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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

MIRANDA OLDHAM, individually, on a representative basis, and on behalf of all others similarly situated; Plaintiff, vs. TOWN HOSPICE & PALLIATIVE CARE, LLC, a California Limited Liability Company; and DOES 1 through 20, inclusive; Defendants.	Case No.: CVRI2402951 *[Assigned to Hon. Harold W. Hopp, Dept 1, for all purposes]* **NOTICE OF MOTION AND MOTION TO APPROVE SETTLEMENT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004** *Filed Concurrently with [Proposed] Order and Supporting Declarations* Hearing Date: September 8, 2026 Time: 8:30 a.m. Dept.: 1

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

PLEASE TAKE NOTICE that on September 8, 2026, at 8:30 a.m. or as soon thereafter as the matter may be heard by the Honorable Harold Hopp in Department 1 of the Riverside County Superior Court, located at 4050 Main Street, Riverside, CA 92501, Plaintiff Miranda Oldham will and hereby does move this Court for an order approving a settlement pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq*. (the "PAGA").

This unopposed motion is based upon this the Memorandum of Points and Authorities; the Declarations of Plaintiff's counsel (Brian Mankin and Kristina Bui Carlson) in support thereof; the Declaration of ILYM Group (the "Settlement Administrator"), the PAGA Representative Action Settlement Agreement and Release of Claims (the "Settlement Agreement"); the proposed Order granting Approval of the PAGA Settlement; all other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

Dated: August 14, 2026 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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In this PAGA-only action, Plaintiff Miranda Oldham – serving as representative for the State of California – and her counsel sought civil penalties against her former employer, Defendant Town Hospice & Palliative Care, LLC and Defendant Suncrest Health Services LLC ("Defendants") under the Labor Code Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq*. (commonly referred to as "PAGA").

A PAGA action is a form of qui tam action filed on behalf of the State to assist it with labor law enforcement. *Iskanian 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 [1] and this Motion to Approve the Settlement.

As brief background, Defendant employed the "Aggrieved Employees" [2] to carry out tasks related to Defendant's hospice business. And Plaintiff alleged that, in these roles, she and the Aggrieved Employees were subjected to various violations of the California Labor Code. Although Defendant vehemently disputed the claims and denied any such violations, the Parties agreed to mediation, paired with informal discovery and a robust exchange of data and documents, at which time the Parties settled the PAGA claims pending in this action.

Now, with a comprehensive Settlement Agreement, Plaintiff seeks (and Defendants do not oppose), this Court's approval of a $80,000 PAGA settlement on behalf of the LWDA and approximately 38 Aggrieved Employees, which equates to approximately $99.38 per pay period based on the Aggrieved Employees collectively working approximately 805 pay periods (but not exceeding 885 pay periods) during the PAGA Period. After payment of Plaintiff's attorneys'

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[1] The PAGA Representative Action Settlement Agreement and Release of PAGA Claims (the "Settlement Agreement" or "S.A.") is attached as Exhibit B to the Declaration of Brian J. Mankin ("Mankin Decl.").

[2] Defined at S.A. ¶ 3 as "all current and former nonexempt (hourly paid) employees employed by Defendant Town Hospice & Palliative Care, LLC in California at any time during the PAGA Period (May 24, 2023, through January 8, 2026)."

fees of $26,666.66 (1/3 of the Settlement) and actual costs ($13,671.09), as well as the administration expenses ($3,000), approximately $36,662.25 will remain as the Net Settlement Amount, with 75% paid to the LWDA ($27,496.69) and the remaining 25% ($9,165.56) paid to the Aggrieved Employees, as set forth in the following chart:

Settlement Amount	**$ 80,000.00**
Attorneys' Fees (1/3)	$ 26,666.66
Attorney Litigation Costs	$ 13,671.09
Administrator Costs	$ 3,000.00
Net Settlement Amount ("NSA")	**$ 36,662.25**
75% of NSA Payable to LWDA	$ 27,496.69
25% of NSA Payable to Aggrieved Employees	$ 9,165.56

Considering that many class actions settle for less than $20 per pay period, settlement merits full approval by requiring Defendant to pay approximately $99.38 per pay period worked by the Aggrieved Employees. Indeed, it fulfills the purpose of PAGA, which is to deter violations of the Labor Code and secure obedience of California's labor laws; to end ongoing violations of the Labor Code either through injunctive relief or a defendant's voluntary changes in light of a PAGA action; and to provide relief that is genuine, meaningful, and consistent with California's goal of benefitting the public through enforcement of labor laws.

