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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

ERIKA LIZETH MERINO ALEJANDRO,
ADRIANA MOLINA, NICHOLAS
CEBALLOS, JOB ASCENCIO, and
GERMAN APARICIO, on behalf of the State
of California and other aggrieved persons,

Plaintiffs,

vs.

SANTA EASTVALE, INC. DBA PANINI
KABOB GRILL; PKG CATERING, INC.;
SANTA CORONA DEL MAR
INVESTMENTS, INC.; SANTA UTC, INC.;
SANTA MISSION, INC.; SANTA
CENTURY, INC.; SANTA LBX, INC.;
SANTA LOS OLIVOS, INC.; SANTA
BROADWAY, INC.; SANTA MIX, INC.;
SANTA FLORITA INVESTMENTS, INC.;
SANTA CERRITOS, INC.; SANTA
JAMBOREE INVESTMENTS, INC.; SANTA
PLAY VISTA PANINI INVESTMENTS,
INC.; SANTA MIGUEL, INC.; SANTA
VICTORIA INVESTMENTS, INC.; SANTA
MONICA PANINI INVESTMENTS, INC.;
SANTA BRASSY, INC.; SAN PEDRO, INC.;
SANTA CROWN, INC.; SANANA, INC.
MAH, INC.; SANTA CULVER, INC.;

Case No.: CIVSB2202254

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

Date: February 22, 2027
Time: 8:30 a.m.
Dept.: S26

SANTA CENTRAL, INC.; SANTA MARINA,
INC.; SANTA PASEO, INC.; SANTA VAN
NUYS, INC.; SAINT REAL, INC.; SAINT
UTC, INC.; SANTA GALLERIA, INC.;
FARM FOOD, INC.; SANTA ESCONDIDO,
INC.; SANTA SUNSET, INC.; SANTA
NORTHRIDGE, INC.; SAINT PARK, INC.;
and DOES 1 through 10, inclusive,

Defendants.

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1 **I. INTRODUCTION**

2 Plaintiffs Erika Lizeth Merino Alejandro, Nicholas Ceballos, Adriana Molina, Job
3 Ascensio, and German Aparicio (collectively, “Plaintiffs”), hereby seek Court approval of a
4 proposed settlement of claims brought under the Private Attorneys General Act (“PAGA”)
5 against defendants PKG Catering, Inc., Santa Eastvale, Inc., Santa Corona Del Mar Investments,
6 Inc., Santa UTC, Inc., Santa Mission, Inc., Santa Century, Inc., Santa LBX, Inc., Santa Los
7 Olivos, Inc., Santa Broadway, Inc., Santa Mix, Inc. Santa Florita Investments, Inc., Santa
8 Cerritos, Inc., Santa Jamboree Investments, Inc., Santa Play Vista Panini Investments, Inc., Santa
9 Miguel, Inc., Santa Victoria Investments, Inc., Santa Monica Panini Investments, Inc., Santa
10 Brassy, Inc., San Pedro, Inc., Santa Crown, Inc. Sanana, Inc. MAH, Inc., Santa Culver, Inc., Santa
11 Central, Inc., Santa Marina, Inc., Santa Paseo, Inc., Santa Van Nuys, Inc., Saint Real, Inc., Saint
12 UTC, Inc., Santa Galleria, Inc., Farm Food, Inc., Santa Escondido, Inc., Santa Sunset, Inc., Santa
13 Northridge, Inc., and Saint Park, Inc. (collectively, “PKG” or “Defendants”). Consistent with
14 PAGA, the proposed settlement releases claims under PAGA only and has no impact on the
15 individual claims of any allegedly aggrieved employee other than Plaintiffs. Since the settlement
16 resolves nothing more than claims under PAGA, it requires only a one-step review and approval
17 process by the Court, and for the reasons discussed below, the proposed settlement is fair,
18 reasonable, and adequate, and advances the statutory purposes of PAGA. Plaintiffs respectfully
19 request the Court approve the Settlement in its entirety.

