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

ANGEL WALDEN, on behalf of the State of
California as the Real Party In Interest;

Plaintiff,

vs.

ADVANCED PAYROLL SOLUTIONS,
INC., a California Corporation; ADVANCED
REAL ESTATE SERVICES, INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVSB2300104

*[Assigned to Hon. Jessica Morgan, Dept S26
for all purposes]*

**NOTICE OF MOTION AND MOTION
TO APPROVE SETTLEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

*Filed Concurrently with: (1) [Proposed]
Order, (2) Declaration of Brian J. Mankin,
Esq. in Support Thereof, and (3) Declaration
of Peter J. Carlson, Esq., in Support Thereof*

Hearing

Date: August 1, 2024

Time: 8:30 a.m.

Dept.: S26

Complaint filed: 1/10/2023

FAC filed: 2/29/2024

1 TO THE HONORABLE COURT AND TO ALL PARTIES AND COUNSEL OF RECORD:

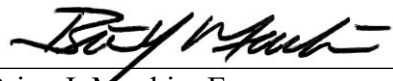
2 PLEASE TAKE NOTICE that on August 1, 2024, at 8:30 a.m. or as soon thereafter as
3 the matter may be heard by the Honorable Jessica Morgan in Department S26 of the San
4 Bernardino County Superior Court, located at 247 West Third Street San Bernardino CA 92415,
5 Plaintiffs Angel Walden and Paige Collins will and hereby do move this Court for an order
6 approving a settlement pursuant to the Private Attorneys General Act of 2004, Labor Code §
7 2698 *et seq.* (the “PAGA”).

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

14 Dated: July 8, 2024

LAUBY, MANKIN & LAUBY LLP

15
16 BY:



Brian J. Mankin, Esq.
Attorneys for Plaintiffs, on behalf of the
State of California as the Real Party In
Interest

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In this PAGA-only action, Plaintiffs Angel Walden and Paige Collins – serving as the
4 representatives for the State of California – and her counsel sought civil penalties against her
5 former employers, Defendants Advanced Payroll Solutions, Inc., and Advanced Real Estate
6 Services, Inc. (“Defendants”) under the Labor Code Private Attorneys General Act of 2004,
7 California Labor Code § 2698 *et seq.* (commonly referred to as “PAGA”).

8 A PAGA action is a form of qui tam action filed on behalf of the state to assist it with
9 labor law enforcement. *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380-
10 382. As such, the state is the real party in interest in a PAGA action. *Id.* at 382. The State of
11 California was timely served with a copy of the Settlement Agreement¹ and this Motion to
12 Approve the Settlement.

13 As brief background, Defendants employed the “Aggrieved Employees”² to carry out
14 tasks related to Defendants’ property management business. And Plaintiffs alleged that, in these
15 roles, they and the Aggrieved Employees were subjected to various violations of the California
16 Labor Code. Although Defendants vehemently disputed the claims and denied any such
17 violations, the Parties agreed to mediation, paired with informal discovery and a robust exchange
18 of data and documents. After mediation was unsuccessful, the Parties stayed this Action to move
19 forward with arbitration of Plaintiffs’ individual claims. But the Parties also continued
20 settlement negotiations and eventually reached this settlement in February 2024.

21 Now, with a comprehensive Settlement Agreement, Plaintiffs seek (and Defendants do
22 not oppose), this Court’s approval of a \$300,000 settlement. After payment of Plaintiffs’
23 attorneys’ fees of \$100,000 (1/3 of the Settlement) and actual costs (\$12,480.28), as well as the
24 administration expenses (\$6,500), and \$5,000 service awards to each Plaintiff, approximately
25

26 ¹ The PAGA Settlement Agreement and Release of Claims (the “Settlement Agreement” or
27 “S.A.”) is attached as Exhibit C to the Declaration of Brian J. Mankin (“Mankin Decl.”).

28 ² Defined at S.A. ¶ 3 as “all current and former nonexempt employees employed by Defendants
in California at any time during the PAGA Period (November 6, 2021, through February 29,
2024).”

1 \$171,019.72 will remain as the Net Settlement Amount, with 75% paid to the LWDA
2 (\$128,264.79) and the remaining 25% (\$42,754.93) paid to the Aggrieved Employees.

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

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

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

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

19 After retaining counsel, Plaintiff Walden submitted a letter to the California Labor &
20 Workforce Development Agency (“LWDA”) and to Defendants regarding the alleged violations.
21 (Mankin Decl. ¶ 7; Exhibit A to Mankin Decl.). This notice is required under Labor Code §
22 2699.3(a)(1)(A) to bring a PAGA claim against an employer. Then, after the 65-day waiting
23 period elapsed without the LWDA asserting jurisdiction, Plaintiff Walden filed this PAGA-only
24 complaint on January 10, 2023. (Mankin Decl. ¶ 7).