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

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

/ / /

II. BACKGROUND

A. Procedural History

After retaining counsel, Plaintiff submitted a letter to the California Labor & Workforce Development Agency ("LWDA") and to Defendant regarding the alleged violations. (Mankin Decl. ¶ 11; Exhibit A to Mankin Decl.). This notice is required under Labor Code § 2699.3(a)(l)(A) to bring a PAGA claim against an employer.

Plaintiff filed her initial putative class action complaint against Defendant on May 24, 2024, followed by a First Amended Complaint adding PAGA claims on October 2, 2024, after the 65-day PAGA exhaustion period elapsed without the LWDA asserting jurisdiction. (Mankin Decl. ¶ 12).

Defendant retained counsel and vowed to vehemently oppose the claims. Defendant Town Hospice filed its Motion to Compel Arbitration and Dismiss Class Claims (the "MTCA") that was set to be heard originally on March 19, 2025, that was continued to April 8, 2025. The matter was taken under submission, and the Court issued its Ruling on Defendant's MTCA on July 1, 2025, compelling Plaintiff's individual claims to arbitration, dismissing the class claims, and then staying the remaining PAGA claims pending arbitration. However, after discussions among counsel, the Parties agreed to attend mediation on the remaining claims. (Mankin Decl. ¶ 13).

In preparation for the mediation, the Parties exchanged documents and information that allowed both sides to calculate the potential PAGA penalties and evaluate potential risk. During this process, Plaintiff and her counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of total penalties, trial, and appellate issues and risks. During this exchange of information, pursuant to Plaintiff counsel's informal requests, Defendant produced documents and pay records that enabled Plaintiff to conduct a thorough analysis of claims for unpaid wages, meal/rest break violations and others. (Mankin Decl. ¶ 14).

On September 9, 2025, the Parties mediated with Jeffrey Fuchsman, Esq. The matter did not resolve at the conclusion of mediation. Defendant Suncrest Health Services LLC was added via Doe amendment after mediation. The Parties continued to engage in months of extensive arms-length negotiations, wherein the Parties reached settlement and entered into this Settlement. (Mankin Decl. ¶ 15).

The Parties now present this Settlement for approval in compliance with the "PAGA Case Management Order #1" (the "CMO") used by this Court for PAGA cases.[3]

B. Summary of Claims and Defenses

Pursuant to CMO ¶ D(2), Plaintiff submits in the Mankin Decl. at ¶¶ 16-30 a full description of all claims, the maximum and risk-adjusted penalties for which Defendants are potentially liable, and other required items. For the sake of brevity, those items are not repeated here but Plaintiff still addresses the big-picture claims and defenses as follows.

Plaintiff alleged eight causes of action on behalf of the Aggrieved Employees. However, as discussed herein, some of the claims are overlapping due to the nature of the violation (so, in essence, there are not 8 distinct penalties recoverable). (Mankin Decl. ¶ 17).

For example, Plaintiff alleged unpaid wage claims under two distinct theories of liability. *First*, Plaintiff argued that the Aggrieved Employees were not paid all required minimum and overtime wages due to the failure to accurately record and compensate for all hours worked (due to, for instance, Plaintiff and the Aggrieved Employees performing off-the-clock work for Defendant when they had to complete their charting or schedule patient visits while clocked out). But Defendant vehemently opposed this claim on the merits and claimed that Plaintiff and the Aggrieved Employees could have easily performed those tasks while clocked in. *Second*, Plaintiff also argued that she and the Aggrieved Employees often earned nondiscretionary bonuses and worked overtime, yet Defendant failed to incorporate the nondiscretionary bonuses into the regular rate calculations and only paid overtime at 1.5 times the base rate. Again, Defendant opposed this claim on the merits (Mankin Decl. ¶ 18).