20 **II. BACKGROUND**

21 Defendants own and operate a chain of Mediterranean fast-casual dining restaurants with
22 around 22 locations across California. Defendants employed Plaintiffs as non-exempt employees
23 in California during the PAGA Period. [Sarb Decl., ¶ 4.]

24 Plaintiff Merino worked for Defendants at their Rancho Cucamonga location from
25 January 2021 to June 2021. Plaintiff Ceballos worked for Defendants at their Eastvale location
26 from April 2021 to August 2021 as a non-exempt Cashier. Plaintiff Molina worked for
27 Defendants at two of their California locations, Play Vista and Long Beach, as a non-exempt
28 server from 2013 to April 2023. Plaintiff Ascencio worked for Defendants at the Long Beach

1 location as a non-exempt server from October 2021 through July 2023. Finally, Plaintiff Aparicio
2 worked for Defendants at the West Hollywood, Santa Monica, and Century City locations as a
3 non-exempt server/busser from March 2012 to November 2023. [Serb Decl., ¶ 5.]

4 On January 28, 2022, Plaintiff Alejandro commenced this Action by filing a Complaint in
5 San Bernardino County Superior Court, case number CIVSB2202254, seeking civil penalties
6 pursuant to the PAGA for wage-and-hour claims, including failure to pay minimum and straight
7 time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize
8 and permit rest periods, failure to timely pay final wages at termination, and failure to provide
9 accurate itemized wage statements. After being ordered to arbitrate her individual claims, she
10 filed a demand for arbitration with AAA on August 19, 2024, AAA Case No. 01-24-0007-3780,
11 for wage-and-hour claims, including failure to pay minimum and straight time wages, failure to
12 pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods,
13 failure to timely pay final wages at termination, and failure to provide accurate itemized wage
14 statements. [Serb Decl., ¶ 6.]

15 On February 28, 2022, Plaintiff Nicholas Ceballos commenced his action by filing a class
16 action complaint in San Bernardino County Superior Court, case number CIVSB2203838,
17 seeking damages for wage-and-hour claims, including minimum and overtime wages, failure to
18 provide meal and rest periods, failure to provide accurate itemized wage statements, failure to
19 reimburse for all business expenses, and failure to pay all wages when due. On May 11, 2022,
20 Plaintiff Nicholas Ceballos filed a separate PAGA complaint in the San Bernardino County
21 Superior Court, case number CIVSB221003, seeking penalties pursuant to PAGA for the same
22 underlying Labor Code claims as the class action complaint. On May 31, 2022, he voluntarily
23 dismissed his class action complaint, and subsequently was ordered to arbitrate his individual
24 claims. On January 27, 2023, he submitted his Demand for Arbitration with JAMS, case number
25 1200060472, seeking damages for individual claims, including minimum and overtime wages,
26 failure to provide meal and rest periods, failure to provide accurate itemized wage statements,
27 failure to reimburse for all business expenses, failure to pay all wages when due, failure to pay
28 sick pay wages, and penalties pursuant to PAGA. [Serb Decl., ¶ 7.]

1 On November 9, 2022, Plaintiff Adriana Molina commenced her action by filing a class
2 action complaint in Los Angeles County Superior Court, case number 22STCV35622, seeking
3 damages for wage-and-hour claims, including failure to pay minimum and straight time wages,
4 failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest
5 periods, failure to timely pay final wages at termination, and failure to provide accurate itemized
6 wage statements. On November 23, 2022, Plaintiff Adriana Molina filed a separate PAGA
7 complaint in the Orange County Superior Court, case number 30-2022-01293213-CU-OE-CXC
8 seeking penalties for the same underlying Labor Code claims as her class action complaint. After
9 both of actions were ordered to individual arbitration, she filed a demand for arbitration with
10 Judicate West on June 6, 2024, case number A319478, alleging wage and hour claims, including
11 failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide
12 meal periods, failure to authorize and permit rest periods, failure to timely pay final wages at
13 termination, and failure to provide accurate itemized wage statements. [Serb Decl., ¶ 8.]

