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10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ORANGE**
12

13 LAUREN EDWARDS, on behalf of herself and
14 all similarly situated aggrieved employees,

15 Plaintiff,

16 vs.

17 CAREERSTAFF UNLIMITED, LLC, a
Delaware limited liability company; REYES
18 COCA-COLA BOTTLING, LLC, a Delaware
limited liability company; GHC PAYROLL,
19 LLC, a Delaware limited liability company;
GENESIS ADMINISTRATIVE SERVICES,
20 LLC a Delaware limited liability company;
21 GENESIS HEALTHCARE INC., a Delaware
corporation; GENESIS HEALTHCARE, LLC,
22 a Delaware limited liability company; and
DOES 1-100,

23
24 Defendants.
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27
28

CASE NO. 30-2020-01176349-CU-OE-CXC

Assigned for All Purposes to:
Hon. Randall J. Sherman
Dept. CX-105

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF
SETTLEMENT UNDER PRIVATE
ATTORNEYS GENERAL ACT**

[Filed Concurrently with Notice of Motion
and Motion; Declarations of Zachary M.
Crosner, Lauren Edwards, Jaron Haygood,
and Eric Springer; [Proposed] Order]

Date: April 21, 2023
Time: 10:00 a.m.
Dept. CX-105

Reservation No.: 73939244

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1 **I. INTRODUCTION**

2 Plaintiffs Lauren Edwards and Jaron Edwards hereby seek Court approval of a proposed
3 settlement of claims brought under the Private Attorneys General Act (“PAGA”) against defendant
4 CareerStaff Unlimited, LLC (“CareerStaff” or “Defendant”). Consistent with PAGA, the proposed
5 settlement releases claims under PAGA only and has no impact on the individual claims of any
6 aggrieved employee other than Plaintiffs. Since the settlement resolves nothing more than claims
7 under PAGA, it requires only a one-step review and approval process by the Court, and for the
8 reasons discussed below, Plaintiffs respectfully request the Court approve the Settlement in its
9 entirety.

10 **II. BACKGROUND**

11 CareerStaff provides temporary rehabilitation therapist staffing for physical, occupational,
12 and speech therapy to hospitals and nursing homes throughout California. Plaintiff Edwards was
13 employed by CareerStaff as an hourly, non-exempt certified nursing assistant from November 2015
14 to April 2020, in Orange County. Plaintiff Haygood was employed by CareerStaff as an hourly, non-
15 exempt certified registered central service technician from June to August 2021, in San Diego
16 County. Both were paid weekly. [Declaration of Zachary M. Crosner (“Crosner Decl.”), ¶ 4.]

17 After appropriate notice¹ to the Labor & Workforce Development Agency (“LWDA”),
18 Plaintiff Edwards filed PAGA-only complaint in this Court on December 28, 2020, against
19 CareerStaff² (hereafter the “Action”) seeking civil penalties for the following alleged wage and hour
20 violations: (a) failure to pay wages, including overtime wages; (b) failure to provide meal and rest
21 periods; (c) failure to provide complete and accurate wage statements; (d) sick pay violations, and
22 (e) waiting time penalties. Edwards filed the matter on behalf of aggrieved employees defined to
23 include all non-exempt joint employees of CareerStaff and its client-employer during the relevant
24 PAGA time frame of October 24, 2019 to present. [Crosner Decl., ¶ 5.]

25
26
27 ¹ Plaintiff Edwards’s PAGA notice letters dated October 7, 2020 and April 19, 2021 are attached to the Crosner
Declaration as Exhibits 3 and 4 respectively.

28 ² CareerStaff’s client-employer, Reyes Coca-Cola Bottling, LLC, also was named as a defendant in Action, but has
been dismissed and is not a party to this settlement although it is a Released Party.

1 After appropriate notice³ to the Labor & Workforce Development Agency (“LWDA”),
2 Plaintiff Haygood filed PAGA-only complaint in the San Diego County Superior Court, Case No.
3 37-2022-00003330, on January 26, 2022 (the “Haygood Action”), against CareerStaff⁴ seeking civil
4 penalties for the following alleged wage and hour violations: (a) failure to pay wages, including
5 overtime wages; (b) failure to provide meal and rest periods; (c) failure to provide complete and
6 accurate wage statements; (d) failure to reimburse expenses; and (e) waiting time penalties.
7 Haygood filed his case on behalf of aggrieved employees defined to include all non-exempt joint
8 employees of CareerStaff and its client-employers during the relevant PAGA time frame of
9 November 21, 2020 to present. [Crosner Decl., ¶ 6.]

