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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MONET L. STERLING, on behalf of herself
and current and former aggrieved employees

Plaintiff,

vs.

DOTHAN SECURITY, INC.; and DOES 1
to 100, inclusive,

Defendants

Case No.: 23STCV08293

Assigned for All Purposes to:
Hon. Bruce G. Iwasaki
Dept. 58

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

Date: January 8, 2025
Time: 9:00 am
Dept.: 58

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1 **I. INTRODUCTION**

2 Plaintiffs Monet Sterling, Miguel Ruiz, Andrew Tarigan, Carlton McGee, and Ricardo
3 Wendell (collectively, “Plaintiffs”) hereby seek Court approval of a proposed settlement of claims
4 brought under the Private Attorneys General Act (“PAGA”) against Defendant Dothan Security, Inc.
5 (“Defendant”). Consistent with PAGA, the proposed settlement releases claims under PAGA only
6 and has no impact on the individual claims of any aggrieved employee other than Plaintiffs. Since the
7 settlement resolves nothing more than claims under PAGA, it requires only a one-step review and
8 approval process by the Court, and for the reasons discussed below, Plaintiffs respectfully request the
9 Court approve the Settlement as it is fair, reasonable and adequate in all respects and advances the
10 purposes underlying PAGA.

11 **II. BACKGROUND**

12 Defendant is a comprehensive security service provider and operates, in part, in California,
13 providing armed and unarmed uniformed security guards, surveillance systems, and consulting
14 services. [Declaration of Sepideh Ardestani (“Ardestani Decl.”), ¶ 4.]

15 Plaintiff Sterling worked for Defendant from October 12, 2021 to August 10, 2022 as a non-
16 exempt security officer. In this matter, she contends that she worked at a single-guard post and
17 accordingly she had to punch in earlier and punch out later for her shifts if another security guard was
18 not present. However, she alleges her hours were “rounded” down to the time of her scheduled shifts,
19 to the benefit of Defendant, she was required to remain on duty at all times during her meal and rest
20 breaks, and she was never relieved of her duties until another security guard clocked in. [Ardestani
21 Decl., ¶ 5.]

22 Plaintiff Ruiz worked for Defendant from June 27, 2022 through January 11, 2023 as a non-
23 exempt Field Supervisor and security officer. Ruiz alleges he was assigned 4-5 positions at any given
24 time, and he was required to wash patrol cars. He contends he was required to keep his cell phone on
25 him at all times and frequently would be contacted by his supervisor about work-related matters while
26 off the clock, or be asked to come back to work to fill in for other security guards. [Ardestani Decl.,
27 ¶ 6.]
28

1 Plaintiff Tarigan worked for Defendant from June 17, 2022 through June 30, 2023 as a non-
2 exempt security officer. He contends that he would oftentimes have to work off-the-clock completing
3 reports, responding to dispatch, and waiting for another security guard to relieve him. He also alleges
4 in this matter that he worked through meal and rest breaks as a result of Defendant's alleged failure
5 to adequately staff locations where he was assigned. Further, he contends he used his personal cell
6 phone to communicate with his supervisor and dispatch as well as purchase and maintain Defendant's
7 uniform, all without reimbursement. [Ardestani Decl., ¶ 7.]

8 Plaintiff McGee worked for Dothan from November 16, 2022 to June 16, 2023 as a security
9 officer. He contends that he was not provided meal or rest periods, or otherwise allowed to leave his
10 work station, signed an on-duty meal period agreement as part of his new hire packet, and was
11 required to purchase his work uniform consisting of pants, shirts, bomber jacket, blazer, windbreaker,
12 blazer, sweater, a cap, and a vest. Plaintiff Wendell worked for Dothan from September 30, 2022 to
13 July 28, 2023 as a security officer, and, like Plaintiff McGee, alleges he did not receive all meal and
14 rest breaks and was required to purchase many different uniforms. [Ardestani Decl., ¶ 8.]

