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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

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

Plaintiff,

v.

SOUTH BAY MOTORS, LLC, a California
Limited Liability Company; SULLIVAN
AUTOMOTIVE GROUP, LLC, a Delaware
Limited Liability Company; LACARGUY
WHOLESALE DIVISION, INC., a
California Corporation; and DOES 1-100,
inclusive,

Defendants.

Case No.: 23STCV15499

Assigned for all purposes to
Hon. Armen Tamzarian
Dept. 52

**MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF MOTION
FOR APPROVAL OF SETTLEMENT UNDER
THE PRIVATE ATTORNEYS GENERAL
ACT**

Date: May 15, 2025
Time: 9:00:00 AM
Dept.: 52

Reservation ID: 010012821465

Complaint filed: July 3, 2023
Trial date: None set

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1 **I. INTRODUCTION**

2 Plaintiffs Davide Giliberti and Dean Leduc hereby seek Court approval of a proposed
3 settlement of claims brought under the Private Attorneys General Act (“PAGA”) against defendants
4 South Bay Motors, LLC; Sullivan Automotive Group, LLC; Sully Insurance Center, LLC; and
5 GENSM, LLC (together “Defendants”). Consistent with PAGA, the proposed settlement releases
6 claims under PAGA only and has no impact on the individual claims of any Aggrieved Employee
7 other than Plaintiffs Giliberti and Leduc. Since the settlement resolves nothing more than claims under
8 PAGA, it requires only a one-step review and approval process by the Court, and for the reasons
9 discussed below, Plaintiffs respectfully request the Court approve the Settlement in its entirety.

10 **II. BACKGROUND**

11 Defendants all are part of Sullivan Automotive Group, LLC, dba South Bay Motors, LLC,
12 which owns and operates around twelve “LACARGUY” dealerships in Southern California, and each
13 dealership operates as its own discrete business entity. This matter concerns only four of these
14 dealerships, including Genesis Santa Monica and South Bay, which includes Porsche South Bay,
15 Pacific VW, and Audi Pacific, as the named defendants.¹ Plaintiff Giliberti worked for Defendants as
16 a non-exempt full-time Sales Consultant at South Bay Motors, LLC, dba Porsche South Bay, from
17 approximately October 2021 through July 2022. Plaintiff Leduc worked as a non-exempt Sales
18 Representative from approximately June 2021 to December 2022. [Declaration of Sepideh Ardestani
19 (“Ardestani Decl.”), ¶ 4.]

20 After appropriate notice² to the Labor & Workforce Development Agency (“LWDA”), on July
21 3, 2023, Plaintiff Giliberti filed a PAGA representative action in the Los Angeles Superior Court, on
22 behalf of the State of California and all other aggrieved employees. The Giliberti PAGA complaint alleges
23 unpaid minimum and overtime wages, meal and rest break violations, inaccurate wage statements, waiting
24 time, and unreimbursed expenses, as well as other violations. On September 26, 2023, Plaintiff Leduc
25 filed a class action complaint in Los Angeles Superior Court, alleging claims on behalf of “[a]ll persons
26

27 ¹ Plaintiffs’ understand there are at least 3 other pending PAGA matters involving other dealerships that are part of the
28 Sullivan Group.

² Plaintiff Taylor’s PAGA notice letter is attached to the Ardestani Declaration as Exhibit 3.

1 who worked for any Defendant in California as a salesperson or sales representative and paid a
2 commission at any time during the period beginning four years before the filing of the initial complaint in
3 this action and ending when notice to the Class is sent.” On October 30, 2023, Plaintiff Leduc submitted
4 a PAGA notice to the LWDA alleging Labor Code violations against Sully Insurance Center, LLC dba
5 LAcarGuy. Mr. Leduc submitted an amended PAGA notice on December 15, 2023, adding Genesis Santa
6 Monica and Porsche South Bay as defendants. On January 8, 2024, in his class action matter, Mr. Leduc
7 filed a First Amended Complaint adding a PAGA cause of action. [Ardestani Decl., ¶ 5.]