10 CareerStaff has at all times denied Plaintiffs’ collective allegations and maintained it
11 properly calculated and paid all wages due, that its meal and rest break and payroll policies and
12 procedures comply with California law, and that it provided the class members with required meal
13 and rest breaks. Additionally, CareerStaff strongly contends the case cannot be maintained as a
14 representative action as, to the extent aggrieved employees missed meal and/or rest breaks, it was
15 intermittent and infrequent and evidence of such missed breaks would be purely anecdotal, and
16 therefore individualized issues predominate, which would render a trial under PAGA
17 unmanageable. Lastly, Defendant contends the case should be sent to arbitration following the U.S.
18 Supreme Court’s decision in Viking River Cruises v. Mariana (2022) 142 S.Ct. 1906. [Crosner
19 Decl., ¶ 7.]

20 After the filing of the Haygood Action, and upon discussing the merits of the cases and
21 engaging in several meet and confer sessions regarding prospective law and motion and discovery
22 issues, the Parties agreed to a global mediation of both cases. The Parties further agreed to a protocol
23 for exchanging additional documents and information before the mediation. Through this informal
24 discovery, Defendant provided Plaintiffs with information including, inter alia, the number of
25 potential aggrieved employees, the number of aggregate pay periods, sample pay stubs and time

26 ³ Plaintiff Haygood’s PAGA notice letters dated September 30, 2021 and October 11, 2021 are attached to the Crosner
27 Declaration as Exhibits 5 and 6 respectively.

28 ⁴ CareerStaff’s client-employers GHC Payroll, LLC, Genesis Administrative Services, LLC, Genesis Healthcare,
LLC, and Genesis Healthcare, Inc., were named as a defendants in the Haygood Action, but also have been dismissed
and are included as Released Parties.

1 records for a sampling of the allegedly aggrieved employees, employee handbooks and manuals,
2 and other relevant policy documents regarding Defendant’s time keeping and reporting policies.
3 Plaintiffs had this information reviewed and analyzed by a consulting expert to assist with
4 calculating, inter alia, potential violation rates and assist with formulating a damages model.
5 [Crosner Decl., ¶ 8; Exh. 7.]

6 The global mediation took place in July 2022 with the Hon. Carl West, (Ret.), a well-respected
7 neutral with extensive wage and hour experience. Before and during the mediation, Plaintiffs and their
8 counsel analyzed, researched, and investigated the potential issues, including matters related to the
9 calculation of damages, trial, and appellate issues and risks. During mediation, the Parties vigorously
10 debated the likelihood of Plaintiffs’ ability to proceed on a representative basis as to the PAGA
11 claims, the legal grounds for Plaintiffs’ claims and Defendant’s defenses, and the parties’ data
12 analyses and conclusions based on data provided by Defendant. After a contentious full day of
13 negotiations, the Parties reached agreement and subsequently formalized their tentative settlement
14 in the Settlement Agreement now before the Court for approval. A fully executed, true and correct
15 copy of the Parties’ PAGA Settlement Agreement (“Settlement Agreement”) is attached to the
16 Crosner Declaration as Exhibit 1 and, order to fully effectuate the proposed global settlement,
17 Plaintiff Edwards filed a second amended complaint in this matter, on October 31, 2022, adding
18 Haygood as a party-plaintiff and incorporating all claims alleged in the Haygood Action. [Crosner
19 Decl., ¶ 9.]

20 Finally, Plaintiff Edwards is entering into a separate individual settlement with Defendant
21 to resolve alleged claims for sexual harassment, discrimination, and retaliation. The terms of that
22 settlement are confidential and will be made available for *in camera* review as requested by the
23 Court. [Crosner Decl., ¶ 10.]