Plaintiff also alleged that Defendant failed to provide compliant meal periods and rest breaks to the Aggrieved Employees due to the hectic workload as the scheduled patient visits did

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[3] Plaintiff notes that the operative CMO in this matter is still the "Class Action Case Management Order #1" issued on June 4, 2024. However, due to the dismissal of class claims and the transition to a PAGA-only case, Plaintiff and his counsel are submitting this Motion in compliance with the Court's CMO issued in other recent PAGA-only cases.

not allow time for meal and rest breaks (*e.g.*, travel from one patient's home to the next patient did not allow time to take a break). But Defendant vehemently opposed this claim based on the argument that Defendant had compliant written policies. Additionally, Defendant argued it provided and made available meal and rest breaks to all employees, and any employee who did not take a meal or rest break did so entirely of her own volition. As such, Defendant argued these claims were without merit because, for each violation, a fact-finder would have to determine why a break was noncompliant/nonexistent, because if it was by the employee's choice, no liability attaches to Defendant. (Mankin Decl. ¶ 19).

As addressed in the Mankin Decl., each of Plaintiff's claims were disputed and Defendant raised strong defenses to each. Thus, because further litigation of the Action would be protracted and expensive, the Parties agreed it is desirable that the Action be fully and finally settled in order to limit further risk, expense and protracted litigation. (Mankin Decl. ¶¶ 17-21).

III. THE PAGA AND ITS REQUIREMENTS

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

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

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

Before filing a PAGA action, an aggrieved employee must first provide written notice to the LWDA and the employer of the particular Labor Code violations the aggrieved employee alleges the employer has violated. Labor Code § 2699.3(a)(l). This notice provides the LWDA with the opportunity to investigate and prosecute the claim. The employee may only sue on the state's behalf if the LWDA fails to respond to the notice within 65 days, responds that it does not intend to investigate, or investigates and does not issue a citation within 185 days. Labor Code §§ 2699.3(a)(2), 2699(h). In this case, Plaintiff provided the LWDA with notice letters advising it of the alleged Labor Code violations, but the LWDA deferred the prosecution of these violations to Plaintiff and his attorneys. Accordingly, the Settlement, and the common fund created by it for the benefit of the State and Aggrieved Employees, is solely the result of the work performed by Plaintiff and his attorneys on this case.

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

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

IV. THE SETTLEMENT AND DISTRIBUTION OF PAGA PENALTIES

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

A. Terms of the Settlement and Distribution of PAGA Penalties

The settlement provides that Defendants will pay a non-reversionary settlement amount of $80,000 (the "Settlement Amount"), subject to increase if the "Escalator Clause" is triggered (*see* S.A. ¶¶ 12, 44), and this amount is inclusive of payments to the LWDA and Aggrieved Employees, attorneys' fees and litigation costs, as well as third party administrator ("Settlement Administrator") costs. (S.A. ¶¶ 27, 38). After payment of the attorneys' fees/costs, administration costs, the remainder of approximately $36,662.25 will form the Net Settlement Amount and, pursuant to Labor Code § 2699(i), 75 percent shall be paid to the LWDA (which shall be used to assist in the enforcement of labor laws and education of employers and employees about their rights and responsibilities under the Labor Code), and the remaining 25 percent being paid to the Aggrieved Employees on a pro rata basis. (*Id*.)

As noted above, and as shown in the Mankin Decl. ¶ 8, the LWDA will receive approximately $27,496.69 (75% of the Net Settlement Amount) and approximately 38 Aggrieved Employees will collectively share in $9,165.56 (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. ¶ 38).

B. Payment and the Notice

Defendants will fund the Settlement Amount within 30 days after the Effective Date occurring.[4] (S.A. ¶ 45). Also, Defendant is required to provide the Settlement Administrator

[4] S.A. ¶ 10 ("Effective Date" is "the date the Court enters the Final Order" with "Final Order" defined at S.A. ¶ 13 as "the order that will be entered by the Court to approve the Settlement")

with the “Aggrieved Employee List” containing all information necessary for the Settlement Administrator to determine if the Escalator Clause is triggered and then apportion and issue payments. (S.A. ¶ 43). In the event that the Escalator Clause is triggered, then the Parties shall submit a supplemental filing advising the Court of whether Defendant elected to increase the Settlement Amount of shorten the PAGA Period. (S.A. ¶ 12).

The Settlement Administrator must then distribute all Court-approved payments no later than 10 calendar days after receipt of the Settlement Amount. (S.A. ¶ 46). Aggrieved Employees will have 180 days to cash their checks; if for any reason a check is un-cashed, 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. ¶ 47).

