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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF RIVERSIDE

10
11 VIRGEL ALLEN, individually, on a
12 representative basis, and on behalf of all others
13 similarly situated;

14 Plaintiff,

15 vs.

16 KELLY SERVICES GLOBAL, LLC, a
17 Michigan Corporation; CORTECH WEST
18 STAFFING, LLC, a California Domestic
19 LLC; and MITSUBISHI MOTORS NORTH
20 AMERICA, INC., a California Corporation,
21 and DOES 1 through 20, inclusive;

22 Defendants.

Case No.: CVRI2303841

[Assigned to Hon. Harold Hopp, Dept 1, for all purposes]

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

*Filed Concurrently with: Declarations of Misty M.
Lauby, Esq., Plaintiff Virgel Allen, Declaration of
Eisha Perry, Esq.; and [Proposed] Order*

Hearing

Date: July 28, 2025

Time: 8:30 a.m.

Dept.: 1

Complaint filed: July 26, 2023

23
24 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

25 PLEASE TAKE NOTICE that on July 28, 2025, at 8:30 a.m., or as soon thereafter as the
26 matter may be heard in Department 1 of the Riverside County Superior Court, located at 4050 Main
27 Street, Riverside, CA 92501, Plaintiff Virgel Allen will move this Court for an order approving a
28

1 settlement pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.*, (the
2 “PAGA”).

3 This motion is based upon this Notice of Motion; the Memorandum of Points and Authorities;
4 the Declarations of Plaintiff, Plaintiff’s counsel (Misty M. Lauby of Lauby Mankin and Lauby LLP),
5 and Defendants’ counsel (Eisha Perry of Duane Morris LLP), in support thereof; the PAGA Settlement
6 Agreement (the “Settlement Agreement”); the [Proposed] Order granting Approval of the PAGA
7 Settlement and entry of Judgment thereon; and all other records, pleadings, and papers filed in this
8 action; and upon such other evidence or argument as may be presented to the Court at the hearing of
9 this Motion.

10
11 Dated: July 3, 2025

LAUBY, MANKIN & LAUBY LLP

12
13 BY:

 
Misty M. Lauby, Esq.
Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF THE ACTION AND SETTLEMENT**

3 In this PAGA-only action, Plaintiff Virgel Allen – serving as the representative for the State of
4 California – and his counsel sought civil penalties against Defendants Kelly Services Global LLC
5 (“KSG”), and Mitsubishi Motors North America, Inc. (“MMNA”) (collectively “Defendants”) under
6 the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.* (commonly referred to as
7 “PAGA”)¹ on behalf of all individual who currently and/or formerly performed work for Kelly on
8 assignment with Mitsubishi in California as hourly and/or non-exempt employees (the “PAGA Class
9 Members” or “Aggrieved Employees”) at any time during the period of March 2, 2022 through
10 September 10, 2024 (the “PAGA Period”).

11 Here, Defendant KSG is a staffing company that employed Plaintiff and the Aggrieved
12 Employees to perform work at a Mitsubishi Motors Distribution center. While performing their
13 duties for Defendants, Plaintiff alleges that he and the Aggrieved Employees were subjected to
14 various Labor Code violation, including: failure to pay all minimum, regular, and overtime wages;
15 failure to provide compliant meal periods and rest breaks, failure to pay vested vacation upon
16 separation of employment; failure to pay sick pay at the proper rate of pay; the failure to timely pay
17 wages each period and upon separation of employment, and the failure to provide accurate itemized
18 wage statements.

19 Defendants raised a variety of defenses to these claims, including that the company had
20 compliant written policies and there was an enforceable arbitration agreement with class action
21 waiver.

22 The Parties attended mediation with Kelly Knight, Esq. on September 10, 2024, which
23 ultimately culminated in a settlement that calls for the dismissal of the remaining stayed class claims
24 against MMNA without prejudice, and a resolution of all PAGA claims.