24 **III. SUMMARY OF SETTLEMENT TERMS**

25 **A. SETTLEMENT TERMS AND DISTRIBUTION OF PAGA PENALTIES**

26 Under the settlement, Defendant will pay a non-reversionary settlement amount of \$825,000
27 (the “Gross Settlement Amount” or “GSA”), and the GSA is inclusive of payments to the LWDA
28 and Aggrieved Employees, costs of settlement administration, modest service awards to each

1 Plaintiff, and reasonable attorney's fees and costs. After payment of these amounts from the GSA,
2 Plaintiffs presently estimate about \$513,272.13 shall form the Net Settlement Amount ("NSA"). Pursuant
3 to Labor Code section 2699(i), the NSA will then be distributed 75 percent (approximately \$384,954.10) to
4 the LWDA, and the remaining 25 percent (approximately \$128,318.03) will be distributed to the
5 Aggrieved Employees in proportion to the total number of Pay Periods each individual worked
6 during the PAGA Period, with an average award currently estimated at about \$82.25 net per
7 Aggrieved Employee and \$3.45 net per Pay Period. [Crosner Decl., ¶ 11.]

8 **B. PAYMENT AND THE NOTICE**

9 The Parties propose using Simpluris, Inc. as the Settlement Administrator. Simpluris has
10 extensive experience administering PAGA settlements, and has agreed to cap its fees at \$8,000.00.
11 [Declaration of Eric Springer, ¶¶ 2-9; Exhs. A-C.] CareerStaff will fund the GSA within 21 calendar
12 days of the Effective Date, and within 14 calendar days thereafter Simpluris will mail a Notice and
13 settlement check to all Aggrieved Employees via regular First-Class U.S. Mail, using the most
14 current, known mailing addresses identified in CareerStaff's records, and will take reasonable steps
15 to update and/or skip-trace for returned mailings. Aggrieved Employees need not submit claim
16 forms and will automatically receive a Notice and settlement check. Settlement checks will be
17 negotiable for 180 days, after which time any unclaimed residual funds will be forwarded to the
18 California State Controller's Unclaimed Property Fund. [Crosner Decl., ¶ 12; Exh. 2.]

19 **C. THE RELEASE**

20 The California Supreme Court has explained that a judgment in "a representative action
21 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ...
22 is binding not only on the named employee plaintiff but also on government agencies and any
23 aggrieved employee not a party to the proceeding." Arias v. Superior Court (2009) 46 Cal.4th 969,
24 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty
25 claims brought under PAGA. Under Arias, the order the Parties request the Court enter is intended
26 to be "binding not only on the named employee plaintiff but also on government agencies and any
27 aggrieved employee not a party to the proceeding." While Plaintiffs both are entering into a general
28 release any and all claims against Defendant, the Settlement Agreement protects the rights of the

1 Aggrieved Employees to bring their own individual claims should they wish. For these reasons, the
2 Parties contend the release narrowly applies only to the PAGA claims alleged, and the Settlement
3 Agreement specifically provides the Release is inapplicable to any claims other than those brought
4 under PAGA. [Crosner Decl., ¶ 13.]

5 **IV. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS**
6 **THE PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL**

7 PAGA requires the Court to “review and approve any settlement of any civil action filed
8 pursuant to this part.” Labor Code § 2699(l)(2). Recently, the appellate court in Moniz v. Adecco
9 USA, Inc. (2021) 72 Cal.App.5th 56, defined the standard for courts to apply when reviewing
10 settlements under PAGA. The court held a trial court must ensure that the settlement is “fair,
11 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
12 deter future ones, and to maximize enforcement of state labor laws.” Id. at 77.

13 In so holding, Moniz noted many federal district courts had imported class action settlement
14 approval principles when evaluating PAGA settlements, demanding that PAGA settlements be “fair,
15 reasonable, and adequate,” and weighing factors such as “the strength of the plaintiff’s case, the
16 risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the
17 settlement amount[.]” Id. at 75-76 (collecting cases). Observing that “PAGA’s purpose” is to
18 “protect the public interest”—especially the allegedly aggrieved employees—the Court agreed with
19 this district court authority, concluding that much the same principles that ensure fairness in class
20 action settlements serve the public interest in the PAGA context. Essentially, these factors are more
21 or less identical to those California courts use to evaluate class action settlements per Kullar v. Foot
22 Locker Retail, Inc. (2008) 168 Cal.App.4th 116 and, accordingly, Plaintiffs submit they should
23 inform the Court’s analysis as well. For the reasons below, the proposed settlement is fair,
24 reasonable and adequate, advances the purposes underlying PAGA, and should be approved.

