

Jamie K. Serb (SBN 289601)
jamie@crosnerlegal.com
Nikki Trenner (SBN 316007)
nikki@crosnerlegal.com
Zachary M. Crosner (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd., Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

Attorneys for Plaintiffs BLANCA
VILLAGOMEZ, SEAN CRANE,
JENNIFER BEAUSOLEIL, MADISON
PALMER and DENISE ORD

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

BLANCA VILLAGOMEZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

v.

SIMI VALLEY HOSPITAL AND
HEALTHCARE SERVICES, d.b.a.
ADVENTIST HEALTH SIMI VALLEY, a
California corporation; ADVENTIST
HEALTH SYSTEM/WEST, a California
corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: 21STCV38017 (Lead Case)
21STCV43678 (Related Case)

Assigned for All Purposes to:
Hon. Elihu M. Berle
Dept.: 6

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

Date: March 14, 2025
Time: 10:00 am
Dept.: SSC-6

TABLE OF CONTENTS

I.	INTRODUCTION	7
II.	BACKGROUND	7
III.	SUMMARY OF SETTLEMENT TERMS	9
A.	SETTLEMENT TERMS AND DISTRIBUTION OF PAGA PENALTIES	9
B.	PAYMENT AND THE NOTICE	9
C.	THE RELEASE	9
IV.	THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS THE PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL	10
A.	NATURE OF THE ALLEGED VIOLATIONS	11
B.	NUMBER OF ALLEGED VIOLATIONS AND POTENTIAL PENALTIES	12
C.	THE SETTLEMENT MEETS THE KULLAR FACTORS, INCLUDING THE STRENGTH OF PLAINTIFF’S CASE, THE DISCOVERY PERFORMED, AND AMOUNT OFFERED IN SETTLEMENT	13
V.	SUBMISSION TO THE LWDA	16
VI.	PLAINTIFFS’ ENHANCEMENTS ARE REASONABLE	17
VII.	THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE	17
A.	PLAINTIFFS’ COUNSEL ARE ENTITLED TO RECOVER ATTORNEY’S FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM ACTION	18
B.	A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF THE FEE AWARD	20
C.	The Requested Costs Are Fair And Reasonable	20
VIII.	CONCLUSION	21

TABLE OF AUTHORITIES

Page(s)

Cases

7-Eleven Owners for Fair Franchising v. Southland Corp.

(2000) 85 Cal.App.4th 1135 10

Alvarado v Dart Container Corp.

(2018) 4 Cal.5th 770 5

Amaral v. Cintas Corp. No. 2

(2008) 163 Cal.App.4th 1157 8

Arias v. Superior Court

(2009) 46 Cal.4th 969 4

Bank of America v. Cory

(1985) 164 Cal.App.3d 66..... 12

Bell v. Farmers Ins. Exch.

(2004) 115 Cal.App.4th 715 13

Boeing Co. v. Van Gemert

(1980) 444 U.S. 472 12, 13

Carrington v. Starbucks Corp.

(2018) 30 Cal.App.5th 504 9

Chavez v. Netflix, Inc.

(2008) 162 Cal.App.4th 43 14

Clarke v. AMN Servs. Inc.

(9th Cir. 2021) 987 F.3d 848 5

Cochran v. Schwan's Home Service, Inc.

(2014) 228 Cal. App. 4th 1137. [Trenner Decl..] 5

Dunk v. Ford Motor Co.

(1996) 48 Cal.App.4th 1794 13

Echavez v. Abercrombie & Fitch Co., Inc.