15 On February 7, 2023, Plaintiff Sterling filed her notice of claims under PAGA with the Labor
16 & Workforce Development Agency ("LWDA") and, after exhausting administrative remedies, on
17 April 14, 2023 filed a representative complaint seeking civil penalties under to PAGA for Dothan's
18 alleged Labor Code violations. On August 3, 2023, the Court granted Defendant's motion to compel
19 arbitration in part as to Plaintiff's individual claims, but stayed the remaining representative/non-
20 individual PAGA claims pending the outcome of arbitration. [Ardestani Decl., ¶ 9.]

21 On March 2, 2023, Plaintiff Ruiz filed his notice of claims under PAGA with the LWDA. On
22 June 6, 2023, and after exhausting his administrative remedies with the LWDA, he filed a separate
23 PAGA-only complaint seeking civil penalties for substantially the same Labor Code violations as
24 alleged by Plaintiff Sterling. On or about October 12, 2023, Plaintiff Ruiz and Defendant stipulated
25 to arbitrate his individual PAGA claims. [Ardestani Decl., ¶ 10.]

26 On May 23, 2023, Plaintiff Tarigan filed his notice of claims under PAGA with the LWDA.
27 On July 28, 2023, and after exhausting his administrative remedies with the LWDA, Plaintiff Tarigan
28

1 filed a representative complaint seeking penalties pursuant to PAGA for the same underlying Labor
2 Code violations as alleged by the co-plaintiffs. [Ardestani Decl., ¶ 11.]

3 After subsequently ascertaining the correct name for the defendant, on January 16, 2024,
4 Plaintiffs Carlton McGee and Ricardo Wendell submitted a PAGA notice to the LWDA, DSIS, and
5 Defendant, regarding Defendant's alleged Labor Code violations. [Ardestani Decl., ¶ 12.]

6 Based on the allegations described above, Plaintiffs' respective complaints alleged a number
7 of Labor Code violations by Defendant. In short, they collectively alleged, among other things, that
8 Defendant failed to pay wages for all hours worked at the legal minimum wage; to pay wages for
9 overtime hours worked at the overtime rate of pay; to pay wages to hourly non-exempt employees
10 for workdays that Defendant failed to provide legally required and compliant meal periods; to pay
11 wages to hourly non-exempt employees for workdays that Defendant failed to provide legally
12 required and compliant rest periods; to indemnify for necessary expenses; to provide supplemental
13 paid sick leave; to pay vested vacation/paid time off; to timely pay earned wages during employment;
14 to provide complete and accurate wage statements; and to pay employees all wages due at time of
15 termination/resignation. Plaintiffs' complaints sought relief on behalf of all non-exempt current and
16 former employees employed by Defendant in California during the relevant time frame (February 7,
17 2022 (the start of the earliest PAGA Period established by the earliest filed LWDA notice letter, e.g.,
18 by Sterling) through June 11, 2024 (date established in the Parties' longform settlement agreement)).
19 Dothan has at all times denied Plaintiffs' allegations and maintained it complied with all California
20 wage and hour laws with respect to the alleged "aggrieved employees," as defined in this matter.
21 [Ardestani Decl., ¶ 13.]

22 After Plaintiffs filed their respective PAGA complaints, and upon engaging in several meet
23 and confer sessions regarding the merits of the asserted claims, ongoing arbitrations with respect to
24 the Plaintiffs' individual wage and hour and individual PAGA claims, prospective law and motion
25 and discovery issues, the Parties agreed to attempt a global mediation. The Parties further agreed to
26 a protocol for informally exchanging additional documents and information before the mediation.
27 Through this informal discovery, Defendant provided Plaintiffs with information related to the
28 alleged aggrieved employees, including the number of alleged aggrieved employees, the number of

1 aggregate pay periods, payroll information and time records for a sampling of alleged aggrieved
2 employees, employee handbooks and manuals, and other policy documents regarding Defendant's
3 timekeeping and reporting policies. Plaintiffs then reviewed and analyzed this information with the
4 assistance of consulting experts from Berger Consulting Group to determine potential violation rates
5 for meal and rest breaks, construct a damages, model, etc. [Ardestani Decl., ¶ 14.]

