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on behalf of the State of California,  
9 and others similarly situated and aggrieved

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LOS ANGELES**

13 JOE MUÑOZ, on behalf of the State of  
California, and others similarly situated and  
14 aggrieved,  
15 Plaintiff,

16 v.

17 ALPHA PROPERTY MANAGEMENT a  
18 Nevada Corporation; 21ST CENTURY  
19 PERSONNEL LLC, a California limited  
liability company; and DOES 1-100, inclusive,  
20 Defendants.  
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Case No.: 23STCV12751

Assigned for all purposes to the  
Hon. Randolph M. Hammock  
Dept. 49

**MEMORNDUM OF POINTS &  
AUTHORTIEIS IN SUPPORT OF  
MOTION FOR APPROVAL OF  
SETTLEMENT UNDER PRIVATE  
ATTORNEYS GENERAL ACT**

Date: March 14, 2024  
Time: 8:30 a.m.  
Dept.: 49

Reservation No.: 539910560484

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1 **I. INTRODUCTION**

2 Plaintiff Joe Munoz hereby seeks Court approval of a proposed settlement of claims brought  
3 under the Private Attorneys General Act (“PAGA”) against EMP III, Inc. dba Alpha Property  
4 Management (“Alpha”) and 21<sup>st</sup> Century Personnel, LLC (“21st Century”) (collectively with Alpha,  
5 “Defendants”). Consistent with PAGA, the proposed settlement releases claims under PAGA only  
6 and has no impact on the individual claims of any allegedly aggrieved employee other than Plaintiff.  
7 Since the settlement resolves nothing more than claims under PAGA, it requires only a one-step  
8 review and approval process by the Court, and for the reasons discussed below, the proposed  
9 settlement is fair, reasonable, and adequate, and advances the statutory purposes of PAGA. Plaintiff  
10 respectfully requests the Court approve the Settlement in its entirety.

11 **II. BACKGROUND**

12 Defendants own and manage numerous apartment properties through the United States and  
13 Puerto Rico, including 28 different properties throughout California. Plaintiff Munoz started  
14 working for Defendants in 1999 as a Maintenance Technician, primarily at Defendants’ Warwick  
15 Terrace apartment complex in Compton, California. His job duties included attending to whatever  
16 maintenance issues arose, such as including fixing broken and malfunctioning fixtures and amenities  
17 for tenants, providing regular maintenance to plumbing and electrical systems, etc., at the Warwick  
18 complex as well as working at some of Defendants’ other complexes in Los Angeles. Plaintiff  
19 terminated his employment with Defendants in July 2022. [Declaration of Jamie K. Serb (“Serb  
20 Decl.”), ¶ 4.]

21 On or about March 28, 2023, Plaintiff Quintero submitted appropriate notice to the Labor &  
22 Workforce Development Agency (“LWDA”) regarding the alleged Labor Code violations at issue  
23 in this matter. Having exhausted administrative remedies, Plaintiff filed a PAGA-only complaint on  
24 June 2, 2023, seeking civil penalties for the alleged: (a) failure to pay all wages due, including  
25 minimum and overtime wages; (b) failure to provide meal and rest periods; (c) failure to reimburse  
26 business expenses, primarily use of personal cell phones; (d) failure to provide complete and  
27 accurate wage statements; and (e) failure to pay wages due on separation of employment. [Serb  
28 Decl., ¶ 5; Exh. 3.]

1 Defendants have at all times denied Plaintiff's allegations and maintained the applicable  
2 timekeeping and payroll policies accurately tracked and paid for all hours worked by its employees,  
3 that its meal and rest break and payroll policies and procedures comply with applicable California  
4 meal and rest break requirements, and that there would be no need for Plaintiffs or other employees  
5 to use their personal phones for work purposes. Defendants strongly contend that any alleged "off  
6 the clock work," or use of personal phones on company business, was against company policy, was  
7 intermittent and infrequent, and would entail substantial difficulties and inefficiencies of proof if  
8 prosecuted on a representative basis. [Serb Decl., ¶ 6.]