25 Defendants retained counsel and vowed to vehemently oppose the claims. However, after
26 early discussions among counsel, the Parties agreed to attend mediation. In preparation for the
27 mediation, the Parties exchanged documents and information that allowed both sides to calculate
28 the potential damages and evaluate potential risk. During this process, Plaintiff and her counsel

1 analyzed, researched, and investigated the potential issues, including matters related to the
2 calculation of total penalties, trial, and appellate issues and risks. During this exchange of
3 information, pursuant to Plaintiff counsel's informal requests, Defendants produced documents
4 and pay records that enabled Plaintiff to conduct a full analysis of the alleged unpaid wage,
5 meal/rest break violations and other claims. (Mankin Decl. ¶ 8).

6 On August 14, 2023, the Parties mediated with Gail Glick, Esq., but the matter did not
7 settle at mediation. Therefore, on August 31, 2023, Plaintiff Walden demanded arbitration of her
8 "individual PAGA claims" (along with her separate individual statutory claims) pursuant to
9 *Viking River Cruises v. Moriana* (2022) 142 S.Ct. 1906. The Parties also agreed to stay Plaintiff
10 Walden's "representative" PAGA claim pending in this Court until completion of arbitration for
11 her individual claims (including the "individual" PAGA claim). (Mankin Decl. ¶ 9).

12 Additionally, Plaintiffs' counsel was then retained by Plaintiff Collins regarding alleged
13 Labor Code violations committed by Defendants. On November 17, 2023, Plaintiff Collins
14 submitted written notice to the LWDA and to Defendants of alleged violation of the Labor Code
15 and, once more than 65 days passed since Plaintiff Collins gave notice to the LWDA and to
16 Defendants (Exhibit B to Mankin Decl.) without the LWDA asserting jurisdiction over the
17 PAGA claims. The Parties then stipulated to the filing of the operative First Amended
18 Complaint, which added Paige Collins as a Plaintiff and PAGA representative. The First
19 Amended Complaint was filed on February 29, 2024. Plaintiff Collins also demanded arbitration
20 of her individual claims, separate and apart from this PAGA-only action. (Mankin Decl. ¶ 10).

21 Concurrent with the ongoing arbitrations, the Parties continued settlement discussions of
22 this PAGA action. And, in February 2024, the Parties reached this Settlement, which is now
23 presented to this Court for approval. (Mankin Decl. ¶ 11; Exhibit C to Mankin Decl.).

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

25 PAGA provides an enforcement method for California's Labor Code by enlisting
26 individual plaintiffs as private attorneys general to recover civil penalties for the state, with a
27 share also going to the individual plaintiffs and other employees. Prior to the enactment of
28 PAGA in 2003, the recovery of civil penalties for violations of certain Labor Code provisions

1 were solely within the province of the California Department of Labor. *Arias*, 46 Cal.4th at 980.

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

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

23 Before filing a PAGA action, an aggrieved employee must first provide written notice to
24 the LWDA and the employer of the particular Labor Code violations the aggrieved employee
25 alleges the employer has violated. Labor Code § 2699.3(a)(1). This notice provides the LWDA
26 with the opportunity to investigate and prosecute the claim. The employee may only sue on the
27 state’s behalf if the LWDA fails to respond to the notice within 65 days, responds that it does not
28 intend to investigate, or investigates and does not issue a citation within 185 days. Labor Code

1 §§ 2699.3(a)(2), 2699(h). In this case, Plaintiffs provided the LWDA with notice letters advising
2 it of the alleged Labor Code violations, but the LWDA deferred the prosecution of these
3 violations to Plaintiff and her attorneys. Accordingly, the Settlement, and the common fund
4 created by it for the benefit of the State and Aggrieved Employees, is solely the result of the
5 work performed by Plaintiffs and their attorneys on this case.

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

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

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

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

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

20 The settlement provides that Defendants will pay a non-reversionary settlement amount
21 of \$300,000 (the "Settlement Amount"), inclusive of payments to the LWDA and Aggrieved
22 Employees, any Service Award to Plaintiffs, and attorneys' fees and litigation costs, as well as
23 third party administrator ("Settlement Administrator") costs. (S.A. ¶¶ 27, 40). After payment of
24 the attorneys' fees/costs, administration costs, and any Service Awards, the remainder of
25 approximately \$171,019.72 will form the Net Settlement Amount and, pursuant to Labor Code §
26 2699(i), 75 percent shall be paid to the LWDA (which shall be used to assist in the enforcement
27 of labor laws and education of employers and employees about their rights and responsibilities
28 under the Labor Code), and the remaining 25 percent being paid to the Aggrieved Employees on

a pro rata basis. (*Id.*)