6 The Parties then mediated the case in April 2024 with Gig Kyriacou, Esq., a respected
7 mediator with extensive class action/wage and hour experience. Before and during the mediation,
8 Plaintiffs and counsel analyzed, researched, and investigated the potential issues, including matters
9 related to the calculation of damages, trial, and appellate issues and risks. During mediation, the
10 Parties vigorously debated the likelihood of Plaintiffs' ability to proceed on a representative basis as
11 to the PAGA claims, the legal grounds for Plaintiffs' claims and Defendant's defenses, and the parties'
12 data analyses and conclusions based on data provided by Defendant. After a contentious full day of
13 negotiations and a mediator's proposal being issued, the Parties reached agreement on all major issues
14 and subsequently formalized their tentative (pending Court approval) settlement in the settlement
15 agreement now before the Court for approval. [Ardestani Decl., ¶ 15.] A fully executed, true and
16 correct copy of the Parties' PAGA settlement agreement ("Settlement Agreement") is attached to the
17 Ardestani Declaration as Exhibit 1.

18 Finally, in order to effectuate the proposed global settlement, on XXX, 2024, Plaintiff Sterling
19 filed a First Amended Complaint in this matter adding Ruiz, Tarigan, McGee and Wendell as party-
20 plaintiffs and to otherwise incorporate all the allegations and claims asserted in Plaintiffs' respective
21 complaints and LWDA notice letters, and the PAGA matters individually filed by Plaintiffs Ruiz,
22 Tarigan and McGee and Wendell were dismissed. [Ardestani Decl., ¶ 16.]

23 **III. SUMMARY OF SETTLEMENT TERMS**

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

25 Under the terms of the Settlement Agreement, Defendant will pay a non-reversionary
26 settlement amount of \$830,000 (the "Gross Settlement Amount" or "GSA"). The GSA is inclusive of
27 payments to the LWDA and Aggrieved Employees, costs of settlement administration (no more than
28 \$4,000), reasonable service awards to the Plaintiffs of \$2,500 each (\$12,500 total), and reasonable

1 attorney's fees (for all respective Plaintiffs' counsel) of 1/3 of the GSA, or \$276,666.67, and actual
2 litigation costs of \$27,653.56. After all deductions from the GSA, Plaintiffs presently estimate about
3 \$509,179.77 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five percent of the NSA
4 (about \$381,884.83) will go to the LWDA, and the remaining 25% (about \$127,294.94) will be
5 distributed to the Aggrieved Employees in proportion to the total number of Pay Periods each
6 individual worked during the PAGA Period, with an average award currently estimated at about
7 \$137.17 per Aggrieved Employee, and awards will range from about \$4.31 to \$262. Finally, each of
8 the named Plaintiffs is entering into a separate individual settlement with Dothan to resolve their
9 respective, individual claims. [Ardestani Decl., ¶ 17.]

10 **B. PAYMENT AND THE NOTICE**

11 The Parties propose and agree to using Simpluris, Inc. as the Settlement Administrator.
12 Simpluris has extensive experience administering PAGA settlements and has agreed to cap its fees at
13 \$4,000. [Declaration of Eric Springer, ¶¶ 2-9; Exhs. A-C.] Dothan will fund the settlement within 30
14 days of the Effective Date (as defined in the Settlement Agreement) and, within 14 days of receipt of
15 the GSA, Simpluris will mail a Notice and settlement check to all Aggrieved Employees via regular
16 First-Class U.S. Mail, using the most current, known mailing addresses identified in Defendant's
17 records. Aggrieved Employees need not submit claim forms and will automatically receive a Notice
18 and settlement check. After 180 days from issuance, any unclaimed residual funds will be forwarded
19 to the California State Controller's Unclaimed Property Fund. [Ardestani Decl., ¶ 18.]

20 **C. THE RELEASE**

21 The California Supreme Court has explained that a judgment in "a representative action
22 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ...
23 is binding not only on the named employee plaintiff but also on government agencies and any
24 aggrieved employee not a party to the proceeding." Arias v. Superior Court (2009) 46 Cal.4th 969,
25 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty
26 claims brought under PAGA. Under Arias, the order the Parties request the Court enter is intended to
27 be "binding not only on the named employee plaintiff but also on government agencies and any
28 aggrieved employee not a party to the proceeding." The Settlement Agreement protects the rights of

1 the Aggrieved Employees to bring their own individual claims should they wish. For these reasons,
2 the Parties contend the release narrowly applies only to the PAGA claims alleged, and the Settlement
3 Agreement specifically provides the Release is inapplicable to any claims other than those brought
4 under PAGA. [Ardestani Decl., ¶ 19.]

