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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF MERCED**

15 CARLOS MEJIA, an individual, on behalf of
16 himself and the State of California, as a private
17 attorney general,

18 Plaintiff,

19 v.

20 TURLOCK FRUIT CO., a California
21 Corporation; STEPHEN H. SMITH FARMS,
22 INC., a California Corporation; and DOES 1 TO
23 50,

24 Defendants.

Case Number: 25CV-01869

**Plaintiff's Notice of Motion and Motion for
Approval of Settlement Pursuant to the
California Labor Code Private Attorneys
General Act of 2004 ("PAGA");
Memorandum of Points and Authorities in
Support Thereof**

Complaint Filed: March 27, 2025

Trial Date: None Set

Hearing Date: November 2, 2026

Time: 8:15 a.m.

Judge: Hon. Stephanie Jamieson

Dept.: 8

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, please take notice that, on November 2, 2026, at 8:15 a.m., or as soon thereafter as the matter may be heard, in Courtroom 8 of the Superior Court of the State of California for the County of Merced, located at the Old Courthouse, 627 West 21st Street, Merced, California 95340, before the Honorable Stephanie L. Jamieson, Plaintiff Carlos Mejia (“Plaintiff”), on behalf of himself and all other aggrieved employees, will and hereby does move this Court for entry of an order:

1. Approving the terms of the *PAGA Settlement Agreement* (“Settlement Agreement”) entered into between Plaintiff, acting in his capacity as a private attorney general for the State of California, and Defendants Turlock Fruit Co. and Stephen H. Smith Farms, Inc. (“Defendants”), pursuant to Labor Code section 2699, subdivision (s)(2), including the gross settlement amount of **\$200,000.00** (“Gross Settlement Amount”);

2. Approving an award of attorneys’ fees in the amount of one-third of the Gross Settlement Amount (i.e., \$66,666.67) as provided in the Settlement Agreement and to be deducted from the Gross Settlement Amount;

3. Approving Plaintiff’s counsel’s request for reimbursement of actual litigation costs incurred in the amount of \$14,202.50 as provided in the Settlement Agreement and to be deducted from the Gross Settlement Amount;

4. Approving Plaintiff Carlos Mejia’s request for a PAGA representative service payment in the amount of \$5,000.00, as provided in the Settlement Agreement and to be deducted from the Gross Settlement Amount;

5. Appointing Simpluris, Inc. as the settlement administrator and approving the settlement administrator’s costs in the amount of \$7,278.00, to be deducted from the Gross Settlement Amount; and

6. Entering final judgment.

This motion is based on the included memorandum of points and authorities; the declarations filed together with this motion; the Settlement Agreement, a true and correct copy of which is attached to the Declaration of Kyle D. Smith as **Exhibit 1**; the proposed order granting approval of the

1 Settlement Agreement; all other records, pleadings, and papers filed in this action; and upon such other
2 evidence or argument as may be presented to the Court at the hearing of this motion.

3 Dated: September 30, 2026

MELMED LAW GROUP P.C.

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6 **KYLE D. SMITH**

7 Attorneys for Plaintiff and the Aggrieved Employees
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Carlos Mejia (“Plaintiff”) seeks approval of a settlement entered into pursuant to the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) between himself and Defendants Turlock Fruit Co. and Stephen H. Smith Farms, Inc. (“Defendants”) (collectively, the “Parties”). A true and correct copy of the *PAGA Settlement Agreement* (“Settlement Agreement”) is attached as **Exhibit 1** to the concurrently filed *Declaration of Kyle D. Smith in Support of Motion to Approve the Settlement Pursuant to PAGA* (“Declaration of Kyle D. Smith” or “Smith Decl.”). The Settlement Agreement, in its entirety, is incorporated herein by reference.

The Settlement Agreement provides for a gross settlement amount of **\$200,000.00** (“Gross Settlement Amount”), to be distributed to the California Labor and Workforce Development Agency (“LWDA”) and a group of approximately 1,484 aggrieved employees (Lab. Code, § 2699, subd. (m)), less applicable deductions. (Settlement Agreement, at pp. 4–6.) The “Aggrieved Employees” are defined in the Settlement Agreement as “all individuals who are or were employed by Defendants as non-exempt employees in California during the PAGA Period.” (Settlement Agreement, at p. 1.) The “PAGA Period” for these purposes is the period from January 13, 2024, through October 16, 2025. (Settlement Agreement, at p. 3.)

