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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

12 SENECCA VAUGHN, as an individual and on
13 behalf of all others similarly aggrieved,

14 Plaintiff,

15 v.

16
17 PUBLIC HEALTH FOUNDATION
18 ENTERPRISES, INC., a California domestic
nonprofit; BLAYNE CUTLER, an individual;
19 and DOES 1-50, inclusive,

20 Defendants.
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CASE NO. 21STCV18512

Assigned for All Purposes to:
Hon. Gregory Keosian
Dept. 61

**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 Chad
Saunders, Senecca Vaughn, Rickey
Vedilago, and Eric Springer; [Proposed]
Order]**

Date: October 17, 2023
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1 **I. INTRODUCTION**

2 Plaintiffs Senecca Vaughn and Rickey Vedilago (“Plaintiffs”) hereby seek Court approval
3 of a proposed settlement of claims brought under the Private Attorneys General Act (“PAGA”)
4 against defendants Public Health Foundation Enterprises, Inc. dba Heluna Health (“Heluna” or
5 “Defendant”). Consistent with PAGA, the proposed settlement releases claims under PAGA only
6 and has no impact on the individual claims of any alleged aggrieved employee. 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, the proposed settlement is fair,
9 reasonable, adequate, and advances the purposes underlying PAGA. Plaintiffs respectfully request
10 the Court approve the Settlement in its entirety.

11 **II. BACKGROUND**

12 Defendant Heluna Defendant contracts with state and local agencies to provide consulting
13 and support to public health programs throughout California. Plaintiff Vaughn worked for
14 Defendant as an outreach specialist in San Francisco for Defendant’s homelessness program, while
15 Plaintiff Vedilago worked for Heluna Health as an hourly paid employee for several years, from
16 about 2015-2022. He likewise worked as an outreach worker providing information and assistance
17 to the homeless in San Francisco. [Declaration of Chad Saunders (“Saunders Decl.”), ¶ 4.]

18 Plaintiffs contend Defendant failed to provide Plaintiff and the allegedly aggrieved
19 employees with compliant meal periods for several reasons. First, Plaintiffs allege Defendant failed
20 to provide compliant meal periods, and that review of time records shows numerous “de facto”
21 violations for meal periods that were late (i.e., after the fifth hour of work), cut short, or not provided
22 at all. That same review of time records also suggests an “auto deduct” policy whereby the times
23 recorded for meal periods are always exactly 30 minutes regardless of whether the meal period was
24 taken or whether it lasted a full 30 minutes. Plaintiffs likewise contend they and other employees
25 did not receive fully compliant rest periods due to similar de facto violations for missed and non-
26 compliant breaks. [Saunders Decl., ¶ 5.]

27 Plaintiff next contend a failure to pay all required overtime wages, as during the PAGA
28 Period paid overtime to some employees based on an Alternative Workweek Schedule (AWS”) that

1 was never adopted by the employees as required by the Labor Code and Wage Order. Per the
2 Department of Industrial Relation's Alternative Workweek Elections Database, the only 5 of
3 Defendant's programs in California have adopted an AWS, however Heluna paid overtime based
4 on an AWS to employees in other programs (i.e., only paid daily overtime after 10 hours), including
5 Plaintiff Vaughn. Consequently, Plaintiffs allege Defendant violated Labor Code § 510 by failing
6 to pay daily overtime for all hours worked over 8 in a day for employees not subject to an AWS.
7 [Saunders Decl., ¶ 6.]

8 Plaintiffs next allege Defendant issued wage statements that do not state the "inclusive dates
9 of the period for which the employee is paid" and thus violate the Labor Code on their face.
10 Plaintiffs also allege derivative wage statement violations and derivative violations for failure to
11 timely pay all wages due on separation of employment based on the primary unpaid wage and
12 meal/rest break claims. [Saunders Decl., ¶ 7.]

