BRANDON BROUILLETTE (SBN 273156)
bbrouillette@crosnerlegal.com
CHAD SAUNDERS (SBN 257810)
chad@crosnerlegal.com
ZACHARY M. CROSNER (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429
Attorneys for Plaintiff MARINA RAMIREZ
on behalf of the State of California,
and others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MARINA RAMIREZ, on behalf of the State of California, and others similarly situated and aggrieved, Plaintiff, v. THE STAND, LLC, a California Limited Liability Company; THE STAND PASADENA, LLC, a California Limited Liability Company; THE STAND NEWPORT BEACH, LLC, a California Limited Liability Company; and DOES 1-100, inclusive, Defendants.	Case No.: 23STCV17089 Assigned for All Purposes to: Hon. Stephen P. Pfahler Dept. 68 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT UNDER PRIVATE ATTORNEYS GENERAL ACT** Date: September 11, 2025 Time: 8:30 AM Dept.: 68 **Reservation ID: 637405240946**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

I. INTRODUCTION

Plaintiff Marina Ramirez hereby seeks Court approval of a proposed settlement of claims brought under the Private Attorneys General Act ("PAGA") against defendant The Stand, LLC ("Stand" or "Defendant"). Consistent with PAGA, the proposed settlement releases claims under PAGA only and has no impact on the individual claims of any alleged aggrieved employee. Since the settlement resolves nothing more than claims under PAGA, it requires only a one-step review and approval process by the Court, and for the reasons discussed below, the proposed settlement is fair, reasonable, adequate, and advances the purposes underlying PAGA. Plaintiff respectfully requests the Court approve the Settlement in its entirety.

II. BACKGROUND

Defendant Stand owns and operates a chain of restaurants called "The Stand" at various locations in Southern California. Plaintiff worked for Defendants as a non-exempt cook from approximately June 2019 to January 2023. [Declaration of Chad Saunders ("Saunders Decl."), ¶ 4.]

Plaintiff contends Stand violated the Labor Code is several ways during the relevant time period. First, she contends Defendant failed to pay Plaintiff and the Aggrieved Employees for all hours worked, including time they were required to work off the clock. She also alleges Stand did not provide Plaintiff and the Aggrieved Employees with compliant meal periods because meal periods were missed, untimely, or cut short due to the press of business, and also that rest periods were missed or non-compliant for the same reasons. She also alleges she had to use her own phone for company business, and occasionally had to work at more than one restaurant in a shift but did not receive any reimbursement for using her personal vehicle to travel between locations. [Saunders Decl., ¶ 5.]

Based on these allegations, and after appropriate notice to the Labor & Workforce Development Agency ("LWDA"), Plaintiff filed a PAGA-only complaint on July 20, 2023. The Complaint sought only PAGA civil penalties for the alleged: (a) failure to pay wages, including minimum and overtime; (b) failure to provide meal and rest periods; (c) failure to reimburse business expenses; (d) provide complete and accurate wage statements; and (e) waiting time penalties, on behalf of all individuals employed by Stand as non-exempt employee in California during the PAGA Period. [Saunders Decl., ¶ 6; Exh 2.]

Defendant has at all times denied Plaintiff's allegations and maintained it complied with all relevant provisions of the Labor Code and Wage Orders. Specifically, Defendant contends among other things that Plaintiff and all alleged aggrieved employees were timely paid for all hours worked at the correct hourly rates in conformance with all applicable laws, that it authorized and permitted Plaintiff and the alleged aggrieved employees to take fully compliant meal and rest periods in accordance with all applicable laws, that no expense reimbursement was necessary as use of personal cell phones was not a required part of the job, and that Plaintiff and the alleged aggrieved employees received accurate and complete itemized wage statements. Defendant also strongly contends the case cannot be maintained as a representative action because among other things Plaintiff's missed/interrupted/late/short meal and rest period allegations necessarily require detailed individualized assessments and accordingly individualized issues predominate and a trial under PAGA would be unmanageable. [Saunders Decl., ¶ 7.]

Once the matter was at issue, the Parties met and conferred regarding discovery, potential law and motion, and other case management issues, and ultimately agreed to attempt early mediation. They also agreed on a protocol for an informal exchange of information and documents to facilitate meaningful settlement negotiations. Through this informal discovery, Defendant provided Plaintiff with information including, inter alia, the number of potential alleged aggrieved employees, the number of aggregate pay periods, sample pay stubs and time records for around 20% of the alleged aggrieved employees, employee handbooks and manuals, and relevant policy documents on Defendant's time keeping and reporting policies, etc. [Saunders Decl., ¶ 8.]

On November 22, 2024, the parties mediated with highly-regarded professional neutral the Hon. Carl West (Ret.), who has extensive experience mediating wage and hour class and PAGA actions. Before and during the evaluation, Plaintiff and counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. The Parties vigorously debated the likelihood of Plaintiff's ability to proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and

Defendant's defenses, and the parties' data analyses and conclusions based on data provided by Defendant. After lengthy and contentious negotiations, the Parties were unable to reach agreement at the mediation. [Saunders Decl., ¶ 9.]

