *PAGA only case*);
- 24 • *Keppler v. Senior Helpers of North Bay*, Napa County Superior Court, Case No. Case
25 No.: 16CV000307 (33.33% fee awarded on a *PAGA only case*);
- 26 • *Jordan v. NCI Group, Inc.* U.S. District Court, Central District of California, Case No.
27 5:16-cv-01701-JVS-SP (33.33% fee awarded on a *PAGA only case*);

28 (Crosner April 25th Decl. ¶ 32.)

1 Based on the foregoing, awarding attorneys' fees based on a one-third percentage of the
2 gross settlement amount is favored by California Courts when a fund established for the common
3 benefit of others is involved, such as here. Accordingly, awarding fees on this basis in the
4 amount of one-third of the \$151,137 gross settlement amount is reasonable and appropriate.

5 **b. A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF**
6 **THE FEE AWARD**

7 Despite recognized limitations of the so-called lodestar method, some California and
8 federal courts acknowledge the utility of a lodestar "cross-check."³ (*Lealao, supra*, 82
9 Cal.App.4th at 46-47.) Under the "lodestar multiplier" method of cross-checking the
10 reasonableness of attorneys' fees in class actions, the court ascertains Class counsel's total
11 "lodestar" amount by multiplying the number of hours reasonably expended by each attorney or
12 legal staff member by their hourly rates, and then enhances or reduces this lodestar figure by a
13 "multiplier" to account for a range of factors, such as the novelty or difficulty of the case, its
14 contingent nature, and the degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22
15 Cal.4th 1084, 1095-96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao, supra*, 82
16 Cal.App.4th at 43 [court has discretion to use a multiplier to ensure that the "fee awarded is
17 within the range of fees freely negotiated in the legal marketplace in comparable litigation"].)
18 Multipliers typically range from between 2 and 4, or even higher. (*Wershba, supra*, 91
19 Cal.App.4th at 255, citing *Coalition for L. A. County Planning etc. Interest v. Board of*
20 *Supervisors* (1977) 76 Cal.App.3d 241,251.) Historically, California courts have approved
21 multipliers of 1.5 to 4. See *Coalition for Los Angeles County Planning v. Board of Supervisors*
22 (1977) 76 Cal.App.3d 241, 251 (multiplier of 2+ approved); *Sternwest Corp v. Ash* (1986) 183
23 Cal.App.3d 74, 75. In *Sternwest Corp. v. Ash*, 183 Cal.App.3d 74 (1986), for instance, the Court
24 of Appeal remanded for a lodestar enhancement of "two, three, four or otherwise." *Id.* at 76; see
25 also *Wershba*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *City*

26 _____
27 ³ In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and
28 capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient
hours have been expended. *Herr, David F., Manuallor Complex Litigation*, § 14.121 (1988); See also *In re Activision*
(N.D. Cal 1989) 723 F.Supp 1373.

of *Oakland v. Oakland Raiders*, 203 Cal.App.3d 78, 83 (affirming 2.34 multiplier); *Coalition for Los Angeles County Planning in the Pub. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 (affirming multiplier of approximately 2); *Craft v. County Of San Bernardino*, 2008 U.S. Dist. LEXIS 27526 (C.D. Cal. Apr. 1, 2008) (applying 5.2 multiplier); See also *Steinder v. Am. Broadcasting Co., Inc.* 248 Fed. Appx. 780, 783 (9th Cir. 2007) (approving multiplier of 6.85 and citing cases with comparable or higher multipliers); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (finding no abuse of discretion in awarding a multiplier of 3 .65). In *Torchia v. WW Grainger, Inc.*, 304 F.R.D. 256, 275-278 (E.D. Cal. 2014) (a federal magistrate approved attorneys’ fees with a 3.57 multiplier). Plaintiff’s counsel is not requesting a multiplier in this case. However, if the Court is inclined to reduce Plaintiff’s Counsel’s suggested hourly rates, as set forth below, the application of a slight multiplier would likely cover such reduction.

As set forth in the declaration of Plaintiff’s Counsel submitted herewith, the actual aggregated lodestar between the attorneys that worked on this case is approximately \$63,092. This results in a lodestar that is in excess of the requested attorneys’ fees in this case. The aggregated lodestar is summarized in the following table, and in the submitted declaration of Plaintiff’s counsel:

Attorney	Experience	Rate/hr	Hours	Total
Michael Crosner	50 years	\$864	41.50	\$35,856
Zachary Crosner	7 years	\$440	61.90	\$27,236
TOTAL				\$63,092.00

(See Crosner April 25th Decl., ¶ 41.)

Lodestar Summary⁴

Attorney	Experience	Rate/hr	Hours	Total
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⁴ Plaintiffs Counsel all 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 !d. (“Here plaintiffs 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.