25 **A. NATURE OF THE ALLEGED VIOLATIONS**

26 First, Plaintiffs alleged Defendant failed to pay all minimum and overtime wages by
27 requiring Plaintiffs and the aggrieved employees to work through their meal periods and perform
28 off the clock work, and also by failing to include bonus and stipend pay in Plaintiffs’ and the

1 aggrieved employees' regular rate of compensation and therefore underpaying for overtime hours.
2 [Crosner Decl., ¶ 14.]

3 Next, Plaintiffs contend Defendant failed to provide compliant meal periods and utilized a
4 policy that failed to comply with California law. As noted, Plaintiffs alleges they did not receive
5 compliant meal periods as they frequently had to work during breakas and thus were no relieved all
6 duties during meal periods. Plaintiffs also contend CareerStaffs meal policy was non-compliant
7 policy as it only provided employees with one 30-minute meal period per shift from October 2019
8 to March 2020, and never advised employees of their right to a second meal period for shifts over
9 10 hours but less than 12 hours. [Crosner Decl., ¶ 15.]

10 Plaintiffs similarly contend Defendant failed to provide Plaintiffs and the Aggrieved
11 Employees with compliant rest periods for essentially the same reasons. failed to provide Plaintiffs
12 and the aggrieved employees with required rest periods by (1) utilizing a facially non-compliant
13 policy that provided employees with one 15-minute rest period per shift from October 2019 to March
14 2020; and (2) utilizing a facially non-compliant policy that prohibits employees from leaving the
15 premises during rest periods unless they clock out. [Crosner Decl., ¶ 16.]

16 Next, Plaintiffs contend Defendant required them to use their personal phones for work
17 purposes, such as accessing CareerStaff's employee portal and completing the onboarding process
18 upon hire, but failed to reimburse Plaintiffs and the aggrieved employees for such use of their
19 personal cell phones for business purposes. [Crosner Decl., ¶ 17.]

20 Lastly, Plaintiffs also bring claims derivative of the foregoing claims, including a derivative
21 wage statement claim based on the failure to pay all wages due, and failure to pay all wages due and
22 owing upon separation of employment under Labor Code §§ 201-203.⁵ [Crosner Decl., ¶ 18.]

23 **B. NUMBER OF ALLEGED VIOLATIONS AND POTENTIAL PENALTIES**

24 For mediation, CareerStaff indicated it employed approximately 1,550 non-exempt
25 employees in California during the relevant time frame of of December 29, 2019 to July 15, 2022,
26 and these individuals worked approximately 37,000 pay periods during that time. Based on the data
27

28 ⁵ Although Plaintiff Edwards alleged sick pay violations, she ultimately determined there were no systemic violations to be addressed via PAGA, and we assigned no value to these claims. [Crosner Decl., ¶ 18.]

1 and information provided by Defendant, Plaintiffs estimated Defendant's maximum PAGA
2 exposure at approximately \$16,503,100, including approximately \$3,411,100 in civil penalties for
3 the unpaid wage/off the clock claims, \$15,700 in civil penalties for the regular rate claims, bout
4 \$3,411,100 in civil penalties for meal period claims, approximately \$3,560,200 in civil penalties for
5 rest period claims, approximately \$2,290,000 in civil penalties on the expense reimbursement claim,
6 approximately \$3,700,000 in civil penalties on the inaccurate wage statement claim, and
7 approximately \$115,000 in civil penalties for failing to timely pay wages on separation of
8 employment. [Crosner Decl., ¶¶ 19-20.]

9 **C. THE SETTLEMENT MEETS THE KULLAR FACTORS, INCLUDING THE**
10 **STRENGTH OF PLAINTIFFS' CASE, THE DISCOVERY PERFORMED,**
11 **AND AMOUNT OFFERED IN SETTLEMENT**

12 In response to Plaintiffs' unpaid wage claims for alleged "off the clock work" during meal
13 peirods, Defendant took the position that its time keeping policies are legally compliant, that it
14 accurately tracked all hours worked, paid the allegedly aggrieved employees for all hours worked
15 consistent with those policies, and never required any kind of work during meal periods. Defendant
16 also argued any trial of this issue on a representative basis would be unmanageable since it would
17 depend entirely on a myriad of individualized inquiries as to each employee regarding alleged work
18 during meal periods to determine if it was mandated or done by employee choice. On the regular
19 rate issue, CareerStaff likewise argued it properly calculated and paid for overtime, and also
20 emphasized that less than 1% of the pay periods at issue arguably even had a potential regular rate
21 issue and therefore the value of the claim is nominal. [Crosner Decl., ¶ 21.]