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

<i>Settlement Amount</i>	\$ 300,000.00
Attorneys' Fees (1/3)	\$ 100,000.00
Attorney Litigation Costs	\$ 12,480.28
Administrator Costs	\$ 6,500.00
PAGA Representative Service Awards (\$5,000 each)	\$ 10,000.00
<i>Net Settlement Amount ("NSA")</i>	\$ 171,019.72
75% of NSA Payable to LWDA	\$ 128,264.79
25% of NSA Payable to Aggrieved Employees	\$ 42,754.93

As such, the LWDA will receive approximately \$128,264.79 (75% of the Net Settlement Amount) and approximately 600 Aggrieved Employees will collectively share in \$42,754.93 (the remaining 25% of the Net Settlement Amount), which will be paid on a pro-rata basis based on the number of pay periods worked during the PAGA Period. (S.A. ¶ 40).

B. PAYMENT AND THE NOTICE

Defendants will fund the Settlement Amount within 15 days after the Effective Date occurring.³ (S.A. ¶ 46). Also, within 10 business days of the Effective Date, Defendants are required to provide the Settlement Administrator with the "Aggrieved Employee List and Data" containing all information necessary for the Settlement Administrator to apportion and issue payments. (S.A. ¶ 45). The Settlement Administrator must then distribute all Court-approved payments no later than 10 calendar days after receipt of the Settlement Amount. (S.A. ¶ 47). Aggrieved Employees will have 180 days to cash their checks; if for any reason a check is uncashed, then the check will be voided and the funds issued to the California State Controller in the name of the Aggrieved Employee who may claim the funds at a later date. (S.A. ¶ 48).

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

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³ See S.A. ¶ 10 ("Effective Date" is "the date the Court enters the Final Order" with "Final Order" defined at S.A. ¶ 12 as "the order that will be entered by the Court to approve the Settlement.")

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

2 As noted, 25% of the Net Settlement Amount (\$42,754.93) will be allocated and paid to
3 the Aggrieved Employees on a pro-rata basis according to the number of pay periods worked
4 during the PAGA Period. Based on data and information obtained from Defendants, Plaintiffs
5 estimate that the 600 Aggrieved Employees will receive an average payment of \$71.26. (Mankin
6 Decl. ¶ 13).

7 **D. THE RELEASE.**

8 The California Supreme Court has explained that a judgment in “a representative action
9 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004
10 ... is binding not only on the named employee plaintiff but also on government agencies and any
11 aggrieved employee not a party to the proceeding.” *Arias*, 46 Cal. 4th at 985-986. The release in
12 the Settlement Agreement, at ¶ 51, narrowly binds the Aggrieved Employees for civil penalty
13 claims brought in this action, as follows:

14 Upon the Effective Date occurring and Defendants’ funding of the Settlement
15 Amount, Plaintiffs, standing in the shoes of the Labor Commissioner/LWDA,
16 and the State of California and Aggrieved Employees will forever completely
 release and discharge the Released Parties from the Released PAGA Claims.

17 The Settlement Agreement, at ¶ 21, defines the “Released PAGA Claims” as follows:

18 any and all rights and claims for civil penalties that Plaintiffs alleged against
19 Defendants, on behalf of Aggrieved Employees and State of California,
20 based on the facts stated in the operative Complaint in the Action and in the
21 LWDA notice letters sent by Plaintiffs, including all PAGA claims seeking
22 civil penalties premised upon (a) failure to pay minimum wages, (b) failure
23 to pay overtime wages, (c) failure to provide meal periods, (d) failure to
24 provide rest breaks, (e) failure to pay vested vacation, (f) failure to timely
25 pay wages each period, (g) failure to timely pay wages upon separation of
26 employment, (h) failure to provide accurate itemized wage statements, and
27 (i) all other claims for civil penalties recoverable under the Private
28 Attorneys General Act, Labor Code §§ 2698 et seq. that were stated in the
 Complaint and based solely upon the facts alleged in the Complaint and the
 notices sent by Plaintiffs to the LWDA.

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

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

3 In 2016, PAGA was amended to require the Court to “review and approve any settlement
4 of any civil action filed pursuant to this part.” (Labor Code § 2699(1)(2).) The amendment also
5 required that the “proposed settlement shall be submitted to the agency at the same time that it is
6 submitted to the court.” As such, the Settlement and this Motion have been concurrently
7 submitted to the LWDA in accordance with this section. (Mankin Decl. ¶ 31; Exhibit E to
8 Mankin Decl.).