(C.D. Cal. Mar. 23, 2017) 2017 WL 3669607 10

1	<u>Fleming v. Covidien</u>	
2	(C.D. Cal. 2011) 2011 U.S.....	9
3	<u>General Atomics v. Superior Court</u>	
4	(2021) 64 Cal. App. 5th 987	8
5	<u>Harris v. Marhoefer</u>	
6	(9th Cir. 1994) 24 F.3d 16.....	15
7	<u>Iskanian, 59 Cal.4th at 380-82</u>	12
8	<u>Kim v. Reins Int’l California, Inc.</u>	
9	(2020) 9 Cal.5th 73	12
10	<u>Kullar v. Foot Locker Retail, Inc.</u>	
11	(2008) 168 Cal.App.4th 116	4
12	<u>Laffitte v. Robert Half Int’l Inc.</u>	
13	(2016)	13
14	<u>Lane v. Facebook, Inc.</u>	
15	(9th Cir. 2012) 696 F.3d 811	10
16	<u>Lealao v. Beneficial California, Inc.</u>	
17	(2000) 82 Cal.App.4th 19	13, 14
18	<u>McKenzie v. Fed. Express Corp.</u>	
19	(C.D. Cal. 2011) 765 F. Supp. 2d 1222 . [Trenner Decl..]	6
20	<u>Moniz v. Adecco USA, Inc.</u>	
21	(2021) 72 Cal.App.5th 56	4
22	<u>PLCM Group, Inc. v. Drexler</u>	
23	(2000)	14
24	<u>Rider v. County of San Diego</u>	
25	(1992) 11 Cal.App.4th 1410	15
26	<u>Sanders v. City of Los Angeles</u>	
27	(1970)	13
28	<u>Serrano v. Priest</u>	
	(1977)	13, 14
	<u>Six (6) Mexican Workers v. Arizona Citrus Growers</u>	
	(9th Cir. 1990) 904 F.2d 1301	13

1	<u>Staton v. Boeing</u>	
2	(9th Cir. 2003) 327 F.3d 938	11
3	<u>People ex rel. Stratham v. Acacia Research Corp.</u>	
4	(2012) 210 Cal.App.4th 487	12
5	<u>In re Taco Bell Wage and Hour Actions</u>	
6	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 . [Trenner Decl..]	9
7	<u>White v. Experian Information Solutions, Inc.</u>	
8	(C.D. Cal. 2011) 803 F.Supp.2d 1086	10
9	<u>White v. Starbucks Corp.</u>	
10	(N.D. Cal. 2007) 497 F.Supp.2d 1080	7
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1	Statutes	
2	Civil Code §§ 1786.....	6
3	Labor Code § 201	6, 8
4	Labor Code § 203	6, 8
5	Labor Code § 226	6, 8
6	Labor Code § 432.5	6
7	Labor Code § 432.7	6
8	Labor Code § 2699(g)(l).....	12
9	Labor Code § 2699(h).....	9
10	Labor Code § 2699(i)	12
11	Labor Code § 2699(l)(2).....	4
12	Labor Code § 2802	8
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiffs Blanca Villagomez, Sean Crane, Jennifer Beausoleil, Madison Palmer, and
3 Denise Ord hereby seek Court approval of a proposed settlement of claims brought under the
4 Private Attorneys General Act (“PAGA”) against Defendants Simi Valley Hospital and
5 Healthcare Services dba Adventist Health Simi Valley and Adventist Health System/West
6 (collectively “Defendant”). Consistent with PAGA, the proposed settlement releases claims under
7 PAGA only and has no impact on the individual claims of any other allegedly aggrieved
8 employee. Since the settlement resolves nothing more than claims under PAGA, it requires only a
9 one-step review and approval process by the Court, and for the reasons discussed below, the
10 proposed settlement is fair, reasonable, and adequate, and advances the statutory purposes of
11 PAGA. Plaintiffs respectfully request the Court approve the Settlement in its entirety.

12 **II. BACKGROUND**

13 Defendant Simi Valley Hospital and Health Care Services is a non-profit community
14 hospital located in Simi Valley, California that provides healthcare services including emergency
15 care, family practice care, women’s services, and children’s services. Plaintiffs all worked for
16 Defendant as non-exempt employees in various job positions during the relevant time frame.
17 [Declaration of Nikki Trenner (“Trenner Decl.”), ¶ 4.]

