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9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SAN BERNARDINO**
12

13 PEARL VARGAS DENAULT, as an
14 individual and on behalf of all others similarly
aggrieved,

15 Plaintiffs,

16 v.

17 LEWIS MANAGEMENT CORP., a Delaware
18 corporation; JOHN M. GOODMAN, an
individual; and DOES 1-50, inclusive,

19
20 Defendants.
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CASE NO. CIVSB2107487

Assigned for All Purposes to:
Hon. Christian Towns
Dept. S26

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 Nikki Trenner,
Pearl Vargas Denault, and Sean Hartranft;
[Proposed] Order]

Date: April 30, 2025
Time: 8:30 a.m.
Dept. S26

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1 **I. INTRODUCTION**

2 Plaintiff Pearl Vargas Denault hereby seeks Court approval of a proposed settlement of
3 claims brought under the Private Attorneys General Act (“PAGA”) against defendants Lewis
4 Management Corporation and John M. Goodman (together “LMC” or “Defendant”). Consistent
5 with PAGA, the proposed settlement releases claims under PAGA only and has no impact on the
6 individual claims of any aggrieved employee other than Plaintiff Denault. Since the settlement
7 resolves nothing more than claims under PAGA, it requires only a one-step review and approval
8 process by the Court, and for the reasons discussed below, Plaintiff now seeks the Court’s approval
9 of the Settlement as fair, reasonable and adequate, and consistent with PAGA’s underlying purposes.

10 **II. BACKGROUND**

11 Defendant LMC owns and manages a number of multi-unit apartment residential complexes
12 in California and Nevada. Plaintiff Denault began working for LMC as a Leasing Consultant at
13 Defendant’s Rosewood apartment complex in Redlands, California in and around July 15, 2019, until
14 her termination in April 2020. Plaintiff greeted and attended to inquiries of prospective and current
15 residents, provided property tours, reviewed lease documents and terms with prospective and current
16 residents, maintained resident records, answered phones, and provided general reception and customer
17 service. She typically worked from 9 am to 6 pm, five to six days per week. [Declaration of Nikki
18 Trenner (“Trenner Decl.”), ¶ 4.]

19 Plaintiff alleges Defendant failed to pay all wages due in several ways. First, she alleges time
20 punches were rounded off to the nearest 10 minutes and that the rounding was implemented in the
21 employer’s favor so that employees suffered an overall loss of compensable hours worked. She also
22 alleges Defendant failed to pay for meal period premiums at the correct rate, as Defendant paid such
23 premiums at the base hourly rate rather the regular rate of pay that incorporated commissions,
24 bonuses, and other compensation. Plaintiff further alleges she was routinely denied the opportunity
25 to take rest and meal periods, or provided with non-compliant breaks. In particular Plaintiff
26 consistently received late meal breaks, and second meal breaks occurred rarely if ever. Per Plaintiff,
27 rest breaks also were provided sporadically and/or did not last a full net 10 minutes. Lastly, Plaintiff
28

1 alleges she was required to use her personal phone for company business, such as communicating
2 with supervisors while on the clock [Trenner Decl., ¶ 5.]

3 Based on these allegations, and after appropriate notice to the Labor & Workforce
4 Development Agency (“LWDA”),¹ Plaintiff filed her PAGA-only complaint on March 18, 2021,
5 seeking civil penalties for the following alleged wage and hour violations: (a) failure to pay wages,
6 including overtime wages; (b) failure to provide meal and rest periods; (c) failure to provide
7 complete and accurate wage statements; and (d) waiting time penalties. Plaintiff filed the matter on
8 behalf of aggrieved employees defined to include all non-exempt employees of LMC during the
9 relevant PAGA time frame (June 15, 2019 to November 9, 2021). [Trenner Decl., ¶ 6.]