If the Court grants approval, approximately **\$106,852.83** will remain as civil penalties (the “PAGA Penalties”), to be distributed 65% to the LWDA and 35% to the Aggrieved Employees, calculated as follows:

Gross Settlement Amount	\$200,000.00
Attorneys’ Fees	(\$66,666.67)
Litigation Costs	(\$14,202.50)
Settlement Administration Costs	(\$7,278.00)
Service Award to Plaintiff	(\$5,000.00)
PAGA Penalties	\$106,852.83
PAGA Payment to LWDA (65% of PAGA Penalties)	\$69,454.34

PAGA Payment to Aggrieved Employees (35% of PAGA Penalties)	\$37,398.49
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Based on Defendants’ estimate that 1,484 Aggrieved Employees worked 20,892 PAGA Pay Periods, the average Individual PAGA Payment will be approximately \$25.20, or approximately \$1.79 per PAGA Pay Period. (Settlement Agreement, at pp. 6, 10; Smith Decl., ¶ 32.)

The Settlement Agreement, which was negotiated in light of all known facts and circumstances—including the difficulty of proving some of Plaintiff’s claims and the potential defenses asserted by Defendants—represents an excellent result in this litigation based upon the risk factors associated with the claims and provides substantial benefits to the Aggrieved Employees and the State of California. (Smith Decl., ¶¶ 17, 30–31.) As such, Plaintiff believes the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the State of California and the aggrieved employees. Accordingly, Plaintiff respectfully requests that the Court grant approval of the Parties’ proposed Settlement Agreement.

II. BACKGROUND

A. PARTY BACKGROUND

Defendants operate melon farming, packing, and cold-storage operations in the Central Valley. Plaintiff worked for Defendants as a non-exempt field worker harvesting melons during the PAGA Period. (Smith Decl., ¶ 18.)

B. PROCEDURAL HISTORY

On or about January 10, 2025, Plaintiff submitted a letter to the California Labor and Workforce Development Agency to notify the LWDA pursuant to the Private Attorneys General Act of 2004, Labor Code sections 2698 through 2699.8, of Plaintiff’s intent to seek civil penalties under PAGA for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2804, as well as Industrial Welfare Commission (“IWC”) Wage Order 14-2001 and others that may be applicable (the “Applicable Wage Orders”). (Smith Decl., ¶ 19; Cal. Code Regs., tit. 8, § 11140.) A true and correct copy of Plaintiff’s PAGA letter is attached as **Exhibit 2** to the Declaration of Kyle D. Smith. (Smith Decl., ¶ 19.) The LWDA did not notify Plaintiff of any intent to investigate within 65 days. (Smith Decl., ¶ 19.)

1 On January 13, 2025, Plaintiff filed a separate class action complaint in this Court, Case No.
2 25CV-00441 (the “Class Action”), alleging, on behalf of himself and all other similarly situated
3 employees, class-based causes of action against Defendants based on the same facts alleged in the
4 present case. (Smith Decl., ¶ 20.) The Class Action is stayed, and it will be dismissed without prejudice
5 as to the putative class members and with prejudice as to Plaintiff upon approval of this settlement.
6 (Settlement Agreement, at pp. 4, 9, 13–14; Smith Decl., ¶ 20.)

7 On March 27, 2025, Plaintiff filed this action, a representative action complaint for penalties
8 under PAGA for violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510,
9 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and other provisions of
10 the Labor Code (the “Operative Complaint”). (Smith Decl., ¶ 21.)

11 C. NEGOTIATION HISTORY

12 On October 16, 2025, the Parties attended an all-day mediation with the Hon. Howard R.
13 Broadman (Ret.). Before the mediation, Defendants produced, through informal discovery, policies
14 and procedures related to the claims alleged, Plaintiff’s personnel file, payroll and time records, and a
15 sample of time and pay records for the Aggrieved Employees. (Settlement Agreement, at p. 4; Smith
16 Decl., ¶ 22.) Plaintiff retained an expert to analyze those data and extrapolate the results to the PAGA
17 Period. (Smith Decl., ¶ 22.) The mediation addressed the PAGA action only. The mediation was
18 successful, and the Parties reached an agreement. Thereafter, the Parties continued to negotiate the
19 detailed terms of a fully executed settlement agreement. (Smith Decl., ¶ 23.)

20 On or about June 24, 2026, the Parties executed the Settlement Agreement now before this
21 Court for approval. (Smith Decl., ¶ 24.)