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

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

13 In so holding, Moniz noted many federal district courts had imported class action settlement
14 approval principles when evaluating PAGA settlements, demanding that PAGA settlements be “fair,
15 reasonable, and adequate,” and weighing factors such as “the strength of the plaintiff’s case, the risk,
16 the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement
17 amount[.]” Id. at 75-76 (collecting cases). Observing that “PAGA’s purpose” is to “protect the public
18 interest”—especially the allegedly Aggrieved Employees—the Court agreed with this district court
19 authority, concluding that much the same principles that ensure fairness in class action settlements
20 serve the public interest in the PAGA context. Essentially, these factors are more or less identical to
21 those California courts use to evaluate class action settlements per Kullar v. Foot Locker Retail, Inc.
22 (2008) 168 Cal.App.4th 116, and, accordingly, Plaintiffs submit they should inform the Court’s
23 analysis as well. For the reasons below, the proposed settlement is fair, reasonable and adequate,
24 advances the purposes underlying PAGA, and should be approved.

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

26 First, Plaintiffs alleged, among other things, Defendant failed to pay for all hours worked by
27 requiring “off the clock” work and by requiring many employees to work “on call” time such that the
28 employees effectively remained subject to employer control. On the “off the clock” claims, Plaintiffs

1 alleged, for example, that if they were working at a single guard post they had to remain on duty until
2 their replacement arrived and, if the next guard was late they were not paid for that extra time. They
3 further alleged they regularly had to work through meal periods without pay for a number of reasons,
4 including understaffing and dealing with the press of business, or had to prepare reports and respond
5 to calls/texts at home. [Ardestani Decl., ¶ 20.]

6 Next, Plaintiffs claimed they did not receive legally compliant meal periods, and alleged
7 numerous “de facto” violations where Aggrieved Employees were consistently unable to take timely,
8 off duty, thirty-minute, uninterrupted meal periods. Plaintiffs also alleged that the “on duty” meal
9 waivers required by Dothan failed to meet narrow “nature of the work” exception to meal period
10 requirements, which permits on-duty meal period agreements “only when the nature of the work
11 prevents an employee from being relieved of all duty...” under IWC Wage Order 4, § 11(C).
12 Plaintiffs emphasized that under this narrow exception to the general rule that employers must provide
13 off-duty meal periods, an employer who opts to implement on-duty meal periods carries the burden
14 of establishing that the facts justify an on-duty meal period, Abdullah v. U.S. Sec. Assocs. (9th Cir.
15 2013) 731 F.3d 952, and that Defendant would be unable to meet this burden and show it was
16 impossible to relieve employees from duty for a meal break. Plaintiffs further alleged the Aggrieved
17 Employees did not receive compliant rest periods for the same reasons in that understaffing and other
18 factors, such as monitoring radios/phones at all times, resulted in employees not being entirely free
19 from employer control while on a rest period. [Ardestani Decl., ¶ 21.]

20 Plaintiffs next alleged Defendant failed to reimburse necessary business expenses for use of
21 personal cell phones, as supervisors would contact Plaintiffs and other employees on their personal
22 phones both at and away from work regarding a host of issues. Cochran v. Schwan’s Home Service,
23 Inc. (2014) 228 Cal.App.4th 1137. Plaintiffs also alleged they were required to purchase multiple
24 uniform items in order to perform their jobs, and likewise received no reimbursement for such
25 mandatory purchases.

26 Lastly, among other claims, Plaintiffs also brought claims derivative of the foregoing claims,
27 including a derivative wage statement claim based on the failure to pay all wages due, and failure to
28 pay all wages due and owing upon separation of employment. [Ardestani Decl., ¶ 22.]

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

2 Defendant indicated it employed approximately 928 non-exempt employees in California
3 during the applicable PAGA period, and these individuals worked approximately 30,000 pay periods
4 during that time. Based on the data and information provided, Plaintiffs estimated Defendant's
5 maximum PAGA exposure at approximately \$15,069,500. [Ardestani Decl., ¶¶ 23-24.]

