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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JULIO LOPEZ, on behalf of himself, the State
of California, and others similarly situated and
aggrieved,

Plaintiff,

v.

STEVEN LABEL, LLC, a Delaware Limited
Liability Company; STEVEN LABEL
CORPORATION, a California Corporation;
STEVEN LABEL, LLC, a California Limited
Liability Company; and DOES 1-100,
inclusive,

Defendants.

Case No. 22STCV21691

Assigned for All Purposes to:
Hon. Bruce Sotelo
Dept. 40

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

[Filed concurrently with Notice of Motion
and Motion; Declarations of Michael Jones,
Julio Lopez, and Eric Springer; [Proposed]
Order]

Date: July 10, 2024
Time: 8:30 a.m.
Dept.: 40

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	1
III.	SUMMARY OF SETTLEMENT TERMS.....	3
A.	Terms of the Settlement and Distribution of PAGA Penalties	3
B.	Payment and Notice	3
C.	The Release	4
IV.	THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS THE PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL.....	4
A.	Nature of the Alleged Violations	5
B.	Number of Alleged Violations and Potential Penalties.....	6
C.	The Settlement Meets the Moniz/Kullar Factors and is Fair, Reasonable and Adequate.....	6
V.	SUBMISSION TO THE LWDA	9
VI.	THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE	10
A.	Plaintiff’s Counsel Are Entitled to Recover Attorney’s Fees Under the Common Fund Doctrine.....	10
B.	A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award	12
C.	The Requested Costs Are Reasonable.....	12
VIII.	CONCLUSION	13

TABLE OF AUTHORITIES

Page(s)

Cases

<u>7-Eleven Owners for Fair Franchising v. Southland Corp.</u> (2000) 85 Cal.App.4th 1135	9
<u>Bank of America v. Cory</u> (1985) 164 Cal.App.3d 66.....	11
<u>Bell v. Farmers Ins. Exch.</u> (2004) 115 Cal.App.4th 715	11
<u>Boeing Co. v. Van Gemert</u> (1980) 444 U.S. 472	11
<u>Carrington v. Starbucks Corp.</u> (2018) 30 Cal.App.5th 504	8
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794	11
<u>Echavez v. Abercrombie & Fitch Co., Inc.</u> (C.D. Cal. Mar. 23, 2017) 2017 WL 3669607	10
<u>Fleming v. Covidien</u> (C.D. Cal. 2011) 2011 U.S.....	8
<u>Harris v. Marhoefer</u> (9th Cir. 1994) 24 F.3d 16.....	13
<u>Jordan v NCI Grp., Inc.</u> (C.D. Cal. Jan. 5, 2018) 2018 U.S. Dist. LEXIS 25297	10
<u>Kim v. Reins Int’l California, Inc.</u> (2020) 9 Cal.5th 73	10
<u>Kullar v. Foot Locker Retail, Inc.</u> (2008) 168 Cal.App.4th 116	5
<u>Laffitte v. Robert Half Int’l Inc.</u> (2016)	11
<u>Lane v. Facebook, Inc.</u> (9th Cir. 2012) 696 F.3d 811	9

1	<u>Lealao v. Beneficial California, Inc.</u>	
2	(2000) 82 Cal.App.4th 19	11, 12
3	<u>Moniz v. Adecco USA, Inc.</u>	
4	(2021) 72 Cal.App.5th 56	4, 5
5	<u>PLCM Group, Inc. v. Drexler</u>	
6	(2000)	12
7	<u>Rider v. County of San Diego</u>	
8	(1992) 11 Cal.App.4th 1410	13
9	<u>Sanders v. City of Los Angeles</u>	
10	(1970)	11
11	<u>Serrano v. Priest</u>	
12	(1977)	11, 12
13	<u>Six (6) Mexican Workers v. Arizona Citrus Growers</u>	
14	(9th Cir. 1990) 904 F.2d 1301	11
15	<u>People ex rel. Stratham v. Acacia Research Corp.</u>	
16	(2012) 210 Cal.App.4th 487	10
17	<u>In re Taco Bell Wage and Hour Actions</u>	
18	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557	8
19	<u>White v. Experian Information Solutions, Inc.</u>	
20	(C.D. Cal. 2011) 803 F.Supp.2d 1086	9
21	<u>White v. Starbucks Corp.</u>	
22	(N.D. Cal. 2007) 497 F.Supp.2d 1080	6