18 Plaintiff Villagomez provided her PAGA Notice to the LWDA on September 24, 2021.
19 On October 14, 2021, she filed a class action complaint in this Court against Defendant alleging
20 various violations of the Labor Code, and then filed a separate PAGA-only complaint against
21 Defendant on November 30, 2021. On June 13, 2022, the Court issued an order compelling all of
22 Plaintiff Villagomez’s claims to arbitration and staying the class and PAGA actions. Thereafter,
23 Plaintiff Villagomez submitted her individual claims to arbitration with JAMS. The Court also
24 tasked the arbitrator with deciding whether the arbitration agreement permits class and/or
25 representative arbitration, although at this time no ruling has been made regarding the arbitrability
26 of the class or representative PAGA claims. [Trenner Decl., ¶ 5; Exh. 3.]

27 On June 8, 2023, the Parties attended mediation with Louis Marlin, Esq. but were unable
28 to reach a settlement. Thereafter, Plaintiffs Crane, Beausoleil, Palmer, and Ord submitted their

1 PAGA Notice to the LWDA on September 6, 2023. They then submitted individual arbitration
2 demands with JAMS and, on November 14, 2023, they collectively filed a representative PAGA
3 action in Los Angeles County Superior Court (Case No. 23STCV27911). [Trenner Decl., ¶ 6;
4 Exh. 4.]

5 After the Crane plaintiffs filed their separate complaint, the Parties engaged in several
6 meet and confer discussions and ultimately agreed to a second and global mediation. The Parties
7 further agreed to an informal exchange of documents and information before the mediation.
8 Through this informal discovery, Defendant provided Plaintiffs with information including, inter
9 alia, Plaintiffs' personnel files, the number of potential Aggrieved Employees, the number of
10 aggregate pay periods, pay stubs and time records for a sampling of the Aggrieved Employees,
11 and relevant policy documents regarding Defendant's time keeping and reporting policies, among
12 other pertinent materials. [Trenner Decl., ¶ 7.]

13 In July 2024 the Parties mediated the case a second time with Daniel Turner, Esq., another
14 respected employment litigator and neutral with extensive class action/wage and hour experience.
15 Before and during the mediation, Plaintiffs and counsel analyzed, researched, and investigated the
16 potential issues, including matters related to the calculation of damages, trial, and appellate issues
17 and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiffs' ability to
18 proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiffs' claims
19 and Defendant's defenses, and the Parties' data analyses and conclusions based on data provided
20 by Defendant. The case did not settle at mediation, but the parties continued to negotiate through
21 the mediators and were eventually able to reach agreement and subsequently formalized their
22 tentative settlement in the Settlement Agreement now before the Court for approval. [Trenner
23 Decl., ¶ 8.] A fully executed, true and correct copy of the Individual and PAGA Settlement
24 Agreement ("Settlement Agreement") is attached to the Trenner Declaration as Exhibit 1.

25 Plaintiff Villagomez also filed a First Amended Complaint adding Sean Crane, Jennifer
26 Beausoleil, Madison Palmer, and Denise Ord as party-plaintiffs, and the Crane plaintiffs
27 dismissed their separate action. The First Amended Complaint is the operative complaint for
28 purposes of settlement. [Trenner Decl., ¶ 9.]

III. SUMMARY OF SETTLEMENT TERMS

A. SETTLEMENT TERMS AND DISTRIBUTION OF PAGA PENALTIES

Under the settlement, Defendant will pay a non-reversionary settlement amount of \$780,000 (the “Gross Settlement Amount” or “GSA”). The GSA is inclusive all payments to the LWDA and Aggrieved Employees, modest service awards to Plaintiffs, costs of settlement administration (estimated at no more than \$9,790), and reasonable attorney’s fees and costs.¹ After payment of settlement administration costs, the service award, and reasonable attorney’s fees and costs from the GSA, Plaintiffs presently estimate about \$461,096.29 will remain (the “Net Settlement Amount” or “NSA”). Seventy-five percent of the NSA (about \$345,822.22) will go to the LWDA, and the remaining 25% (about \$115,274.07) will be distributed to the Aggrieved Employees in proportion to the total number of Pay Periods each individual worked during the PAGA Period, with an average award currently estimated at about \$73.89 per individual. [Trenner Decl., ¶ 10.]