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

9 In response to Plaintiffs' unpaid wage claims, Defendant argued Plaintiff and the alleged
10 Aggrieved Employees were security guards, a position that is generally exempted from off-duty meal
11 periods. (*See* IWC Orders 1 – 15, Sec. 11, Order 16, Section 10; Labor Code § 12.) On the off the
12 clock issue, Defendant argued its policies strictly prohibited any off the clock work, and it accurately
13 tracked all employee hours worked and paid for such time at the correct rates. Thus, any off the clock
14 work would have been against company policy and done without the company's knowledge.
[Ardestani Decl., ¶ 25.]

15 For the meal and rest break claims, Defendant offered multiple defenses. First, it emphasized
16 its written meal and rest break policy was compliant, it authorized and permitted all necessary breaks,
17 and employees received full uninterrupted meal periods free from employer control. It further noted
18 its time records generally showed employees took compliant meal periods, and it compensated
19 employees with the required extra hour of pay for any documented violations. Defendant also
20 asserted that even to the extent any late or short meal periods occurred, such were outliers, merely
21 the result of human error and/or the employee's choice, and in violation of company policy.
22 Defendant also argued that employees entered into valid "on duty" meal waivers where appropriate,
23 and it paid for "on duty" meal periods and otherwise fully complied with all requirements for on duty
24 meals. [Ardestani Decl., ¶ 26.]

25 As with meal breaks, Defendant argued the applicable rest break policies complied with
26 California law, and that it authorized and permitted employees to take all required breaks. Defendant
27 further contended that, in light of the fact that it is not required to maintain a record of rest breaks,
28

1 any evidence of non-compliant rest periods would be purely anecdotal and the result human error
2 and/or the employee's choice. [Ardestani Decl., ¶ 27.]

3 For the expense reimbursement claim, Defendant countered there typically would be no need
4 for employees to communicate via phone or text while performing their job duties or for any reason.
5 Per Defendant, to the extent Plaintiffs or other Aggrieved Employees used their phones for work
6 purposes, it was done for personal convenience and was neither required nor necessary to perform
7 their job duties. Thus, per Defendant, no reimbursement was required. On the uniform issue, Dothan
8 argued it provided (without cost) employees with all necessary work clothing, and, therefore, resulted
9 in no need for reimbursement. [Ardestani Decl., ¶ 28.]

10 Plaintiffs also alleged derivative violations of Labor Code § 226 (wage statement violations)
11 and §§ 201-203 (waiting time penalties), which claims will rise or fall along with the primary claims
12 addressed above, in addition to being subject to "good faith" and other defenses available to
13 Defendant. Accordingly, Plaintiffs had to discount the value of this claim significantly in light of
14 these multiple potential defenses. Defendant also contended any civil penalties should not be stacked,
15 must be proportional to the alleged misconduct (if any), and should not be constitutionally excessive.
16 (*See, e.g., Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1214.) [Ardestani Decl., ¶ 29.]

17 Defendant next emphasized PAGA gives the Court wide latitude to reduce the amount of civil
18 penalties "based on the facts and circumstances of a particular case" if "to do otherwise would result
19 in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(h). Several
20 state and federal courts in California have applied significant reductions to PAGA civil penalties even
21 after plaintiff prevailed on the merits. In Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist.
22 LEXIS 154590, *8-9, for instance, the district court reduced the potential penalties by over 82% after
23 a bench trial. More recently, in Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, after a
24 bench trial, the trial court awarded penalties of just \$5 per pay period, a 90% reduction, which was
25 upheld on appeal. In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist.
26 Lexis 48557 (PAGA penalties denied after trial). Finally, Dothan argued most of the Aggrieved
27 Employees, including Plaintiffs, signed valid and enforceable arbitration agreements and Plaintiffs
28 are participating in individual arbitrations presently. Certainly, resolving the pending arbitrations first

1 will further delay and potentially derail resolution of the PAGA representative claims. [Ardestani
2 Decl., ¶ 20.]