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Statutes

Labor Code §§ 201-203 6

Labor Code § 2699(e)(2) 8

Labor Code § 2699(g)(1) 10

Labor Code § 2699(i) 11

Labor Code § 2699(l)(2) 4

1 **I. INTRODUCTION**

2 Plaintiff Julio Lopez (“Plaintiff”) hereby seeks Court approval of a proposed settlement of
3 claims brought under the Private Attorneys General Act (“PAGA”) against defendants Steven
4 Label, LLC, Steven Label Corporation, and Steven Label, LLC. (together “Steven Label” or
5 “Defendants”). 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. Plaintiff respectfully requests
10 the Court approve the Settlement in its entirety.

11 **II. BACKGROUND**

12 Defendants collectively are a label printing company specializing in printing labels,
13 overlays, membrane switches, and folding cartons, predominantly for medical devices,
14 including labels indicating sizes, barcodes, roll labels, and thermal transfer labels, as well
15 as product instructions for users. Defendants also provide label printing for electronics and
16 wine, beer, food and consumer products. Plaintiff Lopez began working for Defendants on
17 or about April 7, 2014, as a Printing Press Operator at a facility in Santa Fe Springs,
18 California. His duties include not only operating printing presses but also repairing broken
19 machinery as needed. In or around June 2021, Plaintiff suffered an on the job injury and
20 was placed on disability leave.

21 Plaintiff contends Steven Label violated the Labor Code in several ways during the relevant
22 time period. First, he contends Defendant failed to pay Plaintiff and the Aggrieved Employees for
23 all hours worked including pre-shift and post-shift duties and work performed during unpaid meal
24 periods. She also alleges Raymond James failed to provide Plaintiff and the Aggrieved Employees
25 with required meal and rest periods by (1) requiring employees to remain on duty and perform work
26 off the clock during meal periods, and, (2) refusing to pay premium payments for missed, late, or
27 short meal periods. She also contends Defendant failed to reimburse Plaintiff and the Aggrieved
28 Employees for all business expenses including the cost of personal cell phones and home office

1 equipment used for work purposes. [Jones Decl., ¶ 5.]

2 Based on these allegations, and after appropriate notice to the Labor & Workforce
3 Development Agency (“LWDA”),¹ Plaintiff filed a PAGA-only complaint on July 5, 2022. The
4 Complaint sought only PAGA civil penalties for alleged wage and hour violations including: (a)
5 failure to pay wages, including minimum and overtime wages; (b) failure to provide meal and rest
6 periods; (c) failure to reimburse expenses; (d) failure to provide complete and accurate wage
7 statements; and (d) waiting time penalties, on behalf of all individuals employed by Steven Label
8 as a non-exempt employee in California during the PAGA Period. [Jones Decl., ¶ 8.]

9 Defendant has at all times denied Plaintiff’s allegations and maintained it complied with all
10 relevant provisions of the Labor Code and Wage Orders. Specifically, Defendant contends among
11 other things that Plaintiff and all alleged aggrieved employees were timely paid for all hours worked
12 at the correct hourly rates in conformance with all applicable laws, that it authorized and permitted
13 Plaintiff and the alleged aggrieved employees to take fully compliant meal and rest periods in
14 accordance with all applicable laws, and that Plaintiff and the alleged aggrieved employees received
15 accurate and complete itemized wage statements. Defendant also strongly contends the case cannot
16 be maintained as a representative action because among other things Plaintiff’s
17 missed/interrupted/late/short meal and rest period allegations necessarily require detailed
18 individualized assessments and accordingly individualized issues predominate and a trial under
19 PAGA would be unmanageable. [Jones Decl., ¶ 9.]

20 The Parties’ elected to pursue mediation rather than litigating a motion to compel
21 arbitration. The Parties further agreed to a protocol for exchanging additional documents and
22 information before the mediation. Through this informal discovery, Defendant provided Plaintiff
23 with information including, inter alia, the number of potential alleged aggrieved employees, the
24 number of aggregate pay periods, sample pay stubs and time records for around 20% of the alleged
25 aggrieved employees, employee handbooks and manuals, and relevant policy documents on
26 Defendant’s time keeping and reporting policies, etc. [Jones Decl., ¶ 10.]

27 The Parties then attended a full day mediation before highly-regarded mediator Steve

28 ¹ Plaintiff’s April 28, 2022 PAGA notice letter is attached as Exhibit 3 to the Jones Declaration.