10 LMC has at all times denied Plaintiff’s allegations and maintained it properly tracked
11 employee time and calculated and paid all wages due, that its meal and rest break and payroll policies
12 and procedures comply with California law, that it provided the class members with required meal
13 and rest breaks and further paid premium wages for documented violations, and that any use of
14 personal phones was unnecessary and for the employee’s convenience only. Additionally, LMC
15 strongly contends the case cannot be maintained as a representative action as, to the extent aggrieved
16 employees missed meal and/or rest breaks, it was intermittent and infrequent and evidence of such
17 missed breaks would be purely anecdotal, and therefore individualized issues predominate, which
18 would render a trial under PAGA unmanageable. [Trenner Decl., ¶ 7.]

19 After Plaintiff filed her complaint, Defendant successfully moved to compel the matter to
20 arbitration, and the Court ordered her individual claims to arbitration and stayed the representative
21 PAGA claims. Since then, the Parties have been arbitrating before Deborah A. David, Esq., with
22 JAMS. Ultimately, upon discussing the merits of the case and engaging in several meet and confer
23 sessions, the Parties agreed to mediate, including the representative PAGA claims. The Parties
24 further agreed to a protocol for exchanging additional documents and information before the
25 mediation. Through this formal and informal discovery, Defendant provided Plaintiff with
26 information including, inter alia, the number of potential aggrieved employees, the number of
27 aggregate pay periods, pay stubs and time records for a random sampling of the aggrieved

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¹ A copy of Plaintiff’s PAGA notice letter is attached to the Trenner Declaration as Exhibit 3.

1 employees, employee handbooks and manuals, and relevant policy documents on Defendant's time
2 keeping and reporting policies, etc. Plaintiff had that information reviewed by Berger Consulting
3 Group to assist with evaluating potential violation rates, potential damages, etc. [Trenner Decl., ¶ 8.]

4 The parties then attended a full day mediation before highly-regarded mediator Steve Mehta,
5 Esq., who has extensive experience mediating wage and hour class and PAGA actions. Before and
6 during the mediation, Plaintiff and her counsel analyzed, researched, and investigated the potential
7 issues, including matters related to the calculation of damages, trial, and appellate issues and risks.
8 During mediation, the Parties vigorously debated the likelihood of Plaintiff's ability to proceed on a
9 representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and Defendant's
10 defenses, and the parties' data analyses and conclusions based on data provided by Defendant. After
11 a contentious full day of negotiations, the Parties were able to reach agreement on all major issues.
12 The Parties then reduced their agreement to an MOU and subsequently formalized the tentative
13 settlement in the settlement agreement now before the Court. [Trenner Decl., ¶ 9.] A fully executed,
14 true and correct copy of the Parties' PAGA Settlement Agreement ("Settlement Agreement") is
15 attached to the Trenner Declaration as Exhibit 1.

16 **III. SUMMARY OF SETTLEMENT TERMS**

17 **A. Terms of the Settlement and Distribution of PAGA Penalties**

18 Under the settlement, Defendant will pay a non-reversionary settlement amount of
19 \$1,200,000 (the "Gross Settlement Amount" or "GSA"), inclusive of payments to the LWDA and
20 Aggrieved Employees, costs of settlement administration, and reasonable attorney's fees and costs.²
21 After payment of settlement administration costs, and reasonable attorney's fees and costs from the
22 GSA, Plaintiff presently estimates about \$768,180.57 will remain (the "Net Settlement Amount" or
23 "NSA"). Seventy-five percent of the NSA (about \$576,135.43) will go to the LWDA, and the
24 remaining twenty-five percent (about \$192,045.14) will be distributed to the Aggrieved Employees
25 in proportion to the total number of Eligible Pay Periods each individual worked during the PAGA
26 Period. The average award currently is estimated at about \$160, while awards will range from a

27 ² As discussed below, Plaintiff's Counsel seeks a fee equal to one-third of the GSA, or \$400,000, and reimbursement
28 of actual litigation costs of \$23,819.43. Settlement administration costs will be \$8,000.

low of around a \$3.49 to a high of about \$395. Finally, Plaintiff is agreeing to a separate individual settlement to resolve her individual claims and the pending arbitration, and is not requesting a service award. [Trenner Decl., ¶ 10.]