3 Thus, Defendant raised various and multi-layered defenses to each of Plaintiffs' claims, any
4 one of which, if successful, could have decimated Plaintiffs' case. And Defendant vowed to raise all
5 such defenses, among others, at trial. Accordingly, Plaintiffs faced risky issues going forward with
6 this litigation, and it could have taken years to realize any recovery in this action along with the
7 possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be
8 unmanageable, Defendant also intended to raise additional defenses on damages, including the proper
9 measure of civil penalties and the appropriate discount to place on any assessment of such penalties.
10 [Ardestani Decl., ¶ 31.]

11 Although Plaintiffs and counsel believe they could have prevailed, there was no such
12 guarantee. When evaluating the risks of the various individual arbitrations, prevailing at trial on the
13 merits on all claims, securing 100% of the theoretical civil penalties, and the Court's significant
14 discretion to reduce any penalty award, the settlement value is reasonable and supported. Of course,
15 to recover anywhere near the maximum penalties Plaintiffs would have to shoot for the moon and
16 win both liability and maximum penalties on all claims as to every single pay period at issue, when
17 such outcome, for the reasons discussed herein, is unlikely. Given Defendant's various procedural
18 and merits defenses, as well as the substantial penalty reductions ordered in the cases above – which
19 occurred after trial – the proposed settlement is eminently reasonable. [Ardestani Decl., ¶ 32.]

20 Importantly, that a settlement does not provide the same recovery as might be achieved at trial
21 is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91
22 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed settlement is substantially
23 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
24 settlement because the public interest may indeed be served by a voluntary settlement in which each
25 side gives ground in the interest of avoiding litigation”); 7-Eleven Owners for Fair Franchising v.
26 Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may amount
27 to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement
28 is grossly inadequate and should be disapproved”); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d

1 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question
2 whether the settlement is perfect in the estimation of the reviewing court"); White v. Experian
3 Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention
4 settlement was not fair and reasonable even though it represented 99% discount off the maximum
5 value of the claims).

6 In sum, when the risks of litigation, the burdens of proof necessary to establish liability, the
7 probability of appeal of a favorable judgment, the Court's substantial discretion to reduce any penalty
8 award all are accounted for, it is clear a settlement amount of \$830,000 for the PAGA claims is within
9 the ballpark of reasonableness, and approval is appropriate. Jennings v. Open Door Mktg. Inc. (N.D.
10 Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *7 (approving settlement with PAGA penalties
11 of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA
12 has not objected to the settlement").

13 **V. SUBMISSION TO THE LWDA**

14 Plaintiffs timely served the LWDA with the Settlement Agreement and this Motion, and
15 notified the LWDA of this approval hearing. [Ardestani Decl., ¶ 33; Exh. 5.] Accordingly, the LWDA
16 will be able to weigh in as necessary and, importantly, many courts find it persuasive of approval if
17 the LWDA ultimately declines to offer any comment or objection to a proposed PAGA settlement.
18 Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL 3669607, at *3 (court
19 inferred the LWDA's non-response as "tantamount to its consent to the proposed settlement terms,
20 namely the proposed PAGA penalty amount."); Jennings, 2018 WL 4773057, at *9 ("Plaintiffs
21 submitted the settlement agreement to the LWDA, and the LWDA has not objected to the
22 settlement."); Jordan, 2018 U.S. Dist. LEXIS at *7 ("Additionally, the Court finds it persuasive that
23 the LWDA was permitted to file a response to the proposed settlement and no comment or objection
24 has been received.").

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

26 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
27 that benefits the LWDA and Aggrieved Employees, 1/3 of the gross settlement, or \$276,666.67, is
28 allocated (total) to all Plaintiffs' counsel for reasonable attorney's fees, plus actual litigation costs.

1 These fees are warranted under the law and within the range of fees commonly awarded in similar
2 cases. Any fees awarded by the Court will be split per Plaintiffs' respective counsels' fee sharing
3 agreement. [Ardestani Decl., ¶ 52.]

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

7 PAGA provides that a plaintiff is entitled to recover reasonable attorney's fees, expenses, and
8 costs under Labor Code § 2699(g)(1): "Any employee who prevails in any action shall be entitled to
9 an award of reasonable attorney's fees and costs," As discussed below, reasonable attorney's
10 fees and costs are typically awarded under the common fund doctrine in a *qui tam* action such as this,
11 where, as here, the litigation creates a common fund of money in a specific amount for the benefit of
12 others.