9 After filing the complaint, Plaintiff and Defendants engaged in several discussions regarding  
10 the merits of the case and discovery and law and motion issues, and eventually agreed to early  
11 mediation. The Parties further agreed to an informal exchange of documents and information before  
12 the mediation. Through this informal discovery, Defendants provided Plaintiff with information  
13 including, inter alia, personnel files, the number of potential Aggrieved Employees, the number of  
14 aggregate pay periods, pay stubs and time records for a sampling of the Aggrieved Employees, and  
15 relevant policy documents regarding Defendants' time keeping and reporting policies, among other  
16 pertinent materials. [Serb Decl., ¶ 7.]

17 On October 24, 2023, the Parties mediated the case with Jill Sperber, Esq., a respected  
18 professional neutral with extensive class action/wage and hour experience. Before and during the  
19 mediation, Plaintiff and counsel analyzed, researched, and investigated the potential issues,  
20 including matters related to the calculation of damages, trial, and appellate issues and risks. During  
21 mediation, the Parties vigorously debated the likelihood of Plaintiff's ability to proceed on a  
22 representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and Defendants'  
23 defenses, and the Parties' data analyses and conclusions based on data provided by Defendants. After  
24 a contentious day of negotiations, the Parties reached agreement and subsequently formalized their  
25 tentative settlement in the Settlement Agreement now before the Court for approval. [Serb Decl., ¶  
26 8.] A fully executed, true and correct copy of the PAGA Settlement Agreement ("Settlement  
27 Agreement") is attached to the Serb Declaration as Exhibit 1.

28 /////

1 **III. SUMMARY OF SETTLEMENT TERMS**

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

3 Under the settlement, Defendant will pay a non-reversionary settlement amount of \$125,000  
4 (the “Gross Settlement Amount” or “GSA”). The GSA is inclusive of all payments to the LWDA  
5 and Aggrieved Employees, a modest service award to Plaintiff, costs of settlement administration  
6 (estimated at no more than \$2,950), and reasonable attorney’s fees and costs.<sup>1</sup> After payment of the  
7 settlement administration costs, service awards, and reasonable attorney’s fees and costs from the  
8 GSA, Plaintiff presently estimates about \$59,417.16 will remain (the “Net Settlement Amount” or  
9 “NSA”). 75% of the NSA (about \$44,562.87) will go to the LWDA, and the remaining 25% (about  
10 \$14,854.29) will be distributed to the Aggrieved Employees<sup>2</sup> in proportion to the total number of  
11 Pay Periods each individual worked during the PAGA Period of March 29, 2022 to October 24,  
12 2023, with an average award currently estimated at about \$82.50 per individual. [Serb Decl., ¶ 9.]

13 **B. PAYMENT AND THE NOTICE**

14 The Parties propose using Phoenix Settlement Administrators as the Settlement  
15 Administrator. Phoenix has extensive experience administering PAGA settlements, and has agreed  
16 to cap its fees at \$2,950.00. [Declaration of Michael Moore, ¶¶ 2-17; Exhs. A-B.] Defendants will  
17 fund the GSA within 14 days of approval, and within 14 days of funding Phoenix will mail a Notice  
18 and settlement check to all Aggrieved Employees via regular First-Class U.S. Mail, using the most  
19 current, known mailing addresses identified in Defendants’ records. Aggrieved Employees need not  
20 submit claim forms and will automatically receive a Notice and settlement check. Settlement checks  
21 will be negotiable for 180 days, after which time any unclaimed residual funds will be forwarded to  
22 the California State Controller’s Unclaimed Property Fund. [Serb Decl., ¶ 10.]

