

Jamie K. Serb (SBN 289601)
jamie@crosnerlegal.com
Sepideh Ardestani (SBN 274259)
sepideh@crosnerlegal.com
Zachary M. Crosner (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, P.C.
9440 Santa Monica Blvd., Suite 301
Beverly Hills, CA 90210
Tel. (866) 276-7637
Fac. (818) 700-9973

Attorneys for Plaintiff BOBBIE DIANE TAYLOR

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Malcolm E. Clayton, Esq. (SBN 340680)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Emails: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
mclayton@lelawfirm.com

Attorneys for Plaintiff INGRID GARCIA LOPEZ

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

INGRID M. GARCIA PEREZ, on behalf of
herself and current and former aggrieved
employees

Plaintiff,

vs.

FOUNDATION PROPERTY MANAGEMENT,
INC.; RETIREMENT HOUSING
FOUNDATION; AND HILL RHF HOUSING
PARTNERS, L.P.; and DOES 1 to 100, inclusive,

Defendants.

CASE NO. 23STCV0817

Assigned for All Purposes to:
Hon. Alison Mackenzie
Dept. 55

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

Date: April 22, 2025
Time: 8:30 A.M.
Dept.: 55

Reservation No.: 466651698501

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	1
III.	SUMMARY OF SETTLEMENT TERMS.....	3
A.	SETTLEMENT TERMS AND DISTRIBUTION OF PAGA PENALTIES.....	3
B.	PAYMENT AND THE NOTICE	3
C.	THE RELEASE	3
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 KULLAR FACTORS, INCLUDING THE STRENGTH OF PLAINTIFFS' CASE, THE DISCOVERY PERFORMED, AND AMOUNT OFFERED IN SETTLEMENT.....	7
V.	SUBMISSION TO THE LWDA	10
VI.	THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE.....	11
A.	PLAINTIFFS' COUNSEL ARE ENTITLED TO RECOVER ATTORNEY'S FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM ACTION.....	11
B.	THE LODESTAR CROSS-CHECK VALIDATES THE REASONABLENESS OF THE FEE AWARD	13
C.	THE REQUESTED COSTS ARE FAIR AND REASONABLE.....	14
VII.	THE PROPOSED SERVICE AWARDS FOR PLAINTIFFS IS FAIR AND REASONABLE	14
VIII.	CONCLUSION	15

TABLE OF AUTHORITIES

Page(s)

Cases

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

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

Amaral v. Cintas Corp. No. 2

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

Arias v. Superior Court

(2009) 46 Cal.4th 969 4

Bank of America v. Cory

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

Bell v. Farmers Ins. Exch.

(2004) 115 Cal.App.4th 715 12

Boeing Co. v. Van Gemert

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

Carrington v. Starbucks Corp.

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

Chavez v. Netflix, Inc.

(2008) 162 Cal.App.4th 43 13

City of Oakland v. Oakland Raiders

(1988) 203 Cal.App.3d 78..... 13

Dunk v. Ford Motor Co.

(1996) 48 Cal.App.4th 1794 12

Echavez v. Abercrombie & Fitch Co., Inc.