22 For the meal break claims, Defendant offered multiple defenses to these claims. First, it
23 emphasized its written meal and rest break policy generally was compliant, that it authorized and
24 permitted all necessary breaks, and that employees received full uninterrupted lunch periods. Thus,
25 per Defendant, any work performed during meal periods – to the extent it even occurred – was in
26 violation of company policy and aberrational, and would require significant individual inquiries to
27 determine the reasons underlying any such alleged violations and whether it was by employee choice
28 or some other reason. Thus, per Defendant, any trial on this issue would be unmanageable because

1 of these individualized issues. On the second meal issue, CareerStaff likewise argued in provided
2 such breaks to its employees, and that only about 4% of pay periods had a shift of 10-12 hours in
3 any event. [Crosner Decl., ¶ 22.]

4 As with meal breaks, Defendant argued the applicable rest break policies complied with
5 California law, that it authorized and permitted employees to take all required breaks, and
6 provided for 15 minute breaks. Thus per Defendant, Plaintiffs and Aggrieved Employees always
7 would have received a net 10 minutes on their rest breaks. Defendant also argued requiring
8 employees to clock out if they left the work premises had no impact on their employee to take a
9 compliant break and receive a full net 10 minute, duty-free break. Defendant further contended
10 that, in light of the fact that it is not required to maintain a record of rest periods, any evidence of
11 failure to authorize rest periods and/or discouragement from taking rest periods would be purely
12 anecdotal and individual issues would predominate on liability. This arguably would once again
13 make a trial unmanageable since the number of instances an employee missed a rest break would
14 have to be tested on a case by case basis to determine compliance. [Crosner Decl., ¶ 23.]

15 On the cell phone expense reimbursement claim, Defendant argued that use of personal
16 cell phones was not necessary for Plaintiffs or any other employee to perform their job duties, and
17 accordingly any use of personal phones was purely for employee convenience and no
18 reimbursement was required. [Crosner Decl., ¶ 24.]

19 Plaintiffs also alleged derivative violations of Labor Code § 226 (wage statement
20 violations) and §§ 201-203 (waiting time penalties). The wage statement claims and waiting time
21 penalties claim are entirely derivative of the primary unpaid wage claims and will rise or fall along
22 with the primary claims, in addition to being subject to “good faith” and other defenses available
23 to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding
24 employer did not willfully fail to pay wages under Labor Code § 203 even though the class
25 prevailed on the merits on the underlying claim for failing to pay living wages). Accordingly,
26 Plaintiffs had to discount the value of this claim significantly in light of these multiple potential
27 defenses. Defendant also contended a substantial discount should be applied to the civil penalties
28

1 for these derivative (i.e., “stacked”) violations, as it would be unfair to penalize Defendant
2 multiple times for the same violation. [Crosner Decl., ¶ 25.]

3 Defendant also emphasized PAGA gives the Court wide latitude to reduce the amount of
4 civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise
5 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code §
6 2699(h). Several state and federal courts in California have applied significant reductions to
7 PAGA civil penalties even after plaintiff prevailed on the merits. In Fleming v. Covidien (C.D.
8 Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court reduced the
9 potential penalties by over 82% after a bench trial. More recently, in Carrington v. Starbucks
10 Corp. (2018) 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of just \$5
11 per pay period, a 90% reduction, which decision was upheld on appeal. In re Taco Bell Wage and
12 Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after
13 trial). [Crosner Decl., ¶ 26.]

14 Finally, Defendant emphasized the potential applicability of the U.S. Supreme Court’s
15 recent decision in Viking River Cruises v Mariana (2022) 142 S.Ct. 1906. In particular, FSS
16 argued the arbitration agreement signed by Plaintiffs contain the necessary elements outlined by
17 Viking River Cruises to compel arbitration, namely: (1) it provides for the arbitration of wage and hour
18 claims, like Avilez’s pending claims in the PAGA lawsuit, (2) it does not allow for an employee to
19 bring a class or representative claim in arbitration, and (3) it contains a “severability” clause stating
20 that if any terms of the Agreement are unenforceable, the remainder of the Agreement is still valid.
21 Thus, per Defendant, Plaintiffs’ “individual” PAGA claim must be compelled to arbitration and the
22 “representative” PAGA claims dismissed for want of standing. [Crosner Decl., ¶ 27.]