Michael Crosner	50 years	\$864	41.50	\$35,856
Zachary Crosner	7 years	\$440	61.90	\$27,236
TOTAL				\$63,092.00

Under the adjusted Laffey Matrix, a reasonable rate for an attorney with 20-plus years of experience, such as Michael Crosner, is \$864, and a reasonable rate for an attorney with 7 years of experience, such as myself, is \$440. Similarly, the December 8, 2008 article, “Billable Hours Aren’t the Only Game in Town Anymore,” NATIONAL LAW JOURNAL, which set forth the following hourly billing rates as reported by Sheppard, Mullin, Richter & Hampton, a leading firm in the defense of wage-and-hour class actions that I have opposed when litigating wage-and-hour class actions: Partners: \$475-\$795; Associates: 1st Year - \$275, 2nd Year - \$310, 3rd Year - \$335, 4th Year - \$365, 5th Year - \$390, 6th Year - \$415, 7th Year - \$435, 8th Year - \$455. (Crosner April 25th Decl. ¶ 39.)

While Michael Crosner or Zachary Crosner only represent clients on a contingency fee basis and therefore do not have records of charging clients hourly rates for work performed, the suggested hourly rates are in line with courts’ approval of our attorneys’ fees in recent cases:

- In *Aguirre v. Mariani Nut Company*., et al., Case No. 34-2016-00190252-CU-OEGDS (Sacramento Sup. Ct.), the Court awarded a 33 1/3% fee request in a class action lawsuit alleging minimum wage, overtime, meal period, rest period, and derivative violations. Zachary Crosner and Michael Crosner were approved at hourly rates of \$400 and \$750, respectively (hourly rates supported by Laffey Matrix at the time of approval);
- In *Gentry v. Eat 24, LLC*, Case No. CGC-15-546536 (San Francisco Sup. Ct.), the Court awarded a 33 1/3% fee request in a class action lawsuit alleging minimum wage, overtime, meal period, rest period, and derivative violations. Zachary Crosner and Michael Crosner were approved at hourly rates of \$450 and \$750, respectively (hourly rates supported by Laffey Matrix at the time of approval);
- Similarly, in *Gibbins v. Hishmeh Enterprises, Inc.*, et al., Case No. 56-2015-

0004686352 (Ventura Sup. Ct.) – consolidated from Monteleone v. Ocean Cities Pizza, Inc., Case No. 56-2014-00458249 (Ventura Sup. Ct.), the Court awarded a 33 1/3% fee request in a class action lawsuit alleging minimum wage, overtime, meal period, rest period and derivative violations. Zachary Crosner and Michael Crosner were approved at hourly rates of \$450 and \$750, respectively (hourly rates supported by Laffey Matrix at the time of approval).

Thus, Plaintiff’s Counsel’s rates are reasonable and typical. (Crosner April 25th Decl. ¶ 40.)

c. THE REQUESTED LITIGATION COSTS ARE FAIR AND REASONABLE

Plaintiff’s Counsel requests reimbursement of their actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the employees. See *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19. Plaintiff’s Counsel are permitted to recover their litigation costs and expenses under the common fund doctrine. See *Serrano III*, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the fund); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund “[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of attorneys’ fees by ... [Plaintiffs’] attorneys”). Furthermore, Plaintiff’s Counsel are entitled to recover “those out-of-pocket expenses that would normally be charged to a fee-paying client.” *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.) (Crosner April 25th Decl. ¶ 42.)

Prior to filing this motion, Plaintiff’s Counsel had submitted additional information relating to its filing fees and other expenses upon the Court’s request in its previous tentative rulings. The Court’s most recent tentative ruling on November 28, 2018 informed Plaintiff’s Counsel that it would approve a request for expense reimbursement in an amount of \$6,093.02. On December 12, 2018, Counsel for Plaintiff filed a supplemental declaration informing the Court that the Parties had revised the [Proposed] Order to reflect an amount of \$6,093.02 for Plaintiff’s Counsel’s reimbursement of litigation expenses, which is the amount Counsel now

1 seeks in reimbursement of its litigation costs. These costs include mediation fees, filing fees (not
2 including courier or convenience charges), online research, and other costs which include
3 Attorney Service charges, parking charges, CourtCall charges, and process service fees. (*Id.*)
4 These costs are reasonable and uncontested, and should be approved. (Crosner Decl. ¶ 16.)

5 **VII. THE PROPOSED SERVICE AWARD FOR PLAINTIFF IS FAIR AND**
6 **REASONABLE**

7 Although there is no authority approving a “service award” to a named plaintiff in a
8 PAGA action separate from their share of the 25 percent of the assessed civil penalties, as the
9 rationale of awarding service awards to lead plaintiffs in the context of class actions is equally
10 applicable in the context of an aggrieved employee bringing a PAGA action, an award under the
11 circumstances of this case would be justified. (*See Clark v. American Residential Services, LLC*
12 (2009) 175 Cal.App.4th 785, 804) [“an incentive award is appropriate if it is necessary to induce
13 an individual to participate in the suit”].)