22 III. RELEVANT LAW

23 PAGA provides an enforcement mechanism for California’s labor laws by enlisting individual
24 plaintiffs as private attorneys general to recover civil penalties for the state, with a share also going to
25 the individual plaintiffs and other aggrieved employees. (Lab. Code, §§ 2698–2699.8.) Due to the lack
26 of financing for California’s agencies, and the substantial number of Labor Code violations by
27 California employers, the California Legislature found that it was in the public interest to allow
28 aggrieved employees to act as “private attorneys general” to enforce and recover civil penalties on

1 behalf of the State of California for Labor Code violations committed by employers. (*Arias v. Superior*
2 *Court* (2009) 46 Cal.4th 969, 980.) As the Legislature that adopted PAGA observed, in some cases
3 “the only meaningful deterrent to unlawful conduct is the vigorous assessment and collection of civil
4 penalties as provided in the Labor Code.” (Stats. 2003, ch. 906, § 1(b).)

5 Moreover, it is the policy of this State to vigorously enforce minimum labor standards to
6 “ensure employees are not required or permitted to work under substandard unlawful
7 conditions . . . and to protect employers who comply with the law from those who attempt to gain a
8 competitive advantage at the expense of their workers by failing to comply with minimum labor
9 standards.” (Lab. Code, § 90.5, subd. (a).) Therefore, the Legislature determined that “adequate
10 financing of labor law enforcement was necessary to achieve maximum compliance with state labor
11 laws, that staffing levels for labor law enforcement agencies had declined and were unlikely to keep
12 pace with the future growth of the labor market, and that it was therefore in the public interest to allow
13 aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code
14 violations, with the understanding that labor law enforcement agencies were to retain primacy over
15 private enforcement efforts.” (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 980.) Thus, Plaintiff,
16 acting as a private attorney general and proxy for the State of California, filed this action seeking civil
17 penalties for Defendants’ alleged violations of the Labor Code.

18 Plaintiff submitted his notice to the LWDA, and filed this action, after June 19, 2024. PAGA’s
19 2024 revisions therefore apply to this action. (Lab. Code, § 2699, subd. (v)(1) “[T]he amendments
20 made to this section by the act adding this subdivision shall apply to a civil action brought on or after
21 June 19, 2024.”]; see Lab. Code, § 2699, subd. (v)(2).) Penalties recovered under PAGA after its 2024
22 revisions “shall be distributed as follows: 65 percent to the Labor and Workforce Development Agency
23 for enforcement of labor laws, including the administration of this part, and for education of employers
24 and employees about their rights and responsibilities under this code, . . . and 35 percent to the
25 aggrieved employees.” (Lab. Code, § 2699, subd. (m).)

26 Any settlement of a PAGA action brought by an aggrieved employee must be approved by the
27 Court. (Lab. Code, § 2699, subd. (s)(2).) In 2009, the California Supreme Court held that an aggrieved
28 employee’s representative action brought on behalf of the state and other aggrieved employees against

1 an employer for PAGA violations does not need to meet the requirements for class certification nor
2 does there need to be notice to the other employees. (*Arias v. Superior Court* (2009) 46 Cal.4th 969,
3 975.) Thus, the Court reviews a PAGA settlement to determine “whether it is fair, reasonable, and
4 adequate in view of PAGA’s purposes to remediate present labor law violations, deter future ones, and
5 to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56,
6 77, disapproved on other grounds in *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 710; see also *Flores*
7 *v. Starwood Hotels & Resorts Worldwide, Inc.* (C.D. Cal. 2017) 253 F.Supp.3d 1074, 1077 [reviewing
8 a PAGA settlement to determine whether it was “fair and adequate in view of the purposes and policies
9 of the statute”].)

10 **IV. SUMMARY OF THE SETTLEMENT AGREEMENT**

11 Defendants have agreed to pay the non-reversionary Gross Settlement Amount of \$200,000.00
12 in full settlement of the PAGA claims in this Action. (Settlement Agreement, at p. 4.) The Gross
13 Settlement Amount is to be allocated as follows:

14 1. Plaintiff’s counsel’s attorneys’ fees request of one-third of the Gross Settlement Amount
15 (\$66,666.67). (Settlement Agreement, at p. 5.)

16 2. Plaintiff’s counsel’s request for actual litigation costs and expenses up to the additional
17 amount of \$14,202.50. (Settlement Agreement, at p. 5; Smith Decl., ¶ 52.)

18 3. Actual administration costs that Plaintiff’s counsel currently estimates to be \$7,278.00
19 based on the lowest qualified bid from the proposed settlement administrator. (Settlement Agreement,
20 at p. 5; Smith Decl., ¶ 53.)

21 4. Plaintiff’s representative service award of up to \$5,000.00. (Settlement Agreement, at
22 p. 4.)