23 Thus, Defendant raised various and multi-layered defenses to each of Plaintiffs’ claims,
24 anyone of which, if successful, could have decimated Plaintiffs’ case. And Defendant vowed to
25 raise all these defenses at trial, even assuming Plaintiffs overcame Viking River Cruises.
26 Accordingly, Plaintiffs faced risky issues going forward with this litigation, and it could have
27 taken years to realize any recovery in this action along with the possibility of post-trial appeals. In
28 additional to its merits defenses and arguing trial would be unmanageable, Defendant also

1 intended to raise additional defenses on damages, including the proper measure of civil penalties
2 and the appropriate discount to place on any assessment of such penalties. [Crosner Decl., ¶¶ 28-
3 29.]

4 Although Plaintiffs and their counsel believe they could have prevailed, there was no such
5 guarantee. When the risks of overcoming a motion to compel arbitration, a manageability defense,
6 prevailing at trial on the merits on all claims, and securing 100% of the theoretical civil penalties
7 all are factored into the equation, the settlement value is reasonable and supported. Of course, to
8 recover anywhere near the maximum penalties Plaintiffs would have to shoot the moon and win
9 both liability and maximum penalties on all claims, which outcome, for the reasons discussed, is
10 unlikely. Given Defendant's various procedural and merits defenses, as well as the substantial
11 penalty reductions ordered in the cases above – which occurred after trial – the proposed
12 settlement is eminently reasonable. [Crosner Decl., ¶¶ 28-29.]

13 Importantly, the mere fact that a settlement does not provide the same recovery as might be
14 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
15 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed
16 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
17 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
18 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven
19 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
20 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
21 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane
22 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is
23 fundamentally fair . . . is different from the question whether the settlement is perfect in the
24 estimation of the reviewing court”); White v. Experian Information Solutions, Inc. (C.D. Cal.
25 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
26 though it represented 99% discount off the maximum value of the claims).

27 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
28 the probability of appeal of a favorable judgment, the Court's substantial discretion to reduce any

1 penalty award, and potential arbitration issues all are accounted for, it is clear a settlement amount
2 of \$825,000 for the PAGA claims is within the ballpark of reasonableness, and approval is
3 appropriate. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS
4 171356, at *7 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have]
5 submitted the settlement agreement to the LWDA, and the LWDA has not objected to the
6 settlement").

7 **V. SUBMISSION TO THE LWDA**

8 Plaintiffs timely served the LWDA with the Settlement Agreement and this Motion, and
9 notified the LWDA of this approval hearing. [Crosner Decl., ¶ 30; Exh. 8.] Accordingly, the
10 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
11 approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA
12 settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL
13 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the
14 proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings, 2018 WL
15 4773057, at *9 ("Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has
16 not objected to the settlement."); Jordan, 2018 U.S. Dist. LEXIS at *7 ("Additionally, the Court
17 finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and
18 no comment or objection has been received.").

19 **VI. THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE**

20 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
21 that benefits the LWDA and Aggrieved Employees, 1/3 of the gross settlement, or \$275,000.00, is
22 allocated to Plaintiffs' counsel for reasonable attorney's fees, plus actual litigation costs. These fees
23 are warranted under the law and within the range of fees commonly awarded in similar cases.

24 **A. PLAINTIFFS' COUNSEL ARE ENTITLED TO RECOVER ATTORNEY'S**
25 **FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM**
26 **ACTION**

27 PAGA provides a plaintiff is entitled to recover reasonable attorney's fees, expenses, and
28 costs under Labor Code § 2699(g)(1): "Any employee who prevails in any action shall be entitled to
an award of reasonable attorney's fees and costs," As discussed below, reasonable attorney's

1 fees and costs are typically awarded under the common fund doctrine in a *qui tam* such as this one,
2 where, as here, the litigation creates a common fund of money in a specific amount for the benefit
3 of others.