25
26
27 ¹ The PAGA action is a type of *qui tam* action filed on behalf of the state to assist it with labor law enforcement. *Iskanian*
28 *v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 380-382. As such, the state is the real party in interest in a
PAGA action. *Id.* at 382. The State of California was timely served with a copy of the Settlement Agreement in this case
and this Motion to Approve the Settlement.

1 Now with a Settlement Agreement that resolves the PAGA claims alleged in this case, Plaintiff
2 seeks this Court's approval of a \$5,000 PAGA-only settlement on behalf of approximately 32
3 Aggrieved Employees employed by Defendants during the PAGA Period. The settlement merits full
4 approval because it fulfills the purpose of PAGA (i.e., to deter violations of the Labor Code and secure
5 obedience to California's labor laws; to end ongoing violations of the Labor Code either through
6 injunctive relief or a defendant's voluntary policy change in light of a PAGA action; and to provide
7 relief that is genuine, meaningful, and consistent with California's goal of benefitting the public
8 through enforcement of labor laws).

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

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

19 **II. BACKGROUND**

20 **A. PROCEDURAL HISTORY**

21 After being retained by Plaintiff, my office submitted a claim on March 2, 2023, to the
22 California Labor Workforce and Development ("LWDA") for civil penalties under the Labor Code
23 Private Attorneys General Act of 2004 (Lab. Code §§ 2698, et seq.), which is attached hereto as
24 Exhibit A. At the same time, we sent a letter to Defendant requesting the production of Plaintiff's
25 personnel and timekeeping records in order to further evaluate his wage and hour claims while also
26 serving a litigation hold on Defendant to preserve potentially relevant electronically stored
27 information. (Lauby Decl. ¶ 8; Exhibit A to same).

1 On March 2, 2023, Plaintiff, on behalf of himself and similarly situated employees, filed the
2 Class Action Complaint in the Superior Court of the State of California, County of Riverside, entitled
3 *Virgel Allen v. Kelly Services Global, LLC., et al.*, Case No. CVRI2301068, alleging Defendants'
4 failure to pay Plaintiff and other similarly situated employees all minimum wages earned in violation of
5 Labor Code sections 200, 1194, 1194.2, 1197 and IWC Wage Order § 4; failure to pay Plaintiff and
6 other similarly situated employees all overtime wages earned in violation of Labor Code sections 204
7 and 510 and IWC Wage Order § 3(A); failure to provide Plaintiff and other similarly situated employees
8 meal periods in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order §§ 11, 12; failure to
9 provide Plaintiff and other similarly situated employees rest periods in violation of Labor Code §§ 226.7
10 and 512 and IWC Wage Order § 12; 2-2001; failure to pay Plaintiff and other similarly situated employees
11 vested vacation time in violation of Labor Code section 227.3; failure to timely pay Plaintiff and other
12 similarly situated employees final wages in violation of Labor Code sections 201, 202, and 203; failure to
13 provide Plaintiff and other similarly situated employees with wage statements that fully and accurately
14 itemized the requirements set forth in Labor Code section 226; and unfair and unlawful competition in
15 violation of Business and Professions Code section 17200, *et seq.* (Lauby Decl. ¶ 9)

16 On July 24, 2023, upon Kelly's motion, the Court compelled Plaintiff's individual claims raised
17 in the Class Action Complaint against Defendant Kelly to arbitration on the basis of an enforceable
18 arbitration agreement and class action waiver entered into with Defendant Kelly, and stayed the Class
19 Action Complaint pending arbitration between Plaintiff and Defendant Kelly. (Lauby Decl. ¶ 10)

20 On March 2, 2023, Plaintiff, on behalf of himself and similarly situated aggrieved employees,
21 submitted a notice to the California Labor & Workforce Development Agency ("LWDA")
22 memorializing claims against Defendants for violations of the California Labor Code, including claims
23 for failure to pay Plaintiff and other similarly situated employees all minimum wages earned, in
24 violation of Labor Code sections 200, 1194, 1194.2, 1197 and IWC Wage Order § 4; failure to pay
25 Plaintiff and other similarly situated employees all overtime wages earned in violation of Labor Code
26 sections 204 and 510 and IWC Wage Order § 3(A); failure to provide Plaintiff and other similarly
27 situated employees meal periods in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order
28 §§ 11, 12; failure to provide Plaintiff and other similarly situated employees rest periods in violation of