B. PAYMENT AND THE 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 \$9,790. [Declaration of Sean Hartranft, ¶¶ 2-7; Exhs. A-B.] As noted, Defendant will fund the GSA within 14 days of the Effective Date. Within 14 days of funding, Apex will mail a Notice and settlement check to all Aggrieved Employees via First-Class U.S. Mail, using the most current, known mailing addresses identified in Defendant’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 any unclaimed residual funds will be forwarded to the California State Controller’s Unclaimed Property Fund. [Trenner Decl., ¶ 11.]

C. THE RELEASE

The California Supreme Court has explained that a judgment in “a representative action

¹ Plaintiff’s counsel requests 1/3 of the GSA (\$260,000) in fees and costs of \$24,113.71. Plaintiffs request service awards of \$5,000 each (\$25,000 total) for their service as the named PAGA plaintiffs. Each Plaintiff also is entering into an individual settlement agreement with Defendant in change for full general releases and dismissal of their respective individual arbitrations. [Trenner Decl., ¶ 10.]

1 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004
2 ... is binding not only on the named employee plaintiff but also on government agencies and any
3 aggrieved employee not a party to the proceeding.” Arias v. Superior Court (2009) 46 Cal.4th
4 969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil
5 penalty claims brought under PAGA. Under Arias, the order the Parties request the Court enter is
6 intended to be “binding not only on the named employee plaintiff but also on government
7 agencies and any aggrieved employee not a party to the proceeding.” The Settlement Agreement
8 protects the rights of the Aggrieved Employees to bring their own individual claims should they
9 wish. For these reasons, the Parties contend the release narrowly applies only to the PAGA claims
10 alleged, and the Settlement Agreement specifically provides the PAGA Release is inapplicable to
11 any claims other than those brought under PAGA. [Trenner Decl., ¶ 12.]

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

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

20 In so holding, Moniz noted many federal district courts had imported class action
21 settlement approval principles when evaluating PAGA settlements, demanding that PAGA
22 settlements be “fair, reasonable, and adequate,” and weighing factors such as “the strength of the
23 plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of further
24 litigation, and the settlement amount[.]” Id. at 75-76 (collecting cases). Observing that “PAGA’s
25 purpose” is to “protect the public interest” - especially the allegedly Aggrieved Employees – the
26 Court agreed with this district court authority, concluding that much the same principles that
27 ensure fairness in class action settlements serve the public interest in the PAGA context.
28 Essentially, these factors are more or less identical to those California courts use to evaluate class

1 action settlements per Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116 and,
2 accordingly, Plaintiffs submit they should inform the Court’s analysis as well. For the reasons
3 below, the proposed settlement is fair, reasonable and adequate, advances the purposes underlying
4 PAGA, and should be approved.

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

6 Plaintiffs contend Defendant violated the Labor Code in multiple respects. First, they
7 contend Defendant failed to pay wages for all hours worked, and more specifically that
8 employees performed “off the clock” work both pre- and post-shift, and also had to work while
9 purportedly clocked out for meal periods. For instance, Plaintiffs allege employees had to travel
10 through the hospital to access the time clock in their assigned departments which took, on
11 average, about two minutes each shift, and also regularly had to clock out but continue working if
12 for example they were assisting a patient with care at the end of their shift. [Trenner Decl., ¶ 13.]

13 Plaintiffs also allege Defendant underpaid for certain overtime and sick pay hours by
14 failing to include non-discretionary bonuses and shift differentials into the “regular rate of pay”
15 for purposes of calculating overtime and sick pay. Alvarado v Dart Container Corp. (2018) 4
16 Cal.5th 770; Clarke v. AMN Servs. Inc. (9th Cir. 2021) 987 F.3d 848. Instead, per Plaintiffs,
17 these payments were made based on employees’ base hourly rates and thus were underpaid.
18 [Trenner Decl., ¶ 14.]

