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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ANTHONY CAYETANO and KEVIN WATTERS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

Value Windows and Doors, Inc.; Value Vinyl Windows & Doors, Inc.; Moreno Valley Window & Door Manufacture, Inc.; Value Wholesaler, Inc.; Value Vinyl Extrusions, Inc.; Value Aluminum Windows & Doors, Inc.; Farsighted Transport, LLC; and Eurotek Windows and Doors Inc.; and DOES 1 through 100,

Defendants.

Case No.: 25STCV17064

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

Date: December 1, 2026
Time: 10:00 a.m.
Dept. SSC-11

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I. INTRODUCTION

Plaintiffs Anthony Cayetano and Kevin Watters hereby seek Court approval of a proposed settlement of claims brought under the Private Attorneys General Act ("PAGA") against defendants Value Windows and Doors, Inc.; Value Vinyl Windows & Doors, Inc.; Moreno Valley Window & Door Manufacture, Inc.; Value Wholesaler, Inc.; Value Vinyl Extrusions, Inc.; Value Aluminum Windows & Doors, Inc.; Farsighted Transport, LLC; and Eurotek Windows and Doors Inc. ("Defendants"). Consistent with PAGA, the proposed settlement releases claims under PAGA only and has no impact on the individual claims of any allegedly aggrieved employee other than Plaintiffs. Since the settlement resolves nothing more than claims under PAGA, it requires only a one-step review and approval process by the Court, and for the reasons discussed below, the proposed settlement is fair, reasonable, and adequate, and advances the statutory purposes of PAGA. Plaintiffs respectfully request the Court approve the Settlement in its entirety.

II. BACKGROUND

Defendants are a manufacturing company founded in 2005. The company is headquartered in Southern California and operates six manufacturing plants across Los Angeles, Riverside, and San Bernardino counties. Plaintiffs allege Defendants are a vertically integrated group of interrelated business entities operating under common ownership and control, and include the following affiliated entities: Value Windows and Doors, Value Wholesaler, Moreno Valley Window & Door Manufacture, Value Vinyl Extrusions, Eurotek Windows and Doors, Value Vinyl Windows & Doors, Value Aluminum Windows & Doors, and Farsighted Transport. [Declaration of Brandon Brouillette ("Brouillette Decl."), ¶ 4.]

Cayetano is a former employee of Value Windows and Doors who worked as a Machine Operator from September 2021 through February 2025. Cayetano worked at Defendants' Duarte facility, where he worked 8-hour shifts, five days per week. Watters is a current employee of Value Windows and Doors, where he has worked as a Production Lead since approximately February 2025 at Defendants' Moreno Valley facility. Watters regularly worked shifts ranging from 8 to 12 hours per day, five days per week. [Brouillette Decl., ¶ 5.]

After notice to the LWDA and Defendants, and exhausting administrative remedies, on

June 12, 2025, Cayetano commenced an initial class action and PAGA lawsuit against Defendants alleging the following claims, both individually and on behalf of a putative California class and Aggrieved Employees: (1) failure to provide compliant meal periods; (2) failure to provide compliant rest periods; (3) failure to pay for all hours worked; (4) failure to pay all overtime owed; (5) failure to reimburse business expenses; (6) wage statement penalties; (7) waiting time penalties; (8) violation of unfair competition law; and (9) PAGA (the "Cayetano Action"). [Brouillette Decl., ¶ 6; Exh. 2.]

After notice to the LWDA and Defendants, and exhausting administrative remedies, on July 31, 2025, Watters filed a PAGA complaint against Defendants, alleging a single cause of action for PAGA civil penalties—on behalf of himself and Aggrieved Employees—predicated on underlying allegations that Defendants failed to pay all wages owed including minimum and overtime wages; failed to provide compliant meal periods; failed to provide compliant rest periods; failed to reimburse business expenses; and failed to provide accurate itemized wage statements (the "Watters Action"). [Brouillette Decl., ¶ 7.]