13 Based on these allegations, and after appropriate notice to the Labor & Workforce
14 Development Agency ("LWDA"),¹ Plaintiff Vaughn filed a PAGA-only complaint on May 17,
15 2021, and filed a First Amended Complaint on June 25, 2021, that removed the demand for a jury
16 trial. The FAC sought only PAGA civil penalties for the following alleged wage and hour
17 violations: (a) failure to pay wages, including overtime wages; (b) failure to provide meal and rest
18 periods; (c) failure to provide complete and accurate wage statements; and (d) waiting time
19 penalties, all on behalf of all individuals employed by Heluna as non-exempt employee in
20 California during the PAGA Period of March 13, 2020 to July 23, 2023. Plaintiffs later filed a
21 Second Amended Complaint on or about September 19, 2023, that added Mr. Vedilago as a party
22 plaintiff and otherwise conform the complaint to the proposed settlement. The SAC is the operative
23 complaint for purposes of settlement. [Saunders Decl., ¶ 8.]

24 Defendant has at all times denied Plaintiffs' allegations and maintained it complied with all
25 relevant provisions of the Labor Code and Wage Orders. Specifically, Defendant contends among
26 other things that Plaintiff and all alleged aggrieved employees were timely paid for all hours worked
27 at the correct hourly rates in conformance with all applicable laws, that it authorized and permitted

28 ¹ Plaintiff's PAGA notice letter is attached as Exhibit 2 to the Saunders Declaration.

1 Plaintiffs and the alleged aggrieved employees to take fully compliant meal and rest periods in
2 accordance with all applicable laws, and that Plaintiffs and the alleged aggrieved employees
3 received accurate and complete itemized wage statements. Defendant also strongly contends the
4 case cannot be maintained as a representative action because among other things Plaintiffs'
5 missed/interrupted/late/short meal and rest period allegations necessarily require detailed
6 individualized assessments and accordingly individualized issues predominate and a trial under
7 PAGA would be unmanageable. [Saunders Decl., ¶ 9.]

8 After Plaintiff Vaughn filed the initial complaint, the Parties then began engaging in
9 discovery, including a pre-certification notice to the allegedly aggrieved employees. Upon
10 discussing the merits of the case and holding several meet and confer sessions regarding prospective
11 law and motion and discovery issues, the Parties agreed to attempt mediation. The Parties further
12 agreed to a protocol for exchanging additional documents and information before the mediation.
13 Through this formal and informal discovery, Defendant provided Plaintiffs with information
14 including, inter alia, the number of potential alleged aggrieved employees, the number of aggregate
15 pay periods, sample pay stubs and time records for around 20% of the alleged aggrieved employees,
16 employee handbooks and manuals, and relevant policy documents on Defendant's time keeping
17 and reporting policies, etc. Plaintiff had that information reviewed by Berger Consulting Group to
18 assist with evaluating potential violation rates, potential damages, etc. [Saunders Decl., ¶ 10.]

19 The parties then attended a full day mediation before highly-regarded mediator Gig
20 Kyriacou, Esq., who has extensive experience mediating wage and hour class and PAGA actions.
21 Before and during the mediation, Plaintiffs and their counsel analyzed, researched, and investigated
22 the potential issues, including matters related to the calculation of damages, trial, and appellate
23 issues and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiffs'
24 ability to proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiffs'
25 claims and Defendant's defenses, and the parties' data analyses and conclusions based on data
26 provided by Defendant. After a contentious full day of negotiations, the Parties were able to reach
27 agreement on all major issues. The Parties then reduced their agreement to an MOU and
28 subsequently formalized the tentative settlement in the settlement agreement now before the Court.

1 [Saunders Decl., ¶ 11.] A true and correct copy of the Settlement Agreement is attached to the
2 Saunders Declaration as Exhibit 1.

3 **III. SUMMARY OF SETTLEMENT TERMS**

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

5 Under the settlement, Defendant will pay a non-reversionary settlement amount of
6 \$1,150,000 (the “Gross Settlement Amount” or “GSA”), which is inclusive of payments to the
7 LWDA and Aggrieved Employees, costs of settlement administration, modest service awards to
8 the Plaintiffs, and reasonable attorney’s fees and costs.² After payment of settlement administration
9 costs, service award and reasonable attorney’s fees and costs from the GSA, Plaintiffs presently
10 estimate about \$730,680.61 will remain (the “Net Settlement Amount” or “NSA”). 75% of the
11 NSA (about \$548,010.46) will go to the LWDA, and the remaining 25% (about \$182,670.15) will
12 be distributed to the Aggrieved Employees in proportion to the total number of Eligible Pay Periods
13 each individual worked during the PAGA Period. The average award currently is estimated at about
14 \$50. [Saunders Decl., ¶ 12.]