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

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

13 Here, Plaintiffs obtained extensive data and information prior to mediation to investigate
14 the claims and negotiate an appropriate settlement. After evaluation of this information,
15 Plaintiffs’ counsel estimated that there were 14,339 pay periods worked by the Aggrieved
16 Employees through the date of mediation. From this data, and when applying the various facts,
17 violation rates, and considering all of the risks and defenses to the claims herein, Plaintiffs’
18 counsel formulated detailed damage models as discussed below. (Mankin Decl. ¶ 15)

19 For instance, Plaintiffs’ first damage model set the potential PAGA penalties against
20 Defendants as \$1,433,900 [14,339 pay periods multiplied by the default \$100 penalty under
21 PAGA]. Defendants took the position that Plaintiffs would not be entitled to “stack” more than
22 one PAGA civil penalty per employee per pay period (regardless of whether there was one Labor
23 Code violation or five). Although Plaintiffs argued that “stacking” is not a valid defense and that
24 PAGA civil penalties were available for each and every unique Labor Code violation, Plaintiffs
25 agreed that a valuation of \$100 per pay period was reasonable to assess the claims for settlement
26 purposes. (Mankin Decl. ¶ 16).

27 Then, as to each claim, Plaintiffs calculated the potential damages as follows. *First*,
28 Plaintiffs alleged that they and the Aggrieved Employees were subjected to unpaid wage

1 violations in 80% of all pay periods due to Defendants’ failure to pay all wages owed due to a
2 failure to correctly calculate the “regular rate of pay” for overtime, sick pay, and meal premium
3 payments. *Second*, Plaintiffs argued, based on the sampling and other evidence, employees were
4 subjected to meal periods in 25% of pay periods. *Third*, because of the hectic work schedule,
5 Plaintiffs alleged that the Aggrieved Employees were deprived of at least one compliant rest
6 break in 50% of pay periods. *Fourth*, Plaintiffs alleged that every wage statement that
7 Defendants provided to the Aggrieved Employees had some form of “derivative” violation due
8 to the claims discussed above. Based on these metrics, along with other smaller subsets of
9 claims (such as failure to timely pay final wages to an estimated 120 departing employees,
10 leading to only 120 violations), Plaintiffs estimated that there were potentially 36,780 distinct
11 Labor Code violations for all claims combined (ignoring any “stacking” defense), leading to
12 maximum potential PAGA penalties of \$3,678,000 [36,780 x \$100]. (Mankin Decl. ¶ 17).

13 But again, this maximum amount fails to take into account the various risks and defenses
14 to the claims herein, as well as Defendants’ claim that “stacked” penalties is not recoverable.
15 For example, Defendants disputed that there were any unpaid wages. Then, as to the meal and
16 rest break claims, Defendants argued it had fully compliant written policies that specifically
17 authorized its employees to take meal and rest breaks, timesheets specifically showed that breaks
18 occurred, all employees had ample opportunity to take compliant breaks, and Defendants paid
19 meal premiums for alleged violations. Therefore, Defendants asserted that a fact-finder would
20 have to determine for each employee whether a break was recorded on each employees timesheet
21 or if it was missed and why, and why a break was noncompliant or nonexistent, because if it was
22 by the employee’s choice, no liability attaches to Defendants. (Mankin Decl. ¶ 18).

23 Additionally, Plaintiffs had to consider another risk: even if the claims succeeded, courts
24 have wide latitude to (and often do) reduce the total civil penalties “based on the facts and
25 circumstances of a particular case” and if “to do otherwise would result in an award that is
26 unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h). (Mankin Decl. ¶ 19).

27 When considering these risks and defenses, Plaintiffs contend that the Settlement, which
28 binds Defendants to pay a total Settlement Amount of \$300,000 – equal to \$20.92 per pay

1 period. Many class actions settle for less than \$20 per pay period, so to achieve this result in a
2 PAGA-only case is indeed a great result. Clearly, this settlement is fair, adequate, and
3 reasonable in light of the risks and uncertainties associated with the PAGA claims in this case,
4 and it is sufficient to accomplish the objectives of PAGA while not being unjust, arbitrary and
5 oppressive, or confiscatory. (Mankin Decl. ¶ 20).

6 **B. PLAINTIFFS' SEPARATE INDIVIDUAL SETTLEMENTS ARE PROPER**

7 Plaintiffs separately resolved their individual, non-PAGA claims against Defendants in
8 confidential settlements, as disclosed in ¶¶ 53-54 of the Settlement Agreement.⁴

9 The California Labor Code specifically permits Plaintiffs to resolve claims for individual
10 damages, separate and distinct from a settlement of PAGA claims. *See* Labor Code § 2699(g)(1)
11 (“[n]othing in this part shall operate to limit an employee’s right to pursue or recover other
12 remedies available under state or federal law, either separately or concurrently with an action
13 taken under this part”). The rule permitting employees to pursue separate individual claims while
14 maintaining a PAGA claim aligns perfectly with the general understanding that PAGA claims
15 (which seek civil penalties on behalf of Aggrieved Employees) are separate and distinct from
16 individual claims for unpaid wages, statutory penalties, and other individual claims.