19 Plaintiffs also contend Defendant committed meal and rest break violations by among
20 other things requiring employees to remain on the premises and perform work off the clock
21 during meal periods, and failing to pay premium payments for missed, late, and/or short meal
22 periods. Plaintiffs further alleged rest breaks were non-compliant because Defendant required
23 employees to remain on the premises and work through rest periods and further that rest periods
24 did last a net ten minutes. [Trenner Decl., ¶ 15.]

25 On the expense reimbursement claim, Plaintiffs allege employees had pay the costs of
26 laundering and maintaining their work uniforms. They also allege Defendant calls and texts
27 employees on their personal phones for business purposes, and requires employees to access their
28 time and pay records electronically, but does not pay a portion of their cell phone bills. Cochran v.

1 Schwan's Home Service, Inc. (2014) 228 Cal. App. 4th 1137, 1144. [Trenner Decl., ¶ 16.]

2 Plaintiffs also argued Defendant required employees to submit to unlawful financial and
3 criminal background checks as a condition of employment. Here, Plaintiffs allege Defendant
4 failed to properly disclose employees' rights under the federal Fair Credit Reporting Act, 15
5 U.S.C. §§ 1681, *et seq.*, as well under the California Investigative Consumer Reporting Agencies
6 Act, Civil Code §§ 1786, *et seq.*, before performing a background check by including extraneous
7 information being included in Defendant's disclosure forms in violation. Per Plaintiffs, Defendant
8 also required employees to submit to a criminal background check including information
9 regarding arrests in violation of Labor Code § 432.7. Plaintiffs contend this conduct subjects
10 Defendant to penalties under Labor Code § 432.5. [Trenner Decl., ¶ 17.]

11 Plaintiffs next alleged Defendant's wage statements violated Labor Code § 226 on their
12 face, and failed to accurately state total hours worked and the applicable hourly rates of pay. In
13 particular, Plaintiffs argued the wage statements do not provide accurate overtime rates and
14 accurate overtime hours because instead of multiplying the regular rate of pay by one and one-
15 half, Defendant's pay stubs provide multiple rate categories. In other words, Defendant's pay
16 stubs list various categories of hourly rates and two separate categories of total hours. Under this
17 model, the total regular and overtime hours listed in the wage statements, when added together,
18 do not sum up the total hours worked by the employee during the applicable time period.
19 McKenzie v. Fed. Express Corp. (C.D. Cal. 2011) 765 F. Supp. 2d 1222, 1229 (citations omitted).
20 [Trenner Decl., ¶ 18.]

21 Finally, Plaintiffs also bring claims derivative of the foregoing claims, including a
22 derivative wage statement claim based on the failure to pay all wages due, and failure to pay all
23 wages due and owing upon separation of employment under Labor Code §§ 201-203. [Trenner
24 Decl., ¶ 19.]

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

26 For mediation, Defendant indicated it employed approximately 1,620 non-exempt
27 employees in California during the relevant time frame, and these individuals worked
28 approximately 75,583 pay periods during that time. Based on the data provided by Defendant,

1 Plaintiffs estimated Defendant's maximum PAGA exposure at approximately \$38.73 million in
2 civil penalties, including approximately \$7,558,300 on the unpaid wage/off the clock claims,
3 about \$1,820,300 on the regular rate claims, about \$6,575,700 on the meal break claims, about
4 \$7,422,400 on the rest break claims, about \$7,558,300 on the expense reimbursement claims,
5 approximately \$162,000 on the illegal background check claims, about \$7,558,300 on the wage
6 statement claims, and about \$74,900 in civil penalties for failing to timely pay wages on
7 separation of employment. [Trenner Decl., ¶¶ 20-21.]