14 On June 27, 2024, Plaintiff Job Ascencio filed his Demand for Arbitration with Judicate
15 West, case number A318243 seeking damages for individual claims, including failure to pay
16 minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods,
17 failure to authorize and permit rest periods, failure to timely pay final wages at termination, and
18 failure to provide accurate itemized wage statements. Likewise, on June 28, 2024, Plaintiff
19 German Aparicio filed his Demand for Arbitration with Judicate West, case number A318269
20 seeking damages for individual claims, including failure to pay minimum and straight time
21 wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and
22 permit rest periods, failure to timely pay final wages at termination, and failure to provide
23 accurate itemized wage statements. [Serb Decl., ¶ 9.]

24 Once the arbitration issues for all cases were resolved, and after Plaintiffs submitted their
25 respective arbitration demands, the Parties eventually agreed to attempt a global mediation of all
26 cases and claims. They also agreed to and did informally exchange information to permit all
27 parties to evaluate Plaintiffs' allegations. Through this informal discovery, Defendants provided
28 Plaintiffs with information including, inter alia, Plaintiffs' personnel files, the number of potential

1 Aggrieved Employees, the number of aggregate pay periods, pay stubs and time records for a
2 sampling of about ___% of the Aggrieved Employees, and relevant policies regarding Defendants’
3 time keeping and reporting policies and meal and rest break policies, among other pertinent
4 materials. [Serb Decl., ¶ 10.]

5 The Parties then participated in a mediation on May 16, 2024 with Todd A. Smith, Esq., a
6 highly respected professional neutral with extensive experience mediating wage and hour class
7 and PAGA matters.¹ After a full-day of negotiations, the Parties did not reach a resolution.
8 However, the Parties continued to engage in subsequent settlement negotiations through Mr.
9 Smith that ultimately led to this Agreement to settle the Action. The Parties subsequently
10 formalized their tentative settlement in the Settlement Agreement now before the Court for
11 approval. [Serb Decl., ¶ 11.] A fully executed, true and correct copy of the PAGA Settlement
12 Agreement (“Settlement Agreement”) is attached to the Serb Declaration as Exhibit 1.

13 Finally, in order to fully effectuate the tentative global settlement, Plaintiffs filed a
14 Stipulation and Proposed Order to file an amended complaint in this matter on July 21, 2026,
15 which remains pending. The amended complaint will include all Plaintiffs as party-plaintiffs and
16 otherwise conforming the operative complaint’s allegations to the terms of the proposed
17 settlement. For the same reasons, Plaintiff Alejandro submitted an amended PAGA notice to the
18 LWDA incorporating all plaintiffs and all claims alleged in the various matters and that are being
19 resolved via this settlement. [Serb Decl., ¶ 12.]

20 **III. SUMMARY OF SETTLEMENT TERMS**

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

22 Under the settlement, Defendants will pay a non-reversionary settlement amount of
23 \$933,750 (the “Gross Settlement Amount” or “GSA”). The GSA is inclusive of payments to the
24 LWDA and Aggrieved Employees, costs of settlement administration (estimated at no more than
25 \$14,490), service awards to the Plaintiffs, and reasonable attorney’s fees and costs.² After
26

27 ¹ Plaintiff Merino and Defendants also mediated unsuccessfully in December 2023.

28 ² Plaintiffs’ counsel collectively request 1/3 of the GSA (\$311,250) in fees and costs of \$68,803.25.
Plaintiffs each request an enhancement of \$15,000 (\$75,000 total) for their service as PAGA

1 payment of settlement administration costs, Plaintiffs' service awards, and reasonable attorney's
2 fees and costs from the GSA, Plaintiffs presently estimate about \$483,010 will remain (the "Net
3 Settlement Amount" or "NSA"). Seventy-five percent of the NSA (about \$362,257.50) will go to
4 the LWDA, and the remaining 25% (about \$120,752.50) will be distributed to the Aggrieved
5 Employees in proportion to the total number of Pay Periods each individual worked during the
6 PAGA Period. The average award currently is estimated at about \$39.01 per individual. [Serb
7 Decl., ¶ 13.]