23 5. The remainder of the Gross Settlement Amount, after deducting the items above—
24 which is currently estimated to be \$106,852.83—is designated as the PAGA Penalties, to be allocated
25 between the LWDA and the Aggrieved Employees pursuant to Labor Code section 2699, subdivision
26 (m), with 65% paid to the LWDA (i.e., \$69,454.34) and 35% paid to the Aggrieved Employees (i.e.,
27 \$37,398.49) on a pro rata basis according to the number of PAGA Pay Periods each worked.
28 (Settlement Agreement, at p. 6.)

1 Defendants estimate that the Aggrieved Employees worked approximately 20,892 PAGA Pay
2 Periods. If the actual number exceeds that estimate by more than 10%, the Gross Settlement Amount
3 will increase proportionately for each additional pay period above that threshold, unless Defendants
4 elect to end the PAGA Period on the date the pay periods reach the threshold. (Settlement Agreement,
5 at p. 10.)

6 Defendants will fund the Gross Settlement Amount within 30 days after the Effective Date, and
7 the Settlement Administrator will mail all payments within 14 days after funding; the attorneys' fees,
8 costs, and service award will not be disbursed before the Individual PAGA Payments. (Settlement
9 Agreement, at p. 7.) Checks will remain valid for at least 180 days, and funds from uncashed checks
10 will be transmitted to the California Controller's Unclaimed Property Fund in the name of the
11 Aggrieved Employee. (Settlement Agreement, at p. 7.) None of the Gross Settlement Amount will
12 revert to Defendants. (Settlement Agreement, at p. 4.)

13 Effective upon Defendants' full funding of the Gross Settlement Amount, all Aggrieved
14 Employees will release all claims for PAGA penalties that were alleged, or reasonably could have been
15 alleged, based on the PAGA Period facts stated in the Operative Complaint and Plaintiff's PAGA
16 notice. (Settlement Agreement, at p. 8.) Consistent with PAGA, the proposed order confines the release
17 given on behalf of the State of California to claims for civil penalties under PAGA based on those same
18 facts. (See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 83 [a PAGA plaintiff may "bind the
19 state to a settlement releasing claims commensurate with those that would be barred by res judicata"],
20 disapproved on other grounds in *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 710.)

21 **V. THE SETTLEMENT IS FAIR AND REASONABLE, AND WARRANTS COURT**
22 **APPROVAL**

23 **A. STANDARDS FOR APPROVAL OF A PAGA SETTLEMENT**

24 The legislative history of PAGA makes little mention of the approval requirements in Labor
25 Code section 2699. The original version of PAGA did not contain the court approval requirement now
26 codified in subdivision (s)(2). That subdivision was added as part of the amendments to PAGA that
27 became effective on August 11, 2004. (Stats. 2004, ch. 221 (S.B.1809), § 3, eff. Aug. 11, 2004.) Senator
28 Joseph L. Dunn authored both the original PAGA bill (S.B. 796) and the amendments (S.B. 1809). On

1 July 29, 2004, during the consideration of the amendments in S.B. 1809, Senator Dunn sent a letter
2 addressed to the President Pro Tempore of the Senate, which was published in the Senate Daily Journal,
3 “to clarify the intent of subdivision (l)” of Labor Code section 2699. (2003–2004 Sen. Daily J., Vol. 3,
4 at pp. 4754–4755 (July 29, 2004).) In the letter, Senator Dunn stated:

5 “The purpose of the court review of penalties in subdivision (l) is to ensure that
6 settlements involving penalties arising under Labor Code Section 2699 do not undercut
7 the dual statutory purposes of punishment and deterrence, or result in unjust, arbitrary
8 and oppressive, or confiscatory settlements.” (*Id.* at pp. 4754–4755.)

9 These broad criteria appear to give the Court wide latitude in determining whether to approve
10 the penalties proposed as part of a PAGA settlement. Interestingly, the criteria focus on the effect the
11 penalties may have on the defendant-employer rather than the benefit received by the LWDA or the
12 aggrieved employees. (See *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348,
13 383 [while the state has an interest “in receiving the proceeds of civil penalties,” the penalties are “used
14 to deter violations”].) This is different than the analysis of a class action settlement, which typically
15 focuses on the amount received by the class and compares that to the reasonable range of potential
16 outcomes in this case. (See, e.g., *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

17 **B. SUMMARY OF THE CLAIMS AND DEFENSES**

18 Plaintiff primarily alleged that Defendants failed to properly track the Aggrieved Employees’
19 hours of work. In short, the data produced by Defendants reveals a consistent pattern and practice of
20 keeping false time records, which systematically resulted in underpayment to Aggrieved Employees.
21 Most remaining Labor Code claims pleaded were derivative—in some form or another—of this core
22 violation. (Smith Decl., ¶ 26.)