15 **B. Payment and Notice**

16 The Parties propose using Simpluris, Inc. (“Simpluris”) as the Settlement Administrator.
17 Simpluris has extensive experience administering PAGA settlements, and has agreed to cap its fees
18 at \$10,000. Within 30 calendar days of the Settlement’s Effective Date, Defendant will fund the
19 settlement. Simpluris thereafter will mail a Notice and settlement check to all PAGA Members via
20 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in
21 Defendant’s records. Recipients need not submit claim forms and will automatically receive a
22 Notice and settlement check. Settlement checks will be negotiable for 180 days, after which time
23 any unclaimed residual funds will be forwarded to the State Controller’s Unclaimed Property Fund.

24 [Saunders Decl., ¶ 13; Exh. 2; Declaration of Eric Springer, ¶¶ 2-9; Exhs. A-C.]

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26 _____
27 ² As discussed below, Plaintiffs’ Counsel seeks a fee equal to one-third (\$383,333.33) of the GSA, and
28 reimbursement of actual litigation costs of \$15,000.00. Plaintiffs are requesting service awards in the amount of
\$5,000.00 each.

1 **C. The Release**

2 The release in the Settlement Agreement narrowly releases only civil penalty claims brought
3 under PAGA, as asserted in Plaintiff’s PAGA notice to the LWDA and the operative Complaint.
4 While Plaintiff is separately entering into a general release of any and all claims against Defendant,
5 the Settlement Agreement protects the rights of the alleged aggrieved employees to bring their own
6 individual claims should they wish. For these reasons, the Parties contend the release narrowly
7 applies only to the PAGA claims alleged or that could have been alleged, based on the factual and
8 legal allegations pled in the operative Complaint. [Saunders Decl., ¶ 14.]

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

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

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

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

2 Plaintiffs allege claims for civil penalties for unpaid wages, meal/rest break violations, and
3 facial wage statement violations, as well as derivative wage statement and waiting time penalty
4 claims. First, Plaintiffs contends Defendant failed to pay Plaintiffs and other allegedly aggrieved
5 employees for all overtime hours worked because Defendant improperly imposed an AWS³ on all
6 employees without complying with the strict requirements under the Labor Code and Wage Orders
7 for adopting an AWS. Per the DIR's Alternative Workweek Elections Database, the only five (5)
8 of Defendant's programs in California have adopted an AWS. However, it paid overtime based on
9 an AWS to employees in other programs, including Plaintiffs. Consequently, Defendant violated
10 Labor Code § 510 by failing to pay daily overtime for all hours worked over 8 in a day for those
11 Aggrieved Employees forced to work under an AWS that was invalid because it had not been
12 properly adopted and implemented. [Saunders Decl., ¶ 15.]

13 Plaintiff also contends Defendant failed to maintain proper meal and rest break policies and,
14 regardless of any written policies, that review of the time/pay records produced shows extensive de
15 facto violations for missed first and second meal periods, as well as late and short meal periods. In
16 fact, Plaintiffs' expert's analysis shows at least 36% of the pay periods at issue have at least one
17 unique meal violation. Further, Plaintiffs' argued that many meal period times appear to be rounded
18 to exactly 30 minutes regardless of the time the Aggrieved Employees actually took their meal
19 breaks. The times recorded for meal periods are always exactly 30 minutes and always at the exact
20 same time for each employee, suggesting Defendant was not properly recording meal periods and
21 "auto-deducting" and/or "rounding" for meal periods regardless of the actual time received by the
22 employee. Donohue v. AMN Servs. (2021) 11 Cal.5th 58, 61 (meal period times may not be
23 rounded). Plaintiff further alleges that during the PAGA period, Defendant failed to provide
24 Plaintiff and the alleged aggrieved employees with rest periods for the same reasons. i.e. numerous
25 de facto violations for missed or otherwise non-compliant breaks. [Saunders Decl., ¶ 16.]

26 On the wage statement claim, Plaintiffs allege Defendant's wage statements violate Labor

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28 ³ This was a 4/10 AWS, where Heluna did not pay daily overtime if any employee worked more than 8 but less than 10 hours.

1 Cose § 226(a) (6) by failing to include the start and end dates for the pay period. Lastly, Plaintiff
2 also brings derivative claims for inaccurate wage statements and failure to pay all wages due and
3 owing upon separation of employment under Labor Code §§ 201-203. [Saunders Decl., ¶ 17.]