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

11 In response to Plaintiff's unpaid wage/off the clock claim, Defendant argued its time
12 keeping policies are entirely consistent with California law and did not deprive class members
13 of compensable hours worked. Per Defendant its policies strictly prohibited any "off the clock"
14 work and to the extent any such off the clock occurred it was aberrational and intermittent, and
15 done without the employer's knowledge or consent. White v. Starbucks Corp. (N.D. Cal. 2007)
16 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the
17 clock work). Thus, per Defendant it is not liable for any alleged work performed off the clock.
18 Defendant further argued it correctly calculated and paid for overtime hours as well as break
19 premiums and sick pay, including paying such wages based on the correct "regular rate" of pay.
[Trenner Decl., ¶ 22.]

20 On the meal and rest break claims, Defendant emphasized its written policies are
21 compliant and that it authorized and permitted employees to take all required breaks and thus met
22 its obligations under the law. Defendant further argued its records accurately reflect that
23 employees took timely and compliant meal breaks. Defendant also noted that, in light of its
24 compliant policies, whether a employee missed a meal period, received a late meal period, or
25 missed a rest break would have been aberrational and against company policy. Thus, per
26 Defendant, these issues are not amenable representative treatment since their resolution would
27 require individualized inquiries as to why a break was missed or non-compliant. Employees also
28 must attest at the end of each shift whether they were provided compliant meal and rest periods,

1 and if they indicate they were not, then they are paid a meal or rest period premium payment.
2 Finally, Defendant emphasized it paid thousands in meal period premium payments in its good
3 faith efforts to comply with the law. [Trenner Decl., ¶ 23.]

4 On the expense reimbursement claim, Defendant argued there would be no conceivable
5 need for employees to use their phones for work while on duty in the hospital, and that is policies
6 prohibited cell phone use while on duty with patients. Thus, per Defendant, any use of employee
7 phones while working was against company policy and, to the extent it occurred, was purely for
8 personal convenience and therefore not reimbursable as a “reasonable and necessary” business
9 expense. Defendant likewise contended that if employees laundered their own uniforms it also
10 was a matter of personal preference and not a “necessary” business expense compensable under
11 Labor Code § 2802. [Trenner Decl., ¶ 24.]

12 For the alleged illegal background check claims, Defendant emphasized it complied with
13 all applicable laws regarding the required formatting of the relevant documents and that it made
14 all required disclosures to employees before undertaking any background checks. Thus, per
15 Defendant, there is no conceivable liability resulting from its proper and lawful background check
16 procedures. [Trenner Decl., ¶ 25.]

17 On the alleged violations of Labor Code § 226 (wage statement violations) and §§ 201-
18 203 (waiting time penalties), Defendant argued its wage statements complied with Section 226
19 and provided all required information. As a result, Defendant argued employees could quickly
20 and easily arrive at their total hours worked and applicable rates of pay without resorting to any
21 other documents. General Atomics v. Superior Court (2021) 64 Cal. App. 5th 987. As far as the
22 derivative claims, they will rise or fall along with the primary unpaid wage claims, in addition to
23 being subject to “good faith” and other defenses available to Defendant. Amaral v. Cintas Corp.
24 No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay
25 wages under Labor Code § 203 even though the class prevailed on the merits on the underlying
26 claim for failing to pay living wages). Accordingly, Plaintiff discounted these claims significantly
27 in light of these multiple potential defenses. Defendant also contended a substantial discount
28 should be applied to the civil penalties for these derivative (i.e., “stacked”) violations, as it would

1 be unfair to penalize Defendant multiple times for the same violation. [Trenner Decl., ¶ 26.]

2 Defendant also emphasized PAGA gives the Court wide latitude to reduce the amount of
3 civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise
4 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code §
5 2699(h). Several state and federal courts in California have applied significant reductions to
6 PAGA civil penalties even after plaintiffs prevailed on the merits. In Fleming v. Covidien (C.D.
7 Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court reduced the
8 potential penalties by over 82% after a bench trial. More recently, in Carrington v. Starbucks
9 Corp. (2018) 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of just \$5
10 per pay period, a 90% reduction, which decision was upheld on appeal. In re Taco Bell Wage and
11 Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after
12 trial). [Trenner Decl., ¶ 27.]