8 **B. PAYMENT AND THE NOTICE**

9 The Parties propose using Apex Class Action, LLC as the Settlement Administrator.
10 Atticus has extensive experience administering PAGA settlements, and has agreed to cap its fees
11 at \$14,490.00. [Declaration of Michael Sutherland, ¶¶ 2-7; Exh. A-B.] Defendants will fund the
12 GSA within 14 days of the Effective Date, and within 14 days after funding Apex will mail a
13 Notice and settlement check to all Aggrieved Employees via regular First-Class U.S. Mail, using
14 the most current, known mailing addresses identified in Defendants' records. Aggrieved
15 Employees need not submit claim forms and will automatically receive a Notice and settlement
16 check. Settlement checks will be negotiable for 180 days, after which time any unclaimed
17 residual funds will be forwarded to the California State Controller's Unclaimed Property Fund.
18 [Serb Decl., ¶ 14.]

19 **C. THE RELEASE**

20 The California Supreme Court has explained that a judgment in "a representative action
21 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004
22 ... is binding not only on the named employee plaintiff but also on government agencies and any
23 aggrieved employee not a party to the proceeding." Arias v. Superior Court (2009) 46 Cal.4th
24 969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil
25 penalty claims brought under PAGA. Under Arias, the order the Parties request the Court enter is
26 intended to be "binding not only on the named employee plaintiff but also on government
27
28 representatives, and for providing a full general release and dismissing their pending individual
arbitrations. [Serb Decl., ¶ 13.]

1 agencies and any aggrieved employee not a party to the proceeding.” The Settlement Agreement
2 protects the rights of the Aggrieved Employees to bring their own individual claims should they
3 wish. For these reasons, the Parties contend the release narrowly applies only to the PAGA claims
4 alleged, and the Settlement Agreement specifically provides the Release is inapplicable to any
5 claims other than those brought under PAGA. [Serb Decl., ¶ 15.]

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

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

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

25 For the reasons below, the proposed settlement is fair, reasonable and adequate, advances
26 the purposes underlying PAGA, and should be approved.

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

28 Plaintiffs first contend Defendants failed to pay at least the applicable minimum wage for

1 all hours worked and that Defendant required Plaintiffs and the Aggrieved Employees to
2 frequently work off the clock. Namely, Plaintiffs allege employees were often instructed to
3 perform work related duties while clocked out for meal periods at times when the restaurants
4 were understaffed or busy, and were not permitted to clock in early from their meal periods so
5 that they could be paid for those hours worked. Additionally, Plaintiffs and the Aggrieved
6 Employees were required to clock out at the end of their scheduled shifts and continue working
7 for up to fifteen minutes several times per month. Specifically, Plaintiffs claim they were
8 instructed to clock out at their scheduled time and then return to their workstations to continue
9 assisting with the task at hand but without that time be recorded or paid for. [Serb Decl., ¶ 16.]

10 Plaintiffs next contend Defendants failed to pay all wages due because it did not pay
11 overtime and sick pay wages based on the correct “regular rate” of pay, and instead paid for
12 overtime based on employees’ base hourly wage without accounting for shift differentials, per
13 diem payments, and other non-discretionary pay. Marin v. Costco Wholesale Corp. (2008) 169
14 Cal. App. 4th 804, 807 (holding that bonuses must be included in the calculation of an
15 employee’s regular rate of pay); Alvarado v. Dart Container Corp. of Cal. (2018) 4 Cal.5th 542
16 549 (holding that bonuses should be factored into the employee’s regular rate of pay so the
17 regular rate reflects all forms of regular compensation that the employee earned). Here, Plaintiffs
18 contend employees regularly received non-hourly pay such as shift differential and per diems and
19 which non-discretionary compensation was not factored into the “regular rate” of pay. Per
20 Plaintiffs, this resulted in the underpayment of overtime, sick time and meal period premiums for
21 all pay periods where an employee both had sick time or a meal period violation and earned any
22 kind of non-discretionary bonus pay. [Serb Decl., ¶ 17.]