1 Labor Code §§ 226.7 and 512 and IWC Wage Order § 12; 2-2001; failure to pay Plaintiff and similarly
2 situated employees vested vacation in violation of Labor Code section 227.3; failure to timely pay
3 final wages in violation of Labor Code sections 201, 202, and 203; failure to provide Plaintiff and
4 other similarly situated employees with wage statements that fully and accurately itemized the
5 requirements set forth in Labor Code section 226. (Lauby Decl. ¶ 11)

6 On July 26, 2023, Plaintiff filed his PAGA Complaint in the Superior Court of the State of
7 California, County of Riverside, entitled Virgel Allen v. Kelly Services Global, LLC., et al., Case No.
8 CVRI2303841 alleging (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3)
9 failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to pay vested vacation; (6)
10 failure to timely pay wages each period; (7) failure to timely pay final wages; and (8) failure to
11 provide accurate itemized wage statements. (Lauby Decl. ¶ 12)

12 Thereafter, the Parties agreed to attend early mediation. The Parties informally exchanged
13 documents and information that allowed both sides to calculate the potential damages and evaluate
14 potential risk, including policies and procedures pertaining to each claim alleged, and statistics relating
15 to the number of current and former employees, number of shifts, pay periods worked and other
16 things. Defendants also provided their written policies and practices and a robust sampling of payroll
17 and timekeeping records for Class Members. This information enabled both parties to take a deep dive
18 into the claims. Additionally, during this process, Plaintiff and his counsel analyzed, researched, and
19 investigated the potential issues, including matters related to the calculation of damages, trial, and
20 appellate issues and risks. (Lauby Decl. ¶ 13)

21 On September 10, 2024, the Parties engaged in mediation with Kelly A. Knight, Esq., an
22 experienced and reputable wage and hour and PAGA action mediator. In advance of mediation, the
23 Parties engaged in informal discovery to determine the total number of Aggrieved Employees and
24 implicated pay periods at issue, together with a review of the pertinent policies and procedures. At all
25 times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length.
26 (Lauby Decl. ¶ 14)

27 The Parties entered into a Settlement Agreement, which contains all necessary and material
28 terms of this settlement. (Lauby Decl. ¶ 15; Exhibit B to same). Pursuant to the Court's CMO,

1 Plaintiff's separate individual settlement is discussed in the Lauby Declaration at ¶¶ 50-64.

2 The Parties now seek the Court's approval of the PAGA-only Settlement. (Lauby Dec. ¶ 16).

3 **B. SUMMARY OF PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES**

4 Plaintiff alleged eight causes of action on behalf of the Aggrieved Employees. However, as
5 discussed herein, some of the claims are overlapping due to the nature of the violation (so, in essence,
6 there are not 8 distinct penalties recoverable). (Lauby Decl. ¶ 18).

7 KSG is a temporary services provider that provided staffing to the MMNA distribution center
8 at 21800 Authority Way, Suite 102, Riverside California. Plaintiff and Aggrieved Employees worked
9 directly for KSG and under their direction, supervision and employee handbook. KSG only provided
10 labor to the facility from the beginning of the PAGA period on March 2, 2022 through December 2022
11 when their contract with MMNA was terminated. The following claims cover only 32 employees and
12 498 workweeks total. (Lauby Decl. ¶ 19).

13 *First*, Plaintiff alleged that Defendant paid the Aggrieved Employees on an hourly basis with
14 additional earned compensation (in the form of \$100 per week nondiscretionary attendance bonuses,
15 among possibly others). However, Defendant failed to include this nondiscretionary compensation in
16 the regular rate calculations and overtime compensation – in violation of California law. Defendant
17 argued that at a certain point, it became clear that the contract with MMNA was going to end, so they
18 were having trouble retaining employees. They instituted the retention bonus in an attempt to retain
19 employees toward the end of the relevant period and, therefore, this issue did not affect most of the
20 pay periods. (Lauby Decl. ¶ 20).