Plaintiff then embarked on formal discovery, including requests for production, including for pay records and time records; special interrogatories, which included a request for contact information for the PAGA members; and requests for admissions. In the meantime, the Parties continued negotiating with Judge West's assistance and, after Plaintiff received and reviewed Defendants' discovery responses, counsel finally were able to reach an agreement on all major issues. The Parties then subsequently formalized the tentative settlement in their PAGA Settlement Agreement now before the Court for approval. [Saunders Decl., ¶ 10.] A true and correct, fully-executed copy of the Settlement Agreement is attached to the Saunders Declaration as Exhibit 1.

III. SUMMARY OF SETTLEMENT TERMS

A. Terms of the Settlement and Distribution of PAGA Penalties

Under the settlement, Defendant will pay a non-reversionary settlement amount of $300,000 (the "Gross PAGA Settlement Amount" or "GSA"), which is inclusive of payments to the LWDA and Aggrieved Employees, costs of settlement administration, a modest service award to Plaintiff, and reasonable attorney's fees and costs.[1] After payment of settlement administration costs, service award and reasonable attorney's fees and costs from the GSA, Plaintiff presently estimates about $161,563.97 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five of the NSA (about $121,172.98) will go to the LWDA, and the remaining 25% (about $40,290.99) will be distributed to the Aggrieved Employees in proportion to the total number of Eligible Pay Periods each individual worked during the PAGA Period. The average award currently is estimated at about $23. [Saunders Decl., ¶ 11.]

B. Payment and Notice

The Parties propose using Phoenix Settlement Administrators as the Settlement Administrator. Phoenix has extensive experience administering PAGA settlements, and has agreed

[1] As discussed below, Plaintiff's Counsel seeks a fee equal to 35% ($105,000.00) of the GSA, and reimbursement of actual litigation costs of $12,436.03. Plaintiff requests a service award in the amount of $10,000.00.

to cap its fees at $11,000. Within 60 calendar days of the Settlement's Effective Date, Defendant will fund the settlement. Within 14 days thereafter, Phoenix will mail a Notice and settlement check to all Aggrieved Employees Members via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in Defendant's records. Recipients need not submit claim forms and will automatically receive a Notice and settlement check. Settlement checks will be negotiable for 180 days, after which time any unclaimed residual funds will be forwarded to the State Controller's Unclaimed Property Fund. [Saunders Decl., ¶ 12; Declaration of Michael Moore, ¶¶ 2-16; Exhs. A-B.]

C. <u>The Release</u>

The release in the Settlement Agreement narrowly releases only civil penalty claims brought under PAGA, as asserted in Plaintiff's PAGA notice to the LWDA and the operative Complaint. The Settlement Agreement protects the rights of the alleged aggrieved employees to bring their own individual claims should they wish. For these reasons, the Parties contend the release narrowly applies only to the PAGA claims alleged or that could have been alleged, based on the factual and legal allegations pled in the operative Complaint. [Saunders Decl., ¶ 13.]

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

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

In so holding, <u>Moniz</u> noted many federal district courts had imported class action settlement approval principles, demanding that PAGA settlements be "fair, reasonable, and adequate," and weighing factors such as "the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount[.]" <u>Id.</u> (collecting cases). Observing that "PAGA's purpose" is to "protect the public interest" – especially the allegedly aggrieved employees – the Moniz Court agreed with these federal authorities, concluding the same principles that ensure fairness in class action settlements likewise serve the public interest in the PAGA context. These factors are more or less identical to those California courts use to evaluate class action settlements per Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116 and, consistent with Moniz, Plaintiff submits they should inform the Court's analysis as well. For the reasons below, the proposed settlement is fair, reasonable and adequate, advances the purposes underlying PAGA, and should be approved.

A. Nature of the Alleged Violations

Plaintiff alleges claims for civil penalties for unpaid wages, meal/rest break violations, and failure to reimburse expenses, as well as derivative wage statement and waiting time penalty claims. First, Plaintiff contends Defendant failed to pay Plaintiff and other allegedly aggrieved employees for all hours worked because Aggrieved Employees were instructed to record their time based on their scheduled hours and not the actual time they worked. Per Plaintiff this resulted in employees consistently performing off-the-clock work outside of the scheduled shift start and stop times. Among other things employees had to change into their work clothes, turn on lights and disable the security system, undergo covid screenings, and drive to and from other locations while not clocked-in for their shifts. Alleged post-shift off the clock work included completing orders, prepping food for the next shift, cleaning workstations, and, if closing the restaurant, turning off lights and enabling the security system. Per Plaintiff none of this unrecorded time was compensated, and she alleges this this regular performance of off-the-clock work resulted in Defendant underpaying both minimum wages and overtime wages owed to Plaintiff and the Aggrieved Employees, as well as record-keeping violations. [Saunders Decl., ¶ 14.]