14 In passing the PAGA, the Legislature recognized the limited resources available to the
15 state to ensure maximum compliance with California’s labor laws and, therefore, the PAGA
16 would permit private employees harmed by their employer’s labor code violations to bring an
17 action on behalf of the government. (*See Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59
18 Cal.4th 348, 378-3825 [describing legislative history of the PAGA].) Presumably, the PAGA
19 distributed 25 percent of the assessed penalties to the aggrieved employees as an incentive to the
20 potential employee to bring the PAGA action. However, as a practical matter, the resulting share
21 to the named plaintiff in a PAGA action can be nominal once the penalties have been reduced
22 and/or distributed to the LWDA and other non-party aggrieved employees. Thus, in order to
23 effectuate the purpose of the PAGA, where a settlement of PAGA penalties results in nominal
24 award to the named plaintiff, it is necessary to provide an incentive award to induce employees to
25 bring PAGA actions. In the class action context, relevant factors to determine whether an
26 incentive award is appropriate include the actions the plaintiff has taken to protect the class, the
27 degree to which the class has benefited from those actions, and the amount of time and effort the
28

1 plaintiff expended in pursuing the litigation. (*See Clark v. American Residential Services, LLC,*
2 *supra*, 175 Cal.App.4th at 804).

3 In this matter, Plaintiff McCord, at considerable risk to her livelihood, made significant
4 efforts to protect the interests of the state labor agencies and ensure her non-party coworkers
5 were no longer forced to work under unlawful conditions. Plaintiff was critical in identifying
6 potential witnesses to Defendant's labor code violations and she spent many hours assisting her
7 counsel in providing facts, identifying witnesses, and reviewing documents and fields in order to
8 litigate this case. Plaintiff has never been a PAGA plaintiff in any other matter. (Crosner Decl. ¶
9 17.)

10 As a result of Plaintiff's efforts, the Defendant has changed their practices to comply with
11 California's labor laws, benefitting Defendant's current employees. In addition, the LWDA will
12 receive \$66,273.73 at its 75 percent of the PAGA to educate other California employers to
13 comply with law, benefitting the public at large. (*Id.*)

14 In light of the foregoing and upon the Court's own discretion, in its tentative ruling the
15 Court indicated its approval of a service award in an amount of \$3,000, which has been requested
16 in the Parties' revised [Proposed] Order concurrently filed herewith.

17 **VIII. SUBMISSION TO THE LWDA**

18 The revised Settlement Agreement and this Motion have been concurrently submitted to
19 the LWDA in accordance with Labor Code § 2699(1)(2). The proof of electronic submission is
20 attached hereto as **Exhibit D**. (Crosner Decl. ¶ 18.)

21 **IX. THE COURT SHOULD APPOINT PHEONIX AS ADMINISTRATOR**

22 Subject to the Court's approval, the parties stipulated to Phoenix Class Action
23 Administrators ("Phoenix") serving as the Settlement Administrator who will process the
24 settlement payments and provide notice to the Aggrieved Employees. Phoenix is highly
25 experienced in administering class/PAGA settlements. Phoenix provided an all-in proposal to
26 administer the settlement for \$3,300.00. As previously stated, the Court indicated in its tentative
27 ruling that it would approve a settlement administration fee not to exceed \$3,300.00, which is
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1 reflected in the Parties' revised [Proposed] Order. (Crosner Decl. ¶ 19.)

2 **X. CONCLUSION**

3 For the foregoing reasons, Plaintiff respectfully requests the Court approve the Settlement
4 under the PAGA.
5

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8 Dated: January 14, 2019

CROSNER LEGAL, P.C.

9
10 BY:



Zachary Crosner, Esq.
Attorneys for Plaintiff, the State of California
and Aggrieved Employees
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EXHIBIT A

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10 Attorneys for Defendant

11 DEVELOPMENTAL CLIENT CARE INDUSTRIES, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13
14 FOR THE COUNTY OF RIVERSIDE

15 ASHLEY MCCORD, individually, and on
16 behalf of all similarly situated,

17 Plaintiffs,

18 vs.

19 DEVELOPMENTAL CLIENT CARE,
20 INDUSTRIES, INC., and DOES 1 through 100,
inclusive,

21 Defendants.

Case No.: RIC1612928

PAGA SETTLEMENT AGREEMENT

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1 Administrator on IRS Form 1099 to the respective Aggrieved Employee and applicable governmental
2 authorities. Of the portion paid to Aggrieved Employees, the amounts will be subject to the distribution
3 formula agreed upon by the Parties. Any leftover funds remaining after the reductions listed in this
4 paragraph, shall go the Net Settlement Fund and shall not revert back to Defendant. The portions of the
5 Net Settlement Fund to be distributed to the Aggrieved Employees, as described in this Paragraph
6 (“Aggrieved Employee Fund”), shall be paid according to the following formula: *Settlement Payment to*
7 *each Aggrieved Employee = (Aggrieved Employee Fund x Pay Periods Worked by Each Individual*
8 *Aggrieved Employee During Settlement Period) ÷ Total Pay Periods Worked by All Aggrieved*
9 *Employees during the Settlement Period.*

10 5. Attorneys’ Fees and Costs: In full satisfaction of all claims Plaintiff may have for
11 attorney’s fees, litigation costs, and expenses arising out of the Action, Defendant agrees to pay
12 Plaintiff’s counsel, Crosner Legal, P.C. (“Plaintiff’s Counsel”), a total of Fifty Thousand Three Hundred
13 Twenty Eight Dollars and Sixty Two Cents (\$50,328.62) in attorneys’ fees, as well as additional actual
14 litigation costs and expenses in an amount of Six Thousand Eight Hundred Thirty-One Dollars and
15 Twelve Cents (\$6,831.12). (“Attorneys’ Fees and Costs”), from the Maximum Settlement Amount.