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

11 **III. SUMMARY OF SETTLEMENT TERMS**

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

13 Under the settlement, Defendants will pay a non-reversionary settlement amount of
14 \$325,000 (the "Gross Settlement Amount" or "GSA"), which is inclusive of payments to the
15 LWDA and Aggrieved Employees, costs of settlement administration, and reasonable attorney's
16 fees and costs.² After payment of settlement administration costs and reasonable attorney's fees
17 and costs from the GSA, Plaintiff presently estimates about \$202,649.39 will remain (the "Net
18 Settlement Amount" or "NSA"). Seventy-five percent of the NSA (about \$148,237.04) will go to
19 the LWDA, and the remaining twenty-five percent (about \$50,662.35) will be distributed to the
20 Aggrieved Employees in proportion to the total number of Eligible Pay Periods each individual
21 worked during the PAGA Period. No funds will revert to Defendants, and the average award
22 currently is estimated at about \$154. Lastly, Plaintiff has entered into a separate settlement of his
23 personal claims, including non-wage and hour claims arising out of his workplace injury and
24 alleged disability, and accordingly he is not requesting a service award. [Jones Decl., ¶ 12.]

25 **B. Payment and Notice**

26 The Parties propose using Simpluris, Inc. ("Simpluris") as the Settlement Administrator.

27 ² As discussed below, Plaintiff's Counsel seeks a fee equal to one-third (\$108,333.33) of the GSA, and
28 reimbursement of actual litigation costs of \$10,017.28.

1 Simpluris has extensive experience administering PAGA settlements, and has agreed to cap its fees
2 at \$4,000. Within 14 calendar days of the Settlement’s Effective Date, Defendant will fund the
3 settlement. Within 14 days thereafter, Simpluris will mail settlement checks to all Aggrieved
4 Employees via regular First-Class U.S. Mail, using the most current, known mailing addresses
5 identified in Defendants’ records. Recipients need not submit claim forms and will automatically
6 receive a settlement check. Settlement checks will be negotiable for 180 days, after which time any
7 unclaimed residual funds will be forwarded to the State Controller’s Unclaimed Property Fund.
8 [Jones Decl., ¶ 13; Declaration of Eric Springer, ¶¶ 2-9; Exhs. A-C.]

9 **C. The Release**

10 The release in the Settlement Agreement narrowly releases only civil penalty claims brought
11 under PAGA, as asserted in Plaintiff’s PAGA notice to the LWDA and the operative Complaint.
12 The Settlement Agreement protects the rights of the alleged aggrieved employees to bring their
13 own individual claims should they wish. For these reasons, the Parties contend the release narrowly
14 applies only to the PAGA claims alleged or that could have been alleged, based on the factual and
15 legal allegations pled in the operative Complaint. [Jones Decl., ¶ 14.]

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

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

24 In so holding, Moniz noted many federal district courts had imported class action settlement
25 approval principles, demanding that PAGA settlements be “fair, reasonable, and adequate,” and
26 weighing factors such as “the strength of the plaintiff’s case, the risk, the stage of the proceeding,
27 the complexity and likely duration of further litigation, and the settlement amount[.]” Id. (collecting
28 cases). Observing that “PAGA’s purpose” is to “protect the public interest” – especially the

1 allegedly aggrieved employees – the Moniz Court agreed with these federal authorities, concluding
2 the same principles that ensure fairness in class action settlements likewise serve the public interest
3 in the PAGA context. These factors are more or less identical to those California courts use to
4 evaluate class action settlements per Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116
5 and, consistent with Moniz, Plaintiff submits they should inform the Court’s analysis as well. For
6 the reasons below, the proposed settlement is fair, reasonable and adequate, advances the purposes
7 underlying PAGA, and should be approved.

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

9 Plaintiff alleges claims for civil penalties for unpaid wages, meal/rest break violations, and
10 failure to reimburse expenses, as well as derivative wage statement and waiting time penalty claims.
11 First, Plaintiff contends Defendants failed to pay employees for all hours worked because
12 employees had to wait in long lines to clock in/out for their shifts while off the clock and without
13 compensation, and during covid had to undergo wellness screenings also while off the clock.
14 Plaintiff further alleges Defendants underpaid employees for overtime because Steven Label failed
15 to include all non-discretionary pay in the regular rate used to calculate the applicable overtime
16 premium rate. Per Plaintiff, this off-the-clock work and regular rate miscalculations resulted in
17 Defendant underpaying both minimum wages and overtime wages owed to Plaintiff and the
18 Aggrieved Employees. [Jones Decl., ¶ 15.]