23 ////

24 ////

25 \_\_\_\_\_  
26 <sup>1</sup> Plaintiff’s counsel requests 1/3 of the GSA (\$41,666.67) in fees and costs of \$10,966.17. Plaintiff requests  
a service award of \$10,000 for his service as the named PAGA plaintiff.

27 <sup>2</sup> Defined as all non-exempt workers who were directly employed by 21st Century, directly  
28 employed by Alpha, or were assigned/staffed to work at Alpha by 21st Century, in California at any  
time during the PAGA Period of March 29, 2022 to October 24, 2023

1           **C.     THE RELEASE**

2           The California Supreme Court has explained that a judgment in “a representative action  
3 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ...  
4 is binding not only on the named employee plaintiff but also on government agencies and any  
5 aggrieved employee not a party to the proceeding.” Arias v. Superior Court (2009) 46 Cal.4th 969,  
6 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty  
7 claims brought under PAGA. Under Arias, the order the Parties request the Court enter is intended  
8 to be “binding not only on the named employee plaintiff but also on government agencies and any  
9 aggrieved employee not a party to the proceeding.” The Settlement Agreement protects the rights  
10 of the Aggrieved Employees to bring their own individual claims should they wish. For these  
11 reasons, the Parties contend the release narrowly applies only to the PAGA claims alleged, and the  
12 Settlement Agreement specifically provides the PAGA Release is inapplicable to any claims other  
13 than those brought under PAGA. Only the named plaintiff is entering into a general release of claims  
14 and waiver of Civil Code § 1542. [Srb Decl., ¶ 11.]

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

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

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

1 this district court authority, concluding that much the same principles that ensure fairness in class  
2 action settlements serve the public interest in the PAGA context. Essentially, these factors are more  
3 or less identical to those California courts use to evaluate class action settlements per Kullar v. Foot  
4 Locker Retail, Inc. (2008) 168 Cal.App.4th 116 and, accordingly, Plaintiff submits they should  
5 inform the Court's analysis as well. For the reasons below, the proposed settlement is fair,  
6 reasonable and adequate, advances the purposes underlying PAGA, and should be approved.

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

8 Plaintiff contends Defendant failed to pay all wages due because it required employees to  
9 work "off the clock" both before and after their scheduled shift start/stop times, which resulted in  
10 the Aggrieved Employees losing a few minutes of compensable hours worked on many shifts.  
11 Plaintiff also alleged Defendants essentially paid employees based on their scheduled hours rather  
12 than actual hours worked, and failed to accurately track shift start/stop times. [Serb Decl., ¶ 12.]

13 Plaintiff next alleges Defendants did not maintain a compliant meal and rest break policy,  
14 and that there are numerous "de facto" violations where employees either did not receive required  
15 breaks at all, or that their breaks were untimely, cut short, or otherwise non-compliant. Plaintiff also  
16 argued Defendants in many instances failed to record meal periods or used an "auto-deduct" policy  
17 whereby 30 minutes were deducted from employee time without regard to whether a meal break  
18 was taken or documented in the time records. Per Plaintiff, this results in the presumption that a  
19 meal period was not taken and shifts the burden of proof to the employer to prove the meal period  
20 was taken. Under California law, "[i]f time records show missed, short, or delayed meal periods  
21 with no indication of proper compensation, then a rebuttable presumption [of meal period violations]  
22 arises" against the employer, including at the summary judgment stage. Donohue v. AMN Servs.  
23 LLC (2021) 11 Cal.5th 58, 77. [Serb Decl., ¶ 13.]

24 Plaintiff further alleges Defendants required employees to use their personal cell phones for  
25 work purposes, such as communicating with supervisors during a shift, taking pictures of projects,  
26 etc. Per Plaintiffs, they did not receive any reimbursement for this. Plaintiffs also bring claims  
27 derivative of the foregoing claims, including a derivative wage statement claim the failure to pay all  
28

1 wages due and owing upon separation of employment under Labor Code §§ 201-203. [Serb Decl.,  
2 ¶ 14.]