8 After Plaintiffs filed their respective complaints, upon discussing the merits of their various
9 allegations and engaging in several meet and confer sessions regarding prospective discovery, law
10 and motion, etc., the Parties agreed to mediation. The Parties further agreed to a protocol for
11 exchanging additional documents and information before the mediation. Through this informal
12 discovery, Defendants provided Plaintiffs with information including, inter alia, the number of
13 potential Aggrieved Employees, the number of aggregate pay periods, pay stubs and time records for
14 a sampling of about 25% of the allegedly Aggrieved Employees, employee handbooks and manuals,
15 and other relevant policy documents regarding Defendants’ time keeping and reporting policies.
16 [Ardestani Decl., ¶ 6.]

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

28 /////

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 \$275,000
4 (the “Gross Settlement Amount” or “GSA”). The GSA is inclusive of payments to the LWDA and
5 Aggrieved Employees, costs of settlement administration, modest service awards to the Plaintiffs, and
6 reasonable attorney’s fees and costs.³ After payment of settlement administration costs, Plaintiffs’
7 service awards, and attorney’s fees and costs from the GSA, Plaintiffs presently estimate about
8 \$140,685.08 will remain (the “Net Settlement Amount” or “NSA”). Seventy-five percent of the NSA
9 (\$105,513.81) will go to the LWDA, and the remaining twenty-five percent (\$35,171.27) will be
10 distributed to the Aggrieved Employees pro rata in proportion to the total number of Pay Periods each
11 individual worked during the PAGA Period, with an average award currently estimated at about \$138
12 per Aggrieved Employee. [Ardestani Decl., ¶ 8.]

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 to
16 cap its fees at \$3,750.00. Defendants shall fully fund the Gross Settlement Amount by transmitting
17 the funds to the Administrator no later than 15 days after the Effective Date. Within 14 days of receipt
18 of the settlement funds, Phoenix 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 which
22 time any unclaimed residual funds will be forwarded to the California State Controller’s Unclaimed
23 Property Fund. [Ardestani Decl., ¶ 9; Declaration of Jodey Lawrence, ¶¶ 2-16; Exhs. A-B.]

24 **C. THE RELEASE**

25 The California Supreme Court has explained that a judgment in “a representative action
26 brought by an Aggrieved Employee under the Labor Code Private Attorneys General Act of 2004 ...
27 _____

28 ³ Plaintiffs’ counsel jointly request 1/3 of the GSA, or \$91,666.67 for attorney’s fees and costs of \$23,898.26. Plaintiffs each request a service award of \$7,500 (\$15,000 total).

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

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

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

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

1 (2008) 168 Cal.App.4th 116 and, accordingly, Plaintiff submits they should inform the Court's
2 analysis as well. For the reasons below, the proposed settlement is fair, reasonable and adequate,
3 advances the purposes underlying PAGA, and should be approved.

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

5 First, Plaintiffs alleged Defendants failed to pay all minimum and overtime wages to Plaintiffs
6 and the Aggrieved Employees, primarily by requiring employees to work during some or all of a meal
7 break due to alleged chronic understaffing and the overall press of business. Plaintiffs also allege
8 employee time frequently was edited by management to reduce employee hours and avoid paying
9 overtime, and also that they regularly worked "off the clock" on tasks such as delivering vehicles to
10 customers where the work time was neither recorded nor paid for. Plaintiffs estimate they lost at least
11 3 hours of compensable time per week as a result of these policies and practices that resulted on "off
12 the clock" work. [Ardestani Decl., ¶ 11.]

13 Next, Plaintiffs allege they did not receive all required meal and rest breaks on a fully
14 compliant basis. Here, Plaintiffs contend Defendants placed successful sales interactions with
15 customers ahead of labor law compliance, and a result working through meal and rest breaks was
16 commonplace in order to secure successful sales. Plaintiffs further allege managers would nevertheless
17 record timely meal periods for employees in order to avoid paying break premiums. Plaintiffs likewise
18 allege second meal periods were not provided for shifts lasting over 10 hours. For the same reasons,
19 Plaintiff claims rest breaks also either were not provided or were not compliant due to the pressure to
20 work through breaks in order to secure a sale, and that third rest breaks were not provided on shifts of 10+
21 hours. [Ardestani Decl., ¶ 12.]