23 On the meal break claims, Plaintiffs allege that even though Defendants’ written meal and
24 rest period policies seem facially compliant, as applied there were substantial “de facto”
25 violations for lunches that either were missed completely, untimely, or cut short. Further,
26 Plaintiffs allege that as applied there were substantial “de facto” violations for lunches that either
27 were missed completely, untimely, or cut short. Per Plaintiffs’ experts’ review, the data suggested
28 around 58.8% of the pay periods at issue had at least one unique meal period violation, and that

1 there was a total of over 123,000 unique meal violations during the PAGA Period. Plaintiffs also
2 contend the data shows that PKG only paid the required premium payment for about 4.4% of the
3 alleged violations. [Serb Decl., ¶ 18.]

4 On the rest break claims, Plaintiffs likewise allege employees did not receive all required
5 rest breaks and argued that Plaintiffs and other Aggrieved Employees regularly worked through
6 rest periods in order to meet the demands of their jobs. Here, as explained earlier in this brief,
7 Plaintiffs and other Aggrieved Employees were not provided with compliant rest periods.
8 Specifically, due to the demands of their job and the coercive nature of Defendants' work
9 environment, rest breaks were never provided. Not only were Defendants' rest period practices
10 unlawful, but Defendants' rest period policies were further facially unlawful. Contrary to
11 California law, it is clear that Defendants never relinquished control of its employees. [Serb
12 Decl., ¶ 19.]

13 On the expense reimbursement claim, Plaintiffs allege employees had to use personal cell
14 phones for work-related reasons, and further had to launder and maintain their work uniforms. An
15 employer must reimburse employees for use of personal devices, and if the employee has an
16 unlimited monthly plan, then the employer must reimburse an amount that equates to the
17 employee's percentage of use for work. Cochran v. Schwan's Home Serv. (2014) 228 Cal. App.
18 4th 1137. [Serb Decl., ¶ 20.]

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

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

24 Defendants indicated they employed approximately 3,095 non-exempt employees in
25 California during the relevant time frame, and these individuals worked approximately 83,000
26 pay periods during that time. Based on the data provided by Defendants, Plaintiffs estimated
27 Defendants' maximum PAGA exposure at approximately \$38,433,300, including around
28 \$8,300,000 on the unpaid wage/off the clock claim, approximately \$204,700 on the unpaid

1 wage/regular rate claims, about \$4,804,000 on the meal period claims, \$8,300,000 on the rest
2 period claims, \$8,300,000 on the wage statement claims, \$8,300,000 on the expense
3 reimbursement claims, and about \$188,600 in civil penalties for failing to timely pay wages on
4 separation of employment. [Serb Decl., ¶¶ 22-23.] Plaintiffs, however, substantially discounted
5 these estimates in light of Defendants’ many procedural and merits-based defenses.

6 C. **THE SETTLEMENT MEETS THE KULLAR FACTORS, INCLUDING**
7 **THE STRENGTH OF PLAINTIFFS’ CASE, THE DISCOVERY**
8 **PERFORMED, AND AMOUNT OFFERED IN SETTLEMENT**

9 On Plaintiffs’ unpaid wage/off the clock claim, Defendants argued their time keeping
10 policies accurately tracked and paid for all hours worked by its employees, and did not deprive
11 aggrieved employees of compensable hours worked. PKG also emphasized that its policies strictly
12 prohibited any “off the clock work,” that employees were neither asked nor required to work “off
13 the clock” during a lunch or after clocking out, and to the extent it happened it was done without
14 management’s knowledge or consent. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F. Supp. 2d
15 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work).
16 Defendants further argued proving this claim would require hundreds of individualized inquiries
17 and would be impossible to resolve on a representative basis. Similarly, on the regular rate claim,
18 PKG contended its payroll policies properly compensated employees at the correct rates of pay,
19 and that employees received all required overtime pay, sick pay, and meal period premium pay at
20 the correct hourly rate. [Serb Decl., ¶ 24.]