21 *Second*, Plaintiff claimed that Plaintiff and Aggrieved Employees were unable to clock in until
22 their supervisor arrived which regularly happened late. This created multiple violations, including (1)
23 denying employees of compensation for all hours worked, (2) inaccurate record keeping, and (3)
24 denial of agreed upon attendance bonuses for not being late to work. (Lauby Decl. ¶ 21).

25 *Third*, Plaintiff alleged that Defendant Kaydan failed to provide compliant meal periods and
26 rest breaks to the Aggrieved Employees due to workload requirements. However, Defendants
27 vehemently opposed this claim based on the argument that Defendant KSG had compliant written
28 policies. Additionally, Defendants argued that it provided and made available meal and rest breaks to

1 all employees, and any employee who did not take a meal or rest break did so entirely of his or her
2 own volition. As such, Defendants argued that these claims were without merit because, for each
3 violation, a fact-finder would have to determine why a break was noncompliant/nonexistent, because if
4 it was by the employee's choice, no liability attaches to Defendants. (Lauby Decl. ¶ 22).

5 *Fourth*, Plaintiff also brought a claim that Pursuant to Labor Code § 227.3, an employer that
6 has implemented a paid vacation, paid time off, or compensated time off policy must, upon an
7 employee's separation from employment, pay to the employee all vested but unused vacation and/or
8 paid time off at his final rate of pay. However, the records received in advance of mediation appear to
9 have paid out vacation at the correct rate. (Lauby Decl. ¶ 23).

10 *Fifth*, Plaintiff alleged what are often referred to as "derivative" violations. For instance,
11 Plaintiff argued that, due to the unpaid wages, Defendants are liable to each *former* Aggrieved
12 Employee for failure to timely pay all wages due and owing upon separation of employment (Labor
13 Code § 203) and, moreover, that Defendant KSG's wage statements failed to comply with Labor Code
14 § 226 since the wage statements did not accurately state total hours worked, gross and net wages
15 earned, all deductions, among other violations. However, as Defendants argued that the overarching
16 claims had no merit, Defendants also argued that these derivative claims would fail as well. (Lauby
17 Decl. ¶ 24).

18 Further, as to all claims, Defendants alleged that the Company had written compliant policies
19 and there existed an enforceable arbitration agreement with class action waiver. (Lauby Decl. ¶ 25).

20 Despite that each of the claims were disputed, the Parties concluded that further litigation of
21 the Action would be protracted and expensive, and that it is desirable that the Action be fully and
22 finally settled in order to limit further risk, expense and protracted litigation. (Lauby Decl. ¶ 26).

23 **III. PAGA AND ITS REQUIREMENTS**

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

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

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

21 Before filing a PAGA action, an aggrieved employee must first provide written notice to the
22 LWDA and the employer of the particular Labor Code violations the aggrieved employee alleges the
23 employer has violated. Labor Code § 2699.3(a)(1). This notice provides the LWDA with the
24 opportunity to investigate and prosecute the claim. The employee may only sue on the state’s behalf if
25 the LWDA fails to respond to the notice within 65 days, responds that it does not intend to investigate,
26 or investigates and does not issue a citation within 185 days. Labor Code §§ 2699.3(a)(2), 2699(h). In
27 this case, Plaintiff provided the LWDA with notice letters advising it of the alleged Labor Code
28 violations, but the LWDA deferred the prosecution of these violations to Plaintiff and his attorneys.

1 Accordingly, the Settlement and the common fund created by it for the benefit of the State and
2 Aggrieved Employees, is solely the result of the work performed by Plaintiff and his attorneys.