17 The California Supreme Court explained this principal in the landmark *Iskanian* decision,
18 holding that “[t]he civil penalties recovered on behalf of the state under the PAGA **are distinct**
19 from the statutory damages to which employee may be entitled in their individual capacities.”
20 *Iskanian*, 59 Cal.4th at 381. In fact, *Iskanian* directly discussed the separation between
21 individual and PAGA claims, and held that when an employee pursues both types of cases, a
22 defendant must respond to **both** cases: “*Iskanian* must proceed with bilateral arbitration on his
23 individual damages claims, **and** CLS must answer the representative PAGA claims in some
24

25 ⁴ During the pendency of this action, Defendants paid many employees (not represented by Plaintiffs’ counsel)
26 additional wages owed, which Plaintiffs allege was done in response to Plaintiffs’ claims herein. Plaintiffs’ separate
27 individual settlements includes a \$30,000 payment of attorneys’ fees to Plaintiffs’ counsel under a “catalyst theory”
28 for work performed that resulted in these payments to the other employees. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (the catalyst theory allows for an award of attorneys’ fees when a plaintiff’s
“lawsuit was a catalyst motivating the defendants to provide the primary relief sought”); *Cates v. Chiang* (2013) 213 Cal.App.4th 791, 807 (for the catalyst theory to apply, the “litigation need only be a substantial factor contributing to defendant’s action”).

forum.” *Id.* at 391. In the event of a bifurcation of individual and PAGA actions one case may proceed first, while the other case is stayed. *Id.*

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

The framework discussed in *Iskanian* is exactly what happened here. Plaintiffs filed a PAGA case, and while the PAGA case was pending, they initiated separate individual arbitrations pursuing separate and independent claims against some or all of the Defendants. However, the Parties ultimately settled Plaintiffs’ individual claims. Because Plaintiffs are permitted to resolve individual claims and the PAGA claims separately, Plaintiffs respectfully submits that this Court should approve the Settlement Agreement.

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

For their efforts and the risk they undertook in obtaining a common fund settlement that benefits the LWDA and Aggrieved Employees, Plaintiffs’ Counsel seeks \$100,000.00 for reasonable attorneys’ fees, which is one third of the Settlement Amount, which Defendants do not oppose. These fees are warranted under the law and within the range of fees commonly awarded in similar cases. Additionally, the Parties agreed Plaintiffs’ Counsel could seek reimbursement for their actual litigation costs.

A. PLAINTIFFS’ COUNSEL ARE ENTITLED TO RECOVER ATTORNEY’S FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM ACTION

PAGA, at Labor Code § 2699(g)(1), provides that a Plaintiff is entitled to recover reasonable attorneys’ fees, expenses, and costs: “Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.” Additionally, as discussed below, in a qui tam action, reasonable attorney’s fees and costs are typically awarded under the common fund doctrine where, as here, the litigation creates a common fund of money in a

1 specific amount for the benefit of others.

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

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

26 Those benefiting from the recovery of the fund, in this case some
27 depositors and eventually the People of the State of California, must
28 bear their share of the cost of litigation. Fees for taxpayers’ attorneys
will be deducted from the judgment, and each claimant’s share reduced
proportionately. To the extent the judgment relies upon section 1021.5

1 for recovery of attorney fees, it must be modified to confine the award
2 of fees to the common fund theory.

3 In this case, the PAGA Settlement created a common fund for the benefit of the
4 employees and the State of California. Thus, these beneficiaries must bear their share of the
5 costs and attorney's fees, which fees and costs must be deducted from the settlement amount
6 under the common fund theory. *Id.* Moreover, such fees are deducted as a percentage of the
7 settlement amount. *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-*
9 *Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027; *Staton v. Boeing Co.* (9th Cir.
10 2003) 327 F.3d 938, 967.

11 The California Supreme Court also 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. This ruling is consistent
14 with the Court's prior rulings recognizing that "when a number of persons are entitled in
15 common to a specific fund, and an action brought by ... plaintiffs for the benefit of all results in
16 the creation or preservation of that fund, such ... plaintiffs may be awarded attorneys' fees out of
17 the fund." *Serrano III v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert*, 444 U.S. at
18 478 ("[A] lawyer who recovers a common fund . . . is entitled to reasonable attorneys' fees from
19 the fund as a whole;" *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 393-394 [discussing
20 the acceptance of awarding attorneys' fees and expenses from a settlement where "litigation has
21 conferred a substantial benefit on the members of an ascertainable class"]; *see also Lealao v.*
22 *Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26 ("[f]ee spreading occurs when a
23 settlement or adjudication results in the establishment of a separate or so-called common fund for
24 the benefit of the class."].).