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

C. Settlement Allocation to the Aggrieved Employees

As noted, 25% of the Net Settlement Amount ($9,165.56) will be allocated and paid to the Aggrieved Employees on a pro-rata basis according to the number of Eligible Pay Periods. Based on data and information obtained from Defendants, Plaintiff estimates that the 38 Aggrieved Employees will receive an average payment of $241.20. (Mankin Decl. ¶ 14).

D. The Release

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

The release here strictly complies with CMO ¶ D(7) in that it: (a) “bind[s] only the named plaintiff and the State of California”, (b) only releases “the defendant named in the complaint, together with its officers, directors, employees and agents”, and (c) “release[s] only those claims described in the notice sent by the plaintiff to the LWDA, and only to the extent that they are alleged in the complaint.” This full compliance is evidenced by the following provisions in the Settlement Agreement:

> **S.A. ¶ 22: "Released PAGA Claims"** means the PAGA claims that Plaintiff alleged against the Released Parties, based on the facts stated in the relevant LWDA notice letters and only to the extent that they are alleged in the Complaint, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period, (7) failure to timely pay wages upon separation of employment, (8) failure to provide accurate itemized wage statements, and (9) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letters and Complaint. The time period governing the PAGA Released Claims shall be the PAGA Period. The Released PAGA Claims release the Defendants for statutory penalties that could have been sought by the Labor Commissioner for violations identified in the LWDA letter dated May 9, 2024, and operative Complaint but do not release any Aggrieved Employees' claims for wages or damages.
>
> **S.A. ¶ 23: "Released Parties"** means Defendants, and each of their officers, directors, employees, members, partners, owners, shareholders, employees, former employees, agents, consultants, representatives, insurance carriers, servants, attorneys, assigns, affiliates, independent contractors, volunteers, predecessors, successors, parent entities, subsidiary entities, and affiliated entities, the officers, directors, members, partners, owners, shareholders, employees, former employees, agents, consultants, representatives, insurance carriers, servants, attorneys, affiliates, independent contractors, volunteers, customers, clients, predecessors, of any such parent, subsidiary, and affiliated entities; companies or organizations with the same or similar ownership as the Defendants; and all persons acting by, through, under or in concert with any of them, and each of their respective heirs, successors, and assigns, or any of them.
>
> **S.A. ¶ 49:** Upon the Effective Date occurring and Defendant fully funding the Settlement Amount, Plaintiff – in her individual capacity and on behalf of the State of California and the LWDA – shall completely release and discharge the Released Parties of the Released PAGA Claims.

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

V. <u>THE SETTLEMENT IS FAIR, REASONABLE, AND WARRANTS COURT APPROVAL</u>

In 2016, PAGA was amended to require the Court to "review and approve any settlement of any civil action filed pursuant to this part." (Labor Code § 2699(l)(2).) The amendment also required that the "proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." As such, the Settlement and this Motion have been concurrently submitted to the LWDA in accordance with this section. (Mankin Decl. ¶ 46 and Exhibit D).

A. Evaluation of the PAGA Settlement

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

Here, Plaintiff obtained extensive data and information prior to mediation to investigate the claims and negotiate an appropriate settlement. After evaluation of this information, Plaintiff's counsel estimated that there were 805 pay periods worked by 38 Aggrieved Employees through the date of mediation. From this data, and when applying the various facts and theories of liability, Plaintiff's counsel formulated detailed a PAGA penalty model and calculated the maximum PAGA penalties, assuming all claims were successful through trial, as $565,600. Then, by applying the observed violation rates, and considering all of the risks and defenses to the claims herein, Plaintiff's counsel calculated $135,744 as the "risk-adjusted" value of PAGA penalties, taking into account "the weight of evidence, the clarity of the applicable law, and the strength of any factual or legal defense likely to be asserted by the defendant." (*See* CMO ¶ D(2)(d)). As required by CMO ¶ D(2), the full analysis of these claims, the maximum and risk-adjusted values, and other factors, is contained in the Mankin Decl. at ¶¶ 16-30 (and, for the sake of brevity, that information is not duplicated in this Motion).