16 6. Settlement Administration. The Parties will retain Simpluris Inc. (“Settlement
17 Administrator”) to administer this Settlement. The Settlement Administrator will be responsible for
18 establishing a qualified settlement fund (“QSF”) from the Maximum Settlement Amount paid by
19 Defendant, and issuing payments and appropriate tax forms to Aggrieved Employees, the LWDA,
20 Plaintiff, and Plaintiff’s counsel. The fees and costs of the Settlement Administrator shall be paid from
21 the QSF (“Settlement Administration Costs”) in an amount not to exceed Ten Thousand Dollars and
22 Zero Cents (\$10,000.00).

23 7. Plaintiff’s Service Award: In recognition of her effort and work in prosecuting the
24 Action for the benefit of the State of California and Aggrieved Employees, and for a general release of
25 all individual claims she may have against Defendant, as set forth in Paragraph 15, Defendant agrees to
26 pay Plaintiff Ten Thousand Dollars and Zero Cents (\$10,000.00) (“Plaintiff’s Service Award”) from the
27 Maximum Settlement Amount, subject to issuance of a Form 1099, in addition to her share of the
28 Aggrieved Employee Fund as determined under Paragraph 4. Plaintiff shall assume full responsibility

and liability for payment of taxes due on Plaintiff's Service Award.

8. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties will present this Settlement Agreement to the Court and will request that the Court issue an order approving and incorporating by reference the terms and conditions of the Settlement Agreement (the "Order"). Simultaneously, Plaintiff's counsel will submit a copy of the executed Settlement Agreement to the LWDA. Upon approval of the Order, Plaintiff's counsel will submit a copy of the Order to the LWDA.

9. Installment Funding of the Settlement. After the Court enters the Order, Defendant will deposit Fifty Percent (50%) of the Maximum Settlement Amount into the QSF by no later than May 18, 2018 ("First Installment Payment"); Defendant will thereafter deposit the remaining Fifty Percent (50%) of the Maximum Settlement Amount into the QSF by no later than July 18, 2018 ("Second Installment Payment") (collectively referred to as the "Installment Payments"). Within fourteen (14) calendar days of the First Installment Payment and of the Second Installment Payment, the Settlement Administrator will issue payments to: (a) Aggrieved Employees; (b) the LWDA; (c) Plaintiff; (d) Plaintiff's counsel, and (e) itself. The Settlement Administrator, and not Defendant, will issue the appropriate tax forms for all payments issued under this Settlement.

10. Non-Installment Funding of the Settlement. The Parties agree that if two Installment Payments by the Settlement Administrator cause the Settlement Administration Costs to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00), then the Settlement Administrator will not issue any payments following Defendant's deposit of the First Installment Payment. The Settlement Administrator will only issue payments to (a) Aggrieved Employees; (b) the LWDA; (c) Plaintiff; (d) Plaintiff's counsel; and (e) itself, within fourteen (14) calendar days following Defendant's deposit of the Second Installment Payment.

11. No Opt-Out or Objection to the Settlement. Because the requirements of class certification do not apply to PAGA representation actions (*see Arias v. Super. Ct.*, 46 Cal. 4th 969 ([2009])), it is understood and agreed that the Aggrieved Employees shall not be afforded an opportunity to opt out of, or object to, the Settlement.

12. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue

1 each Aggrieved Employees a check for his or her share of the Aggrieved Employee Fund, as calculated
2 under Paragraph 4, along with an explanatory letter which will be mutually approved by the parties,
3 explaining, *inter alia*, that the Settled Claims are barred by operation of the Settlement. Checks will
4 remain negotiable for 180 days. Any checks returned as non-deliverable on or before the check cashing
5 deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed
6 thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to
7 determine the correct address using a skip-trace, or other search using the name, address or Social
8 Security number of the Aggrieved Employees involved, and will then perform a single re-mailing.
9 Funds represented by settlement checks returned as undeliverable and those settlement checks remaining
10 un-cashed for more than 180 days after issuance will be tendered to the California Department of
11 Industrial Relations Unpaid Wage Fund (see Cal. Lab. Code § 96.6). All settlement payments to
12 Aggrieved Employees will be treated as miscellaneous income for which a 1099 will be issued. Plaintiff
13 and Aggrieved Employees, and not Defendant, shall assume full responsibility and liability for payment
14 of any taxes due on such settlement payments, if any.