25 Accordingly, the common fund doctrine allows a court to award attorneys' fees based
26 upon a percentage of the total fund that is created for the satisfaction of beneficiaries' claims
27 when the fund consists of a "certain or easily calculable sum of money." *Dunk v. Ford Motor Co.*
28 (1996) 48 Cal.App.4th 1794, 1809; *Jutkowitz v. Bourns, Inc.* (1981) 118 Cal.App.3d 102, 110

1 [application of the percentage of the fund recovery depended on “[t]he critical point” that “a fund
2 was created from which attorneys’ fees could be paid”]; A. Conte & H. Newberg, *Newberg on*
3 *Class Actions*, § 14:6 (4th ed. 2002).

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

16 Based on the foregoing, awarding attorneys’ fees of one-third of the Settlement Amount
17 is fair and warranted in light of the PAGA settlement that was reached on behalf of the State of
18 California and Aggrieved Employees. Accordingly, awarding fees on this basis in this amount is
19 reasonable and appropriate.

20 **B. THE PERCENTAGE FEE OF THE SETTLEMENT AMOUNT IS FAIR AND REASONABLE**

21 An award of fees from the Settlement Amount under the common fund doctrine prevents
22 unjust enrichment of those who benefit from the common fund created through the successful
23 efforts of plaintiff’s counsel and furthers the important goal of attracting competent counsel to
24 handle representative actions enforcing minimum labor standards. *Laffitte*, 1 Cal.5th at 503. The
25 California Supreme Court summarized the benefits of the percentage method of recovery stating:
26 “The recognized advantages of the percentage method—including relative ease of calculation,
27 alignment of incentives between counsel and the class, a better approximation of market
28 conditions in a contingency case, and the encouragement it provides counsel to seek an early

1 settlement and avoid unnecessarily prolonging the litigation [citations]—convince us the
2 percentage method is a valuable tool that should not be denied our trial courts.” *Id.*

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

8 All these factors support an award here of one-third of the common fund. First,
9 Plaintiffs’ counsel achieved a good PAGA settlement in a case that involved highly contested
10 issues that were primarily related to small periods of time that were allegedly unpaid, as well as
11 meal and rest break violations and facially inaccurate wage statements. Second, Plaintiffs faced
12 significant risks going forward with the litigation. As discussed above, Defendants raised various
13 defenses and, as such, Plaintiffs faced risky issues going forward with this litigation, and it
14 would have taken significant time to realize any recovery in this action. Third, Plaintiffs’
15 Counsel are experienced representative action litigators, including having been selected as a
16 “Super Lawyer” in employment litigation, and have achieved some of the largest PAGA awards.
17 (Mankin Decl. ¶¶ 2-6). This experience and expertise, combined with the high quality of work
18 performed in this case by Plaintiffs’ Counsel, resulted in the settlement achieved in this case.
19 Fourth, as discussed above and as set forth in the Declaration of Plaintiffs’ Counsel, the request
20 for attorney’s fees falls well within the norms accepted by state and federal courts in California
21 in comparable wage and hour actions actually handled by Plaintiffs’ Counsel.

22 For all of the above reasons, a fee award in the amount of one-third of the Settlement
23 Amount is fair and reasonable.

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1 C. **A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF THE FEE**
2 **REQUEST**

3 Despite recognized limitations of the so-called lodestar method, some California and
4 federal courts acknowledge the utility of a lodestar “cross-check.”⁵ (*Lealao*, 82 Cal.App.4th at
5 46-47.) Under the “lodestar multiplier” method of cross-checking the reasonableness of
6 attorneys’ fees in class actions, the court ascertains Class counsel’s total “lodestar” amount by
7 multiplying the number of hours reasonably expended by each attorney or legal staff member by
8 their hourly rates, and then enhances or reduces this lodestar figure by a “multiplier” to account
9 for a range of factors, such as the novelty or difficulty of the case, its contingent nature, and the
10 degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96;
11 *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Lealao*, 82 Cal.App.4th at 43 [court has
12 discretion to use a multiplier to ensure that the “fee awarded is within the range of fees freely
13 negotiated in the legal marketplace in comparable litigation”]).