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

4 For mediation, Defendants indicated it employed approximately 180 non-exempt employees  
5 in California during the relevant time frame, and these individuals worked approximately 3,812 pay  
6 periods at during that time. Based on the data provided by Defendant, Plaintiffs estimated  
7 Defendant's maximum PAGA exposure at approximately \$1,906,000, including approximately  
8 \$381,200 in civil penalties on each substantive claim assuming a 100% violation rate. [Serb Decl.,  
9 ¶¶ 15-16.]

10 **C. THE SETTLEMENT MEETS THE KULLAR FACTORS, INCLUDING THE**  
11 **STRENGTH OF PLAINTIFF'S CASE, THE DISCOVERY PERFORMED,**  
**AND AMOUNT OFFERED IN SETTLEMENT**

12 In response to Plaintiff's unpaid wage/off the clock claim, Defendants argued its time  
13 keeping policies are entirely consistent with California law and did not deprive class members of  
14 compensable hours worked. Per Defendants, the applicable timekeeping and payroll policies  
15 accurately recorded and paid for all hours worked, including all overtime wages. Defendants also  
16 contend to the extent any off the clock work occurred, it was against company policy and done  
17 without company knowledge. Accordingly Defendant argued the issue would not be amenable to  
18 representative treatment since it would require individualized inquiries whether any compensable  
19 "off the clock" work occurred and why it was or was not documented and paid for. White v.  
20 Starbucks Corp., 497 F.Supp.2d 1080, 1083 (N.D. Cal. 2007) (employer must have actual or  
21 constructive knowledge of the off the clock work for liability to attach). [Serb Decl., ¶ 17.]

22 On the meal and rest break claims, Defendants deny Plaintiff's contentions, claiming they  
23 made meal and rest breaks available to Class Members in compliance with California law.  
24 Defendants contend their meal and rest break policies are lawful and that Class Members were  
25 frequently reminded they were required to take all meal and rest breaks. Defendants also contend  
26 that time records demonstrate that Class Members took duty-free, timely meal and rest breaks, and  
27 further that Defendants paid meal premiums. Defendants contend their meal and rest break policies  
28 and practices comported with the flexibility held was integral to California's meal and rest period

1 requirements in Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004. Finally,  
2 Defendants argue that Plaintiff's meal and rest break claims are not susceptible to common proof,  
3 as the claims would require individualized inquiry, including whether there was an unlawful  
4 companywide policy, whether employees had the opportunity to take meal and rest periods, whether  
5 they voluntarily chose to forego their meal and rest periods, and whether Defendants ever prevented  
6 them from taking meal and rest periods. [Serb Decl., ¶ 18.]

7 On the expense reimbursement claim, Plaintiffs alleged that throughout their employment,  
8 they had to use their personal cell phones, inter alia, in order to communicate with supervisors,  
9 and take pictures of their work projects. However, Defendants did not reimburse Plaintiff and  
10 other employees for this expense. Cochran v. Schwan's Home Serv., Inc. (2014) 228 Cal.App.4th  
11 113. On the other hand, Defendants argued there would be no conceivable need for employees to  
12 use their phones for work and that any use of employee phones was purely for personal  
13 convenience and therefore not reimbursable. [Serb Decl., ¶ 19.]

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

24 Defendant also emphasized PAGA gives the Court wide latitude to reduce the amount of  
25 civil penalties "based on the facts and circumstances of a particular case" if "to do otherwise  
26 would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code §  
27 2699(h). Several state and federal courts in California have applied significant reductions to  
28 PAGA civil penalties even after plaintiffs prevailed on the merits. In Fleming v. Covidien (C.D.

1 Cal. 2011) 2011 U.S. Dist. LEXIS 154590, \*8-9, for instance, the district court reduced the  
2 potential penalties by over 82% after a bench trial. More recently, in Carrington v. Starbucks  
3 Corp. (2018) 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of just \$5  
4 per pay period, a 90% reduction, which decision was upheld on appeal. In re Taco Bell Wage and  
5 Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after  
6 trial). [Serb Decl., ¶ 21.]