Once the cases were at issue, the Parties began meeting and conferring regarding discovery, potential law and motion, and other case management issues, and eventually agreed to attempt a global mediation. They also agreed to and did informally exchange information to permit both sides to evaluate Plaintiffs' allegations. Through this informal discovery, Defendants provided Plaintiffs with information including, inter alia, Plaintiffs' personnel files, the number of potential Aggrieved Employees, the number of aggregate pay periods, pay stubs and time records for a sampling of the Aggrieved Employees, and relevant policy documents regarding Defendants' time keeping and reporting policies and meal and rest break policies, among other pertinent materials. [Brouillette Decl., ¶ 8.]

In December 2025, the Parties mediated the case with Lisa Klerman, Esq., a respected professional neutral with extensive class action/wage and hour experience. Before and during the mediation, Plaintiffs and their counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiffs' ability to proceed on a

representative basis as to the PAGA claims, the legal grounds for Plaintiffs' claims and Defendants' defenses, and the Parties' data analyses and conclusions based on data provided by Defendants. After a contentious day of negotiations, the Parties reached agreement on all major issues. The Parties subsequently formalized their tentative settlement in the Settlement Agreement now before the Court for approval. [Brouillette Decl., ¶ 9.] A fully executed, true and correct copy of the PAGA Settlement Agreement ("Settlement Agreement") is attached to the Brouillette Declaration as Exhibit 1.

Finally, in order to fully effectuate the proposed global settlement, Cayetano filed a First Amended Complaint on August 20, 2026 that added Watters as a party-plaintiff and otherwise conforming the FAC's allegations to the terms of the settlement. [Brouillette Decl., ¶ 10.]

III. SUMMARY OF SETTLEMENT TERMS

A. SETTLEMENT TERMS AND DISTRIBUTION OF PAGA PENALTIES

Under the settlement, Defendants will pay a non-reversionary settlement amount of $375,000 (the "Gross Settlement Amount" or "GSA"). The GSA is inclusive of payments to the LWDA and Aggrieved Employees, costs of settlement administration (estimated at no more than $5,000.00), reasonable enhancement awards to Plaintiffs, and reasonable attorney's fees and costs.[1] After payment of settlement administration costs, Plaintiffs' service awards, and reasonable attorney's fees and costs from the GSA, Plaintiffs presently estimate about $194,836.18 will remain (the "Net Settlement Amount" or "NSA"). Sixty-five percent of the NSA (about $126,643.52) will go to the LWDA, and the remaining 35% (about $68,192.66) will be distributed to the Aggrieved Employees in proportion to the total number of Pay Periods each individual worked during the PAGA Period, with an average award currently estimated at about $221 per individual. [Brouillette Decl., ¶ 11.]

B. PAYMENT AND THE NOTICE

The Parties propose using Simpluris, Inc. as the Settlement Administrator. Simpluris has extensive experience administering PAGA settlements, and has agreed to cap its fees at $9,000.00.

[1] Plaintiffs' counsel request attorney's fees equal to 1/3 of the GSA ($125,000) and costs of $20,163.82. Plaintiffs request service awards of $10,000 each. [Brouillette Decl., ¶ 11.]

[Declaration of Michael Bui, ¶¶ 2-9; Exhs. A-C.] Defendants' will fund the GSA within 30 days of the the date the Court enters a final Judgment on its Order Approving the PAGA Settlement, and within 14 days of funding, Simpluris will mail a Notice and settlement check to all Aggrieved Employees via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in Defendants' records. Aggrieved Employees need not submit claim forms and will automatically receive a Notice and settlement check. Settlement checks will be negotiable for 180 days, after which time any unclaimed residual funds will be forwarded to the California State Controller's Unclaimed Property Fund. [Brouillette Decl., ¶ 12.]