14 Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for*
15 *Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251
16 **(multiplier of 2+ approved)**; *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The
17 multiplier requested by Plaintiffs’ Counsel below is within the range of multipliers found to be
18 appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash*, for
19 instance, the Court of Appeal remanded for a lodestar enhancement of “**two, three, four or**
20 **otherwise.**” *Id.* at 76; *see also Wershba*, 91 Cal.App.4th at 255 (“**Multipliers can range from 2**
21 **to 4 or even higher**”); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 83
22 **(affirming 2.34 multiplier)**; *Coalition for Los Angeles County Planning in the Pub. Interest v.*
23 *Board of Supervisors*, 76 Cal.App.3d 241, 251 **(affirming multiplier of approximately 2)**;
24 *Craft v. County of Los Angeles* (C.D. Cal. Apr. 1, 2008) 2008 U.S. Dist. LEXIS 27526
25 **(applying 5.2 multiplier)**; *Steinder v. Am. Broadcasting Co., Inc.* (9th Cir. 2007) 248 Fed.Appx.

26
27 ⁵ In practice, the lodestar method is difficult to apply, time-consuming, inconsistent in result, and
28 capable of manipulation. In addition, the lodestar method creates inherent incentive to prolong
litigation until sufficient hours have been expended. Herr, David F., *Manual for Complex*
Litigation, § 14.121 (1988); *See also In re Activision* (N.D. Cal 1989) 723 F.Supp 1373.

780, 783 (**approving multiplier of 6.85** and citing cases with comparable or higher multipliers); *Vizcaino*, 290 F.3d at 1051 (finding no abuse of discretion in **awarding a multiplier of 3.65**); *Torchia v. WW Grainger, Inc.* (E.D. Cal. 2014) 304 F.R.D. 256, 275-278 (approving attorneys’ fees of \$550,000 **constituting a 3.57 multiplier** on class counsel’s total lodestar).

The actual aggregated lodestar between the Plaintiff’s attorneys that worked on this case is approximately \$139,585. This results in a negative multiplier, as summarized in the following table, and in the submitted declarations of Plaintiff’s counsel:

Attorney/Timekeeper	Role	Yrs Experience	Rate	Hours	Fee
Brian J. Mankin (Partner – LML)	Trial Counsel	23	\$775	72⁶	\$ 55,800
Peter Carlson (Senior Associate – LML)	Handling Attorney	10	\$650	128.9	\$ 83,785
Grand Total for All Attorneys					\$ 139,585

(See Mankin Decl. ¶¶ 23-24; Carlson Decl. ¶ 10).

The hourly rates for Plaintiffs’ counsel are comparable to those of other attorneys with equal or similar experience, if not somewhat lower (*i.e.*, the Laffey Matrix at www.laffeymatrix.com indicates that the benchmark rates are: \$777/hour for an 8–10-year attorney and \$1,057/hour for a 20+ year attorney).

Moreover, the Wolters Kluwer 2023 Real Rate Report (“Real Rate Report”) provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data, comprising millions of billing entries from a hundred thousand individual timekeepers who worked at thousands of law firms. The Real Rate Report

⁶ Includes an estimated 15 hours of additional work preparing for and attending the hearing (inclusive of finalizing and filing the motion, appearing at the hearing, addressing the Court’s questions/concerns, submitting revised documents, responding to class members who are anxious to receive their check, and so on), as well as 20 hours in anticipated work to be performed after the final approval, working with counsel, administrator, and Class Members (which includes up to 1.5 years of case management relating to ensuring timely payment from Defendants, reviewing the calculations, checks are timely mailed, responding to class members questions about the timing of checks/missing checks/lost checks and remailings, working with the administrator regarding uncashed checks and remailings, assisting with the Administrator’s declarations regarding payments and uncashed checks, potentially filing an amended judgment, appearing at the final disbursement hearing and/or submitting paperwork related thereto.

1 then compiles and analyzes this data to provide hourly rates for partners and associates in major
2 metropolitan areas. For the southern California area: (a) the rate for partners in Los Angeles is
3 between \$840 and \$1,159 per hour for the middle and upper quartiles, and (b) the rates for
4 associates with seven or more years of experience, the median rate is \$674 per hour, and the
5 upper quartile rate is \$888 per hour. And, perhaps most importantly, the information provided in
6 the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or
7 other publications – instead, the Real Rate Report is based on the actual hours and fees billed by
8 law firms, which makes it “a much better reflection of true market rates than self-reported rates
9 in all practice areas.” *Brown v. CVS Pharmacy, Inc.* (C.D. Cal. Apr. 24, 2017) 2017 U.S. Dist.
10 LEXIS 182309, at *21; *PLCM Group*, 22 Cal.4th at 1085 (holding that rates should be premised
11 upon precisely this form of independent, “objective” rate data that reflects “fair market” rates
12 actually billed to clients “in the community for similar work”). (Mankin Decl. ¶ 25).