15 13. Release as to the PAGA Representative Claims: Subject to approval by the Court, and
16 for good and valuable consideration set forth herein, the receipt and sufficient of which is hereby
17 acknowledged, Plaintiff Ashley McCord, individually and in her capacity as a private attorney general on
18 behalf of the LWDA, does hereby irrevocably release, acquit, and forever discharge Defendant of and
19 from any and all claims, rights, penalties, demands, damages, debts, accounts, duties, costs (other than
20 those costs required to be paid pursuant to this Settlement Agreement), liens, charges, complaints, causes
21 of action, obligations, or liability of any and every kind, arising out of the facts alleged in the operative
22 complaint, and that were asserted or reasonably could have been asserted in the operative complaint,
23 including but no limited to claims for DCCI's (i) failure to pay split shift premiums; (ii) failure to timely
24 pay wages after the close of each pay period; (iii) inaccurate wage statements, as a result of unpaid split
25 shift premiums; (iv) failure to pay all outstanding wages at separation, as a result of unpaid split shift
26 premiums; and (v) the alleged violation of, or claims for relief pursuant to, Labor Code sections 201,
27 202, 203, 204, 210, 226, 226.3, 512, 558, and 1174, as well as California Code of Regulations, Title 8,
28 section 11050(4)(C) and IWC Wage Order 5-2001, Section 4(C) ("Released Claims").

14. The time period governing these Released Claims shall be at any time from September 1, 2015, through the date of the Final Order approving this Settlement Agreement.

15. These Releases also include a release of all claims against Defendants for attorneys' fees and costs incurred by Plaintiff's Counsel in connection with this Action and the Settlement of this Action.

16. Release by Plaintiff: Plaintiff does for herself and for her respective spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and assigns forever and completely release and discharge Defendant from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages', interest, attorneys' fees, and costs) of any nature whatsoever, from the beginning of time to the date she executes this Settlement Agreement, whether known or unknown, suspected or unsuspected, including but not limited to all claims arising out of, based upon, or relating to Plaintiff's employment with Defendant or the remuneration for or termination of such employment.

Without limiting the generality of the foregoing, Plaintiff expressly releases all claims or rights against Defendant arising out of or relating to alleged violations of any contracts, express or implied (including but not limited to any contract of employment); any contract or covenant of good faith and fair dealing (express or implied); any tort, including any claim for improper or unauthorized wage deductions, failure to pay the applicable wage, unpaid wages, unpaid vacation benefits, penalties, liquidated damages, other damages, alleged minimum wage and overtime under state law, including California Labor Code Sections 204 and 558, waiting time penalties pursuant to California Labor Section 203, damages or penalties pursuant to California Labor Code Section 226, meal period and rest break payments pursuant to California Labor Code Sections 226.7 and 512, failure to provide itemized wage statements pursuant to California Labor Code Section 226, statutory or civil penalties pursuant to California Labor Code Sections 210, unfair competition and unfair business practices pursuant to Business and Professions Code Section 17200 et seq., interest and costs pursuant to California Civil Code Section 3287 and California Labor Code Section 218.6, statutory or common law rights to attorneys' fees and costs, including those pursuant to California Labor Code Section 1194 et seq.; claims

1 under the Private Attorneys General Act of 2004, Labor Code section 2699 et seq., and the alleged
2 violation or breach of any other state or federal statute, rule and or regulation; including all applicable
3 Industrial Welfare Commission Wage Orders, and all similar causes of action, including but not limited
4 to, any claim for restitution, equitable relief, interest, penalties, costs or attorneys' fees in connection with
5 any of the foregoing, negligent infliction of emotional distress, intentional infliction of emotional distress,
6 and defamation; any "wrongful discharge," "constructive discharge," and "retaliation" claims; any
7 claims relating to any breach of public policy; any legal restrictions on Defendant's' right to discharge
8 employees; and any federal, state, or other governmental statute, regulation, or ordinance, including,
9 without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national
10 origin discrimination or harassment, including retaliation for reporting discrimination or harassment); (2)
11 42 U.S.C. § 1981 (discrimination); (3) Equal Pay Act, 29 U.S.C. § 209(d) (1) (equal pay); (4)
12 Americans with Disabilities Act, 42 U.S.C. § 12100 et seq. (disability discrimination); (5) Family and
13 Medical Leave Act, 29 U.S.C. § 2601 et seq. (family/medical leave); (6) California Fair Employment
14 and Housing Act, Cal. Government Code § 12900 et seq. (discrimination or harassment in employment
15 and/or housing, including discrimination or harassment based on race, religious creed, color, national
16 origin, ancestry, disability, marital status, sex (including pregnancy), or age, including retaliation for
17 reporting discrimination or harassment); (7) California Family Rights Act, Cal. Government Code §
18 12945.1 et seq. (family/medical leave); (8) California Labor Code, including Section 1720 et seq., or any
19 Industrial Welfare Commission Wage Order; (9) Executive Order 11246 (race, color, religion, sex, and
20 national origin discrimination or harassment); (10) Executive Order 11141 (age discrimination); (11)
21 Sections 503 and 504 of the Rehabilitation Act of 1973 (handicap discrimination); (12) the Fair Labor
22 Standards Act; and (13) Employee Retirement Income Security Act, 29 U.S.C. § 1000 et seq. (employee
23 benefits).