C. THE RELEASE

The California Supreme Court has explained that a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ... is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." Arias v. Superior Court (2009) 46 Cal.4th 969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty claims brought under PAGA. Under Arias, the order the Parties request the Court enter is intended to be "binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." The Settlement Agreement protects the rights of the Aggrieved Employees to bring their own individual claims should they wish. For these reasons, the Parties contend the release narrowly applies only to the PAGA claims alleged, and the Settlement Agreement specifically provides the Release is inapplicable to any claims other than those brought under PAGA. [Brouillette Decl., ¶ 13.]

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

PAGA requires the Court to "review and approve any settlement of any civil action filed pursuant to this part." Labor Code § 2699(*l*)(2). Recently, the appellate court in Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56, defined the standard for courts to apply when reviewing settlements under PAGA. The court held a trial court must ensure that the settlement is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations,

deter future ones, and to maximize enforcement of state labor laws." Id. at 77.

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

A. NATURE OF THE ALLEGED VIOLATIONS

Plaintiffs first contend Defendants failed to pay all wages due to being required to work "off the clock" and without compensation. Here, Plaintiffs allege employees were required to work off-the-clock in multiple ways. First, Plaintiffs allege employees were regularly required to continue working after clocking out at the end of their shifts, resulting in straight off-the-clock work for which employees received no compensation. Plaintiffs also allege Defendants maintained an unlawful time rounding policy that systematically underpaid employees. Per Plaintiffs' analysis of the time records, they allege around 47.2% of pay periods reflect underpayments attributable to improper rounding. Additionally, Plaintiffs claim Defendants' rounding practices also applied to meal period punches, resulting in additional uncompensated time. As the California Supreme Court held in Donohue v. AMN Services, LLC (2021) 11 Cal.5th 58, employers may not round meal period time punches. As a result of these violations, Plaintiffs allege employees were not paid for all "hours worked," as that phrase is defined in the Wage Order and interpreted by California courts. Wage Order No. 5, subd. 2(K); Mendiola v. CPS Security Solutions, Inc. (2015) 60 Cal.4th 833. [Brouillette Decl., ¶ 14.]

Plaintiffs also allege that they and the Aggrieved Employees did not receive compliant meal periods. Here, Plaintiffs allege numerous "de facto" violations for missed and non-compliant breaks. Per Plaintiffs, lunch breaks regularly were missed, taken late, or cut short largely due to the press of business and need to finish orders on schedule. As a result, Plaintiffs contend employees were pressured to work through their meal breaks to complete their work, or had their meal breaks regularly interrupted or cut short due. Plaintiffs' review of the time records produced suggested about 74.3% of all pay periods had a least one unique meal violation, and the pay records likewise do not reflect corresponding payment of premium wages. [Brouillette Decl., ¶ 15.]

Plaintiffs similarly contend Defendants failed to provide Plaintiffs and the Aggrieved Employees with compliant rest periods for essentially the same reasons, i.e. the pressure to complete their work within specific timeframes and having breaks interrupted by the press of business and the need complete orders on time. For the purposes of mediation, Plaintiffs assumed that each employee did not receive at least one rest break they were entitled to per pay period, resulting in a 100% violation rate. Per Plaintiffs, the pay records suggest Defendants did not pay any rest period premiums. [Brouillette Decl., ¶ 16.]

Next, Plaintiffs allege Defendants violated Labor Code section 2802 and failed to properly reimburse employees for their expenses, and in particular employees had to purchase their own protective face masks for use in the manufacturing facilities, which masks needed regular replacement. Per Plaintiffs, these masks were absolutely necessary due to the materials used in the manufacturing process and Plaintiffs understood Defendants previously had issues with OSHA regarding poor air quality in their facilities. [Brouillette Decl., ¶ 17.]

Finally, Plaintiffs also allege derivative claims for failure to provide accurate wage statements under Labor Code § 226 and failure to pay all wages due and owing upon separation of employment under Labor Code §§ 201-203. [Brouillette Decl., ¶ 18.]