B. Payment and Notice

The Parties propose using Apex Class Action, LLC as the Settlement Administrator. Apex has extensive experience administering PAGA settlements, and has agreed to cap its fees at \$8,000.00. Within 14 days of the Settlement's Effective Date, LMC will fund the settlement and then Apex will mail a Notice and settlement check to all Aggrieved Employees via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in LMC's records. Aggrieved Employees need not submit claim forms and will automatically receive a Notice and settlement check. Settlement checks will be negotiable for 180 days, after which time any unclaimed residual funds will be forwarded to the California State Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 11; Exh. 2.]

C. 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 v. Superior Court (2009) 46 Cal.4th 969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty claims brought under PAGA. Under Arias, the order the Parties request the Court enter is intended to be "binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." While Plaintiff is entering into a general release any and all claims against Defendant, the Settlement Agreement protects the rights of the Aggrieved Employees to bring their own individual claims should they wish. For these reasons, the Parties contend the release narrowly applies only to the PAGA claims alleged or that could have been alleged, based on the facts alleged in the operative complaint. [Trenner Decl., ¶ 12.]

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

3 PAGA requires the Court “review and approve any settlement of any civil action filed
4 pursuant to this part.” Labor Code § 2699(l)(2). Not long ago, Moniz v. Adecco USA, Inc. (2021)
5 72 Cal.App.5th 56 defined the standard for courts to apply when reviewing settlements under
6 PAGA. The court held a trial court must ensure that the settlement is “fair, reasonable, and adequate
7 in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and to
8 maximize enforcement of state labor laws.” Id.

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

21 **A. Nature of the Alleged Violations**

22 First, Plaintiff contends Defendant had a policy of rounding off employee time punches to
23 the nearest 1/6 of an hour, and that the rounding as implemented resulted in an overall loss of
24 compensable time to the employees. Recently, a California appellate court reversed a trial court’s
25 order granting the employer summary judgment on a time rounding claim, holding that “[u]nder the
26 guidance and direction of *Troester* and *Donohue*, which [the] court must follow as an intermediate
27 court, if an employer, as in this case, can capture and has captured the exact amount of time an
28 employee has worked during a shift, the employer must pay the employee for ‘all the time’ worked.”

1 Delmer Camp v. Home Depot USA, Inc. (2022) 84 Cal.App.5th 638, 660. Plaintiff likewise alleges
2 LMC captured employee time to the minute but nevertheless failed to pay for such time. [Trenner
3 Decl., ¶ 13.]

4 Plaintiff next alleges LMC failed to pay for meal period premiums at the “regular rate of
5 pay” as required by Ferra v. Loews Hollywood Hotel, LLC, 11 Cal. 5th 858 (2021). As part of
6 Plaintiff’s and the aggrieved employees’ pay, Defendant paid various commissions based on the
7 number of new leases that were signed, referrals that were received, leases that were renewed, etc.,
8 and based on the number of units in each designated apartment complex; as well as quarterly
9 bonuses. While Defendant did incorporate these payments into the regular rate calculation when
10 paying overtime wages, it failed to do so when paying for break premiums. [Trenner Decl., ¶ 14.]

11 Plaintiff also contends Defendant failed to provide Aggrieved Employees with compliant
12 meal periods and utilized a policy that failed to comply with California law. In particular, Plaintiff
13 alleges Defendant did not schedule meal periods to begin until after the fifth of work and accordingly
14 many meal periods were untimely and required a premium payment. She further alleges second meal
15 periods on shift of 10+ hours were provided only rarely, and that both meal and rest breaks could
16 be interrupted by management. She also contends rest breaks frequently were not provided at all, or
17 that employees did not receive a full 10 minutes for their rest breaks. [Trenner Decl., ¶ 15.]