4 “A *qui tam* action is one brought under a statute that allows a private person to sue as a
5 private attorney general to recover damages or penalties, all or part of which will be paid to the
6 government.” People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487, 491-
7 492. As our Supreme Court recently affirmed, a PAGA action is a *qui tam* action because the statute
8 allows the employee plaintiff, acting as the proxy of the State’s labor law enforcement agency, to
9 sue his or her employer for Labor Code violations and recover civil penalties that otherwise could
10 only be assessed and collected by the LWDA. Kim v. Reins Int’l California, Inc. (2020) 9 Cal.5th
11 73; Iskanian, 59 Cal.4th at 380-82 (“[a] PAGA representative action is therefore a type of *qui tam*
12 action”). Indeed, the majority of the civil penalties recovered in a PAGA action are paid to the State,
13 with a smaller portion paid to the aggrieved employees (e.g. 75% paid to the state; 25% paid to the
14 aggrieved employees). Lab. Code § 2699(i). As here, where a common fund is created in a *qui tam*
15 action by the successful litigation of a plaintiff and his attorneys, the plaintiff’s attorneys are entitled
16 to recover their fees from the common fund. Bank of America v. Cory (1985) 164 Cal.App.3d 66,
17 89-91.

18 Through the successful efforts of Plaintiffs and their attorneys here, a common fund was
19 created in the amount of \$825,000 for the benefit of the Aggrieved Employees and the State. Thus,
20 these beneficiaries should bear their share of the costs and attorney’s fees out of the overall \$825,000
21 amount in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444
22 U.S. 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d
23 1301, 1311.

24 Not long ago, the California Supreme Court upheld the use of the common fund theory of
25 recovery for attorney’s fees in Laffitte v. Robert Half Int’l Inc. (2016) 1 Cal.5th 480, 506. In
26 Laffitte, the Supreme Court upheld an award of attorney’s fees of one-third of the \$19 million gross
27 settlement (e.g., awarded \$6.33 million in fees) under the common fund theory of recovery. Lafitte
28 is consistent with prior decisions recognizing “when a number of persons are entitled in common to

1 a specific fund, and an action brought by ... plaintiffs for the benefit of all results in the creation or
2 preservation of that fund, such ... plaintiffs may be awarded attorneys' fees out of the fund." Serrano
3 v. Priest (1977) 20 Cal.3d 25, 34; Boeing, 444 U.S. at 478 ("[A] lawyer who recovers a common
4 fund ... is entitled to reasonable attorneys' fees from the fund as a whole"; Lealao v. Beneficial
5 California, Inc. (2000) 82 Cal.App.4th 19, 26 ("[f]ee spreading occurs when a settlement or
6 adjudication results in the establishment of a separate or so-called common fund for the benefit of
7 the class").

8 Accordingly, the common fund doctrine allows a court to award attorney's fees based on a
9 percentage of the total fund created when the fund consists of a "certain or easily calculable sum of
10 money," and California law has long applied the percentage of the recovery method for awarding
11 attorney's fees where a common fund is established. Serrano, 20 Cal.3d at 34; Bell v. Farmers Ins.
12 Exch. (2004) 115 Cal.App.4th 715, 726; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794,
13 1809; Sanders v. City of Los Angeles (1970) 3 Cal.3d 252, 261-63 (affirming award of attorney's
14 fee based on percentage of recovery).

15 Awarding attorney's fees of one-third of gross common fund amount is favored by California
16 courts when a fund established for the common benefit of others is involved, such as here.
17 Accordingly, awarding fees on this basis out of the \$825,000 GSA, for a total of \$275,000.00, is
18 reasonable and appropriate. [Crosner Decl., ¶¶ 31-45.]

19 **B. A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF**
20 **THE FEE AWARD**

21 Despite the recognized limitations of the so-called lodestar method, some California and
22 federal courts acknowledge the utility of a lodestar "cross-check" when assessing a proposed
23 percentage-based fee award. Lealao, 82 Cal.App.4th at 46-47. Under the "lodestar multiplier"
24 method of cross-checking proposed fee awards, the court first ascertains counsel's total "lodestar"
25 amount by multiplying the number of hours reasonably expended by each attorney's reasonable
26 hourly rate, and then enhances or reduces this lodestar figure by a "multiplier" to account for a range
27 of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree of
28 success achieved. PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-96; Lealao, 82

1 Cal.App.4th at 43 (court has discretion to use a multiplier to ensure that the “fee awarded is within
2 the range of fees freely negotiated in the legal marketplace in comparable litigation”).