When considering these risks and defenses, Plaintiff contends that the Settlement, which binds Defendant to pay a total Settlement Amount of $80,000 – equal to $99.38 per pay period at 805 pay periods. Many class actions settle for less than $20 per pay period, so to achieve this result in a PAGA-only case is indeed a great result. Clearly, this settlement is fair, adequate, and reasonable in light of the risks and uncertainties associated with the PAGA claims in this case, and it is sufficient to accomplish the objectives of PAGA while not being unjust, arbitrary and oppressive, or confiscatory.

/ / /

B. Plaintiff's Separate Individual Settlement is Proper

Plaintiff separately resolved her individual, non-PAGA claims against Defendant, and the information required for Plaintiff's separate individual settlement is disclosed in the Mankin Decl. at ¶¶ 40-44 as required by CMO ¶ D(4).

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

The California Supreme Court explained this principal in the landmark *Iskanian* decision, holding that "[t]he civil penalties recovered on behalf of the state under the PAGA ***are distinct*** from the statutory damages to which employee may be entitled in their individual capacities." *Iskanian,* 59 Cal.4th at 381. In fact, *Iskanian* directly discussed the separation between individual and PAGA claims, and held that when an employee pursues both types of cases, a defendant must respond to ***both*** cases: "Iskanian must proceed with bilateral arbitration on his individual damages claims, <u>**and**</u> CLS must answer the representative PAGA claims in some 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. Plaintiff separately negotiated a fair resolution for the PAGA case, and then separately settled his individual claims, in conformity with California law. Thus, Plaintiff 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 risks they undertook in obtaining a common fund settlement that benefits the LWDA and Aggrieved Employees, Plaintiff's Counsel seeks $26,666.66 for reasonable attorneys' fees, which is one third of the Settlement Amount. Defendant does not oppose this request. These fees are warranted under the law and within the range of fees commonly awarded in similar cases. Additionally, the Parties agreed Plaintiff's Counsel could seek reimbursement for their actual litigation costs of $13,671.09.

A. Plaintiff's 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 specific amount for the benefit of others.

"A qui tam action is one brought under a statute that allows a private person to sue as a private attorney general to recover damages or penalties, all or part of which will be paid to the government." *People ex rel. Stratham v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 491-492. "A qui tam action 'is a type of private attorney general lawsuit' [citation], in which 'the qui tam plaintiff stands in the shoes of the state or political subdivision [citation].'" *Id.* at p. 501. As the name of the PAGA statute makes clear (e.g. "Labor Code Private Attorneys General Act"), a PAGA action is a qui tam action because the statute allows the employee plaintiff, acting as the proxy of the state's labor law enforcement agency, to sue his or her employer for Labor Code violations and recover civil penalties that otherwise would have been assessed and collected by the Labor and Workforce Development Agency (LWDA). *Iskanian,* 59 Cal.4th at

380. “A PAGA representative action is therefore a type of *qui tam* action.” *Id.* at p. 382. Indeed, the majority of the civil penalties recovered in a PAGA action are paid to the state, with a smaller portion paid to the aggrieved employees (e.g. 75% paid to the state; 25% paid to the aggrieved employees). See Lab. C. 2699(i).

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

> Those benefiting from the recovery of the fund, in this case some depositors and eventually the People of the State of California, must 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 for recovery of attorney fees, it must be modified to confine the award of fees to the common fund theory.

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

The California Supreme Court also upheld the use of the common fund theory of recovery for attorney's fees in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 506. In

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

Accordingly, the common fund doctrine allows a court to award attorneys' fees based upon a percentage of the total fund that is created for the satisfaction of beneficiaries' claims when the fund consists of a "certain or easily calculable sum of money." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1809; *Jutkowitz v. Bourns, Inc.* (1981) 118 Cal.App.3d 102, 110 [application of the percentage of the fund recovery depended on "[t]he critical point" that "a fund was created from which attorneys' fees could be paid"]; A. Conte & H. Newberg, *Newberg on Class Actions*, § 14:6 (4th ed. 2002).

California law has long upheld, and continues to uphold, the percentage of the recovery method for awarding attorneys' fees where a fund is established. *See, e.g.*, *Serrano*, 20 Cal.3d at 34; *Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 65-66 ["fees based on a percentage of the benefits are in fact appropriate in large class actions…"]; *Sanders v. City of Los Angeles* (1970) 3 Cal.3d 252, 261, 263 [affirming award of attorneys' fee based on percentage of recovery];; *see also Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387, 397 [the common fund doctrine is "frequently applied in class actions when the efforts of the attorney for the named class representatives produce monetary benefits for the entire class"]; *Wershba v.*

Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254 ["courts recognize two methods for calculating attorney fees in class actions: the lodestar/multiplier method and the percentage of recovery"].