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

5 For mediation, Defendant indicated there are approximately 3,651 individuals who fit
6 within Plaintiff's definition of alleged aggrieved employees in California during the relevant PAGA
7 period, and these individuals worked approximately 115,000 pay periods. Based on the data and
8 information provided by Defendant, and with their expert's assistance and analysis, Plaintiffs
9 estimated Defendant's theoretical maximum PAGA exposure at over \$28,000,000. Plaintiffs,
10 however, substantially discounted that number to account for Defendant's procedural and merits
11 defenses, of which there are many. [Saunders Decl., ¶¶ 18-19.]

12 **C. The Settlement Meets the Moniz/Kullar Factors and is Fair, Reasonable and**
13 **Adequate**

14 In response to Plaintiffs' unpaid overtime wage claims for the alleged invalid AWS's,
15 Defendant took in properly applied an AWS only to those individuals working for business units
16 that adopted an AWS in compliance with applicable law, and further argued that otherwise its time
17 keeping policies are legally compliant, that it accurately tracked all hours worked and paid the
18 allegedly aggrieved employees for all hours worked at the correct rates consistent with its compliant
19 payroll policies. [Saunders Decl., ¶ 20.]

20 For the meal and rest break claims, Defendant offered multiple defenses. First, Defendant
21 emphasized that the written meal and rest break policy generally was compliant, that they
22 authorized and permitted all necessary breaks, and that alleged aggrieved employees received full
23 30 minute lunch periods as reflected in the time records. Defendant also argued that even to the
24 extent missed/non-compliant breaks occurred, it was in violation of company policy and would
25 require significant individual inquiries to determine the reasons underlying any such alleged
26 violations and whether it was by employee choice or some other reason. Thus, per Defendant, any
27 trial would be unmanageable on a representative basis because of these individualized issues.
28 [Saunders Decl., ¶ 21.]

1 As with meal breaks, Defendant argued the applicable rest break policies complied with
2 California law and authorized and permitted employees to take all required breaks. Defendant
3 further contended that, in light of the fact that recording rest periods is not required, any evidence
4 of failure to authorize rest periods and/or discouragement from taking rest periods would be purely
5 anecdotal and individual issues would predominate on liability. Defendant also contended that they
6 are only liable if Plaintiff can prove, on a shift-by-shift basis, that each alleged aggrieved employee
7 actually did not receive a fully-compliant rest break. This arguably would once again make a trial
8 unmanageable since the instances an employee missed a rest break would have to be tested on a
9 case by case basis to determine compliance. [Saunders Decl., ¶ 22.]

10 On the wage statement and waiting time waiting time penalty claims, Defendant emphasized
11 that, to the extent they are derivative then they will rise or fall along with the primary claims, in
12 addition to being subject to “good faith” and other defenses available to Defendant. Accordingly,
13 Plaintiff had to discount the value of these claims significantly in light of these multiple potential
14 defenses. Defendant also contended a substantial discount should be applied to the civil penalties
15 for these derivative (i.e., “stacked”) violations, as it would be unfair to penalize Defendant multiple
16 times for the same violation. [Saunders Decl., ¶ 23.]

17 Defendant also emphasized PAGA gives the Court wide latitude to reduce the amount of
18 civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise would
19 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code §
20 2699(e)(2). This is particularly true here where the claims essentially are premised on “de facto”
21 violations and that could prove difficult to establish on a representative basis, and in light of many
22 cases that have imposed substantial discounts on PAGA penalties awarded after trial. In Fleming
23 v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court
24 reduced the potential penalties by over 82% after a bench trial. More recently, in Carrington v.
25 Starbucks Corp. (2018) 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of
26 just \$5 per pay period, a 90% reduction, which decision was upheld on appeal. In re Taco Bell
27 Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties
28 denied after trial). Additionally, no information came to light suggesting that any violations were

1 knowing and willful by Defendant. For these reasons, Plaintiffs believe there is a high likelihood
2 the Court would find imposition of significantly more in penalties would be “unjust, arbitrary, or
3 confiscatory.” [Saunders Decl., ¶ 24.]