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

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

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

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

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

18 The settlement provides that Defendant will pay a non-reversionary PAGA settlement amount
19 of Five Thousand Dollars (\$5,000) (the "PAGA Settlement Amount") plus a Forty Thousand Dollar
20 (\$40,000) individual settlement to Plaintiff Virgel Allen that is inclusive of payments for Attorneys'
21 Fees and Attorneys' Costs,² (the Individual Settlement Agreement ["Individual Settlement"]). KSG will
22 be separately responsible for the Settlement Administration Costs. ¶ 4.02(b)(5), attached as Exhibit B
23 to the Lauby Decl.) As a result, the full \$5,000 will remain as the PAGA Award for payment to the
24 LWDA and Aggrieved Employees and, pursuant to Labor Code § 2699(i), 75% shall be paid to the
25 LWDA (which shall be used to assist in the enforcement of labor laws and education of employers and
26 employees about their rights and responsibilities under the Labor Code), and the remaining 25% being
27

28 ² Attorneys' Fees in the amount of \$19,210.24, and reimbursement of actual attorney costs of \$10789.76 (Lauby Decl. ¶ 42).

1 paid to the Aggrieved Employees on a pro rata basis based the number of pay periods each Aggrieved
2 Employee worked during the PAGA Period. (S.A. ¶ 4.02(b)(3)-(4)). (Lauby Decl. ¶ 38).

3 As such, the LWDA will receive \$3,750 and the Aggrieved Employees will receive \$1,250.
4 Assuming 32 employees, the average payment will be \$39.06. Each Aggrieved Employee's share will
5 be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 to the
6 respective Aggrieved Employee and applicable governmental authorities. (Lauby Decl. ¶ 39).

7 **B. PAYMENT AND THE NOTICE LETTER**

8 Pursuant to the terms of the Settlement Agreement, Defendants are required to fund the
9 Settlement Amount within 30 days of the Effective Date. (S.A. ¶ 4.02(b)(6)). Within 10 days after
10 receiving the funds, the Administrator shall issue payments to cover all court-approved payments.
11 (S.A. ¶ 4.02(b)(8)). (Lauby Decl. ¶ 40).

12 The Aggrieved Employees will have 180 days to cash their checks, and if for any reason a
13 check is un-cashed, that share will be forwarded to State Controller's Office for the State of California
14 in the name of the Aggrieved Employee. (S.A. ¶ 4.02(b)(9)). (Lauby Decl. ¶ 41).

15 A Notice will be sent to the Aggrieved Employees advising of the settlement and payment.
16 (*see* Exhibit D to Lauby Decl.). (Lauby Decl. ¶ 42).

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

18 As noted, 25% of the PAGA Award (totaling \$1,250) will be paid to approximately 32
19 Aggrieved Employees on a pro-rata basis according to the number of pay periods each Aggrieved
20 Employee worked during the PAGA Period. (S.A. ¶ 4.02(b)(4)). The portion of the PAGA Award
21 allocated to each Aggrieved Employee shall be referred to as the Aggrieved Employee's "Individual
22 PAGA Payment." The Aggrieved Employees will receive \$35.21 on average while preserving all
23 potential claims for unpaid wages and statutory penalties, if any exist. (Lauby Decl. ¶ 43).

24 **D. THE RELEASE**

25 The California Supreme Court has explained that a judgment in "a representative action
26 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004... is
27 binding not only on the named employee plaintiff but also on government agencies and any aggrieved
28 employee not a party to the proceeding." *Arias*, 46 Cal.4th at 985-986. (Lauby Decl. ¶ 44).

1 The release in the Settlement Agreement strictly complies with CMO ¶ G(9)(d). For instance,
2 it was agreed that the “[u]pon the Effective Date, the release of claims for PAGA penalties shall bind
3 only the named plaintiff and the State of California. See CMO ¶ G(9)(d)(i). Thus, the Parties agree that
4 Plaintiff – in his individual capacity and on behalf of the State of California and LWDA – shall
5 completely release and discharge the PAGA Released Parties from the PAGA Released Claims for the
6 PAGA Release Period” (S.A. ¶ 6.01(a)). (Lauby Decl. ¶ 45).