23 Section 7 of the applicable Wage Order requires every employer to accurately maintain records
24 that show, among other things: **(1)** time records showing when the employee begins each work period,
25 **(2)** time records showing when the employee ends each work period, **(3)** an accurate production record
26 of the employee’s piece rate units earned, and **(4)** time records showing when meal periods begin and
27 end. This section is given force by Labor Code section 1174, subdivision (d), and Labor Code section
28 226, subdivision (a).

1 In this case, Plaintiff alleged that Defendants fabricated their time records resulting in
2 widespread underpayments. Specifically, Plaintiff alleged that Defendants failed to accurately track the
3 Aggrieved Employees' hours because break times were routinely logged at moments when no
4 employees were actually working, making it clear that the logged meal and rest periods were
5 documenting anticipated meal and rest period times, which were written down as a matter of course for
6 the sole purpose of artificially treating meal and rest periods as having presumptively been taken at
7 particular times—rather than legitimately recording actual break times. (Smith Decl., ¶ 27.)

8 Further, Plaintiff argued that Defendants maintained a practice of consistently recording
9 artificial meal break entries reflecting punches of exactly 30-minute meals. In fact, over 70% of exactly
10 30-minute meals reported by Defendants were taken at the precise hours of 11:00 a.m., 11:30 a.m., or
11 12:00 p.m. In practice, that degree of uniformity in punch-out times is virtually unattainable without
12 manual manipulation. (Smith Decl., ¶ 28.)

13 Plaintiff further alleged that the violations described above gave rise to additional Labor Code
14 violations, including unpaid overtime and off-the-clock work resulting from Defendants' failure to
15 compensate employees for all hours worked and their failure to record such time (Lab. Code, § 510),
16 and failure to reimburse Aggrieved Employees for necessary business expenses, including the use of
17 personal cell phones and the purchase of specialized work boots and work pants. (Smith Decl., ¶ 29;
18 Lab. Code, § 2802.)

19 Defendants persistently denied all liability or wrongdoing of any kind associated with the
20 claims alleged in this Action. Defendants argued that the Aggrieved Employees' hours were properly
21 tracked, and that Defendants produced meal period waivers. Further, Defendants argued that even if
22 Plaintiff was able to recover some PAGA penalties on behalf of the Aggrieved Employees, courts
23 frequently use their discretion to significantly reduce PAGA penalties where such penalties would be
24 unjust, arbitrary and oppressive, or confiscatory. (Lab. Code, § 2699, subd. (e)(2).) In ascertaining
25 Defendants' exposure, Plaintiff considered that courts have exercised that discretion to reduce PAGA
26 penalties substantially. (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming
27 reduction to \$5 per violation]; Smith Decl., ¶ 30.)

28 The Court should therefore find that the Gross Settlement Amount, negotiated at arm's length

1 over the course of an all-day mediation, reflects both the viability of Plaintiff's claims and the litigation
2 risks posed by the disputed merits and Defendants' defenses.

3 **C. THE PAGA SETTLEMENT AGREEMENT IS FAIR AND REASONABLE**

4 Here, the penalties are appropriate when considered in light of the claims discussed above. A
5 non-reversionary Gross Settlement Amount of \$200,000.00 represents an excellent recovery that is
6 large enough to punish or deter Defendants, while not being so great as to be unjust, arbitrary,
7 oppressive, or confiscatory. The proposed Settlement Agreement provides a fair and reasonable
8 monetary recovery for the LWDA and the Aggrieved Employees in the face of hotly disputed claims.
9 (Smith Decl., ¶ 31.)

10 The Gross Settlement Amount is extremely reasonable considering the risks and uncertainties
11 associated with the PAGA claims in this case. The Settlement Agreement commits Defendants to fund
12 \$106,852.83 in PAGA Penalties (after fees, costs, the service award, and administration expenses),
13 which is large enough to punish Defendants for alleged violations and to deter such conduct in the
14 future. At the same time, it is not so large as to be unjust or oppressive. The settlement also serves
15 PAGA's purposes of remediating violations, deterring future violations, and maximizing enforcement:
16 it imposes a meaningful penalty, directs 65% of the PAGA Penalties to the LWDA for enforcement
17 and education, and distributes the remainder to the Aggrieved Employees without requiring any claim.
18 Based upon the foregoing, the proposed settlement is fair, reasonable, and in the best interest of the
19 State of California and the Aggrieved Employees. Finally, public policy strongly favors the settlement
20 of litigation. (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141
21 Cal.App.4th 46, 63.) Because the proposed Settlement Agreement is neither unjust nor contrary to the
22 public interest, it should be approved.