B. NUMBER OF ALLEGED VIOLATIONS AND POTENTIAL PENALTIES

For mediation, Defendants indicated they employed approximately 308 non-exempt employees in California during the relevant time frame (including about 116 former employees), and these individuals worked approximately 7,725 pay periods during that time. Based on the data

provided by Defendants, Plaintiffs estimated Defendants' maximum PAGA exposure at approximately $3,680,600, including about $772,500 on the unpaid wage/off the clock claims, about $574,000 on the meal period claims, $772,500 on the rest period claims, $772,500 on the expense reimbursement claims, $772,500 on the wage statement claims, and about $16,600 in penalties for failing to timely pay wages on separation of employment. [Brouillette Decl., ¶¶ 19-20.]

C. THE SETTLEMENT MEETS THE KULLAR FACTORS, INCLUDING THE STRENGTH OF PLAINTIFFS' CASE, THE DISCOVERY PERFORMED, AND AMOUNT OFFERED IN SETTLEMENT

In response to Plaintiffs' unpaid wage claim, Defendants argued their timekeeping and payroll policies fully comply with California and that it paid Plaintiffs and the Aggrieved Employees for all hours worked the correct rates of pay. Defendants further emphasized their policies strictly prohibited off the clock work, and if any such work occurred it was done in violation of company policy and without management's approval or knowledge. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). Defendants also contended that any time rounding was entirely neutral in its overall effect and did not deprive employees of any compensable time or pay. See's Candy Shops, Inc. v. Superior Court (2012) 210 Cal. App. 4th 889. [Brouillette Decl., ¶ 21.]

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

As with meal breaks, Defendants argued the applicable rest break policies complied with California law, and that it authorized and permitted employees to take all required breaks. Further, per Defendants, in light of the fact that it is not required to maintain a record of rest periods, any

evidence of failure to authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal and individual issues would predominate on liability. This arguably would once again make a trial unmanageable since the number of instances an employee missed a rest break would have to be tested on a case by case basis to determine compliance. [Brouillette Decl., ¶ 23.]

For the expense reimbursement claim, Defendants argued they provided all necessary safety equipment needed by employees to perform their jobs safely. Per Defendants, if employees purchased their own masks it was for personal convenience or comfort and the expense was neither reasonable nor necessary to perform the job. Thus, per Defendants, no reimbursement is owed under Labor Code section 2802. [Brouillette Decl., ¶ 24.]

On the alleged wage statement violations and alleged failure to timely pay final wages, since the claims are derivative they will rise or fall along with the primary claims, in addition to being subject to "good faith" and other defenses available to Defendants. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay living wages). Accordingly, Plaintiffs had to discount the value of these claims significantly in light of these multiple potential defenses. Defendants also contended a substantial discount should be applied to the civil penalties for these derivative (i.e., "stacked") violations, as it would be unfair to penalize Defendants multiple times for the same violation. [Brouillette Decl., ¶ 25.]

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

[Brouillette Decl., ¶ 26.]

Thus, Defendants raised various and multi-layered defenses to each of Plaintiffs' claims, anyone of which, if successful, could have derailed Plaintiffs' case. And Defendants vowed to raise all these defenses at trial. Accordingly, Plaintiffs faced risky issues going forward with litigation, and it could have taken years to realize any recovery in this action along with the possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be unmanageable, Defendants also intended to raise additional defenses on damages, including the proper measure of civil penalties and the appropriate discount to place on any assessment of such penalties. [Brouillette Decl., ¶ 27.]

Although Plaintiffs and their counsel believe they could have prevailed, there was no such guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits on all claims, securing the maximum theoretical civil penalties, and appellate risks all are factored into the equation, the settlement value is reasonable and supported. Of course, to recover anywhere near the maximum penalties Plaintiffs would have to shoot for the moon and win both liability and maximum penalties on all claims for every single pay period at issue, which outcome, for the reasons discussed, is unlikely. After discounting the estimated maximum damages to account for these defenses, Plaintiffs estimated the likely exposure after trial at around $736,120 and, applying a further 50% discount to account for the Court's discretion to reduce any penalties awarded, estimated the final risk-discounted exposure at about $368,080. Thus, the proposed settlement represents about 11% of the theoretical maximum exposure, and a little over 100% of the estimated exposure after trial. In light of this, and given Defendants' various procedural and merits defenses, as well as the substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed settlement is reasonable. [Brouillette Decl., ¶ 28.]