19 Plaintiff also contends Defendants failed to maintain proper meal and rest break policies
20 and that he and other Aggrieved Employees did not receive all required breaks on a fully compliant
21 basis. For example, Plaintiff argued review of the time records produced by Defendants showed
22 numerous “de facto” violations for missed, untimely, and short meal periods. Plaintiff argued
23 further that Defendants did not provide second meal periods or third rest breaks on shifts lasting
24 over 10 hours. Lastly Plaintiff contends he and other employees sometimes had to work through
25 meal and rest breaks depending on the flow of business, to keep printing machinery operating, etc.
26 [Jones Decl., ¶ 16.]

27 On the expense reimbursement claims, Plaintiff alleges Defendant failed to reimburse
28 Plaintiff and the Aggrieved Employees for expenses such as cell phone expenses, data or internet

1 access charges, and other costs associated with use of their personal devices for company business.
2 Per Plaintiff, he and other Aggrieved Employees were regularly required to use their personal cell
3 phones and computers/tablets to perform their job duties, including but not limited to, to
4 communicate with supervisors about work issues. [Jones Decl., ¶ 17.] Lastly, Plaintiff also brings
5 derivative claims for inaccurate wage statements and failure to pay all wages due and owing upon
6 separation of employment under Labor Code §§ 201-203, all based on the alleged failure to pay
7 wages due addressed above. [Jones Decl., ¶ 17.]

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

9 For mediation, Defendants indicated there are approximately 328 individuals who fit within
10 Plaintiff's definition of alleged aggrieved employees in California during the relevant PAGA
11 period, and these individuals worked approximately 21,652 pay periods. Based on the data and
12 information provided by Defendants, and with his expert's assistance and analysis, Plaintiff
13 estimated Defendants' theoretical maximum PAGA exposure at about \$3.66 million. [Jones Decl.,
14 ¶¶ 18-19.] Plaintiff, however, substantially discounted that number to account for Defendants'
15 procedural and merits defenses, of which there are many.

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

18 In response to Plaintiff's wage claims, Defendants argued its time keeping policies are
19 legally compliant, that it accurately tracked all hours worked and paid the allegedly aggrieved
20 employees for all hours worked at the correct rates consistent with its compliant payroll policies. It
21 further argued that employees lost no time waiting to use time clocks or due to wellness checks,
22 which per Steven Label were not "off the clock." Defendants also emphasized off the clock work
23 by employees was strictly prohibited and per Steven Label, if any such off the clock work occurred
24 it was against company policy and done without the employer's knowledge. White v. Starbucks
25 Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive
26 knowledge of the off the clock work). Per Defendants, resolution of this claim on a representative
27 basis would be unmanageable because it necessarily would entail numerous individualized
28 inquiries. [Jones Decl., ¶ 20.]

1 For the meal and rest break claims, Defendants offered multiple defenses. First, they
2 emphasized that the written meal and rest break policy generally was compliant, that they
3 authorized and permitted all necessary breaks, that alleged aggrieved employees received such
4 breaks in full compliance with California law, and that employees waived second meal periods.
5 Defendants also argued that even to the extent missed/non-compliant breaks occurred, it was in
6 violation of company policy and would require significant individual inquiries to determine the
7 reasons underlying any such alleged violations and whether it was by employee choice or some
8 other reason. Thus, per Defendants, any trial would be unmanageable on a representative basis
9 because of these individualized issues. [Jones Decl., ¶ 21.]

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

19 For the expense reimbursement claims, Steven Label argued there would be no need for
20 employees to use personal phones while operating machinery on the production floor or to
21 otherwise communicate with supervisors present in the facility. According to Defendants, if an
22 employee used their own phones it was strictly for personal convenience rather than business
23 necessity. As such, any such expenses are not reimbursable. [Jones Decl., ¶ 22.]