18 On the unreimbursed expense claim, Plaintiff alleges she and other employees were required
19 to use the personal phones to, inter alia, communicate with supervisors and also to take pictures of
20 the any issues they found in the apartment complex. Per Plaintiff, she received no reimbursement
21 for using her own phone for work purposes. Cochran v. Schwan’s Home Services, Inc. (2014) 228
22 Cal.App.4th 1137, 1144. “[T]o be in compliance with section 2802, the employer must pay some
23 reasonable percentage of the employee’s cell phone bill.” [Trenner Decl., ¶ 16.]

24 Lastly, Plaintiff also brings claims derivative of the foregoing claims, including a derivative
25 wage statement claim based on the failure to pay all wages due, and failure to pay all wages due and
26 owing upon separation of employment under Labor Code §§ 201-203. [Trenner Decl., ¶ 17.]

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1 **B. Number of Alleged Violations and Potential Penalties**

2 Based on the data and information provided by Defendant, and with her expert's assistance
3 and analysis, Plaintiff estimated Defendant's maximum PAGA exposure at approximately
4 \$24,648,600. This estimate includes approximately \$5,503,800 in civil penalties on the unpaid wage
5 claims for time rounding, about \$567,000 in civil penalties on the regular rate claims, approximately
6 \$2,004,700 in civil penalties for the meal period claims, about \$5,503,800 on the rest period claims,
7 approximately \$5,503,800 in civil penalties on the unreimbursed expense claims, approximately
8 \$5,503,800 in civil penalties on the inaccurate wage statement claim, and approximately \$61,700
9 on the unpaid final wages claim. [Trenner Decl., ¶¶ 18-19.]

10 **C. The Settlement Meets the Hanlon and Kullar Factors, Including the Strength of**
11 **Plaintiff's Case, The Discovery Performed, and Amount Offered in Settlement**

12 On the unpaid wage claim, Defendant argued its time keeping policies accurately tracked
13 and paid for all hours worked by its employees. It further emphasized that any time rounding
14 was entirely neutral in its overall effect and did not deprive employees of any compensable
15 hours worked consistent with See's Candy Shops, Inc. v. Superior Court (2012) 210 Cal.App.4th
16 889. [Trenner Decl., ¶ 20.]

17 For the meal and rest break claims, Defendant offered multiple defenses. First, it
18 emphasized its written meal and rest break policy generally was compliant, that it authorized
19 and permitted all necessary breaks, and that employees received full uninterrupted lunch
20 periods. While Plaintiff's review of the time records suggested a substantial violation rate for
21 late and short meal breaks, Defendant countered that even to the extent this occurred, it was in
22 violation of company policy and would require significant individual inquiries to determine the
23 reasons underlying any such alleged violations and whether it was by employee choice or some
24 other reason. Thus, per Defendant, any trial would be unmanageable. Defendant also
25 emphasized in paid thousands of dollars in meal period premiums when any meal period
26 violation allegedly occurred. [Trenner Decl., ¶ 21.]

27 As with meal breaks, Defendant argues its rest break policies complied with California law
28 and authorized and permitted employees to take all required breaks. Defendant further contended
that, in light of the fact that it is not required to maintain a record of rest periods, any evidence of

1 failure to authorize rest periods and/or discouragement from taking rest periods would be purely
2 anecdotal and individual issues would predominate on liability. Defendant also may contend that it
3 is only liable if Plaintiff can prove, on a shift-by-shift basis, the aggrieved employees actually did
4 not receive a fully compliant rest break. This arguably would once again make a trial
5 unmanageable since the number of instances an employee missed a rest break would have to be
6 tested on a case by case basis to determine compliance. [Trenner Decl., ¶ 22.]

7 For the expense reimbursement claim, Defendant argued there would be no conceivable
8 need for employees to use their own phones to talk to management while working, and that any
9 pictures of maintenance issues were taken on the employee's own initiative and were not required
10 in any way. Thus, per Defendant, use of personal phones was for personal convenience only and
11 not required, and not reimbursable under Labor Code § 2802. [Trenner Decl., ¶ 23.]