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

Fleming v. Covidien

(C.D. Cal. 2011) 2011 U.S..... 9

Harris v. Marhoefer

(9th Cir. 1994) 24 F.3d 16..... 14

Iskanian, 59 Cal.4th at 380-82

..... 11

1	<u>Jennings v. Open Door Mktg. Inc.</u>	
2	(N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356.....	10
3	<u>Kim v. Reins Int’l California, Inc.</u>	
4	(2020) 9 Cal.5th 73	11
5	<u>Kullar v. Foot Locker Retail, Inc.</u>	
6	(2008) 168 Cal.App.4th 116	5
7	<u>Laffitte v. Robert Half Int’l Inc.</u>	
8	(2016)	12
9	<u>Lane v. Facebook, Inc.</u>	
10	(9th Cir. 2012) 696 F.3d 811	10
11	<u>Lealao v. Beneficial California, Inc.</u>	
12	(2000) 82 Cal.App.4th 19	12, 13
13	<u>Moniz v. Adecco USA, Inc.</u>	
14	(2021) 72 Cal.App.5th 56	4
15	<u>Nelson v. Avon 5 Prod., Inc.</u>	
16	(N.D. Cal. Feb. 24, 2017) 2017 WL 733145	15
17	<u>PLCM Group, Inc. v. Drexler</u>	
18	(2000)	13
19	<u>Rider v. County of San Diego</u>	
20	(1992) 11 Cal.App.4th 1410	14
21	<u>Sanders v. City of Los Angeles</u>	
22	(1970)	12
23	<u>See’s Candy Shops, Inc. v. Superior Court</u>	
24	(2012) 210 Cal. App. 4th 889	7
25	<u>Serrano v. Priest</u>	
26	(1977)	12, 14
27	<u>Six (6) Mexican Workers v. Arizona Citrus Growers</u>	
28	(9th Cir. 1990) 904 F.2d 1301	12
	<u>People ex rel. Stratham v. Acacia Research Corp.</u>	
	(2012) 210 Cal.App.4th 487	11
	<u>In re Taco Bell Wage and Hour Actions</u>	
	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 . [Ardestani Decl.]	9

1	<u>Torchia v. W.W. Grainger, Inc.</u>	
2	(E.D. Cal. 2014) 304 F.R.D. 256	15
3	<u>Wershba v. Apple Computer, Inc.</u>	
4	(2001) 91 Cal.App.4th at 255	9, 13
5	<u>White v. Experian Information Solutions, Inc.</u>	
6	(C.D. Cal. 2011) 803 F.Supp.2d 1086	10
7	<u>White v. Starbucks Corp.</u>	
8	(N.D. Cal. 2007) 497 F.Supp.2d 1080	7

1	Statutes	
2	Labor Code § 201	6, 8
3	Labor Code § 203	6, 8
4	Labor Code § 226	8
5	Labor Code § 2699(g)(l).....	11
6	Labor Code § 2699(h).....	8
7	Labor Code § 2699(i)	11
8	Labor Code § 2699(l)(2).....	4
9	Labor Code section 2802.....	6
10	Other Authorities	
11	IWC Wage Order 5-2001, § 14	6
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiffs Bobbie Diane Taylor and Ingrid Garcia Lopez hereby seek Court approval of a
3 proposed settlement of claims brought under the Private Attorneys General Act (“PAGA”)
4 against defendants Foundation Property Management, Inc., Retirement Housing Foundation, and
5 Hill RHF Housing Partners, L.P. (together “Foundation” or “Defendants”). Consistent with
6 PAGA, the proposed settlement releases claims under PAGA only and has no impact on the
7 individual claims of any Aggrieved Employee other than Plaintiffs Taylor and Lopez. Since the
8 settlement resolves nothing more than claims under PAGA, it requires only a one-step review and
9 approval process by the Court, and for the reasons discussed below, Plaintiffs respectfully request
10 the Court approve the Settlement in its entirety.

11 **II. BACKGROUND**

12 Foundation Property Management, Inc. provides centralized Management and
13 administrative services to over 190 related tax exempt & other organizations that operate low and
14 very low income and market rate retirement housing communities, assisted living, and skilled
15 nursing facilities. Foundation Property Management, Inc. has been operating since in or about
16 1981. Retirement Housing Foundation (RHF) is a non-profit organization of 188 communities in
17 27 states, Washington, D.C., Puerto Rico, and the U.S. Virgin Islands. RHF provides housing and
18 services to more than 19,000 older adults, low-income families, and persons with disabilities. Hill
19 RHF Housing Partners, L.P. is a nonprofit provider of housing and services to low-income
20 seniors. [Declaration of Sepideh Ardestani (“Ardestani Decl.”), ¶ 4.]