24 On the wage statement and waiting time waiting time penalty claims, Defendants
25 emphasized that, to the extent they are derivative then such claims will rise or fall along with the
26 primary claims, in addition to being subject to “good faith” and other defenses available to
27 Defendants. Accordingly, Plaintiff had to discount the value of these claims significantly in light
28 of these multiple potential defenses. Defendants also contended a substantial discount should be

1 applied to the civil penalties for these derivative (i.e., “stacked”) violations, as it would be unfair
2 to penalize Defendants multiple times for the same violation. [Jones Decl., ¶ 23.]

3 Defendants also emphasized PAGA gives the Court wide latitude to reduce the amount of
4 civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise would
5 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code §
6 2699(e)(2). This is particularly true here where the claims essentially are premised on “de facto”
7 violations and that could prove difficult to establish on a representative basis, and in light of many
8 cases that have imposed substantial discounts on PAGA penalties awarded after trial. In Fleming
9 v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court
10 reduced the potential penalties by over 82% after a bench trial. More recently, in Carrington v.
11 Starbucks Corp. (2018) 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of
12 just \$5 per pay period, a 90% reduction, which decision was upheld on appeal. In re Taco Bell
13 Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties
14 denied after trial). Additionally, no information came to light suggesting that any violations were
15 knowing and willful by Defendants. For these reasons, Plaintiff believes there is a high likelihood
16 the Court would find imposition of significantly more in penalties would be “unjust, arbitrary, or
17 confiscatory.” [Jones Decl., ¶ 24.]

18 Thus, Defendants raised various and multi-layered defenses to each of Plaintiff’s claims,
19 any one of which, if successful, could have decimated Plaintiff’s case. And Defendants vowed to
20 raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with this
21 litigation, and it could have taken years to realize any recovery in this action along with the
22 possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be
23 unmanageable, Defendants also intended to raise additional defenses on damages, including the
24 proper measure of civil penalties and the appropriate discount to place on any assessment of such
25 penalties. [Jones Decl., ¶ 25]

26 Although Plaintiff and his counsel believe they could have prevailed, there was no such
27 guarantee. When the risks of overcoming a manageability defense and prevailing at trial on the
28 merits are factored into the equation, the settlement value is reasonable and supported. Indeed, to

1 recover maximum penalties Plaintiff would have to shoot the moon and win on liability as to all
2 claims and convince the Court to award full penalties for each and every pay period at issue, which
3 outcome is highly unlikely. Given Defendants' procedural and merits defenses, as well as the
4 substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed
5 settlement is eminently reasonable. [Jones Decl., ¶ 26.]

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

20 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
21 the probability of appeal of a favorable judgment, and the Court's substantial discretion to reduce
22 any penalty award all are accounted for, it is clear a settlement amount of \$340,000 for the PAGA
23 claim is within the ballpark of reasonableness, and approval is appropriate.

24 **V. SUBMISSION TO THE LWDA**

25 Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and
26 notified the LWDA of this approval hearing. [Jones Decl., ¶ 27; Exh. 4.] Accordingly, the LWDA
27 will be able to weigh in as necessary and, importantly, many courts find it persuasive of approval
28 if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA

1 settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL
2 3669607, at *3 (court inferred the LWDA’s non-response as “tantamount to its consent to the
3 proposed settlement terms, namely the proposed PAGA penalty amount.”); Jennings, 2018 WL
4 4773057, at *9; Jordan v NCI Grp., Inc. (C.D. Cal. Jan. 5, 2018) 2018 U.S. Dist. LEXIS 25297, at
5 *7 (“Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to
6 the proposed settlement and no comment or objection has been received.”).

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

8 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
9 that benefits the LWDA and aggrieved employees, one-third of the gross settlement, or
10 \$108,333.33, is allocated to Plaintiff’s counsel for reasonable attorney’s fees, plus actual litigation
11 costs. These fees are warranted under the law and within the range of fees commonly awarded in
12 similar cases.

13 **A. Plaintiff’s Counsel Are Entitled to Recover Attorney’s Fees Under the**
14 **Common Fund Doctrine**

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

20 “A *qui tam* action is one brought under a statute that allows a private person to sue as a
21 private attorney general to recover damages or penalties, all or part of which will be paid to the
22 government.” People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487, 491-
23 492. As our Supreme Court recently affirmed, a PAGA action is a *qui tam* action because the statute
24 allows the employee plaintiff, acting as the proxy of the State’s labor law enforcement agency, to
25 sue his or her employer for Labor Code violations and recover civil penalties that otherwise could
26 only be assessed and collected by the LWDA. Kim v. Reins Int’l California, Inc. (2020) 9 Cal.5th
27 73; Iskanian v. CLS Transportation of Los Angeles, 59 Cal.4th at 380-82 (“[a] PAGA
28 representative action is therefore a type of *qui tam* action”). Indeed, the majority of the civil