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

B. The Percentage Fee of the Settlement Amount Is Fair and Reasonable

An award of fees from the Settlement Amount under the common fund doctrine prevents unjust enrichment of those who benefit from the common fund created through the successful efforts of plaintiff's counsel and furthers the important goal of attracting competent counsel to handle representative actions enforcing minimum labor standards. *Laffitte*, 1 Cal.5th at 503. The California Supreme Court summarized the benefits of the percentage method of recovery stating: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [citations]—convince us the percentage method is a valuable tool that should not be denied our trial courts." *Id*.

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

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

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

C. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Request

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

[5] In practice, the lodestar method is difficult to apply, time-consuming, inconsistent in result, and 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.

Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal.App.3d 241, 251 (**multiplier of 2+ approved**); *Sternwest Corp v. Ash* (1986) 183 Cal.App.3d 74, 75. The multiplier requested by Plaintiff's Counsel below is within the range of multipliers found to be appropriate by various federal and state courts in California. In *Sternwest Corp. v. Ash*, for instance, the Court of Appeal remanded for a lodestar enhancement of "**two, three, four or otherwise**." *Id*. at 76; *see also Wershba*, 91 Cal.App.4th at 255 ("**Multipliers can range from 2 to 4 or even higher**"); *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78, 83 (**affirming 2.34 multiplier**); *Coalition for Los Angeles County Planning in the Pub. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 (**affirming multiplier of approximately 2**); *Craft v. County of Los Angeles* (C.D. Cal. Apr. 1, 2008) 2008 U.S. Dist. LEXIS 27526 (**applying 5.2 multiplier**); *Steinder v. Am. Broadcasting Co., Inc*. (9th Cir. 2007) 248 Fed.Appx. 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 $88,740 as reflected in the Mankin Decl. ¶ 37 and Carlson Decl. ¶ 7. This results in a *negative* multiplier, as summarized in the submitted declarations of Plaintiff's counsel.

The hourly rates utilized by Plaintiff's 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 $878/hour for an 11–19-year attorney and $1,057/hour for a 20+ year attorney). The reasonableness of Plaintiff's counsel's rates is reinforced by facts showing that local attorneys in Los Angeles engaged in complex litigation bill at rates far higher than Class Counsel – and far higher than the Laffey Matrix. Recent public filings confirm that the Los Angeles Department of Water and Power is paying outside counsel at minimum rates of $1,800 for partners, $1,180 per hour for associates with 7 years of experience or more, and LADWP even pays first year associates $745 per hour. *See* https://www.latimes.com/california/story/2025-02-14/law-firm-1975-an-hour-defend-against-palisades-fire-lawsuits (last visited June 5, 2025).

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

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

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

D. The Requested Litigation Costs are Fair and Reasonable

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

The Settlement Agreement authorized Plaintiff's Counsel to recover litigation costs up to $25,000. However, the actual costs through the approval hearing are projected to be $13,671.09, which is the amount requested. (Mankin Decl. ¶ 49; Exhibit D to Mankin Decl.). These costs are reasonable, uncontested, and should be approved.

VII. <u>SUBMISSION TO THE LWDA</u>

As set forth in the Mankin Declaration at ¶ 46, the settlement agreement and this motion are concurrently being submitted to the LWDA in accordance with Labor Code § 2699(l)(2). The proof of electronic submission is attached as **Exhibit D** to the Mankin Declaration.

VIII. <u>THE SETTLEMENT ADMINISTRATOR</u>

ILYM Group 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. ILYM provided an all-in bid to administrator the Settlement for $3,000, which is the amount that will be paid from the Settlement Amount. (Mankin Decl. ¶ 45; Declaration of ILYM and Exhibit B to same [ILYM's bid]).

/ / /

IX. CONCLUSION

For the foregoing reasons, Plaintiff requests, and Defendant does not oppose, the Court's approval of the Settlement under the PAGA.

Dated: August 14, 2026

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 August 14, 2026, 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

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.

[X] **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.

[X] **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 14, 2026, 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

Tracie Chiarito, Declarant

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