21 Plaintiff Taylor worked for Defendants as a Certified Nursing Assistant since November
22 2021. Plaintiff Garcia worked for Defendants as a receptionist from October 2017 through June
23 17, 2022. [Declaration of Sepideh Ardestani (“Ardestani Decl.”), ¶ 4.]

24 After appropriate notice¹ to the Labor & Workforce Development Agency (“LWDA”), on
25 November 21, 2022 Plaintiff Taylor filed her PAGA-only complaint in Orange County Superior
26 Court on behalf of all current and former non-exempt employees of Defendants. The Taylor PAGA
27 complaint alleges unpaid minimum and overtime wages, meal and rest break violations, inaccurate

28

¹ Plaintiff Taylor’s PAGA notice letter is attached to the Ardestani Declaration as Exhibit 3.

1 wage statements, waiting time, and unreimbursed expenses, as well as other violations. On December
2 9, 2022, Plaintiff Taylor also filed a class action lawsuit against Defendants in Orange County
3 Superior Court. Defendants filed a motion to compel arbitration, which was granted and the class
4 claims dismissed in August 2023. On February 6, 2023, Plaintiff Garcia served the LWDA with a
5 PAGA Notice and thereafter on April 13, 2023, she filed a separate PAGA-only complaint in the Los
6 Angeles County Superior Court seeking the civil penalties associated with the aforementioned alleged
7 violations of the labor code on behalf of Plaintiff herself, the state of California, and other current and
8 former aggrieved employees of Defendants [Ardestani Decl., ¶ 5.]

9 After Plaintiffs filed their respective complaints, upon discussing the merits of her
10 allegations engaging in several meet and confer sessions regarding prospective discovery, law and
11 motion, etc., the Parties agreed to mediation. The Parties further agreed to a protocol for
12 exchanging additional documents and information before the mediation. Through this informal
13 discovery, Defendants provided Plaintiffs with information including, inter alia, the number of
14 potential Aggrieved Employees, the number of aggregate pay periods, pay stubs and time records
15 for a sampling of the allegedly Aggrieved Employees, employee handbooks and manuals, and
16 other relevant policy documents regarding Defendants' time keeping and reporting policies.
17 [Ardestani Decl., ¶ 7.]

18 The mediation took place on February 7, 2024 with Jeffrey Krivis, Esq., a well-respected
19 neutral with extensive wage and hour experience. Before and during the mediation, Plaintiffs and
20 their counsel analyzed, researched, and investigated the potential issues, including matters related
21 to the calculation of damages, trial, and appellate issues and risks. During mediation, the Parties
22 vigorously debated the likelihood of Plaintiffs' ability to proceed on a representative basis as to
23 the PAGA claims, the legal grounds for Plaintiffs' claims and Defendants' defenses, and the
24 Parties' data analyses and conclusions based on data provided by Defendants. After a contentious
25 full day of negotiations, the Parties reached agreement and subsequently formalized their tentative
26 settlement in the Settlement Agreement now before the Court for approval. [Ardestani Decl., ¶ 8.]
27 A fully executed, true and correct copy of the Parties' PAGA Settlement Agreement ("Settlement
28 Agreement") is attached to the Ardestani Declaration as Exhibit 1.

1 **III. SUMMARY OF SETTLEMENT TERMS**

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

3 Under the settlement, Defendants will pay a non-reversionary settlement amount of
4 \$760,000 (the “Gross Settlement Amount” or “GSA”). The GSA is inclusive of payments to the
5 LWDA and Aggrieved Employees, costs of settlement administration (not to exceed \$4,000),
6 modest service awards to the Plaintiffs, and reasonable attorney’s fees and costs.² After payment
7 of settlement administration costs, Plaintiffs’ service awards, and attorney’s fees and costs from
8 the GSA, Plaintiffs presently estimate about \$469,744.65 will remain (the “Net Settlement
9 Amount” or “NSA”). Seventy-five percent of the NSA (\$352,308.49) will go to the LWDA, and
10 the remaining 25% (\$117,426.16) will be distributed to the Aggrieved Employees in proportion to
11 the total number of Pay Periods each individual worked during the PAGA Period, with an average
12 award currently estimated at about \$98 per Aggrieved Employee. [Ardestani Decl., ¶ 9.]