1 penalties recovered in a PAGA action are paid to the State, with a smaller portion paid to the
2 aggrieved employees (e.g. 75% paid to the state; 25% paid to the aggrieved employees). Lab. Code
3 § 2699(i). Where a common fund is created in a *qui tam* action by the successful litigation of a
4 plaintiff, the plaintiff's attorneys are entitled to recover their fees from the common fund. Bank of
5 America v. Cory (1985) 164 Cal.App.3d 66, 89-91.

6 Through the efforts of Plaintiff and his attorneys here, a common fund was created in the
7 amount of \$340,000 for the benefit of the allegedly aggrieved employees and the State. Thus, these
8 beneficiaries should bear their share of the costs and attorney's fees out of the overall recovery
9 under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478-482; Six (6)
10 Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

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

23 Accordingly, the common fund doctrine allows a court to award attorney's fees based on a
24 percentage of the total fund created when the fund consists of a "certain or easily calculable sum
25 of money," and California law has long applied the percentage of the recovery method for awarding
26 attorney's fees where a common fund is established. Serrano, 20 Cal.3d at 34; Bell v. Farmers Ins.
27 Exch. (2004) 115 Cal.App.4th 715, 726; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794,
28 1809; Sanders v. City of Los Angeles (1970) 3 Cal.3d 252, 261-63 (affirming award of attorney's

1 fee based on percentage of recovery).

2 Awarding attorney's fees of one-third of gross common fund amount is favored by
3 California courts when a fund established for the common benefit of others is involved, such as
4 here. Accordingly, awarding fees on this basis out of the \$325,000 GSA, for a total of \$108,333.33,
5 is reasonable and appropriate. [Jones Decl., ¶¶ 28-47.]

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

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

17 Here, Crosner Legal's lodestar is approximately \$109,880, based on 162.1 attorney hours
18 spent litigating the case. [Jones Decl., ¶¶ 31-47; Exh. 5.] On a lodestar basis, the fee request of
19 \$108,333.33 results in an amount that is less than the unadorned lodestar, and accordingly
20 there is no request for a multiplier. Plaintiff's counsel submits this effectively operates to
21 show the percentage fee request is reasonable considering the requested fees are less than the
22 value of the services rendered when valued via traditional hourly billing. [Jones Decl., ¶¶ 28-
23 47.]

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

25 Plaintiff's counsel requests reimbursement of actual out-of-pocket expenses incurred to
26 prosecute this action. These expenses were incidental and necessary to the effective representation
27 of the employees, and Plaintiff's counsel is permitted to recover their litigation costs and expenses
28 under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35 (common

1 fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego
2 (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund “[o]f necessity,
3 and for precisely the same reasons discussed above with respect to the recovery of attorneys’ fees
4 by ... [Plaintiffs’] attorneys”). Furthermore, Plaintiff’s Counsel is entitled to recover “those out-of-
5 pocket expenses that would normally be charged to a fee-paying client.” Harris v. Marhoefer (9th
6 Cir. 1994) 24 F.3d 16, 19.

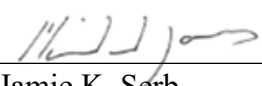
7 Plaintiff’s Counsel’s actual costs presently are \$10,017.82. This includes filing fees, service
8 of process, mediation costs, postage, and expert consultant fees, while waiving photocopying costs
9 and legal research charges. These costs are reasonable and uncontested, and were necessary to the
10 successful prosecution of the action. The costs should be approved in full. [Jones Decl., ¶¶ 48-49.]

11 **VIII. CONCLUSION**

12 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
13 under PAGA, approve the requested award of reasonable attorney’s fees and costs, approve
14 Simpluris as the settlement administrator and approve its fees in the amount of \$4,000, approve the
15 proposed distributions to the LWDA and Aggrieved Employees, and enter its Order of final
16 approval and judgment thereon.

17
18 Dated: June 3, 2024

CROSNER LEGAL, P.C.

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21 _____
22 Jamie K. Serb
23 Michael Jones
24 Zachary Crosner
25 Attorneys for Plaintiff Julio Lopez
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