22 Plaintiffs also contend employees had to use their personal cellular phones as part of their
23 sales duties. While Plaintiffs concede they did receive some reimbursement, they claim it was
24 insufficient to fully compensate them for the amount of time they had to use their own phones and
25 accordingly Defendants still were in violation of Labor Code § 2802, which requires full and complete
26 reimbursement. [Ardestani Decl., ¶ 13.]

27 Plaintiffs next alleged facial violations of Labor Code § 226 and contend that the wage
28 statements Defendants issued failed on their face to accurately reflect employee pay in several

1 respects. Here, employees were paid both a base hourly wage and commissions, and further received
2 a recoverable draw on future commissions. Per Plaintiffs the wage statements they received contained
3 a confusing amalgamation of hourly pay, rest and recovery pay, commissions, draws, and amounts
4 recaptured from previous draws, that collectively did not accurately reflect gross or net wages, or all
5 applicable hourly rates and the number of hours worked at each rate. They further contend employees
6 had to refer to several different documents at once when trying to decipher the information on the pay
7 stubs, in violation of Labor Code § 226(e) (employee must be able to “promptly and easily
8 determine...from the wage statement alone” all information required for the pay period). [Ardestani
9 Decl., ¶ 14.]

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

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

14 For mediation, Defendants indicated that during the PAGA Period, they employed 255 non-
15 exempt employees in California who worked an aggregate 4,908 PAGA pay periods during that time.
16 Based on the data and information provided by Defendants, Plaintiffs estimated Defendants’
17 maximum PAGA exposure at approximately \$2,463,000 assuming a 100% violation rate on all
18 claims. This estimate includes approximately \$490,800 in civil penalties for the unpaid wage claims,
19 \$490,800 for the meal period claims, about \$490,800 in civil penalties on the rest break claims, around
20 approximately \$490,800 in civil penalties on the inaccurate wage statement claim, \$490,800 in civil
21 penalties for the unreimbursed business expenses claim, and approximately \$9,000 in civil penalties
22 for failing to timely pay wages on separation of employment. [Ardestani Decl., ¶¶ 16-17.]

23 **C. THE SETTLEMENT MEETS THE KULLAR FACTORS, INCLUDING THE**
24 **STRENGTH OF PLAINTIFFS’ CASE, THE DISCOVERY PERFORMED,**
AND AMOUNT OFFERED IN SETTLEMENT

25 In response to Plaintiffs’ unpaid wage claims for alleged “off the clock work,” South Bay
26 took the position that its time keeping policies are legally compliant, that it accurately tracked all
27 hours worked, paid the allegedly Aggrieved Employees for all hours worked consistent with those
28 policies. South Bay further argued that off the clock work was strictly prohibited and if any

1 employee did work off the clock, they were in violation of company policy and Defendants had
2 no knowledge of it. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083
3 (employer must have actual or constructive knowledge of the off the clock work). Defendants
4 emphasized Plaintiffs allegations of time record manipulation were purely speculative, and that
5 any time spent on tasks away from the dealership, such as delivering vehicles to customers after
6 hours, was recorded and accounted for the following day. Lastly, Defendants argued any trial of
7 this issue on a representative basis would be unmanageable since it would depend entirely on a
8 myriad of individualized inquiries as to each employee regarding any discrepancies in actual time
9 worked versus what was reported and paid for. [Ardestani Decl., ¶ 18.]

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

19 As with meal breaks, South Bay argued the applicable rest break policies complied with
20 California law, and that it authorized and permitted employees to take all required breaks.
21 Defendants further contended that, in light of the fact that it is not required to maintain a record of
22 rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking
23 rest periods would be purely anecdotal and individual issues would predominate on liability. This
24 arguably would once again make a trial unmanageable since the number of instances an employee
25 missed a rest break would have to be tested on a case by case basis to determine compliance.
26 [Ardestani Decl., ¶ 20.]