24 Plaintiff expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the
25 Civil Code of the State of California and do so understanding and acknowledging the significance of the
26 waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
28 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HER OR HER

1 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
2 BY HER OR HER MUST HAVE MATERIALLY AFFECTED HER OR HER
3 SETTLEMENT WITH THE DEBTOR.

4 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and
5 complete release and discharge of all parties, Plaintiff and Plaintiff's Counsel expressly acknowledge that
6 this Settlement Agreement is intended to include in its effect, without limitation, all claims that Plaintiff
7 knows of, as well as all claims that they do not know or suspect to, exist in her favor against Defendant,
8 or any of them, for the time period from the beginning of time to the date of the entry of the Final Order
9 and that this Settlement Agreement contemplates the extinguishment of any such claims.

10 Plaintiff's general release shall become effective upon the date of entry of the Final Order. The
11 Parties agree that Plaintiff's general release shall not affect or limit Plaintiff's ability or standing to serve
12 as the representative/lead Plaintiff for the State of California in this Action and/or for this Settlement
13 Agreement.

14 17. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant
15 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
16 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of
17 action or right herein released and discharged.

18 18. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve
19 the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then
20 this Settlement Agreement will be null and void, and the Parties will be returned to their original
21 respective positions pursuant to the terms of the Memorandum of Agreement entered into by the Parties
22 on October 18, 2017.

23 19. Order and Continued Jurisdiction. After entry of the Order, the Court will have
24 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the
25 terms of the Settlement, (ii) settlement administration matters, and (iii) such other matters as may be
26 appropriate under court rules or as set forth in this Settlement.

27 20. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties'
28 settlement terms. Apart from the Memorandum of Agreement entered into by the Parties on October 17,

2017, no other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

21. Amendment or Modification. This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties.

22. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

23. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

24. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

25. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

26. Acknowledgement that the Settlement is Fair and Reasonable. Defendant has produced and Plaintiff has received and reviewed data pertaining to the hours worked by and wages paid Aggrieved Employees, in addition to the applicable number of work weeks and shifts. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties agree that

1 Plaintiff and her counsel have sufficient information to assess this matter for settlement and have
2 engaged in sufficient investigation and informal and formal discovery to assess the relative merits of
3 Plaintiff's claims and Defendant's defenses to them.

4 27. The Parties further acknowledge that they are each represented by competent counsel
5 and that they have had an opportunity to consult with their counsel regarding the fairness and
6 reasonableness of this Settlement.

7 28. Invalidity of Any Provision. Before declaring any provision of this Settlement
8 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent
9 possible consistent with applicable precedents so as to define all provisions of this Settlement Agreement
10 valid and enforceable.

11 29. Captions. The captions and section numbers in this Settlement Agreement are inserted
12 for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the
13 provisions of this Settlement Agreement.

14 30. Waiver. No waiver of any condition or covenant contained in this Settlement
15 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to
16 imply or constitute a further waiver by such party of the same or any other condition, covenant, right or
17 remedy.

18 31. Enforcement Action. In the event that one or more of the Parties institutes any legal
19 action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement
20 or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be
21 entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including
22 expert witness fees incurred in connection with any enforcement actions.

23 32. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
24 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed
25 more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for
26 one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties,
27 all Parties have contributed to the preparation of this Settlement Agreement.
28

1 33. Representation By Counsel. The Parties acknowledge that they have been represented
2 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
3 that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed
4 in full.

5 34. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good
6 faith and execute all documents to the extent reasonably necessary to effectuate the terms of this
7 Settlement Agreement.

8 35. Binding Agreement. The Parties warrant that they understand and have full authority to
9 enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and
10 binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to
11 enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply
12 under federal or state law.

13 36. Denial of Liability. The Parties expressly recognize that the making of this agreement
14 does not in any way constitute an admission or concession of wrongdoing on the part of any of the
15 Defendant, and Defendant expressly denies any liability to Plaintiff and the Aggrieved Employees.
16 Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements,
17 discussions or communications, nor any materials prepared, exchanged, issued or used during the course
18 of this Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be
19 used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other
20 forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance,
21 regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the
22 foregoing, this agreement may be used in any proceeding in the Court that has as its purpose the
23 interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court
24 entered into in connection therewith.

25 **READ CAREFULLY BEFORE SIGNING**

26 **SIGNATURES FOLLOW ON NEXT PAGE**

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PLAINTIFF

Dated: _____

Plaintiff Ashley McCord

**DEFENDANT DEVELOPMENTAL CLIENT
CARE INDUSTRIES, INC.**

Dated: 11/21/18



CARL E. ROWE

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

CROSNER LEGAL, P.C.

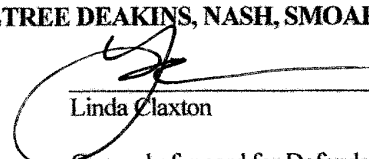
Dated: _____

Zachary Crosner, Esq.

Counsel of record for Plaintiff Ashley McCord

OGLTREE DEAKINS, NASH, SMOAK & STEWART, P.C.