23 **VI. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE**

24 For their efforts and the risk that they undertook in obtaining a common fund settlement that
25 benefits the State of California and the Aggrieved Employees, the Parties allocated one-third of the
26 Gross Settlement Amount to Plaintiff's counsel for reasonable attorneys' fees. These fees are warranted
27 under the law and within the range of fees commonly awarded in similar cases.

28 **A. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER ATTORNEYS'**

FEES UNDER THE COMMON FUND DOCTRINE

PAGA provides for mandatory recovery of reasonable attorneys' fees, expenses, and costs under Labor Code section 2699, subdivision (k)(1), which states that, "Any employee who prevails in any action **shall** be entitled to an award of reasonable attorney's fees and costs" (Lab. Code, § 2699, subd. (k)(1), emphasis added.) As discussed below, in a *qui tam* action, reasonable attorneys' fees and costs are typically awarded under the common fund doctrine where, as here, the litigation creates a common fund of money in a specific amount for the benefit of others. "A *qui tam* action is one brought under a statute that allows a private person to sue as a private attorney general to recover damages or penalties, all or part of which will be paid to the government." (*People ex rel. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487, 491–492.)

As the name of PAGA statute makes clear (i.e., the "Labor Code Private Attorneys General Act of 2004"), a PAGA action is a *qui tam* action because the statute allows the employee-plaintiff, acting as the proxy of the state's labor law enforcement agency, to sue his or her employer for Labor Code violations and recover civil penalties that otherwise could only have been assessed and collected by the LWDA. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 380.) Indeed, the majority of the civil penalties recovered in a PAGA action are paid to the State of California, with a smaller portion paid to the aggrieved employees (e.g., 65% paid to the state; 35% paid to the aggrieved employees). (Lab. Code, § 2699, subd. (m).)

Where litigation brought on behalf of the public creates a common fund, counsel may recover their fees from that fund. (See *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89–91.) In this case, through the successful efforts of Plaintiff and his attorneys, a common fund was created in the amount of \$200,000.00 for the benefit of the Aggrieved Employees and the State of California. Thus, these beneficiaries must bear their share of the costs and attorney's fees, which fees and costs must be deducted from the \$200,000.00 Gross Settlement Amount under the common fund theory. (*Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89–91.)

The California Supreme Court has upheld the use of the common fund theory of recovery for attorney's fees in *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480. The *Laffitte* ruling is consistent with the California Supreme Court's other cases recognizing that "when a number of persons

1 are entitled in common to a specific fund, and an action brought by . . . plaintiffs for the benefit of all
2 results in the creation or preservation of that fund, such . . . plaintiffs may be awarded attorneys’ fees
3 out of the fund.” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34.)

4 **B. A FEE OF ONE-THIRD OF THE GROSS SETTLEMENT AMOUNT IS FAIR**
5 **AND REASONABLE**

6 When awarding attorneys’ fees, courts have discretion to choose between two different methods
7 for calculating a reasonable attorneys’ fees award: **(1)** the common fund approach, or **(2)** the lodestar
8 approach. (See *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 504.) In *Laffitte*, the
9 California Supreme Court noted that “[t]he recognized advantages of the percentage method—
10 including relative ease of calculation, alignment of incentives between counsel and the class, a better
11 approximation of market conditions in a contingency case, and the encouragement it provides counsel
12 to seek an early settlement and avoid unnecessarily prolonging the litigation [citations]—convince us
13 the percentage method is a valuable tool that should not be denied our trial courts.” (*Laffitte v. Robert*
14 *Half Internat. Inc.* (2016) 1 Cal.5th 480, 503–504.) Similarly, the Ninth Circuit has cautioned that class
15 counsel should not “receive a lesser fee for settling a case quickly.” (*Vizcaino v. Microsoft Corp.* (9th
16 Cir. 2002) 290 F.3d 1043, 1050 fn. 5.)

17 Further, an award of fees from the gross settlement amount under the common fund doctrine
18 prevents unjust enrichment of those who benefit from the common fund created through the successful
19 efforts of Plaintiff’s counsel and furthers the important goal of attracting competent counsel to handle
20 representative actions enforcing minimum labor standards. (*Laffitte v. Robert Half Internat. Inc.*, *supra*,
21 1 Cal.5th 480, 503.)