4 Thus, Defendant raised various and multi-layered defenses to each of Plaintiffs’ claims, any
5 one of which, if successful, could have decimated Plaintiffs’ case. And Defendant vowed to raise
6 all these defenses at trial. Accordingly, Plaintiffs faced risky issues going forward with this
7 litigation, and it could have taken years to realize any recovery in this action along with the
8 possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be
9 unmanageable, Defendant also intended to raise additional defenses on damages, including the
10 proper measure of civil penalties and the appropriate discount to place on any assessment of such
11 penalties. [Saunders Decl., ¶ 25]

12 Although Plaintiffs and their counsel believe they could have prevailed, there was no such
13 guarantee. When the risks of overcoming a manageability defense and prevailing at trial on the
14 merits are factored into the equation, the settlement value is reasonable and supported. Indeed, to
15 recover maximum penalties Plaintiffs would have to shoot the moon and win on liability as to all
16 claims and convince the Court to award full penalties, which outcome is highly unlikely. Given
17 Defendant’s procedural and merits defenses, as well as the substantial penalty reductions ordered
18 in the cases above – which occurred after trial – the proposed settlement is eminently reasonable.
19 [Saunders Decl., ¶ 26.]

20 Importantly, the mere fact that a settlement does not provide the same recovery as might
21 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
22 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed
23 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
24 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
25 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven
26 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
27 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
28 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane

1 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is
2 fundamentally fair . . . is different from the question whether the settlement is perfect in the
3 estimation of the reviewing court"); White v. Experian Information Solutions, Inc. (C.D. Cal.
4 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable
5 even though it represented 99% discount off the maximum value of the claims).

6 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
7 the probability of appeal of a favorable judgment, and the Court's substantial discretion to reduce
8 any penalty award all are accounted for, it is clear a settlement amount of \$1,150,000 for the
9 PAGA claim is within the ballpark of reasonableness, and approval is appropriate.

10 **V. SUBMISSION TO THE LWDA**

11 Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and
12 notified the LWDA of this approval hearing. [Saunders Decl., ¶ 27; Exh. 4.] Accordingly, the
13 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
14 approval if the LWDA ultimately declines to offer any comment or objection to a proposed
15 PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017
16 WL 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the
17 proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings, 2018 WL
18 4773057, at *9; Jordan v NCI Grp., Inc. (C.D. Cal. Jan. 5, 2018) 2018 U.S. Dist. LEXIS 25297, at
19 *7 ("Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to
20 the proposed settlement and no comment or objection has been received.").

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

22 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
23 that benefits the LWDA and aggrieved employees, one-third of the gross settlement, or
24 \$383,333.33, is allocated to Plaintiffs' counsel for reasonable attorney's fees, plus actual litigation
25 costs. These fees are warranted under the law and within the range of fees commonly awarded in
26 similar cases.

27 /////

28 /////

1 A. **Plaintiffs' Counsel Are Entitled to Recover Attorney's Fees Under the**
2 **Common Fund Doctrine**

3 PAGA provides a plaintiff is entitled to recover reasonable attorney's fees, expenses, and
4 costs under Labor Code § 2699(g)(1): "Any employee who prevails in any action shall be entitled
5 to an award of reasonable attorney's fees and costs," Reasonable attorney's fees and costs are
6 typically awarded under the common fund doctrine in a *qui tam* such as this one, where, as here,
7 the litigation creates a common fund of money in a specific amount for the benefit of others.

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

22 Through the efforts of Plaintiffs and their attorneys here, a common fund was created in the
23 amount of \$1,150,000 for the benefit of the allegedly aggrieved employees and the State. Thus,
24 these beneficiaries should bear their share of the costs and attorney's fees out of the overall recovery
25 under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478-482; Six (6)
26 Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

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

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

19 Awarding attorney's fees of one-third of gross common fund amount is favored by
20 California courts when a fund established for the common benefit of others is involved, such as
21 here. Accordingly, awarding fees on this basis out of the \$1,150,000 GSA, for a total of
22 \$383,333.33, is reasonable and appropriate. [Saunders Decl., ¶¶ 28-47.]