7 Thus, Defendants raised various and multi-layered defenses to each of Plaintiff's claims,  
8 anyone of which, if successful, could have derailed Plaintiff's case. And Defendants vowed to  
9 raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with  
10 litigation, and it could have taken years to realize any recovery in this action along with the  
11 possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be  
12 unmanageable, Defendants also intended to raise additional defenses on damages, including the  
13 proper measure of civil penalties and the appropriate discount to place on any assessment of such  
14 penalties. [Serb Decl., ¶ 22.]

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

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

1 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven  
2 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that  
3 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of  
4 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane  
5 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is  
6 fundamentally fair . . . is different from the question whether the settlement is perfect in the  
7 estimation of the reviewing court”); White v. Experian Information Solutions, Inc. (C.D. Cal.  
8 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even  
9 though it represented 99% discount off the maximum value of the claims).

10 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,  
11 the probability of appeal of a favorable judgment, the Court’s substantial discretion to reduce any  
12 penalty award all are accounted for, it is clear a settlement amount of \$125,000 for the PAGA  
13 claims is within the ballpark of reasonableness, furthers the purposes underlying PAGA, and  
14 approval is appropriate.

15 **V. SUBMISSION TO THE LWDA**

16 Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and  
17 notified the LWDA of this approval hearing. [Serb Decl., ¶ 24; Exh. 5.] Accordingly, the LWDA  
18 will be able to weigh in as necessary and, importantly, many courts find it persuasive of approval  
19 if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA  
20 settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL  
21 3669607, at \*3 (court inferred the LWDA’s non-response as “tantamount to its consent to the  
22 proposed settlement terms, namely the proposed PAGA penalty amount.”); Jennings, 2018 WL  
23 4773057, at \*9 (“Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has  
24 not objected to the settlement.”); Jordan, 2018 U.S. Dist. LEXIS at \*7 (“Additionally, the Court  
25 finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and  
26 no comment or objection has been received.”).

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

2 For their efforts and the contingent risk undertaken in obtaining a common fund settlement  
3 that benefits the LWDA and Aggrieved Employees, 1/3 of the PAGA Allocation, or \$41,666.67, is  
4 allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs not to  
5 exceed \$15,000.00. These fees and costs are warranted under the law and within the range of fees  
6 commonly awarded in similar cases.

7 **A. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER ATTORNEY'S**  
8 **FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM**  
9 **ACTION**

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

16 "A *qui tam* action is one brought under a statute that allows a private person to sue as a  
17 private attorney general to recover damages or penalties, all or part of which will be paid to the  
18 government." People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487, 491-  
19 492. As our Supreme Court recently affirmed, a PAGA action is a *qui tam* action because the statute  
20 allows the employee plaintiff, acting as the proxy of the State's labor law enforcement agency, to  
21 sue his or her employer for Labor Code violations and recover civil penalties that otherwise could  
22 only be assessed and collected by the LWDA. Kim v. Reins Int'l California, Inc. (2020) 9 Cal.5th  
23 73; Iskanian, 59 Cal.4th at 380-82 ("[a] PAGA representative action is therefore a type of *qui tam*  
24 action"). Indeed, the majority of the civil penalties recovered in a PAGA action are paid to the State,  
25 with a smaller portion paid to the Aggrieved Employees (e.g. 75% paid to the state; 25% paid to the  
26 Aggrieved Employees). Lab. Code § 2699(i). As here, where a common fund is created in a *qui*  
27 *tam* action by the successful litigation of a plaintiff and his attorneys, the plaintiff's attorneys are  
28 entitled to recover their fees from the common fund. Bank of America v. Cory (1985) 164  
Cal.App.3d 66, 89-91.