7 Additionally, the release claims are limited, as required by the CMO and set forth in the
8 Settlement Agreement, include the following:

9 “”PAGA Released Claims” means all claims for statutory penalties release
10 all claims for statutory penalties that could have been sought by the Labor
11 Commissioner for the violations identified in Plaintiff’s pre-filing letter to
12 the LWDA to the extent they are alleged in the PAGA Complaint, including
13 but not limited to, claims premised upon (1) failure to pay minimum wages,
14 (2) failure to pay overtime wages, (3) failure to provide meal periods, (4)
15 failure to provide rest breaks, (5) failure to pay vested vacation; (6) failure
16 to timely pay wages each period, (8) failure to timely pay final wages, (9)
17 failure to provide accurate itemized wage statements, and (10) all other
18 claims for civil penalties recoverable under the Private Attorneys General
19 Act, Labor Code §§ 2698 et seq. that were stated in the to be filed PAGA
20 Complaint. The time period governing the PAGA Released Claims shall be
21 any time during the PAGA Release Period. Plaintiff does not release any
22 aggrieved employee’s claim for wages or damages. See PAGA CMO ¶
23 G(9)(d)(i-iv).” (S.A. ¶ 1.01(m)).

24 (Lauby Decl. ¶ 46).

25 Furthermore, the Released Parties are defined as follows: “PAGA Released Parties” means the
26 Defendants named in the PAGA Complaint and Kelly Services USA, LLC, together with their
27 respective officers, directors, employees and agents. See PAGA CMO ¶ G(9)(d)(ii). (S.A. ¶ 1.01(l)).
28 (See the concurrently filed Declaration of Eisha Perry, Esq. – counsel for Defendants – for the

1 discussion of the rationale behind the addition of Kelly Services USA, LLC as a Released Party.)
2 (Lauby Decl. ¶ 47).

3 Separate and apart from Plaintiff's PAGA claims *civil* penalties, Plaintiff also alleged
4 individual claims for the underlying *unpaid wage and statutory* penalty claims. To resolve Plaintiff's
5 separate claims, Defendant agreed to pay a total sum of \$40,000, less applicable withholdings, in
6 exchange for a full release of his individual claims, inclusive of \$30,000 in attorneys' fees and costs.
7 (Lauby Decl. ¶ 48).

8 For these reasons, the Parties contend that the release in the Settlement Agreement narrowly
9 applies only to the claims alleged, and only binds the named Plaintiff as is consistent with the
10 California Supreme Court's ruling in *Arias*, 46 Cal.4th at 986. (Lauby Decl. ¶ 49).

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

13 In 2016, PAGA was amended to require the Court to "review and approve any settlement of
14 any civil action filed pursuant to this part." Labor Code § 2699(1)(2). The amendment also required
15 that the "proposed settlement shall be submitted to the agency at the same time that it is submitted to
16 the court." As such, the Settlement Agreement and this Motion have been concurrently submitted to
17 the LWDA in accordance with this section. (Lauby Decl. ¶ 80).

18 On March 3, 2023, this Court issued its Case Management Order #1 to govern the PAGA
19 matter. Therefore, Plaintiff will also conform this Motion to requirements of a CMO for a PAGA-only
20 matter ("PAGA CMO"). To the extent not already discussed herein, the Lauby Declaration contains
21 the requested information, as follows:

22 • PAGA CMO ¶ G(9)(a) requires explanation of the terms of any settlement of the
23 PAGA claims. This is addressed at Lauby Decl. ¶¶ 38-49.

24 • PAGA CMO ¶ G(9) (b) requires a declaration describing how the penalties were
25 calculated and otherwise establishing facts sufficient to allow the Court to review and approve those
26 penalties as required by California Labor Code section 2699(1). In particular, the declaration shall
27 explain:
28