13 **B. PAYMENT AND THE NOTICE**

14 The Parties propose using Simpluris, Inc. as the Settlement Administrator. Simpluris has
15 extensive experience administering PAGA settlements and has agreed to cap its fees at \$4,000.00.
16 Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the
17 Administrator no later than 14 days after the Effective Date. Within 14 days of receipt of the
18 settlement funds, Simpluris will mail a Notice and settlement check to all Aggrieved Employees
19 via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in
20 Defendants’ records. Aggrieved Employees need not submit claim forms and will automatically
21 receive a Notice and settlement check. Settlement checks will be negotiable for 180 days, after
22 which time any unclaimed residual funds will be forwarded to the California State Controller’s
23 Unclaimed Property Fund. [Ardestani Decl., ¶ 10; Exh. 2; Declaration of Denise Islas, ¶¶ 2-9;
24 Exhs. A-C.]

25 **C. THE RELEASE**

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

27 _____
28 ² Plaintiffs’ counsel jointly request 1/3 of the GSA, or \$253,333.33 for attorney’s fees and costs of \$22,831.57.
Plaintiffs each request a service award of \$5,000 (\$10,000 total).

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

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

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

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

1 Essentially, these factors are more or less identical to those California courts use to evaluate class
2 action settlements per Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116 and,
3 accordingly, Plaintiff submits they should inform the Court’s analysis as well. For the reasons
4 below, the proposed settlement is fair, reasonable and adequate, advances the purposes underlying
5 PAGA, and should be approved.

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

7 First, Plaintiffs alleged Defendants failed to pay all minimum and overtime wages by
8 “rounding down” or “shaving down” employee punches to the nearest quarter hour, and that the
9 rounding substantially benefitted Defendants rather than the employees. As a result, Plaintiffs allege
10 employees regularly lost a few minutes of compensable hours worked on shifts as a result. Plaintiffs
11 further allege “off the clock” work where many employees, especially those in patient care like
12 Plaintiff Taylor, had to arrive early prior to the start of their scheduled shift in order to complete
13 various duties to ensure a smooth handoff between shifts, such as meeting with other employees,
14 review patient charts, and so on. Per Plaintiffs, this pre-shift work was not recorded or compensated.
15 Plaintiffs also argued they had to work while purportedly clocked out for meal periods in order to
16 attend to patient needs. [Ardestani Decl., ¶ 12.]

17 Next, Plaintiffs alleges they did not receive all required meal and rest breaks on a fully
18 compliant basis. Here, Plaintiffs contend Defendants utilized a policy that failed to comply with
19 California law. Due to the nature of the work, Plaintiffs contend employees could not simply stop
20 work and take a full meal or rest period, as their job required their full attention to the health and
21 well-being of their residents at all times during their shifts, and even if clocked out they would
22 have to continue working as necessary to care for patients. As a result, Plaintiff claims meal
23 periods regularly were cut short, started late, or not received at all. Plaintiffs’ experts analysis of
24 the time records provided suggested around 35% of pay periods had at least one unique meal
25 period violation, and Plaintiffs argued liability attaches for these “de facto” violations. Plaintiffs
26 also allege employees oftentimes had to take quick breaks less than ten minutes in length and
27 return back to the attending to patients, or that breaks would be interrupted by patient needs.
28 Plaintiffs also allege Defendants placed numerous restrictions on how employees utilized their

1 break time, prohibiting use of personal cellphones during working hours, prohibiting any personal
2 work during business hours, or napping/sleeping, and thus meal and rest breaks were not completely
3 free from employer control. [Ardestani Decl., ¶ 13.]

4 Plaintiffs also contend that employees had to use their personal cellular phones to make
5 and receive calls and text messages from the shift charge nurse related to their patients, especially
6 if they were away from the front desk or nursing station. Defendants did not reimburse Plaintiff
7 and Aggrieved Employees for use of their cellular phones, in violation of Labor Code section
8 2802. [Ardestani Decl., ¶ 14.]