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

26 Through the efforts of Plaintiffs and their attorneys here, a common fund was created in the
27 amount of \$830,000 for the benefit of the Aggrieved Employees and the State. Thus, these
28 beneficiaries should bear their share of the costs and attorney's fees out of the overall \$830,000
amount in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S.

1 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301,
2 1311.

3 The California Supreme Court has upheld the use of the common fund theory of recovery for
4 attorney's fees in Laffitte v. Robert Half Int'l Inc. (2016) 1 Cal.5th 480, 506. In Laffitte, the Supreme
5 Court upheld an award of attorney's fees of one-third of the \$19 million gross settlement (e.g.,
6 awarded \$6.33 million in fees) under the common fund theory of recovery. Lafitte is consistent with
7 prior decisions recognizing "when a number of persons are entitled in common to a specific fund,
8 and an action brought by ... plaintiffs for the benefit of all results in the creation or preservation of
9 that fund, such ... plaintiffs may be awarded attorneys' fees out of the fund." Serrano v. Priest (1977)
10 20 Cal.3d 25, 34; Boeing, 444 U.S. at 478 ("[A] lawyer who recovers a common fund ... is entitled
11 to reasonable attorneys' fees from the fund as a whole"); Lealao v. Beneficial California, Inc. (2000)
12 82 Cal.App.4th 19, 26 ("[f]ee spreading occurs when a settlement or adjudication results in the
13 establishment of a separate or so-called common fund for the benefit of the class").

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

21 Awarding attorney's fees of one-third of gross common fund amount is favored by California
22 courts when a fund established for the common benefit of others is involved, such as here.
23 Accordingly, awarding fees on this basis out of the \$830,000 GSA, for a total of \$276,666.67, is
24 reasonable and appropriate. [Ardestani Decl., ¶¶ 34-52.]

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

27 Despite the recognized limitations of the so-called lodestar method, some California and
28 federal courts acknowledge the utility of a lodestar "cross-check" when assessing a proposed

1 percentage-based fee award. Lealao, 82 Cal.App.4th at 46-47. Under the “lodestar multiplier” method
2 of cross-checking proposed fee awards, the court first ascertains counsel’s total “lodestar” amount by
3 multiplying the number of hours reasonably expended by each attorney’s reasonable hourly rate, and
4 then enhances or reduces this lodestar figure by a “multiplier” to account for a range of factors, such
5 as the novelty or difficulty of the case, its contingent nature, and the degree of success achieved.
6 PLCM Group, Inc. v. Drexler (2000) 22 Ca1.4th 1084, 1095-96; Lealao, 82 Cal.App.4th at 43 (court
7 has discretion to use a multiplier to ensure that the “fee awarded is within the range of fees freely
8 negotiated in the legal marketplace in comparable litigation”).

9 Here, Plaintiffs’ counsels’ collective lodestar is approximately \$271,493.40, based on 386.1
10 total attorney hours spent litigating the case. [Ardestani Decl., ¶¶ 37-51; Exh. 6; Declaration of
11 William Tran (“Tran Decl.”), ¶¶ 3-18; Declaration of Justin Marquez (“Marquez Decl.”), ¶¶ 3-22;
12 Declaration of John A. Young (“Young Decl.”), ¶¶ 3-8, Exh. A.] On a lodestar basis, the fee request
13 of \$276,666.67 results in a multiplier of 1.02, which is a modest enhancement entirely in line
14 with California law. [Ardestani Decl., ¶¶ 37-51.] Indeed, California courts routinely approve
15 multipliers in the in the 2-4 range to compensate for the time and risk of class action cases.
16 Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award including
17 an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to
18 4 or even higher."); City of Oakland v. Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming
19 a multiplier of 2.34).) PAGA Counsel submits that the requested 1.02 multiplier effectively
20 operates to show that the percentage fee request is reasonable considering the challenges
21 presented in this contingency fee matter, and appropriately compensates PAGA Counsel for the
22 contingent risk assumed and delay in payment during the approximately two years counsel has
23 been representing Plaintiffs. Thus, the multiplier results in a fee constituting a fair return on the
24 contingency.