- 1 a. PAGA CMO ¶ G(9)(b)(i): The nature of the alleged violations. These topics are
2 addressed at Lauby Decl. ¶¶18-26.
- 3 b. PAGA CMO ¶ G(9)(b)(ii): The number of alleged individual violations,
4 including both the length of the relevant employment period and the number of
5 employees allegedly employed during that period. These topics are addressed at
6 Lauby Decl. ¶¶ 27-28.
- 7 c. PAGA CMO ¶ 9(b)(iii):The total amount of penalties for which the defendant
8 is potentially liable if all allegations are proven. These topics are addressed at
9 Lauby Decl. ¶¶ 29.
- 10 d. PAGA CMO ¶ G(9)(b)(iv):The total amount of penalties defendant is likely to
11 be found liable at trial considering the weight of the evidence, the clarity of the
12 applicable law, and the strength of any factual or legal defense likely to be
13 asserted by the defendant. These topics are addressed at Lauby Decl. ¶¶ 30-31.
- 14 e. PAGA CMO ¶ G(9)(b)(v):The likelihood that any violations would be proven
15 to have been knowing and intentional. These topics are addressed at Lauby
16 Decl. ¶¶ 32.
- 17 f. PAGA CMO ¶ G(9)(b)(vi):Any facts that tend to suggest that the imposition of
18 the total amount of statutory penalties for which the defendant would be likely
19 to be found liable at trial would be unjust, arbitrary and oppressive, or
20 confiscatory. These topics are addressed at Lauby Decl. ¶¶ 33-35.
- 21 g. PAGA CMO ¶ G(9)(b)(vii):How the amount of the agreed-upon penalties was
22 calculated or otherwise arrived at. These topics are addressed at Lauby Decl. ¶
23 36.
- 24 h. PAGA CMO ¶ G(9)(b)(viii):Any other factors that are material to a
25 determination that the amount of the agreed-upon penalties is fair. These topics
26 are addressed at Lauby Decl. ¶ 37.

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1 **VI. THERE ARE NO REQUESTED ATTORNEYS' FEES AND LITIGATION COSTS**
2 **TAKEN OUT OF THE PAGA SETTLEMENT WHICH IS FAIR AND**
3 **REASONABLE**

4 The Settlement Agreement provides that no attorneys' fees or costs will come out of the PAGA
5 settlement. Instead, fees and costs are coming out of the Individual Settlement which is fair and
6 reasonable. Plaintiff's counsel has waived their right to recover attorneys' fees out of the common
7 fund (typically 1/3). Even then, despite their efforts and the substantial risk they undertook in
8 obtaining a common fund settlement that benefits the LWDA and Aggrieved Employees, the
9 attorneys' fees that are coming out of the individual settlement are substantially less than Plaintiff
10 Counsel's lodestar. As such, these fees are warranted and should be approved. (Lauby Decl. ¶ 54).

11 **A. DESPITE THAT PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER ATTORNEY'S**
12 **FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM ACTION,**
13 **PLAINTIFF'S COUNSEL HAS WAIVED THEIR RIGHT TO RECOVER FEES FROM THE**
14 **COMMON FUND FOR PURPOSES OF THIS SETTLEMENT**

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

22 A PAGA action is a qui tam action because the statute allows the employee plaintiff, acting
23 as the proxy of the state's labor law enforcement agency, to sue his or her employer for Labor Code
24 violations and recover civil penalties that otherwise would have been assessed and collected by the
25 Labor and Workforce Development Agency (LWDA). *Iskanian*, 59 Cal.4th at 380. "A PAGA
26 representative action is therefore a type of *qui tam* action." *Id.* at p. 382. Indeed, the majority of the
27 civil penalties recovered in a PAGA action are paid to the state, with a smaller portion paid to the
28 aggrieved employees (e.g. 75% paid to the state; 25% paid to the aggrieved employees). See Lab. C.

1 2699(i).

2 Where a common fund is created in a qui tam action by the successful litigation of a plaintiff
3 and his attorneys, the plaintiff's attorneys are entitled to recover their fees from the common fund.

4 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91. In *Bank of America*, attorneys were
5 awarded their fees from the common fund in a taxpayer action to enforce unclaimed property law.

6 Affirming the award, the Court stated:

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

11 In this case, through the efforts of Plaintiff and his attorneys, a common fund was created in
12 the amount of \$5,000 for the benefit of the employees and the State of California. Here however,
13 Plaintiff's counsel will not receive any portion of the common fund. Thus, the beneficiaries bear no
14 share of the costs and attorney's fees.