Dated: 11/21/18



Linda Claxton

Counsel of record for Defendant Developmental
Client Care Industries, Inc.

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PLAINTIFF

Dated: 11/25/2018



Plaintiff Ashley McCord

**DEFENDANT DEVELOPMENTAL CLIENT
CARE INDUSTRIES, INC.**

Dated: _____

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

CROSNER LEGAL, P.C.


Zachary Crosner, Esq.
Counsel of record for Plaintiff Ashley McCord

OGLTREE DEAKINS, NASH, SMOAK & STEWART, P.C.

Dated: _____

Linda Claxton
Counsel of record for Defendant Developmental
Client Care Industries, Inc.

EXHIBIT B

«DATE»

«FIRST_NAME» «LAST_NAME»
«ADDRESS 1»
«ADDRESS 2»

Re: Payment From McCord v. Developmental Client Care Industries, Inc., et al.

Dear «FIRST_NAME» «LAST_NAME»

Enclosed is your payment from the settlement of the lawsuit entitled *McCord v. Developmental Client Care Industries, Inc., et al.*, Riverside County Superior Court Case No. RIC1612928 (the “Lawsuit”).

That case was filed against Developmental Client Care Industries, Inc., (“DCCI”) pursuant to the California Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq. (called “PAGA”). The claim was brought on behalf of the State of California and all similarly situated aggrieved employees of DCCI. You have been identified as one of the employees on whose behalf the case was brought.

The plaintiff in the case claimed that DCCI owed penalties under PAGA for certain California Labor Code violations, including alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 512, 558, and 1174, and California Code of Regulations, Title 8, section 11050(4)(C) and IWC Wage Order 5-2001, Section 4(C). DCCI denies that it did anything wrong or that it owes any penalties. The parties agreed to resolve the case, and as part of that settlement, DCCI agreed to pay a certain amount of money categorized as PAGA penalties.

The Court approved the Settlement on _____, 2019. First, under California law, any settlement of a PAGA case results in 75 percent of the awarded PAGA penalty being paid to the State of California and 25 percent of the penalty being paid to the employees who worked during the applicable period. DCCI vigorously disputes that any PAGA penalties are due, but nonetheless has agreed to resolve the claims raised in the Lawsuit without further court action. You are receiving this payment as your share of the Settlement. You have 180 days to cash the settlement checks. You will receive a tax from 1099 for the check that is not attributable to wages.

In exchange for these payments, Plaintiff Ashley McCord’s claim pursuant to Labor Code Section 2699, et seq. (PAGA) for the period of September 1, 2015, through _____, 2019 is dismissed with prejudice as to Plaintiff Ashley McCord and without prejudice to yourself and all other similarly situated aggrieved employees of DCCI. The settlement does not release any individual claims belonging to any employee, including yourself.

You can learn more about the lawsuit on the Court’s website at _____ by entering the case number (RIC1612928). You may also call the attorneys listed below:

Counsel for Plaintiff/Employees:	Counsel for DCCI:
Zachary Crosner, Esq. Michael Crosner, Esq. Crosner Legal, P.C. 433 N. Camden Dr., Ste. 400 Beverly Hills, CA 90210 Tel: (310) 496-5818 Email: zach@crosnerlegal.com Email: mike@crosnerlegal.com	Linda Claxton, Esq. Ogletree, Deakins, Nash, Smoak & Stewart, P.C. 400 South Hope Street, Suite 1200 Los Angeles, CA 90071 Tel: 213-438-5841 Email: linda.claxton@ogletree.com

EXHIBIT C

1 CROSNER LEGAL, P.C.
Michael Crosner (SBN: 41299)
2 mike@crosnerlegal.com
Zachary Crosner (SBN: 272295)
3 zach@crosnerlegal.com
433 N Camden Dr., Ste. 400
4 Beverly Hills, CA 90210
Telephone: (310) 496-5818
5 Fax: (310) 510-6429

6 Attorneys for Plaintiffs

7 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
LINDA K. CLAXTON, CA Bar No. 125729
8 400 South Hope Street, Suite 1200
Los Angeles, CA 90071
9 Telephone: 213.239.9800
Facsimile: 213.239.9045

10 Attorneys for Defendant

11 DEVELOPMENTAL CLIENT CARE INDUSTRIES, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF RIVERSIDE

14
15 ASHLEY MCCORD, individually, and on
behalf of all similarly situated,

16 Plaintiffs,

17 vs.

18 DEVELOPMENTAL CLIENT CARE,
19 INDUSTRIES, INC., and DOES 1 through 100,
inclusive,

20 Defendants.
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Case No.: RIC1612928

**[PROPOSED] ORDER APPROVING PAGA
SETTLEMENT AGREEMENT PURSUANT
TO THE PRIVATE ATTORNEY GENERAL
ACT AND DISMISSAL ENTERED
THEREON**

1
2 The Motion to Approve the PAGA Settlement Agreement (“Settlement Agreement”) in
3 accordance with Labor Code section 2699(1)(2) of the Private Attorney Act of 2004
4 (“PAGA”) came before this Court on a regularly noticed motion.