13 Thus, Defendant raised various and multi-layered defenses to each of Plaintiffs’ claims,
14 anyone of which, if successful, could have derailed Plaintiffs’ case and Defendant vowed to raise
15 all these defenses at trial. Accordingly, Plaintiffs faced risky issues going forward with litigation,
16 and it could have taken years to realize any recovery in this action along with the possibility of
17 post-trial appeals. In addition to its merits defenses and arguing trial would be unmanageable,
18 Defendant also intended to raise additional defenses on damages, including the proper measure of
19 civil penalties and the appropriate discount to place on any assessment of such penalties. Further,
20 Defendant apparently initiated efforts to make even more certain it was complying with
21 applicable wage and hour laws. [Trenner Decl., ¶ 28.]

22 Although Plaintiffs and counsel believe they could have prevailed, there was no such
23 guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits
24 on all claims, securing the maximum theoretical civil penalties, and appellate risks all are factored
25 into the equation, the settlement value is reasonable and supported. Of course, to recover
26 anywhere near the maximum penalties Plaintiffs would have to shoot the moon and win both
27 liability and maximum penalties on all claims as to each and every pay period at issue, which
28 outcome, for the reasons discussed, is unlikely. Given Defendant’s various procedural and merits

1 defenses, as well as the substantial penalty reductions ordered in the cases above – which
2 occurred after trial – the proposed settlement is reasonable. [Trenner Decl., ¶ 29.]

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

17 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
18 the probability of appeal of a favorable judgment, the Court’s substantial discretion to reduce any
19 penalty award all are accounted for, it is clear a settlement amount of \$780,000 for the PAGA
20 claims is within the ballpark of reasonableness, furthers the purposes underlying PAGA, and
21 approval is appropriate.

22 **V. SUBMISSION TO THE LWDA**

23 Plaintiffs timely served the LWDA with the Settlement Agreement and this Motion, and
24 notified the LWDA of this approval hearing. [Trenner Decl., ¶ 30; Exh. 5.] Accordingly, the
25 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
26 approval if the LWDA ultimately declines to offer any comment or objection to a proposed
27 PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017
28 WL 3669607, at *3 (court inferred the LWDA’s non-response as “tantamount to its consent to the

1 proposed settlement terms, namely the proposed PAGA penalty amount.”); Jennings, 2018 WL
2 4773057, at *9 (“Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has
3 not objected to the settlement.”); Jordan, 2018 U.S. Dist. LEXIS at *7 (“Additionally, the Court
4 finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and
5 no comment or objection has been received.”).

6 **VI. PLAINTIFFS’ ENHANCEMENTS ARE REASONABLE**

7 Pursuant to the Settlement Agreement, Plaintiffs each seek an incentive award of \$5,000
8 (\$25,000 total). These requests are reasonable given Plaintiffs’ efforts in the litigation the risks
9 each undertook on behalf of the Aggrieved Employees. Additionally, by contacting and retaining
10 counsel to pursue these claims, Plaintiffs made this settlement possible for the other Aggrieved
11 Employees and the LWDA, while shouldering the risk of being liable for Defendant’s litigation
12 costs if unsuccessful. Plaintiffs also exposed themselves to unwanted notoriety related to filing a
13 public lawsuit (discoverable even through a simple google search) for the benefit of other
14 employees, placing Plaintiffs at risk of discrimination by future prospective employers. Among
15 taking many other actions assisting in the successful litigation of this case, Plaintiffs provided
16 substantial factual information to counsel, participated in numerous phone calls and meetings
17 with counsel to discuss the case, pursued their individual arbitrations, and in general kept up to
18 speed and informed on the case’s progress. The incentive payments to Plaintiffs are appropriate
19 and justified as part of the Settlement. [Trenner Decl., ¶ 31; Declaration of Blanca Villagomez, ¶¶
20 2-9; Declaration of Sean Crane, §§ 2-9; Declaration of Jennifer Beausoleil, ¶¶ 2-9; Declaration of
21 Madison Palmer, ¶¶ 2-9; Declaration of Denise Ord, ¶¶ 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. Staton v. Boeing (9th Cir.
24 2003) 327 F.3d 938, 977 (collecting cases awarding service and incentive payments ranging
25 from \$2,000 to \$25,000).