22 Among the factors considered in determining whether the requested fee percentage is
23 reasonable are: **(1)** the results achieved; **(2)** the risk of further litigation; **(3)** the skill required of
24 plaintiff’s counsel and the quality of work performed by plaintiff’s counsel; **(4)** the contingent nature
25 of the fee and the financial burden carried by the plaintiff; and **(5)** awards made in similar cases.
26 (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048–1050.) All these factors support an
27 award here of one-third of the common fund.

28 First, Plaintiff’s counsel’s efforts resulted in a common fund settlement amount of \$200,000.00.

1 As discussed above, this is an excellent PAGA settlement considering the contested issues, the number
2 of violations at issue, and the severity of those violations.

3 Second, Plaintiff's counsel are experienced representative and class action litigators, and have
4 previously achieved significant PAGA and class action awards. (Smith Decl., ¶¶ 7–15.) This experience
5 and expertise, combined with the high quality of work performed in this case by Plaintiff's counsel,
6 resulted in the settlement achieved.

7 Third, the request for attorneys' fees in the amount of one-third of the common fund falls well
8 within the norms accepted by state and federal courts in California in comparable wage and hour
9 actions. (See, e.g., *Laffitte v. Robert Half Internat. Inc.*, *supra*, 1 Cal.5th 480, 503; see also *Stuart v.*
10 *Radioshack Corp.* (N.D. Cal., Aug. 9, 2010, No. C-07-4499 EMC) 2010 WL 3155645, at *6 [noting
11 that the fee award of one-third of the total settlement was "well within the range of percentages which
12 courts have upheld as reasonable"].)

13 Plaintiff's counsel's diligent and efficient litigation of this action resulted in the creation of an
14 ascertainable gross settlement amount of \$200,000.00 that will substantially benefit the State of
15 California and the Aggrieved Employees. Consistent with numerous cases, including those identified
16 above, Plaintiff's counsel seeks approval of an award of attorneys' fees in the amount of \$66,666.67,
17 representing one-third of the Gross Settlement Amount. (Smith Decl., ¶ 41.)

18 **C. THE CONTINGENT NATURE OF PLAINTIFF'S COUNSEL'S**
19 **REPRESENTATION FURTHER SUPPORTS THE FEE AWARD**

20 An additional factor militating in favor of the granting of the requested fee award is the fact that
21 this case was both legally and financially risky for Plaintiff's counsel, who accepted this representation
22 on a contingency basis. (See *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048–1049
23 [noting that "[r]isk is a relevant circumstance" when considering attorneys' fees].) There is also always
24 the possibility that the plaintiff will not prevail and PAGA counsel will not receive any compensation
25 whatsoever for its services or that the defendant will declare bankruptcy or lack the assets necessary to
26 satisfy any judgment obtained against it—as has happened in cases handled by Plaintiff's counsel's
27 firm. (Smith Decl., ¶ 39.)

28 Here, there was the prospect of enormous cost inherent in PAGA litigation, and the many

1 additional risks. Those risks include the risk of Defendants prevailing on the merits and the risk that a
2 court may not award the damages or penalties sought. In light of these risks, the chances of recovery
3 were far from certain. As explained by the California Supreme Court, “[a] lawyer who both bears the
4 risk of not being paid and provides legal services is not receiving the fair market value of his work if
5 he is paid only for the second of these functions. If he is paid no more, competent counsel will be
6 reluctant to accept fee award cases.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1133, quotation marks
7 omitted.)

8 **D. THE LODESTAR MULTIPLIER APPROACH CONFIRMS THE**
9 **REASONABLENESS OF THE FEE REQUEST**

10 A lodestar cross-check further confirms that the percentage requested is patently reasonable.
11 The “lodestar-multiplier” is an alternative accepted approach of evaluating the reasonableness of
12 attorneys’ fees whereby the court computes the “lodestar” amount by multiplying the number of hours
13 reasonably expended by each attorney or legal staff member by their hourly rates, and then enhances
14 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty or difficulty
15 of the case, its contingent nature, and the degree of success achieved. (See *PLCM Group v. Drexler*
16 (2000) 22 Cal.4th 1084, 1095–1096; *Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322; *Serrano v.*
17 *Priest* (1977) 20 Cal.3d 25, 48–49.) Under the lodestar approach, the court first computes the
18 reasonable market value of the services rendered by multiplying the time spent by the attorneys and
19 other timekeepers by their reasonable hourly rates. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131–
20 1132.)