27 For the expense reimbursement claim, South Bay emphasized it paid a generous \$30/month
28 for phone reimbursement, which was sufficient to cover most, if not all, of a typical monthly phone

1 plan and certainly was ample to pay for all conceivable business use. Cochran v. Schwan's Home
2 Serv. (2014) 228 Cal.App.4th 1137 (employers must reimburse employees for use of personal
3 devices, and if the employee has an unlimited monthly plan then the employer must reimburse an
4 amount that equates to the employee's percentage of use for work). Thus, per South Bay, no
5 additional reimbursement was required. [Ardestani Decl., ¶ 21.]

6 On the wage statement claims, South Bay contended the wage statements accurately
7 reflected all information required under Labor Code § 226, and that employees could easily
8 determine their pay from the wage statements alone and that Defendants had a good faith belief that
9 they wage statements were in compliance. Plaintiffs also alleged derivative violations of Labor
10 Code § 226 (wage statement violations) and §§ 201-203 (waiting time penalties). The derivative
11 claims (based on the unpaid wage and meal/rest claims), will rise or fall along with the primary
12 claims, while all of these claims also are subject to "good faith" and other defenses available to
13 Defendants. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding
14 employer did not willfully fail to pay wages under Labor Code § 203 even though the class
15 prevailed on the merits on the underlying claim for failing to pay living wages). Accordingly,
16 Plaintiffs had to discount the value of this claim significantly in light of these multiple potential
17 defenses. Defendants also contended a substantial discount should be applied to the civil penalties
18 for these derivative (i.e., "stacked") violations, as it would be unfair to penalize Defendants multiple
19 times for the same violation. [Ardestani Decl., ¶ 22.]

20 Defendants further emphasized PAGA gives the Court wide latitude to reduce the amount of
21 civil penalties "based on the facts and circumstances of a particular case" if "to do otherwise would
22 result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(h).
23 Several state and federal courts in California have applied significant reductions to PAGA civil
24 penalties even after plaintiff prevailed on the merits. In Fleming v. Covidien (C.D. Cal. 2011) 2011
25 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court reduced the potential penalties by
26 over 82% after a bench trial. More recently, in Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th
27 504, after a bench trial, the trial court awarded penalties of just \$5 per pay period, a 90% reduction,
28

1 which decision was upheld on appeal. In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8,
2 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial). [Ardestani Decl., ¶ 23.]

3 Thus, Defendants raised various and multi-layered defenses to each of Plaintiffs' claims,
4 anyone of which, if successful, could have decimated Plaintiffs' case. And Defendants vowed to
5 raise all these defenses at trial. Accordingly, Plaintiffs faced risky issues going forward with this
6 litigation, and it could have taken several more years to realize any recovery in this action along
7 with the possibility of post-trial appeals. In addition to its merits defenses and arguing trial would
8 be unmanageable, Defendants also intended to raise additional defenses on damages, including the
9 proper measure of civil penalties and the appropriate discount to place on any assessment of such
10 penalties. [Ardestani Decl., ¶ 24.]

11 Although Plaintiffs and their counsel believe they could have prevailed, there was no such
12 guarantee. When the risks of overcoming a motion to compel arbitration, a manageability defense,
13 prevailing at trial on the merits on all claims, and securing 100% of the theoretical civil penalties for
14 every single pay period at issue all are factored into the equation, the settlement value is reasonable
15 and supported. Of course, to recover anywhere near the maximum penalties Plaintiffs would have to
16 shoot the moon and win both liability and maximum penalties on all claims, which outcome, for the
17 reasons discussed, is unlikely. Given Defendants' various procedural and merits defenses, and the
18 substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed
19 settlement is eminently reasonable. [Ardestani Decl., ¶ 25; Declaration of Arrash Fattahi ("Fattahi
20 Decl."), ¶¶ 5, 10.]

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

1 that the proposed settlement is grossly inadequate and should be disapproved”); Lane v. Facebook,
2 Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair .
3 . . is different from the question whether the settlement is perfect in the estimation of the reviewing
4 court”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098
5 (rejecting contention settlement was not fair and reasonable even though it represented 99%
6 discount off the maximum value of the claims).