5 Plaintiff’s First Amended Complaint (“FAC”) contains causes of action under the PAGA
6 based on alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 226,
7 226.3, 512, 558, and 1174, and California Code of Regulations, Title 8, section 11050(4)(C)
8 and IWC Wage Order 5-2001, Section 4(C), as well as for Plaintiff’s individual (non-PAGA)
9 wage and hour causes of action, including (i) failure to pay split shift premiums; (ii)
10 inaccurate wage statements, as a result of unpaid split shift premiums; and (iii) failure to pay
all outstanding wages at separation, as a result of unpaid split shift premiums.

11 Plaintiff’s FAC seeks civil penalties on behalf of the State of California and others
12 similarly situated aggrieved employees (the “Aggrieved Employees”), as authorized by
13 PAGA, in relation to alleged violations of those predicate statutes on behalf of all current and
14 former non-exempt employees of Defendant who, from September 1, 2015 through the date of
15 the entry of this Order and dismissal thereon, (i) worked split shifts, but were not paid all
16 associated split shift premiums; (ii) received wages more than seven (7) days after the close of
17 Defendant’s pay period; (iii) received inaccurate wage statements from Defendant, as a result
18 of unpaid split shift premiums; and/or (iv) did not receive all wages owed at the time of their
termination or resignation, as a result of unpaid split shift premiums.

19 The Court, having considered the PAGA Settlement, including proposed PAGA penalties,
20 embodied in the PAGA Settlement (attached hereto as Exhibit “A”) between Plaintiff Ashley McCord
21 and Defendant, pursuant to Labor Code section 2699(1)(2), having considered the papers filed in support
of the PAGA Settlement and the arguments of counsel, and good cause appearing, the Court finds that:

- 22 1. In a settlement of a PAGA action brought by an aggrieved employee, the Court “shall review
23 and approve any settlement of any civil action filed pursuant to this part.” Cal. Lab. Code section
24 2699 (1)(2).
- 25 2. The instant Action present a good faith dispute of the claims alleged, and that settlement of the
26 PAGA claims for \$151,137.00, inclusive of attorney's fees and costs, is in all respects, fair,
27 adequate, and reasonable, and was reached as a result of intensive, serious, and non-collusive
28 arm's length negotiations.
3. Reduction of PAGA penalties pursuant to this Order and per Lab. Code, § 2699, subd. (e)(2) is
appropriate to prevent an unjust, arbitrary and oppressive, or confiscatory result;

1 4. Under the terms of the PAGA Settlement Agreement ("Settlement Agreement") and in light of
2 Defendant's potential exposure, an award of attorneys' fees to Plaintiff's counsel in the amount of
3 \$50,328.62 and actual litigation expenses in the amount of \$6,093.02 falls within the range of
4 reasonableness and that the results achieved justify the award.

5 NOW, THEREFOR, IT IS HEREBY ORDERED:

- 6 1. The Motion is GRANTED, and the Court approves the payment of \$151,137.00 , inclusive
7 of attorney's fees, to resolve Plaintiff's PAGA claims, and shall be distributed as follows:
8 a. \$50,328.62 in attorney's fees to Crosner Legal, P.C.;
9 b. \$6,093.02 in litigation costs to Crosner Legal, P.C.;
10 c. \$3,300.00 to Simplirus, Inc. for administration costs;
11 d. \$3,000.00 to Plaintiff for a Service Award
- 12 2. After deducting the foregoing payments, the remainder of \$88,415.36 shall form the Net
13 Settlement Fund. Pursuant to Labor Code section 2699(i), the Net Settlement Fund shall be
14 divided with 75% (\$66,311.52) being paid to the LWDA, and the remaining 25% (\$22,103.84)
15 paid to the Aggrieved Employees on a pro rata basis, as set forth in the Settlement Agreement.
16 The Court approves these payments, and direct the Settlement Administrator to issue checks to
17 the LWDA and Aggrieved Employees, along with the Notice Letter (attached hereto as Exhibit
18 "B"), as set forth in the Settlement Agreement.
- 19 3. The Settlement Agreement, except for paragraph 36 (page 10, lines 13-24) shall be implemented
20 in accordance with its terms. The Settling Parties are directed to perform in accordance with the
21 terms set forth in the Settlement Agreement, including that Defendant is directed to make
22 payments in accordance with the Settlement Agreement.
- 23 4. The Court reserves exclusive and continuing jurisdiction over the Action and the Parties for the
24 purposes of supervising the implementation, enforcement, construction, administration, and
25 interpretation of the Settlement Agreement and this Order.

26 5. Plaintiff Ashley McCord's individual claims are dismissed with prejudice; and
27 Plaintiff Ashley McCord's claim pursuant to Labor Code Section 2699, et seq. (PAGA) is dismissed
28 with prejudice as to Plaintiff Ashley McCord and without prejudice to all other Aggrieved Employees.

IT IS SO ORDERED.

Date: _____

Honorable Craig Riemer, Dept. 05
Superior Court County of Riverside

EXHIBIT D