12 Plaintiff also alleged derivative violations of Labor Code § 226 (wage statement
13 violations) and §§ 201-203 (waiting time penalties). The derivative wage statement claims and the
14 waiting time penalties claim are based on the primary unpaid wage and meal/rest break claims,
15 and will rise or fall along with the primary claims, in addition to being subject to "good faith" and
16 other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th
17 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even
18 though the class prevailed on the merits on the underlying claim for failing to pay living wages).
19 Accordingly, Plaintiff had to discount the value of these claims significantly in light of these
20 multiple potential defenses. Defendant also contended a substantial discount should be applied to
21 the civil penalties for these derivative (i.e., "stacked") violations, as it would be unfair to penalize
22 Defendant multiple times for the same violation. [Trenner Decl., ¶ 24.]

23 Finally, Defendants emphasized PAGA gives the Court wide latitude to reduce the civil
24 penalties "based on the facts and circumstances of a particular case" if "to do otherwise would
25 result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(h).
26 Further, several state and federal courts in California have applied significant reductions to PAGA
27 civil penalties even after plaintiff prevailed on the merits. In Fleming v. Covidien (C.D. Cal.
28 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court reduced the potential

1 penalties by over 82% after a bench trial. More recently, in Carrington v. Starbucks Corp. (2018)
2 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of just \$5 per pay period,
3 a 90% reduction, which decision was upheld on appeal. See also In re Taco Bell Wage and Hour
4 Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).
5 [Trenner Decl., ¶ 25.]

6 Thus, Defendant raised various and multi-layered defenses to each of Plaintiff's claims,
7 anyone of which, if successful, could have decimated Plaintiff's case. And Defendant vowed to
8 raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with this
9 litigation, and it could have taken years to realize any recovery in this action along with the
10 possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be
11 unmanageable, Defendant also intended to raise additional defenses on damages, including the
12 proper measure of civil penalties and the appropriate discount to place on any assessment of such
13 penalties. [Trenner Decl., ¶ 26.]

14 Although Plaintiff's counsel believes they could have prevailed, there was no such
15 guarantee. When the risks of overcoming a manageability defense and prevailing at trial on the
16 merits are factored into the equation, the settlement value is reasonable and supported. Notably,
17 the proposed settlement equates to significant portion of the estimated maximum theoretical
18 liability, as discussed above. Of course, to recover those sums Plaintiff would have to shoot the
19 moon and win both liability and maximum penalties on all claims for every single pay period at
20 issue, which outcome, for the reasons discussed, is unlikely. Given Defendant's procedural and
21 merits defenses, as well as the substantial penalty reductions ordered in the cases above – which
22 occurred after trial – the proposed settlement is eminently reasonable. [Trenner Decl., ¶ 27.]

23 Importantly, the mere fact that a settlement does not provide the same recovery as might be
24 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
25 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed
26 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
27 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
28 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven

1 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
2 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
3 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane
4 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is
5 fundamentally fair . . . is different from the question whether the settlement is perfect in the
6 estimation of the reviewing court”); White v. Experian Information Solutions, Inc. (C.D. Cal.
7 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
8 though it represented 99% discount off the maximum value of the claims).

9 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
10 the probability of appeal of a favorable judgment, and the Court’s substantial discretion to reduce
11 any penalty award all are accounted for, it is clear a settlement amount of \$425,000 for the PAGA
12 claims is within the ballpark of reasonableness, and approval is appropriate. Jennings v. Open
13 Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *7 (approving
14 settlement with PAGA penalties of 0.6% where “[p]laintiffs [have] submitted the settlement
15 agreement to the LWDA, and the LWDA has not objected to the settlement”).

16 **V. SUBMISSION TO THE LWDA**

17 Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and
18 notified the LWDA of this approval hearing. [Trenner Decl., ¶ 28; Exh. 4.] Accordingly, the
19 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
20 approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA
21 settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL
22 3669607, at *3 (court inferred the LWDA’s non-response as “tantamount to its consent to the
23 proposed settlement terms, namely the proposed PAGA penalty amount.”); Jennings, 2018 WL
24 4773057, at *9 (“Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has
25 not objected to the settlement.”); Jordan, 2018 U.S. Dist. LEXIS at *7 (“Additionally, the Court
26 finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and
27 no comment or objection has been received.”).