9 Plaintiffs next allege suitable seating violations under IWC Wage Order 5-2001, § 14.
10 Here, Plaintiffs allege that small break room had no seating available, and that management did not
11 permit employees to use other seats that were available elsewhere in the facility. [Ardestani Decl.,
12 ¶ 15.]

13 Lastly, Plaintiff also brings claims derivative of the foregoing claims, including a
14 derivative wage statement claim based on the failure to pay all wages due, and failure to pay all
15 wages due upon separation of employment under Labor Code §§ 201-203. [Ardestani Decl.,
16 ¶ 15.]

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

18 For mediation, Defendants indicated that during the PAGA Period, they employed 1,195
19 non-exempt employees in California who worked an aggregate 40,234 PAGA pay periods during
20 that time. Based on the data and information provided by Defendants, Plaintiffs estimated
21 Defendants' maximum PAGA exposure at approximately \$4,271,000 assuming a 100% violation
22 rate on all claims. This estimate includes approximately \$850,000 in civil penalties for the unpaid
23 wage claims, \$1,700,000 for the meal and rest period claims, approximately \$850,000 in civil
24 penalties on the inaccurate wage statement claim, \$850,000 in civil penalties for the unreimbursed
25 business expenses claim, and approximately \$21,000 in civil penalties for failing to timely pay
26 wages on separation of employment. [Ardestani Decl., ¶¶ 16-17.]

27 /////

28 /////

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

4 In response to Plaintiffs' unpaid wage claims for alleged rounding and "off the clock
5 work," Foundation took the position that its time keeping policies are legally compliant, that it
6 accurately tracked all hours worked, paid the allegedly Aggrieved Employees for all hours
7 worked consistent with those policies. On the rounding issue, Foundation argued that any time
8 rounding was entirely neutral in its overall impact on employee compensation, and not favor
9 either the employees or the employer. Per Foundation, such a neutral rounding policy is
10 entirely proper under California law. See's Candy Shops, Inc. v. Superior Court (2012) 210 Cal.
11 App. 4th 889. Foundation further argued that off the clock work was strictly prohibited and if
12 any employee did work off the clock, they were in violation of company policy and Defendants
13 had no knowledge of it. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083
14 (employer must have actual or constructive knowledge of the off the clock work). Lastly,
15 Defendants argued any trial of this issue on a representative basis would be unmanageable since
16 it would depend entirely on a myriad of individualized inquiries as to each employee regarding
17 any discrepancies in actual time worked versus what was reported and paid for. [Ardestani
18 Decl., ¶ 18.]

19 For the meal and rest break claims, Foundation likewise offered multiple defenses. First,
20 it emphasized its written meal and rest break policy generally was compliant, that it authorized
21 and permitted all necessary breaks, and that employees received full uninterrupted lunch periods.
22 While Plaintiffs' review of the time records suggested a substantial violation rate for late and
23 short meal breaks, Defendants countered that even to the extent this occurred, it was in violation
24 of company policy and aberrational, and would require significant individual inquiries to
25 determine the reasons underlying any such alleged violations and whether it was by employee
26 choice or some other reason. Thus, per Defendants, any trial on this issue would be
27 unmanageable because of these individualized issues. [Ardestani Decl., ¶ 19.]

28 As with meal breaks, Foundation argued the applicable rest break policies complied with
California law, and that it authorized and permitted employees to take all required breaks.

1 Defendants further contended that, in light of the fact that it is not required to maintain a record of
2 rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking
3 rest periods would be purely anecdotal and individual issues would predominate on liability. This
4 arguably would once again make a trial unmanageable since the number of instances an employee
5 missed a rest break would have to be tested on a case by case basis to determine compliance.

6 [Ardestani Decl., ¶ 20.]