1 Through the successful efforts of Plaintiff and her attorneys here, a common fund was  
2 created in the amount of \$125,000 for the benefit of the Aggrieved Employees and the State. Thus,  
3 these beneficiaries should bear their share of the costs and attorney's fees out of the overall \$125,000  
4 in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472,  
5 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

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

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

25 Awarding attorney's fees of one-third of gross common fund amount is favored by California  
26 courts when a fund established for the common benefit of others is involved, such as here.  
27 Accordingly, awarding fees on this basis out of the \$125,000 PAGA Allocation, for a total of  
28 \$41,666.67, is reasonable and appropriate. [Serb Decl., ¶¶ 25-43.]

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

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

13           Here, Plaintiff’s counsel’s lodestar is approximately \$78,965.00, based on 111.8 attorney  
14 hours spent litigating the case. [Serb Decl., ¶¶ 228-42; Exh. 5.] On a lodestar basis, the fee  
15 request of \$14,666.67 is less than the base lodestar, and accordingly there is no request for a  
16 lodestar enhancement. Plaintiff notes, however, that this shows the reasonableness of the fee  
17 request, as the actual value of the services performed is higher than the fees requested when  
18 valued via traditional hourly billing.

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

20           Plaintiff’s counsel requests reimbursement of actual out-of-pocket expenses incurred to  
21 prosecute this action. These expenses were incidental and necessary to the effective representation  
22 of the employees, and Plaintiff’s Counsel is permitted to recover their litigation costs and expenses  
23 under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35 (common  
24 fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego  
25 (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund “[o]f necessity,  
26 and for precisely the same reasons discussed above with respect to the recovery of attorneys’ fees  
27 by ... [Plaintiffs’] attorneys”). Furthermore, Plaintiff’s counsel is entitled to recover “those out-of-  
28

1 pocket expenses that would normally be charged to a fee-paying client.” Harris v. Marhoefer (9th  
2 Cir. 1994) 24 F.3d 16, 19.

3 Plaintiff’s counsel’s actual costs presently are \$10,966.17. This includes filing fees,  
4 mediation costs, and postage, while waiving photocopying costs and legal research charges. These  
5 costs are reasonable and uncontested, and should be approved. [Serb Decl., ¶¶ 44-45.]

6 **VII. PLAINTIFF’S ENCHANCEMENT AWARD**

7 Here, pursuant to the Settlement Agreement, Plaintiff seeks an incentive award of \$10,000.  
8 This request is reasonable given the much broader release that Plaintiff is agreeing to, as well as  
9 her efforts in this case and the risks he undertook on behalf of the Aggrieved Employees.

10 Additionally, by contacting and retaining counsel to pursue these claims, Plaintiff made this  
11 settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the risk  
12 of being liable for Defendants’ litigation costs. Plaintiff also exposed himself to unwanted  
13 notoriety related to filing a public lawsuit (discoverable even through a simple google search) for  
14 the benefit of other employees, placing him at risk of discrimination by future prospective  
15 employers. Among taking many other actions assisting in the successful litigation of this case,  
16 Plaintiff provided substantial factual information to my office, attended numerous meetings with  
17 my office to discuss the case, and generally participated in all phases of the litigation.

18 Accordingly, the requested enhancement payment to Plaintiff is appropriate and justified as part of  
19 the Settlement. [Serb Decl., ¶ 46; Declaration of Joe Munoz, ¶¶ 2-10.]

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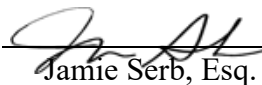
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1 **VIII. CONCLUSION**

2 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement under  
3 PAGA, approve the requested award of reasonable attorney's fees and costs, approve Apex Class  
4 Action as the settlement administrator and approve is fees in the amount of \$2,950.00, approve the  
5 proposed distributions to the LWDA and Aggrieved Employees, and enter judgment.  
6

7 Dated: February 8, 2024

**CROSNER LEGAL, PC**

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9 By:   
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