7 In sum, when the risks of litigation, the burdens of proof necessary to establish liability, the
8 probability of appeal of a favorable judgment, the Court’s substantial discretion to reduce any
9 penalty award all are accounted for, it is clear a settlement amount of \$49,270 for the PAGA claims
10 is within the ballpark of reasonableness, and approval is appropriate. Jennings v. Open Door Mktg.
11 Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *7 (approving settlement with
12 PAGA penalties of 0.6% where “[p]laintiffs [have] submitted the settlement agreement to the
13 LWDA, and the LWDA has not objected to the settlement”).

14 **V. SUBMISSION TO THE LWDA**

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

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

27 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
28 that benefits the LWDA and Aggrieved Employees, 1/3 of the gross settlement, or \$91,666.67, is

1 allocated to Plaintiffs' counsel for reasonable attorney's fees, plus actual litigation costs. These fees
2 are warranted under the law and within the range of fees commonly awarded in similar cases.

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

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

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

24 Through the successful efforts of Plaintiffs and their attorneys here, a common fund was
25 created in the amount of \$275,000.00 for the benefit of the Aggrieved Employees and the State. Thus,
26 these beneficiaries should bear their share of the costs and attorney's fees out of the overall settlement
27 amount in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S.
28 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301,
1311.

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

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

19 Awarding attorney's fees of one-third of gross common fund amount is favored by California
20 courts when a fund established for the common benefit of others is involved, such as here.
21 Accordingly, awarding fees on this basis out of the \$275,000 GSA, for a total of \$91,666.67, is
22 reasonable and appropriate. [Ardestani Decl., ¶¶ 27-46; Fattahi Decl., ¶¶ 11-18.]

23 **B. THE LODESTAR CROSS-CHECK VALIDATES THE REASONABLENESS**
24 **OF THE FEE AWARD**

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

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

7 Here, Plaintiffs’ counsels’ combined lodestar is approximately \$202,480.00, based on a total
8 of 258.1 attorney hours spent litigating the case. [Ardestani Decl., ¶¶ 31-46; Exh. 6; Fattahi Decl.,
9 ¶¶ 11-18] This results in a lodestar that is higher than the fees requested on a percentage of the
10 recovery basis and, accordingly, there is no request for a multiplier. It also is important to note this
11 fact serves to highlight the reasonableness of the fees sought on a percentage-of-the-recovery basis,
12 as it shows the requested fees are actually lower than the market rate for the services rendered if those
13 services are valued via traditional hourly billing.

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

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

25 Plaintiffs’ Counsel’s actual costs presently are \$23,898.26 (\$20,289.53 to Crosner Legal and
26 \$3,608.73 to Wilshire Law Firm), including filing fees, mediation costs, expert fees, and postage,
27 while waiving photocopying costs and legal research charges. [Ardestani Decl., ¶¶ 47-48; Fattahi
28

Decl., ¶ 18.] Since these costs are reasonable and uncontested, the full amount of \$23,898.26 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 \$7,500. 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 discrimination by future prospective employers. Among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information to Plaintiffs' Counsel, participated in numerous phone calls and meetings with counsel to discuss the case, and general kept up to speed and informed on the case's progress. The incentive payments to Plaintiffs are appropriate and justified as part of the Settlement. [Ardestani Decl., ¶ 49; Fattahi Decl., ¶ 9; Declaration of Davide Giliberti, ¶¶ 2-9; Declaration of Dean Leduc.] Accordingly, Plaintiffs submit the amount sought is well within the range of reasonableness for such awards in other wage and hour actions. Torchia v. W.W. Grainger, Inc. (E.D. Cal. 2014) 304 F.R.D. 256 (approving \$7,500 incentive award).

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs request the Court approve the proposed settlement under PAGA, approve the requested award of reasonable attorney's fees and costs, approve the requested service awards to Plaintiffs in the amount of \$7,500 each, approve Phoenix Settlement Administrators as the settlement administrator and approve is fees in the amount of \$3,750, approve the proposed

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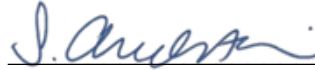
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1 distributions to the LWDA and Aggrieved Employees, and enter judgment.

2
3 Dated: April 3, 2025

CROSNER LEGAL, P.C.

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6 Zachary Crosner
7 Jamie Serb
8 Sepideh Ardistani
9 Attorneys for Plaintiff DAVIDE GILIBERTI
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