15 Accordingly, awarding fees from the Individual Settlement only is reasonable and appropriate.

16 **B. A LODESTAR CROSS-CHECK OF THE FEES TO BE COLLECTED FROM THE INDIVIDUAL**
17 **SETTELEMENT CONFIRMS THE REASONABLENESS OF THE FEE AWARD**

18 Despite recognized limitations of the so-called lodestar method, some California and federal
19 courts acknowledge the utility of a lodestar "cross-check."³ (*Lealao, supra*, 82 Cal.App.4th at 46-47.)
20 Under the "lodestar multiplier" method of cross-checking the reasonableness of attorneys' fees in class
21 actions, the court ascertains Class counsel's total "lodestar" amount by multiplying the number of
22 hours reasonably expended by each attorney or legal staff member by their hourly rates, and then
23 enhances or reduces this lodestar figure by a "multiplier" to account for a range of factors, such as the
24 novelty or difficulty of the case, its contingent nature, and the degree of success achieved. *PLCM*

25
26 _____
27 ³ In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of
28 manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient hours have been
expended. Herr, David F., *Manual for Complex Litigation*, § 14.121 (1988); *See also In re Activision* (N.D. Cal 1989) 723
F.Supp 1373.

1 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d
2 311, 322; *Lealao, supra*, 82 Cal.App.4th at 43 [court has discretion to use a multiplier to ensure that
3 the “fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable
4 litigation”].)

5 Here, the fees requested by Class Counsel are unquestionably reasonable as the requested
6 amount represents a ***negative multiplier***. As set forth in the Declaration of Misty M. Lauby, who was
7 the handling attorney on this matter, she spent 147.8 hours and generated a lodestar of \$96,070.
8 (Lauby Decl. ¶¶ 54-60). Thus, the attorneys’ fees of \$19,210.24 are fair and reasonable under the
9 lodestar cross-check.

10 **C. THE LITIGATION COSTS ARE FAIR AND REASONABLE**

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

21 Plaintiff’s Counsel will recover their actual litigation costs in the amount of \$10,789.76.
22 (Lauby Decl. ¶ 61; Exhibit C). These costs include mediation fees, filing fees, and other costs that
23 include Attorney Service charges, CourtCall charges, and process service fees. These costs are
24 reasonable and uncontested, and should be approved.

25 **VII. THERE IS NO SERVICE AWARD REQUEST**

26 The Settlement Agreement does not seek a service award for the Plaintiff.

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28 ///

1 **VIII. SUBMISSION TO THE LWDA**

2 As set forth in the Lauby Declaration at ¶ 80, the settlement and this motion are concurrently
3 being submitted to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of electronic
4 submission is attached as **Exhibit E** to the Lauby Declaration.

5 **IX. KSG IS SEPARATELY PAYING THE ADMINISTRATOR**

6 The PAGA Settlement Agreement provides that KSG shall pay the fees of the Settlement
7 Administrator separate and apart from the Gross Settlement Amount or administer the settlement itself
8 so long as it performs all the duties of the settlement administrator. (S.A ¶ 4.02(b)(5). The Parties
9 request that the Court approve this term of the Settlement.

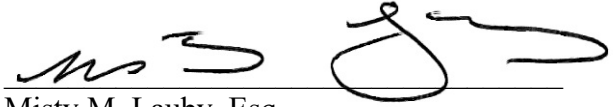
10 **X. CONCLUSION**

11 For the foregoing reasons, Plaintiff requests the Court approve the Settlement under the PAGA.

12
13 Dated: July 3, 2025

LAUBY, MANKIN & LAUBY LLP

14
15 BY:


16 Misty M. Lauby, Esq.
17 Attorneys for Plaintiff, on behalf of the State of
18 California and Aggrieved Employees
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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, California 92504.

On July 3, 2025, I caused to be served the foregoing document(s) described as follows:

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

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 3, 2025, 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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