21 On the meal break claims, Defendants offered multiple defenses. First, it emphasized it
22 authorized and permitted all necessary breaks, and that employees received full uninterrupted
23 lunch periods as reflected in its time records. Defendants further argued that even to the extent
24 meal or rest breaks were missed or arguably non-compliant, it was in violation of company policy
25 and aberrational, and would require significant individual inquiries to determine the reasons
26 underlying any such alleged violations and whether it was by employee choice or some other
27 reason. Thus, per Defendants, any trial on this issue would be unmanageable because of these
28 individualized issues. Defendants further emphasized that they paid thousands of meal period

1 premiums during the PAGA Period, and likewise argued that many employees waived their rights
2 to a first meal period on shifts of 5-6 hours, and their rights to a second meal period on shifts of
3 10+ hours. Bradsbery v Vicar Operating, Inc. (2025) 110 Cal. App. 5th 899 (holding blanket meal
4 waivers are enforceable). For these reasons, PKG argued the actual number of potentially
5 actionable violations rate would be minimal at best. [Serb Decl., ¶ 25.]

6 As with meal breaks, Defendants argued the applicable rest break policies complied with
7 California law, and that it authorized and permitted employees to take all required breaks, that
8 such breaks were a net 10 minutes and otherwise fully compliant, and employees could leave the
9 premises. Further, per Defendants, in light of the fact that it is not required to maintain a record of
10 rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking
11 rest periods would be purely anecdotal and individual issues would predominate on liability. This
12 arguably would once again make a trial unmanageable since the number of instances an employee
13 missed a rest break would have to be tested on a case-by-case basis to determine compliance.
14 [Serb Decl., ¶ 26.]

15 For Plaintiffs' expense reimbursement claim, Defendants emphasized their written
16 policies prohibited employees from using their own phones while on the clock and working.
17 Beyond that, Defendants argued there would be no need for employees to use their phones while
18 working, and if they did it was purely for personal convenience and therefore it was not
19 reimbursable as a "necessary" business expense under Labor Code § 2802. [Serb Decl., ¶ 27.]

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

1 unfair to penalize Defendants multiple times for the same violation. [Serb Decl., ¶ 28.]

2 Defendants 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). [Serb Decl., ¶ 29.]

13 Thus, Defendants raised various and multi-layered defenses to each of Plaintiffs’ claims,
14 anyone of which, if successful, could have derailed Plaintiffs’ case. And Defendants vowed to
15 raise all these defenses at trial. Accordingly, Plaintiffs faced risky issues going forward with
16 litigation, and it could have taken years to realize any recovery in this action along with the
17 possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be
18 unmanageable, Defendants also intended to raise additional defenses on damages, including the
19 proper measure of civil penalties and the appropriate discount to place on any assessment of such
20 penalties. [Serb Decl., ¶¶ 30-31.]

21 Moreover, the recovery is in line with a number of other PAGA settlements approved by
22 California courts. The amount further is in line with many other PAGA settlements that have
23 received approval from courts in California. McLeod v. Bank of Am., N.A. (N.D. Cal. Nov. 14,
24 2018) 2018 WL 5982863, at *4 (finding \$50,000 PAGA allocation for claims estimated at \$4.7
25 million - approximately 1.1% - adequate); Smith v. Kaiser Found. Hosps. (S.D. Cal. Aug. 26,
26 2020) 2020 WL 5064282, at *17 (finding that PAGA award that was 2.4% of maximum
27 estimated value of PAGA claims was not “unfair, inadequate, or unreasonable given the risks of
28 continued litigation”); Gilmore v. McMillan-Hendryx Inc. (E.D. Cal. Jan. 20, 2022) 2022 WL

1 184004, at *4 (PAGA award of 4.2% of the maximum estimated value of PAGA claims was “not
2 unreasonable and weighs in favor of settlement”).

3 Although Plaintiffs and their counsel believe they could have prevailed, there was no such
4 guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits
5 on all claims, securing the maximum theoretical civil penalties, and appellate risks all are factored
6 into the equation, the settlement value is reasonable and supported. Of course, to recover
7 anywhere near the maximum penalties Plaintiffs would have to shoot for the moon and win both
8 liability and maximum penalties on all claims for every single pay period at issue, which
9 outcome, for the reasons discussed, is unlikely. Given Defendants’ various procedural and merits
10 defenses, as well as the substantial penalty reductions ordered in the cases above – which
11 occurred after trial – the proposed settlement is reasonable. [Serb Decl., ¶ 32; Declaration of Kyle
12 Nordrehaug ("Nordrehaug Decl."), ¶¶ 4-9; Declaration of Benjamin Haber ("Haber" Decl.), ¶¶ 3-
13 6, 24.]