7 For the expense reimbursement claim, Foundation countered that it provided employees
8 with everything they needed to perform their job duties, and to the extent Plaintiffs or other
9 Aggrieved Employees used their individual phones for work purposes, it was done purely for
10 personal convenience and was neither required nor necessary in order to perform their job duties.
11 Thus, per Foundation, no reimbursement was required. Similarly, on the lack of suitable seating
12 claim, Foundation again argued it provided employees with seating at all facilities for use to the
13 extent allowed by employee duties, and thus met its obligations under the Wage Orders.

14 [Ardestani Decl., ¶ 21.]

15 Plaintiffs also alleged derivative violations of Labor Code § 226 (wage statement
16 violations) and §§ 201-203 (waiting time penalties). The derivative wage statement claims (based
17 on the unpaid wage and meal/rest claims). The waiting time penalties claim, also is entirely
18 derivative and will rise or fall along with the primary claims, in addition to being subject to “good
19 faith” and other defenses available to Defendants. Amaral v. Cintas Corp. No. 2 (2008) 163
20 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor
21 Code § 203 even though the class prevailed on the merits on the underlying claim for failing to
22 pay living wages). Accordingly, Plaintiffs had to discount the value of this claim significantly in
23 light of these multiple potential defenses. Defendants also contended a substantial discount
24 should be applied to the civil penalties for these derivative (i.e., “stacked”) violations, as it would
25 be unfair to penalize Defendants multiple times for the same violation. [Ardestani Decl., ¶ 22.]

26 Defendants also emphasized PAGA gives the Court wide latitude to reduce the amount of
27 civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise
28 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code §

1 2699(h). Several state and federal courts in California have applied significant reductions to
2 PAGA civil penalties even after plaintiff prevailed on the merits. In Fleming v. Covidien (C.D.
3 Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court reduced the
4 potential penalties by over 82% after a bench trial. More recently, in Carrington v. Starbucks
5 Corp. (2018) 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of just \$5
6 per pay period, a 90% reduction, which decision was upheld on appeal. In re Taco Bell Wage and
7 Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after
8 trial). [Ardestani Decl., ¶ 23.]

9 Thus, Defendants raised various and multi-layered defenses to each of Plaintiffs' claims,
10 anyone of which, if successful, could have decimated Plaintiffs' case. And Defendants vowed to
11 raise all these defenses at trial. Accordingly, Plaintiffs faced risky issues going forward with this
12 litigation, and it could have taken several more years to realize any recovery in this action along
13 with the possibility of post-trial appeals. In addition to its merits defenses and arguing trial
14 would be unmanageable, Defendants also intended to raise additional defenses on damages,
15 including the proper measure of civil penalties and the appropriate discount to place on any
16 assessment of such penalties. [Ardestani Decl., ¶ 25.]

17 Although Plaintiffs and their counsel believes they could have prevailed, there was no
18 such guarantee. When the risks of overcoming a motion to compel arbitration, a manageability
19 defense, prevailing at trial on the merits on all claims, and securing 100% of the theoretical civil
20 penalties all are factored into the equation, the settlement value is reasonable and supported. Of
21 course, to recover anywhere near the maximum penalties Plaintiffs would have to shoot the moon
22 and win both liability and maximum penalties on all claims, which outcome, for the reasons
23 discussed, is unlikely. Given Defendants' various procedural and merits defenses, and the
24 substantial penalty reductions ordered in the cases above – which occurred after trial – the
25 proposed settlement is eminently reasonable. [Ardestani Decl., ¶ 26.]

26 Importantly, the mere fact that a settlement does not provide the same recovery as might
27 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
28 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed

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

12 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
13 the probability of appeal of a favorable judgment, the Court’s substantial discretion to reduce any
14 penalty award all are accounted for, it is clear a settlement amount of \$760,000 for the PAGA
15 claims is within the ballpark of reasonableness, and approval is appropriate. Jennings v. Open
16 Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *7 (approving
17 settlement with PAGA penalties of 0.6% where “[p]laintiffs [have] submitted the settlement
18 agreement to the LWDA, and the LWDA has not objected to the settlement”).