Importantly as well, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary

settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims).

In sum, when the risks of litigation, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, and the Court's substantial discretion to reduce any penalty award all are accounted for, it is clear a settlement amount of $375,000 for the PAGA claims is within the ballpark of reasonableness, furthers the purposes underlying PAGA, and approval is appropriate.

V. SUBMISSION TO THE LWDA

Plaintiffs timely served the LWDA with the Settlement Agreement and this Motion, and notified the LWDA of this approval hearing. [Brouillette Decl., ¶ 29; Exh. 4.] Accordingly, the LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings, 2018 WL 4773057, at *9 ("Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement."); Jordan, 2018 U.S. Dist. LEXIS at *7 ("Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and no comment or objection has been received.").

VI. PLAINTIFFS' REQUESTED SERVICE AWARDS ARE REASONABLE

Pursuant to the terms of the settlement, Plaintiffs each seek a modest incentive award of

$10,000 for their service in bringing these claims on behalf of the State and Aggrieved Employees. The requests are reasonable given the risks each undertook, and by contacting and retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for the absent Aggrieved Employees and LWDA, while shouldering the risk of being liable for Defendants' litigation costs. Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing each at risk of discrimination by future prospective employers. As set forth in more detail in their respective declarations filed herewith, among taking many other actions assisting in the successful litigation of this case, Plaintiffs provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and were kept abreast of all significant developments. Finally, both Plaintiffs are agreeing to a full general release of all claims against Defendants rather than the far more limited release of PAGA claims only that will apply to the Aggrieved Employees. [Declaration of Anthony Cayetano, ¶¶ 2-9; Declaration of Kevin Watters, ¶¶ 2-9; Brouillette Decl., ¶ 28.] Accordingly, the requested enhancement payments to Plaintiffs are appropriate and justified as part of the settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from $2,000 to $25,000).

VII. THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE

For their efforts and the contingent risk undertaken in obtaining a common fund settlement that benefits the LWDA and Aggrieved Employees, 1/3 of the gross settlement, or $125,000, is allocated to Plaintiffs' counsel for reasonable attorney's fees, plus actual litigation costs of $20,163.82. These fees and costs are warranted under the law and within the range of fees commonly awarded in similar cases.

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

PAGA provides a plaintiff is entitled to recover reasonable attorney's fees, expenses, and costs under Labor Code § 2699(g)(l): "Any employee who prevails in any action shall be entitled

to an award of reasonable attorney's fees and costs, ..." As discussed below, reasonable attorney's fees and costs are typically awarded under the common fund doctrine in a *qui tam* such as this one, 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. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487, 491-492. As our Supreme Court recently affirmed, 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 be assessed and collected by the LWDA. Kim v. Reins Int'l California, Inc. (2020) 9 Cal.5th 73; Iskanian, 59 Ca1.4th at 380-82 ("[a] PAGA representative action is therefore a type of qui tam action"). Indeed, the majority of the civil penalties recovered in a PAGA action are paid to the State, 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(i). As here, where a common fund is created in a *qui tam* action by the successful litigation of a plaintiff and his attorneys, the plaintiff's attorneys are entitled to recover their fees from the common fund. Bank of America v. Cory (1985) 164 Cal.App.3d 66, 89-91.