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

24 Despite the recognized limitations of the so-called lodestar method, some California and
25 federal courts acknowledge the utility of a lodestar "cross-check" when assessing a proposed
26 percentage-based fee award. Lealao, 82 Cal.App.4th at 46-47. Under the "lodestar multiplier"
27 method of cross-checking proposed fee awards, the court first ascertains counsel's total "lodestar"
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1 amount by multiplying the number of hours reasonably expended by each attorney's reasonable
2 hourly rate, and then enhances or reduces this lodestar figure by a "multiplier" to account for a
3 range of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree
4 of success achieved. PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-96; Lealao, 82
5 Cal.App.4th at 43 (court has discretion to use a multiplier to ensure that the "fee awarded is within
6 the range of fees freely negotiated in the legal marketplace in comparable litigation").

7 Here, Crosner Legal's lodestar is approximately \$233,375, based on 293.8 attorney hours
8 spent litigating the case. [Saunders Decl., ¶¶ 31-47; Exh. 5.] On a lodestar basis, the fee request
9 of \$383,333.33 results in a multiplier of 1.64, which is an enhancement entirely in line with
10 California law. Indeed, California courts routinely approve multipliers in the in the 2-4 range
11 to compensate for the time and risk of class action cases. Chavez v. Netflix, Inc. (2008) 162
12 Cal.App.4th 43, 66 (affirming attorneys' fee award including an upward multiplier of 2.5);
13 Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); City
14 of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).)
15 Plaintiffs' counsel submits the requested 1.69 multiplier effectively operates to show the
16 percentage fee request is reasonable considering the challenges presented in this contingency
17 fee matter, and appropriately compensates counsel for the contingent risk assumed and delay
18 in payment during the time counsel has been representing Plaintiffs. Thus, the multiplier
19 results in a fee constituting a fair return on the contingency. [Saunders Decl., ¶¶ 28-47.]

20 **C. The Requested Costs Are Reasonable**

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

1 pocket expenses that would normally be charged to a fee-paying client.” Harris v. Marhoefer (9th
2 Cir. 1994) 24 F.3d 16, 19.

3 Plaintiffs’ Counsel’s actual costs presently are \$15,986.06. This includes filing fees, service
4 of process, mediation costs, costs of notice to the aggrieved employees, postage, and expert
5 consultant fees, while waiving photocopying costs and legal research charges. However, since the
6 cap on costs imposed by the Settlement Agreement is \$15,000, Plaintiffs’ counsel requests
7 reimbursement in the amount of \$15,000 only. These costs are reasonable and uncontested, and
8 should be approved. [Saunders Decl., ¶¶ 48-49.]

9 **VII. PLAINTIFFS’ ENHANCEMENT AWARD**

10 Under the Settlement Agreement, Plaintiffs seek incentive awards of \$5,000 each. These
11 requests are reasonable given the much broader release that Plaintiffs are agreeing to, as well as
12 their efforts in this case and the risks each undertook on behalf of the Aggrieved Employees and
13 State. Additionally, by contacting and retaining counsel to pursue these claims, Plaintiffs made
14 this settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the
15 risk of being liable for Defendant’s litigation costs. Plaintiffs also exposed themselves to
16 unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google
17 search) for the benefit of other employees, placing him at risk of discrimination by future
18 prospective employers. Among taking many other actions assisting in the successful litigation of
19 this case, Plaintiff provided substantial factual information to my office, attended numerous
20 meetings with my office to discuss the case, and generally participated in all phases of the
21 litigation. Accordingly, the requested enhancement payments to Plaintiffs are appropriate and
22 justified as part of the Settlement for their service, risks undertaken, and for entering into a full
23 general release. [Saunders Decl., ¶ 50; Declaration of Senecca Vaughn, ¶¶ 2-9; Declaration of
24 Rickey Vedilago, ¶¶ 2-9.]

25 **VIII. CONCLUSION**

26 For the foregoing reasons, Plaintiffs request the Court approve the proposed settlement
27 under PAGA, approve the requested award of reasonable attorney’s fees and costs, approve
28 Simpluris, Inc. as the settlement administrator and approve its fees in the amount of \$10,000,

1 approve Plaintiffs' enhancement awards in the amount of \$5,000 each, approve the proposed
2 distributions to the LWDA and Aggrieved Employees, and enter its Order of final approval and
3 judgment thereon.

4 Dated: September 20, 2023

CROSNER LEGAL, P.C.

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7 _____
8 Zachary Crosner
9 Jamie K. Serb
10 Chad Saunders
11 Attorneys for Plaintiffs Senecca Vaughn and
12 Rickey Vedilago
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