21 As set forth above, Plaintiff’s counsel are not requesting attorneys’ fees under the lodestar
22 multiplier approach. Nevertheless, Plaintiff’s counsel in their declaration have provided a summary of
23 the hours they expended throughout the course of the litigation. To date, Plaintiff’s counsel’s lodestar
24 is **\$55,347.40** after expending **66.1 hours** on this matter. (Smith Decl., ¶ 45.) Thus, the fees sought here
25 reflect a lodestar multiplier of only 1.20 (i.e., \$66,666.67 ÷ \$55,347.40). Moreover, it is anticipated
26 that Plaintiff’s counsel will expend time which cannot yet be accounted for in the hours in Plaintiff’s
27 counsel’s declaration. (Smith Decl., ¶ 49.) Therefore, the unadjusted lodestar will increase and the
28 multiplier will decrease by the conclusion of this matter.

Historically, courts in California have commonly approved multipliers between two and four. (See, e.g., *Steiner v. American Broadcasting Co., Inc.* (9th Cir. 2007) 248 Fed.Appx. 780, 783 [multiplier of 6.85 “falls well within the range of multipliers that courts have allowed”]; *Sternwest Corp. v. Ash* (1986) 183 Cal.App.3d 74, 76 [directing the trial court “to enhance the lodestar award by such factor (two, three, four or otherwise) that the court, in its discretion shall deem proper”]; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 298 [“Multipliers in the 3–4 range are common in lodestar awards for lengthy and complex class action litigation.”]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051, fn. 6, 1052–1054 [appendix listing numerous cases with multipliers exceeding the multiplier at issue here, and even up to a multiplier of 19.6]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 [“Multipliers can range from 2 to 4 or even higher.”].) The fact that Plaintiff’s counsel’s lodestar multiplier falls well below those approved by courts further confirms the reasonableness of the fee request.

VII. THE REQUESTED LITIGATION COSTS ARE FAIR AND REASONABLE

Plaintiff’s counsel requests reimbursement of their actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the employees. (See *Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.) The Settlement Agreement authorizes Plaintiff’s counsel to recover their litigation costs of up to \$14,202.50. (Settlement Agreement, at p. 5.) The actual litigation costs in this case by Plaintiff’s counsel to date amount to \$14,262.35 of which Plaintiff will seek to recover \$14,202.50. (Smith Decl., ¶ 52.)

VIII. THE REQUESTED SERVICE AWARD IS FAIR AND REASONABLE

The Settlement Agreement contemplates a service award to Plaintiff in the amount of \$5,000.00 to recognize the time, effort, and risk Plaintiff undertook in bringing this case and helping to secure the relief obtained for the State of California and the Aggrieved Employees. (See *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding “service payment” to named plaintiff for his efforts in bringing class case].) Here, Plaintiff actively and aggressively represented the State of California and the Aggrieved Employees throughout this litigation. (See generally *Declaration of Carlos Mejia in Support of Plaintiff’s Motion for Approval of Settlement Pursuant to PAGA* (“Mejia Decl.”).) Plaintiff, for example, was an essential element in the successful prosecution and ultimate

1 settlement of this case and was available to provide input on the litigation, gather evidence, and provide
2 other information that proved critical to the prosecution. (Mejia Decl., ¶¶ 6–8.) The proposed service
3 award is also fair given the amount of time and effort Plaintiff spent on assisting in the prosecution of
4 this case and the risks he assumed as the named plaintiff, including the reputational risk of having his
5 name associated with an employment lawsuit. (Mejia Decl., ¶¶ 5, 9–10.) Plaintiff also provided a
6 release of his own claims that is broader than the Aggrieved Employees’ release, including a waiver
7 under Civil Code section 1542. (Settlement Agreement, at p. 8.)

8 **IX. SELECTION OF THE SETTLEMENT ADMINISTRATOR**

9 The Settlement Agreement provides for the Parties to select among several approved settlement
10 administration companies. (Settlement Agreement, at p. 1.) Of those, Simpluris, Inc. provided the
11 lowest qualified bid of \$7,278.00. (Smith Decl., ¶ 53.) Accordingly, Plaintiff proposes using Simpluris,
12 Inc. as the settlement administrator in this action, which is an entity with significant experience in
13 settlement administration and who is well-qualified to administer any wage-and-hour class or PAGA
14 settlement of this size. The Settlement Administrator will be responsible for processing the settlement
15 payments as outlined in the Settlement Agreement. (Settlement Agreement, at pp. 6–7.)

16 **X. SUBMISSION TO THE LWDA**

17 Concurrently with the filing of this motion, Plaintiff submitted the Settlement Agreement and
18 the Operative Complaint to the LWDA. (Lab. Code, § 2699, subd. (s)(1)–(2); Smith Decl., ¶ 55.)

19 Dated: September 30, 2026

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