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

1 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
2 the probability of appeal of a favorable judgment, the Court's substantial discretion to reduce any
3 penalty award all are accounted for, it is clear a settlement amount of \$911,250 for the PAGA
4 claims is within the ballpark of reasonableness, furthers the purposes underlying PAGA, and
5 approval is appropriate.

6 **V. SUBMISSION TO THE LWDA**

7 Plaintiffs timely provided the LWDA with the Settlement Agreement and this Motion, and
8 notified the LWDA of this approval hearing via the LWDA's online portal. [Serb Decl., ¶ 32;
9 Exh. 6.] Accordingly, the LWDA will be able to weigh in as necessary and, importantly, many
10 courts find it persuasive of approval if the LWDA ultimately declines to offer any comment or
11 objection to a proposed PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal.
12 Mar. 23, 2017) 2017 WL 3669607, at *3 (court inferred the LWDA's non-response as
13 "tantamount to its consent to the proposed settlement terms, namely the proposed PAGA penalty
14 amount."); Jennings, 2018 WL 4773057, at *9 ("Plaintiffs submitted the settlement agreement to
15 the LWDA, and the LWDA has not objected to the settlement."); Jordan, 2018 U.S. Dist. LEXIS
16 at *7 ("Additionally, the Court finds it persuasive that the LWDA was permitted to file a response
17 to the proposed settlement and no comment or objection has been received.").

18 **VI. THE REQUESTED ENHANCEMENT AWARDS ARE FAIR AND REASONABLE**

19 Pursuant to the terms of the settlement, Plaintiffs seek reasonable incentive awards of
20 \$15,000 each (\$75,000 total) for their service in bringing these claims on behalf of the State and
21 Aggrieved Employees, for agreeing to a full general release of claims against Defendants and
22 not just the far more limited release applicable to the Aggrieved Employees, and for dismissing
23 their individual arbitrations. These requests are reasonable given the risks they undertook on
24 behalf of the Class Members, and by contacting and retaining counsel to pursue these claims,
25 Plaintiffs helped make this settlement possible for the absent Class Members, while shouldering
26 the risk of being liable for Defendant's litigation costs. Plaintiffs also exposed themselves to
27 unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google
28 search) for the benefit of other employees, placing them at risk of discrimination by future

1 prospective employers. As set forth in more detail in their respective declarations filed
2 herewith, among taking many other actions assisting in the successful litigation of this case,
3 Plaintiffs provided substantial factual information and documents to counsel, attended
4 numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all
5 significant developments. [Declaration of Adriana Molina, ¶¶ 2-9; Declaration of German
6 Aparicio, ¶¶ 2-9, Declaration of Job Ascensio, ¶¶ 2-9; Declaration of Erika Lizeth Merino
7 Alejandro, ¶¶ 2-9; Declaration of Nicholas Ceballos, ¶¶ 2-10; Serb Decl., ¶ 33.] Accordingly,
8 the requested enhancement payments to the Plaintiffs are appropriate and justified as part of the
9 settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class
10 representatives service and incentive payments ranging from \$2,000 to \$25,000).

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

12 For their efforts and the contingent risk undertaken in obtaining a common fund
13 settlement that benefits the LWDA and Aggrieved Employees, 1/3 of the gross settlement, or
14 \$311,250, is allocated to Plaintiffs' counsel for reasonable attorney's fees, plus actual litigation
15 costs of no more than \$70,000. These fees and costs are warranted under the law and within the
16 range of fees commonly awarded in similar cases, and counsel will split any fees awarded as
17 follows: Wilshire Law Firm 40%, Crosner Legal 30%, and Blumenthal Nordrehaug et al. 30%.
18 The proposed fee split has been approved by all Plaintiffs in writing. [Serb Decl., ¶ 34.]