19 **V. SUBMISSION TO THE LWDA**

20 Plaintiffs timely served the LWDA with the Settlement Agreement and this Motion, and
21 notified the LWDA of this approval hearing. [Ardestani Decl., ¶ 27; Exh. 4.] Accordingly, the
22 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
23 approval if the LWDA ultimately declines to offer any comment or objection to a proposed
24 PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017
25 WL 3669607, at *3 (court inferred the LWDA’s non-response as “tantamount to its consent to the
26 proposed settlement terms, namely the proposed PAGA penalty amount.”); Jennings, 2018 WL
27 4773057, at *9 (“Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has
28 not objected to the settlement.”); Jordan, 2018 U.S. Dist. LEXIS at *7 (“Additionally, the Court

1 finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and
2 no comment or objection has been received.”).

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

4 For their efforts and the contingent risk undertaken in obtaining a common fund
5 settlement that benefits the LWDA and Aggrieved Employees, 1/3 of the gross settlement, or
6 \$253,333.33, is allocated to Plaintiffs’ counsel for reasonable attorney’s fees, plus actual
7 litigation costs. These fees are warranted under the law and within the range of fees commonly
8 awarded in similar cases.

9 **A. PLAINTIFFS’ COUNSEL ARE ENTITLED TO RECOVER ATTORNEY’S**
10 **FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM**
11 **ACTION**

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

18 “A *qui tam* action is one brought under a statute that allows a private person to sue as a
19 private attorney general to recover damages or penalties, all or part of which will be paid to the
20 government.” People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487,
21 491- 492. As our Supreme Court recently affirmed, a PAGA action is a *qui tam* action because
22 the statute allows the employee plaintiff, acting as the proxy of the State’s labor law enforcement
23 agency, to sue his or her employer for Labor Code violations and recover civil penalties that
24 otherwise could only be assessed and collected by the LWDA. Kim v. Reins Int’l California, Inc.
25 (2020) 9 Cal.5th 73; Iskanian, 59 Cal.4th at 380-82 (“[a] PAGA representative action is therefore
26 a type of *qui tam* action”). Indeed, the majority of the civil penalties in a PAGA action are paid to
27 the State, with a smaller portion paid to the Aggrieved Employees (e.g. 75% paid to the state;
28 25% 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

1 plaintiff's attorneys are entitled to recover their fees from the common fund. Bank of America v.
2 Cory (1985) 164 Cal.App.3d 66, 89-91.

3 Through the successful efforts of Plaintiffs and their attorneys here, a common fund was
4 created in the amount of \$760,000.00 for the benefit of the Aggrieved Employees and the State.
5 Thus, these beneficiaries should bear their share of the costs and attorney's fees out of the overall
6 settlement amount in civil penalties under the common fund theory. Boeing Co. v. Van Gemert
7 (1980) 444 U.S. 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir.
8 1990) 904 F.2d 1301, 1311.

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

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

28 Awarding attorney's fees of one-third of gross common fund amount is favored by

1 California courts when a fund established for the common benefit of others is involved, such as
2 here. Accordingly, awarding fees on this basis out of the \$760,000 GSA, for a total of
3 \$253,333.33, is reasonable and appropriate. [Ardestani Decl., ¶¶ 28-47.]