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

2 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
3 that benefits the LWDA and Aggrieved Employees, one-third of the gross settlement, or \$400,000,
4 is allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs. These
5 fees are warranted under the law and within the range of fees commonly awarded in similar cases.

6 **A. Plaintiff's Counsel Are Entitled to Recover Attorney's Fees Under the Common Fund Doctrine**

7 PAGA provides a Plaintiff is entitled to recover reasonable attorney's fees, expenses, and
8 costs under Labor Code § 2699(g)(l): "Any employee who prevails in any action shall be entitled to
9 an award of reasonable attorney's fees and costs," Reasonable attorney's fees and costs are
10 typically awarded under the common fund doctrine in a *qui tam* such as this one, where, as here, the
11 litigation creates a common fund of money in a specific amount for the benefit of others.

12 "A *qui tam* action is one brought under a statute that allows a private person to sue as a
13 private attorney general to recover damages or penalties, all or part of which will be paid to the
14 government." People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487, 491-
15 492. As our Supreme Court recently affirmed, a PAGA action is a *qui tam* action because the statute
16 allows the employee plaintiff, acting as the proxy of the State's labor law enforcement agency, to
17 sue his or her employer for Labor Code violations and recover civil penalties that otherwise could
18 only be assessed and collected by the LWDA. Kim v. Reins Int'l California, Inc. (2020) 9 Cal.5th
19 73; Iskanian, 59 Cal.4th at 380-82 ("[a] PAGA representative action is therefore a type of *qui tam*
20 action"). Indeed, the majority of the civil penalties recovered in a PAGA action are paid to the State,
21 with a smaller portion paid to the aggrieved employees (e.g. 75% paid to the state; 25% paid to the
22 aggrieved employees). Lab. Code § 2699(i). Where a common fund is created in a *qui tam* action
23 by the successful litigation of a plaintiff, the plaintiff's attorneys are entitled to recover their fees
24 from the common fund. Bank of America v. Cory (1985) 164 Cal.App.3d 66, 89-91.

25 Through the successful efforts of Plaintiff and her attorneys here, a common fund was
26 created in the amount of \$1,200,000 for the benefit of the Aggrieved Employees and the State. Thus,
27 these beneficiaries should bear their share of the costs and attorney's fees out of the overall recovery
28

1 under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478-482; Six (6)
2 Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

3 Not long ago, the California Supreme Court upheld the use of the common fund theory of
4 recovery for attorney's fees in Laffitte v. Robert Half Int'l Inc. (2016) 1 Cal.5th 480, 506. There,
5 the Court upheld an award of attorney's fees of one-third of the \$19 million gross settlement (*e.g.*,
6 awarded \$6.33 million in fees) under the common fund theory of recovery. Lafitte is consistent
7 with prior decisions recognizing "when a number of persons are entitled in common to a specific
8 fund, and an action brought by ... plaintiffs for the benefit of all results in the creation or preservation
9 of that fund, such ... plaintiffs may be awarded attorneys' fees out of the fund." Serrano v. Priest
10 (1977) 20 Cal.3d 25, 34; Boeing, 444 U.S. at 478 ("[A] lawyer who recovers a common fund ... is
11 entitled to reasonable attorneys' fees from the fund as a whole"); Lealao v. Beneficial California, Inc.
12 (2000) 82 Cal.App.4th 19, 26 ("[f]ee spreading occurs when a settlement or adjudication results in
13 the establishment of a separate or so-called common fund for the benefit of the class").

14 Accordingly, the common fund doctrine allows a court to award attorney's fees based on a
15 percentage of the total fund created when the fund consists of a "certain or easily calculable sum of
16 money," and California law has long applied the percentage of the recovery method for awarding
17 attorney's fees where a common fund is established. Serrano, 20 Cal.3d at 34; Bell v. Farmers Ins.
18 Exch. (2004) 115 Cal.App.4th 715, 726; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794,
19 1809; Sanders v. City of Los Angeles (1970) 3 Cal.3d 252, 261-63 (affirming award of attorney's
20 fee based on percentage of recovery).