19 **A. PLAINTIFFS' COUNSEL ARE ENTITLED TO RECOVER ATTORNEY'S**
20 **FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM**
21 **ACTION**

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

27 "A *qui tam* action is one brought under a statute that allows a private person to sue as a
28 private attorney general to recover damages or penalties, all or part of which will be paid to the

1 government.” People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal. App. 4th 487,
2 491- 492. As our Supreme Court recently affirmed, a PAGA action is a *qui tam* action because
3 the statute allows the employee plaintiff, acting as the proxy of the State’s labor law enforcement
4 agency, to sue his or her employer for Labor Code violations and recover civil penalties that
5 otherwise could only be assessed and collected by the LWDA. Kim v. Reins Int’l California, Inc.
6 (2020) 9 Cal.5th 73; Iskanian, 59 Cal.4th at 380-82 (“[a] PAGA representative action is therefore
7 a type of *qui tam* action”). Indeed, the majority of the civil penalties recovered in a PAGA action
8 are paid to the State, with a smaller portion paid to the Aggrieved Employees (e.g. 75% paid to
9 the state; 25% paid to the Aggrieved Employees). Lab. Code § 2699(i). As here, where a
10 common fund is created in a *qui tam* action by the successful litigation of a plaintiff and his
11 attorneys, the plaintiff’s attorneys are entitled to recover their fees from the common fund. Bank
12 of America v. Cory (1985) 164 Cal. App. 3d 66, 89-91.

13 Through the successful efforts of Plaintiffs and their attorneys here, a common fund was
14 created in the amount of \$933,750 for the benefit of the Aggrieved Employees and the State.
15 Thus, these beneficiaries should bear their share of the costs and attorney’s fees out of the overall
16 amount in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444
17 U.S. 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d
18 1301, 1311.

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

1 a settlement or adjudication results in the establishment of a separate or so-called common fund
2 for the benefit of the class”).

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

10 Awarding attorney’s fees of one-third of gross common fund amount is favored by
11 California courts when a fund established for the common benefit of others is involved, such as
12 here. Accordingly, awarding fees on this basis out of the \$933,250 GSA, for a total of \$311,250,
13 is reasonable and appropriate. [Serb Decl., ¶¶ 34-53; Nordrehaug Decl., ¶¶ 10-13; Haber Decl., ¶¶
14 7-22.]

15 **B. A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS**
16 **OF THE FEE AWARD**

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

27 Here, Plaintiffs’ counsel’s lodestar is approximately \$480,293.75. [Serb Decl., ¶¶ 34-53;
28 Exh. 7; Nordrehaug Decl., ¶¶ 10-13; Exhs. 3-6; Haber Decl., ¶¶ 7-22.] On a lodestar basis, the

1 fee request of \$311,250 results in a base lodestar that is higher than the fees requested on a
2 percentage of the recovery basis, and accordingly there is no request for a lodestar modifier.
3 Counsel submit that the crosscheck effectively operates to show that the percentage fee
4 request is reasonable and shows the actual fee request is less than the value of the services
5 rendered when valued via traditional hourly billing.

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

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

17 While the Settlement Agreement authorizes litigation costs not to exceed
18 \$70,000, Plaintiffs' Counsels' actual costs presently are \$68,803.25. [Serb Decl., ¶¶ 54-55;
19 Nordrehaug Decl., ¶ 14, Exhs. 3-5; Haber Decl., ¶ 23, Exh. 3.] This includes filing fees,
20 service of process, mediation costs, and expert witness fees. These costs are reasonable and
21 uncontested, and should be approved up to the cap imposed under the Settlement Agreement.

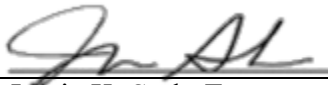
22 **VII. CONCLUSION**

23 For the foregoing reasons, Plaintiffs request the Court approve the proposed settlement
24 under PAGA, approve the requested service awards, approve the requested award of reasonable
25 attorney's fees and costs, approve Apex Class Action, LLC as the settlement administrator and
26 approve its fees in the amount of \$14,490.00, approve the proposed distributions to the LWDA
27 and Aggrieved Employees, and enter Judgment.

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Dated: August 26, 2026

CROSNER LEGAL, PC

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