4 **B. THE LODESTAR CROSS-CHECK VALIDATES THE REASONABLENESS OF**
5 **THE FEE AWARD**

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

16 Here, Plaintiffs’ counsels’ combined lodestar is approximately \$205,248.00, based on a
17 total of 282.67 attorney hours spent litigating the case. [Ardestani Decl., ¶¶ 32-47; Exh. 5;
18 Declaration of Malcolm Clayton (“Clayton Decl.”), ¶¶ 10-32, Exhs. 3-8.] On a lodestar basis, the
19 fee request represents the base lodestar with a modest 1.23 upward modifier, which is justified,
20 reasonable and appropriate. Indeed, California courts routinely approve multipliers in the in
21 the 2-4 range to compensate for the time and contingent risk of these types of cases. Chavez
22 v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorney’s fee award including an
23 upward multiplier of 2.5); Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th at 255
24 (“Multipliers can range from 2 to 4 or even higher”); City of Oakland v. Oakland Raiders
25 (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34). It also is important to note this
26 fact serves to highlight the reasonableness of the fees requested on a percentage-of-the-recovery
27 basis, as it shows the requested fees are within striking distance of the market rate for the services
28 rendered if those services are valued via traditional hourly billing, and that the nominal

enhancement requested adequately compensates counsel for the contingent risk assumed and the delay in payment, and represents a fair return on the contingency. [Trenner Decl., ¶¶ 49-50.]

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 is 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.

Plaintiffs' Counsel's actual costs presently are \$22,922.02 (\$9,311.01 to Crosner Legal and \$13,611.01 to Lavi & Ebrahimian), including filing fees, mediation costs, expert fees, and postage, while waiving photocopying costs and legal research charges. [Ardestani Decl., ¶¶ 48-49; Clayton Decl., ¶ 33, Exh. 1] Since these costs are reasonable and uncontested, the full amount of \$22,922.02 should be approved.

VII. THE PROPOSED SERVICE AWARDS FOR PLAINTIFFS IS FAIR AND REASONABLE

Pursuant to the Settlement Agreement, Plaintiffs each seek an incentive award of \$5,000. These requests are reasonable given the much broader release that Plaintiffs are agreeing to, as well as Plaintiffs' efforts in this case and the risks they undertook on behalf of the Aggrieved Employees. Additionally, by contacting and retaining counsel to pursue these claims, Plaintiffs made this settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the risk of being liable for Defendants' litigation costs if unsuccessful. 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 Plaintiffs at risk of

1 discrimination by future prospective employers. Among taking many other actions assisting in the
2 successful litigation of this case, Plaintiff provided substantial factual information to Plaintiffs'
3 Counsel, participated in numerous phone calls and meetings with counsel to discuss the case, and
4 general kept up to speed and informed on the case's progress. The incentive payments to
5 Plaintiffs are appropriate and justified as part of the Settlement. [Ardestani Decl., ¶ 50; Clayton
6 Decl., ¶ 34; Declaration of Bobbie Diane Taylor, ¶¶ 2-9; Declaration of Ingrid Garcia Lopez, ¶¶
7 2-8.]

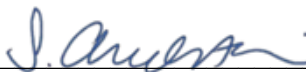
8 Accordingly, Plaintiffs submit the amount sought is well within the range of
9 reasonableness for such awards in other wage and hour actions. Nelson v. Avon 5 Prod., Inc.
10 (N.D. Cal. Feb. 24, 2017) 2017 WL 733145, at *7 (approving incentive award of \$10,000
11 where plaintiff "appeared for an all-day deposition, searched for documentation relating to
12 the class action, reviewed documents and settlement papers, attended the mediation and
13 subsequent negotiations, and aided Class Counsel with negotiation efforts."); Torchia v.
14 W.W. Grainger, Inc. (E.D. Cal. 2014) 304 F.R.D. 256 (approving \$7,500 incentive award).

15 **VIII. CONCLUSION**

16 For the foregoing reasons, Plaintiffs request the Court approve the proposed settlement
17 under PAGA, approve the requested award of reasonable attorney's fees and costs, approve the
18 requested service awards to Plaintiffs in the amount of \$5,000 each, approve Simpluris, Inc. as the
19 settlement administrator and approve its fees in the amount of \$4,000, approve the proposed
20 distributions to the LWDA and Aggrieved Employees, and enter judgment.

21
22
23 Dated: February 13, 2025

CROSNER LEGAL, P.C.

24
25 

26 Jamie Serb
27 Sepideh Ardistani
28 Zachary Crosner Attorneys for Plaintiff BOBBIE
DIANE TAYLOR