13 Plaintiffs’ Counsel are also highly experienced in Class/PAGA litigation, including
14 having been named by the LA Times as one “Southern California Leading Lawyers” in the May
15 2023 issue of Consumer Attorneys of Southern California (a recognition given to 17 employment
16 and labor law attorneys in 2023), having been selected as “Super Lawyer” in employment
17 litigation over the last 5 consecutive years, having achieved large settlements, having prevailed
18 at trial in PAGA-only actions and Class Action jury trials. (Mankin Decl. ¶¶ 2-6; Carlson Decl.
19 ¶¶ 3-9). Indeed, Plaintiffs’ Counsel’s rates are typical of the rates charged by defense counsel
20 with similar experience doing similar employment law work in this region.

21 Thus, not only are Plaintiffs’ Counsel’s rates reasonable and typical, but the attorneys’
22 fees are in line with the lodestar, which confirms that the fee request is fair and reasonable.

23 **D. THE REQUESTED LITIGATION COSTS ARE FAIR AND REASONABLE**

24 Plaintiffs’ Counsel requests reimbursement of their actual out-of-pocket expenses
25 incurred to prosecute this action. These expenses were incidental and necessary to the effective
26 representation of the employees. *See Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.
27 Plaintiffs’ Counsel are permitted to recover their litigation costs and expenses under the common
28 fund doctrine. *See Serrano III*, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees

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

6 The Settlement Agreement authorized Plaintiffs’ Counsel to recover litigation costs up to
7 \$20,000. However, the actual costs through the approval hearing are projected to be \$12,480.28,
8 which is the amount requested. (Mankin Decl. ¶ 28; Exhibit D to Mankin Decl.). These costs are
9 reasonable, uncontested, and should be approved.

10 **VII. THE REQUESTED SERVICE AWARD IS FAIR AND REASONABLE**

11 Paragraph 40(d) of the Settlement Agreement permits each Plaintiff to request a Service
12 Award of \$5,000, subject to Court approval, which is reasonable given the time and effort they
13 each devoted to this case. Their efforts included providing factual background for the lawsuit;
14 providing documents and information about Defendants’ compensation plan and other
15 policies/practices; participating in phone calls to discuss litigation and settlement strategy;
16 making themselves available throughout the litigation to assist with analyzing the claims and
17 defenses; helping counsel prepare for the mediation; and reviewing the settlement documents.
18 Plaintiffs also assumed significant risk in bringing this litigation; namely, had they lost, they
19 could have been ordered to pay Defendants’ costs.

20 The requested service award falls within the range of incentive payments typically
21 awarded to class representatives in similar class actions. *See, e.g., Bond v. Ferguson Enterprises,*
22 *Inc.* (E.D. Cal. 2011) 2011 WL 2648879 (approving \$11,250 service awards in trucker meal
23 break class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922,
24 at *2 (approving \$20,000 enhancement award in California wage-and-hour class action
25 settlement); *Vasquez v. Coast Valley Roofing, Inc.* (E.D. Cal. 2010) 266 F.R.D. 415, 493
26 (approving service awards of \$15,000 from a \$300,000 settlement fund in a wage/hour class
27 action); *West v. Circle K Stores, Inc.* (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28
28 (finding service awards “of \$15,000 each to be reasonable.”); *Glass v. UBS Fin. Servs.* (N.D.

Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding “requested payment of \$25,000 to each of the named Plaintiff is appropriate” in wage and hour settlement).

VIII. SUBMISSION TO THE LWDA

As set forth in the Mankin Declaration at ¶ 30, the settlement agreement and this motion are concurrently being submitted to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of electronic submission is attached as Exhibit E to the Mankin Declaration.

IX. THE SETTLEMENT ADMINISTRATOR

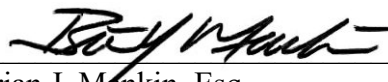
Phoenix will serve as the Settlement Administrator and will be responsible for processing and issuing the settlement payments and providing notice of the settlement payment to the Aggrieved Employees. Phoenix provided an all-in bid to administrator the Settlement for \$6,500, which is the amount that will be paid from the Settlement Amount. (Mankin Decl. ¶ 31; Exhibit F to Mankin Decl. [Phoenix’s bid]).

X. CONCLUSION

For the foregoing reasons, Plaintiffs request, and Defendants do not oppose, the Court’s approval of the Settlement under the PAGA.

Dated: July 8, 2024

LAUBY, MANKIN & LAUBY LLP

BY: 
Brian J. Mankin, Esq.
Attorneys for Plaintiff, on behalf of the State
of California as the Real Party In Interest

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On July 8, 2024, I caused to be served the foregoing document(s) described as follows:

**NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT OF 2004; DECLARATIONS IN SUPPORT
THEREOF; [PROPOSED] ORDER**

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

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

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

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

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

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

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

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 8, 2024, Riverside, California.

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


Tracie Chiarito, Declarant

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