25 **C. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

26 Plaintiffs’ Counsel request reimbursement of actual out-of-pocket expenses incurred to
27 prosecute this action. These expenses were incidental and necessary to the effective representation of
28 the employees, and Plaintiffs’ Counsel is permitted to recover their litigation costs and expenses

1 under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35 (common
2 fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego (1992)
3 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund “[o]f necessity, and for
4 precisely the same reasons discussed above with respect to the recovery of attorneys’ fees by ...
5 [Plaintiffs’] attorneys”). Furthermore, Plaintiffs’ Counsel is entitled to recover “those out-of-pocket
6 expenses that would normally be charged to a fee-paying client.” Harris v. Marhoefer (9th Cir. 1994)
7 24 F.3d 16, 19.

8 While the Settlement Agreement authorizes litigation costs not to exceed \$32,000, Plaintiffs’
9 Counsels’ actual costs presently are \$27,653.56, including \$11,690.05 for Crosner Legal, PC,
10 \$6,565.75 for Lavi & Ebrahimian, LLP, \$3,385.71 for Wilshire Law Firm, and \$6,012.05 for
11 Mahoney Law Group. [Ardestani Decl., ¶¶ 53-54; Tran Decl., ¶ 19; Marquez Decl, ¶ 9, Exh. A;
12 Young Decl., ¶ 9, Exh. B.] This includes filing fees, service of process, expert fees, mediation costs,
13 and postage. These costs are reasonable and uncontested, and should be approved.

14 **VII. THE PROPOSED SERVICE AWARDS FOR PLAINTIFFS ARE FAIR AND**
15 **REASONABLE**

16 Pursuant to the Settlement Agreement, Plaintiffs seek an incentive awards of \$2,500 each.
17 These requests are reasonable given the much broader release that Plaintiffs are agreeing to, as well
18 as Plaintiffs’ efforts in this case and the risks each undertook on behalf of the Aggrieved Employees.
19 Additionally, by contacting and retaining counsel to pursue these claims, Plaintiffs made this
20 settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the risk of
21 being liable for Defendant’s litigation costs if unsuccessful. Plaintiffs also exposed themselves to
22 unwanted notoriety related to filing a public lawsuit (discoverable even through a simple Google
23 search) for the benefit of other employees, placing Plaintiffs at risk of discrimination by future
24 prospective employers. Among taking many other actions assisting in the successful litigation of this
25 case, Plaintiffs both provided substantial factual information to counsel, participated in numerous
26 phone calls and meetings with counsel to discuss the case, and general kept up to speed and informed
27 on the case’s progress. The incentive payments to Plaintiffs are appropriate and justified as part of
28 the Settlement. [Ardestani Decl., ¶ 55; Declaration of Monet Sterling, ¶¶ 2-11; Declaration of Miguel

1 Ruiz, ¶¶ 2-9; Declaration of Andrew Tarigan, ¶¶ 2-14; Declaration of Carlton McGee, ¶¶ 2-16;
2 Declaration of Ricardo Wendell, ¶¶ 2-15.]

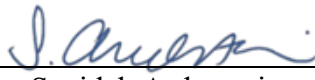
3 Accordingly, Plaintiffs submit the amounts sought are well within the range of
4 reasonableness for such awards in other wage and hour actions. Staton v. Boeing (9th Cir. 2003)
5 327 F.3d 938, 977 (collecting cases awarding service and incentive payments ranging from \$2,000
6 to \$25,000).

7 **VIII. CONCLUSION**

8 For the foregoing reasons, Plaintiffs request the Court approve the proposed settlement under
9 PAGA, approve the requested award of reasonable attorney's fees and costs, approve the requested
10 service awards to Plaintiffs in the amount of \$2,500 for each Plaintiff, approve Simpluris, Inc. as the
11 settlement administrator and approve its fees in the amount of \$4,000.00, approve the proposed
12 distributions to the LWDA and Aggrieved Employees, and enter judgment.

13
14 Dated: November 4, 2024

CROSNER LEGAL, PC

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16 By: 
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