Through the successful efforts of Plaintiffs and their attorneys here, a common fund was created in the amount of $375,000 for the benefit of the Aggrieved Employees and the State. Thus, these beneficiaries should bear their share of the costs and attorney's fees out of the overall $375,000 in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

Not long ago, the California Supreme Court upheld the use of the common fund theory of recovery for attorney's fees in Laffitte v. Robert Half Int'l Inc. (2016) 1 Ca1.5th 480, 506. In Laffitte, the Supreme Court upheld an award of attorney's fees of one-third of the $19 million gross settlement (*e.g.*, awarded $6.33 million in fees) under the common fund theory of recovery. Lafitte

is consistent with prior decisions recognizing "when a number of persons are entitled in common to a specific fund, and an action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that fund, such ... plaintiffs may be awarded attorneys' fees out of the fund." Serrano v. Priest (1977) 20 Ca1.3d 25, 34; Boeing, 444 U.S. at 478 ("[A] lawyer who recovers a common fund ... is entitled to reasonable attorneys' fees from the fund as a whole]; Lealao v. Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 26 ("[f]ee spreading occurs when a settlement or adjudication results in the establishment of a separate or so-called common fund for the benefit of the class").

Accordingly, the common fund doctrine allows a court to award attorney's fees based on a percentage of the total fund created when the fund consists of a "certain or easily calculable sum of money," and California law has long applied the percentage of the recovery method for awarding attorney's fees where a common fund is established. Serrano, 20 Ca1.3d at 34; Bell v. Farmers Ins. Exch. *(*2004) 115 Cal.App.4th 715, 726; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1809; Sanders v. City of Los Angeles (1970) 3 Ca1.3d 252, 261-63 (affirming award of attorney's fee based on percentage of recovery).

Awarding attorney's fees of one-third of gross common fund amount is favored by California courts when a fund established for the common benefit of others is involved, such as here. Accordingly, awarding fees on this basis out of the $375,000 GSA, for a total of $125,000, is reasonable and appropriate. Any fees awarded by the Court will be split equally between Plaintiffs' two firms. [Brouillette Decl., ¶¶ 31-55; Exh. 6; Declaration of Manny Starr ("Starr Decl."), ¶¶ 25, 27-30.]

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

Despite the recognized limitations of the so-called lodestar method, some California and federal courts acknowledge the utility of a lodestar "cross-check" when assessing a proposed percentage-based fee award. Lealao*,* 82 Cal.App.4th at 46-47. Under the "lodestar multiplier" method of cross-checking proposed fee awards, the court first ascertains counsel's total "lodestar" amount by multiplying the number of hours reasonably expended by each attorney's reasonable

hourly rate, and then enhances or reduces this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree of success achieved. PLCM Group, Inc. v. Drexler (2000) 22 Ca1.4th 1084, 1095-96; Lealao, 82 Cal.App.4th at 43 (court has discretion to use a multiplier to ensure that the "fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation").

Here, Plaintiffs' counsels' collective lodestar is approximately $194,836.18, based on 280.9 attorney hours spent litigating the case. [Brouillette Decl., ¶¶ 31-55; Exh. 7; Starr Decl., ¶¶ 27-30.] On a lodestar basis, the fee request of $125,000 results in a fee that is actually smaller than the base lodestar and, accordingly, there is no request to apply a lodestar multiplier.

C. The Requested Costs Are Fair And Reasonable

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

While the Settlement Agreement authorizes litigation costs not to exceed $25,000, and Plaintiffs' Counsels' actual costs presently are $20,163.82. [Brouillette Decl., ¶¶ 47-48; Starr Decl., ¶ 26, Exh. A.] This includes filing fees, expert witness fees, mediation costs, and postage. These costs are reasonable and uncontested, and should be approved and reimbursed in full.

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs request the Court approve the proposed settlement under PAGA, approve the requested service awards, approve the requested award of reasonable attorney's fees and costs, approve Simpluris, Inc.. as the settlement administrator and approve its

fees in the amount of $5,000.00, approve the proposed distributions to the LWDA and Aggrieved Employees, and enter judgment.

Dated: 10/29/2026

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