21 Awarding attorney's fees of one-third of gross common fund amount is favored by California
22 courts when a fund established for the common benefit of others is involved, such as here.
23 Accordingly, awarding fees on this basis out of the \$1,200,000 GSA, for a total of \$400,000, is
24 reasonable and appropriate. [Trenner Decl., ¶¶ 29-49.]

25 **B. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award**

26 Despite the recognized limitations of the so-called lodestar method, some California and
27 federal courts acknowledge the utility of a lodestar "cross-check" when assessing a proposed
28 percentage-based fee award. Lealao, 82 Cal.App.4th at 46-47. Under the "lodestar multiplier"

1 method of cross-checking proposed fee awards, the court first ascertains counsel's total "lodestar"
2 amount by multiplying the number of hours reasonably expended by each attorney's reasonable
3 hourly rate, and then enhances or reduces this lodestar figure by a "multiplier" to account for a range
4 of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree of
5 success achieved. PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-96; Lealao, 82
6 Cal.App.4th at 43 (court has discretion to use a multiplier to ensure that the "fee awarded is within
7 the range of fees freely negotiated in the legal marketplace in comparable litigation").

8 Here, Crosner Legal's lodestar is approximately \$237,350, based on 322.7 attorney hours
9 spent litigating the case. [Trenner Decl., ¶¶ 33-50; Exh. 5.] This results in a modest lodestar
10 multiplier of 1.08, which is justified, reasonable and appropriate. [Id.] Indeed, California courts
11 routinely approve multipliers in the in the 2-4 range to compensate for the time and contingent
12 risk of these types of cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming
13 attorney's fee award including an upward multiplier of 2.5); Wershba v. Apple Computer, Inc.
14 (2001) 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher"); City of
15 Oakland v. Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).

16 It also is important to note this fact serves to highlight the reasonableness of the fees
17 requested on a percentage-of-the-recovery basis, as it shows the requested fees are within striking
18 distance of the market rate for the services rendered if those services are valued via traditional hourly
19 billing, and that the nominal enhancement requested adequately compensates counsel for the
20 contingent risk assumed and the delay in payment, and represents a fair return on the contingency.
21 [Trenner Decl., ¶¶ 49-50.]

22 C. The Requested Costs Are Reasonable

23 Plaintiff's Counsel requests reimbursement of actual out-of-pocket expenses incurred to
24 prosecute this action. These expenses were incidental and necessary to the effective representation
25 of the employees, and Plaintiff's Counsel is permitted to recover their litigation costs and expenses
26 under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35 (common
27 fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego
28 (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund "[o]f necessity,

1 and for precisely the same reasons discussed above with respect to the recovery of attorneys' fees
2 by ... [Plaintiffs'] attorneys"). Furthermore, Plaintiff's Counsel is entitled to recover "those out-of-
3 pocket expenses that would normally be charged to a fee-paying client." Harris v. Marhoefer (9th
4 Cir. 1994) 24 F.3d 16, 19.

5 While the Settlement Agreement authorizes litigation costs not to exceed \$27,000, Plaintiff's
6 Counsel's actual costs presently are \$23,819.43. [Trenner Decl., ¶¶ 51-52.] This includes filing fees,
7 service of process, mediation costs, postage, and expert consultant fees, while waiving photocopying
8 costs and legal research charges. These costs are reasonable and uncontested, and should be
9 approved.

10 **VII. CONCLUSION**

11 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement under
12 PAGA, approve the requested award of reasonable attorney's fees and costs, approve Apex Class
13 Action, LLC as the settlement administrator and approve its fees in the amount of \$8,000, approve
14 the proposed distributions to the LWDA and Aggrieved Employees, and enter its Order of final
15 approval and judgment thereon.

16
17 Dated: January 23, 2025

CROSNER LEGAL, PC

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