26 **VII. THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE**

27 For their efforts and the contingent risk undertaken in obtaining a common fund
28 settlement that benefits the LWDA and Aggrieved Employees, 1/3 of the GSA, or \$260,000, is

1 allocated to Plaintiffs' counsel for reasonable attorney's fees, plus actual litigation costs not to
2 exceed \$75,000 (only \$24,113.71 is requested). These fees and costs are warranted under the law
3 and within the range of fees commonly awarded in similar cases.

4 **A. PLAINTIFFS' COUNSEL ARE ENTITLED TO RECOVER**
5 **ATTORNEY'S FEES UNDER THE COMMON FUND**
6 **DOCTRINE IN THIS QUI TAM ACTION**

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

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

26 Through the successful efforts of Plaintiffs and their attorneys here, a common fund was
27 created in the amount of \$780,000 for the benefit of the Aggrieved Employees and the State.
28 Thus, these beneficiaries should bear their share of the costs and attorney's fees out of the overall

1 \$780,000 in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444
2 U.S. 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d
3 1301, 1311.

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

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

23 Awarding attorney's fees of one-third of gross common fund amount is favored by
24 California courts when a fund established for the common benefit of others is involved, such as
25 here. Accordingly, awarding fees on this basis out of the \$780,000 GSA, for a total of \$260,000,
26 is reasonable and appropriate. [Trenner Decl., ¶¶ 32-50.]

27 ////

28 ////

1 **B. A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS**
2 **OF THE FEE AWARD**

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

13 Here, Plaintiffs’ counsel’s lodestar is approximately \$253,245, based on 348.8
14 attorney/paralegal hours spent litigating the case. [Trenner Decl., ¶¶ 34-50; Exh. 6.] On a lodestar
15 basis, the fee request of \$260,000 results in a multiplier of 1.03, which is a very modest
16 enhancement entirely in line with California law. Indeed, California courts routinely approve
17 multipliers in the in the 2-4 range to compensate for the time and risk of class action cases.
18 Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award
19 including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can
20 range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d
21 78, 85 (affirming a multiplier of 2.34).) Plaintiffs’ Counsel submits that the requested 1.03
22 multiplier effectively operates to show that the percentage fee request is reasonable
23 considering the challenges presented in this contingency fee matter, and appropriately
24 compensates Class Counsel for the contingent risk assumed and delay in payment during the
25 approximately 4 years counsel has been representing Plaintiffs. Thus, the multiplier results in
26 a fee constituting a fair return on the contingency.

27 **C. The Requested Costs Are Fair And Reasonable**

28 Plaintiffs’ Counsel also request reimbursement of actual out-of-pocket expenses incurred

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

10 While the Settlement Agreement authorizes litigation costs not to exceed \$75,000
11 Plaintiffs' Counsel's actual costs presently are \$24,113.93. [Trenner Decl., ¶¶ 51-52.] This
12 includes filing fees, service of process, expert fees, mediation costs, and postage, while waiving
13 photocopying costs and legal research charges. These costs are reasonable and uncontested, and
14 should be approved.

15 **VIII. CONCLUSION**

16 For the foregoing reasons, Plaintiffs request the Court approve the proposed settlement
17 under PAGA, approve the requested award of reasonable attorney's fees and costs, approve the
18 requested service awards to Plaintiffs, approve Apex Class Action, LLC as the settlement
19 administrator and approve is fees in the amount of \$9,790.00, approve the proposed distributions
20 to the LWDA and Aggrieved Employees, and enter judgment.

21
22
23 Dated: February 7, 2025

Respectfully submitted,
CROSNER LEGAL, PC

24 By: 
25 Zachary M. Crosner
26 Jamie K. Serb
27 Nikki Trenner
28 Attorneys for Plaintiff BLANCA
VILLAGOMEZ