3 Here, Crosner Legal’s lodestar is approximately \$222,105.00, based on 302.5 attorney
4 hours spent litigating the two cases. [Crosner Decl., ¶¶ 34-50; Exh. 9.] On a lodestar basis, the
5 fee request of \$275,000.00 results in a multiplier of 1.24, which is a modest enhancement
6 entirely in line with California law. Indeed, California courts routinely approve multipliers in
7 the in the 2-4 range to compensate for the time and risk of class action cases. Chavez v.
8 Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorney's fee award including an
9 upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to
10 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85
11 (affirming a multiplier of 2.34). Class Counsel submits that the requested 1.24 multiplier
12 effectively operates to show that the percentage fee request is reasonable considering the
13 challenges presented in these contingency fee matters, and appropriately compensates Class
14 Counsel for the contingent risk assumed and delay in payment during the 2+ years they have
15 represented Plaintiffs. Thus, the multiplier results in a fee constituting a fair return on the
16 contingency.

17 **C. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

18 Plaintiffs’ counsel requests reimbursement of actual out-of-pocket expenses incurred to
19 prosecute this action. These expenses were incidental and necessary to the effective representation
20 of the employees, and Plaintiffs’ counsel is permitted to recover their litigation costs and expenses
21 under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35 (common
22 fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego
23 (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund “[o]f necessity,
24 and for precisely the same reasons discussed above with respect to the recovery of attorneys’ fees
25 by ... [Plaintiffs’] attorneys”). Furthermore, Plaintiffs’ counsel is entitled to recover “those out-of-
26 pocket expenses that would normally be charged to a fee-paying client.” Harris v. Marhoefer (9th
27 Cir. 1994) 24 F.3d 16, 19.

1 While the Settlement Agreement authorizes litigation costs not to exceed \$20,000, Plaintiffs'
2 counsel's actual costs presently are \$16,727.87. [Crosner Decl., ¶¶ 51-52; Exh. 10.] This includes
3 filing fees, service of process, mediation costs, postage, expert fees, and Courtcall charges, while
4 waiving photocopying costs and legal research charges. These costs are reasonable and uncontested,
5 and should be approved.

6 **VII. THE PROPOSED SERVICE AWARDS FOR PLAINTIFFS ARE FAIR AND**
7 **REASONABLE**

8 Pursuant to the Settlement Agreement, Plaintiffs seek an incentive award of \$7,500 each.
9 These requests are reasonable given the much broader release that Plaintiffs are agreeing to, as well
10 as Plaintiffs' efforts in this case and the risks they undertook on behalf of the Aggrieved Employees.
11 Additionally, by contacting and retaining counsel to pursue these claims, Plaintiffs made this
12 settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the risk
13 of being liable for Defendant's litigation costs if they were unsuccessful. Plaintiffs also exposed
14 themselves to unwanted notoriety related to filing a public lawsuit (discoverable even through a
15 simple google search) for the benefit of other employees, placing Plaintiffs at risk of discrimination
16 by future prospective employers. Among taking many other actions assisting in the successful
17 litigation of this case, both Plaintiffs provided substantial factual information to their counsel,
18 participated in numerous phone calls and meetings with counsel to discuss the case, and generally
19 kept up to speed and informed on the progress of their respective cases. The incentive payments to
20 Plaintiffs are appropriate and justified as part of the Settlement. [Crosner Decl., ¶ 53; Declaration
21 of Lauren Edwards, ¶¶ 2-9; Declaration of Jaron Haygood, ¶¶ 2-9.]

22 Accordingly, Plaintiffs submit the amounts sought are well within the range of
23 reasonableness for such awards in other wage and hour actions. See Staton v. Boeing (9th Cir.
24 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive
25 payments ranging from \$2,000 to \$25,000); Torchia v. W.W. Grainger, Inc. (E.D. Cal. 2014)
26 304 F.R.D. 256 (approving \$7,500 incentive award).

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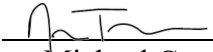
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1 **VIII. CONCLUSION**

2 For the foregoing reasons, Plaintiffs request the Court approve the proposed settlement under
3 PAGA, approve the requested award of reasonable attorney's fees and costs, approve the requested
4 service award to Plaintiffs in the amount of \$7,500 each, approve Simpluris, Inc. as the settlement
5 administrator and approve is fees in the amount of \$8,000, approve the proposed distributions to the
6 LWDA and Aggrieved Employees, and enter judgment.

7
8 Dated: January 27 2023

CROSNER LEGAL, PC

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10 By: 
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12 Zach Crosner
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