Plaintiff also contends Defendant failed to provide proper meal breaks due to systemic understaffing, and lack of coverage due to periodic call-outs. Per Plaintiff, she and other Aggrieved Employees routinely missed their meal breaks, were required to take them late, or had their meal breaks interrupted. In addition to these alleged "de facto" violations, Plaintiff also alleges Defendant had an "auto deduct" policy whereby 30 minutes of time was deducted from employee hours worked even when the time records show the employee did not clock out for the meal break. Plaintiff further contends Stand did not pay the required premium wages even when violations were reflected in the time records. For similar reason, Plaintiff contends Stand did not provide all required rest breaks, or that breaks were not fully compliant. For the same reasons, Plaintiff alleges rest periods were not provided or were non-compliant. [Saunders Decl., ¶ 15.]

On the expense reimbursement claim, Plaintiff alleges she and other employees incurred necessary business-related expenditures in direct discharge of their job duties, including but not limited to, cell phone expenses, and expenses for the use of their personal vehicles. Plaintiff and Aggrieved Employees were regularly required to use their personal cell phones to perform their job duties, including but not limited to, to communicating with supervisors when they were off duty. Additionally, Plaintiff and other Aggrieved Employees were frequently required to work at multiple locations on a single day, meaning that that they had to drive their personal vehicles during work time, but received no mileage reimbursement. [Saunders Decl., ¶ 16.]

Lastly, Plaintiff also brings derivative claims for inaccurate wage statements and failure to pay all wages due and owing upon separation of employment under Labor Code §§ 201-203. [Saunders Decl., ¶ 17.]

B. Number of Alleged Violations and Potential Penalties

For mediation, Defendant indicated there are approximately 1,750 individuals who fit within Plaintiff's definition of alleged aggrieved employees in California during the relevant PAGA period, and these individuals worked approximately 25,000 pay periods. Based on the data and information provided by Defendant, Plaintiff estimated Defendant's theoretical maximum PAGA exposure at about $11,450,000. Plaintiff, however, substantially discounted that number to account for Defendant's procedural and merits defenses, of which there are many. [Saunders Decl., ¶¶ 18-19.]

C. The Settlement Meets the Moniz/Kullar Factors and is Fair, Reasonable and Adequate

In response to Plaintiff's wage claims Defendant argued its time keeping policies are legally compliant, that it accurately tracked all hours worked and paid the allegedly aggrieved employees for all hours worked at the correct rates consistent with its compliant payroll policies. It further argued that "off the clock" work by employees was strictly prohibited. Per Stand, if any off the clock work occurred, it was aberrational and against company policy, and done without the company's knowledge or authorization. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). [Saunders Decl., ¶ 20.]

For the meal and rest break claims, Defendant offered multiple defenses. First, Defendant emphasized that the written meal and rest break policy generally was compliant, that it authorized and permitted all required breaks, and that the allegedly aggrieved employees received full 30 minute lunch periods as reflected in their time records. Defendant strongly denied that it had any kind of "auto deduct" policy or that the time records were inaccurate for any reason, and further referred to the employee "attestation" form where employees confirmed that they received their meal and rest breaks, or that they waived their meal period for shifts lasting less than 6 hours. Per Defendant, these admissions showed there were few if any potential cognizable violations. Defendant also asserted that even to the extent any late or short meal periods occurred, they were in violation of company policy and aberrational, and would require significant individual inquiries to determine the reasons underlying any such alleged violations and whether they were by employee choice or some other reason. [Saunders Decl., ¶ 21.]

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

For the expense reimbursement claim, Defendant countered there typically would be no need for employees to communicate via phone or text while performing their job duties, or for them to otherwise use their personal phones for any reason. Per Defendant, to the extent Plaintiff or other Aggrieved Employees used their individual phones for work purposes, it was done purely for personal convenience and was neither required nor necessary in order to perform their job duties. Thus, per Defendant, no reimbursement is required. On the mileage reimbursement issue, Defendant argued its policies allowed for mileage reimbursement but that Plaintiff and other aggrieved employees voluntarily failed to request such reimbursement, and further that instances of employees working at two different locations on the same shift were infrequent at best. [Saunders Decl., ¶ 23.]

On the wage statement and waiting time waiting time penalty claims, Defendant emphasized that, to the extent they are derivative then they will rise or fall along with the primary claims, in addition to being subject to "good faith" and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay living wages). Accordingly, Plaintiff had to discount the value of these claims significantly in light of these multiple potential defenses. Defendant also contended a substantial discount should be applied to the civil penalties for these derivative (i.e., "stacked") violations, as it would be unfair to penalize Defendant multiple times for the same violation. [Saunders Decl., ¶ 24.]

Defendant also emphasized PAGA gives the Court wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(e)(2). This is particularly true here where the claims essentially are premised on "de facto" violations and that could prove difficult to establish on a representative basis, and in light of many cases that have imposed substantial discounts on PAGA penalties awarded after trial. In Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court reduced the potential penalties by over 82% after a bench trial. More recently, in Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of just $5 per pay period, a 90% reduction, which decision was upheld on appeal. In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial). Additionally, no information came to light suggesting that any violations were knowing and willful by Defendant.

For these reasons, Plaintiff believes there is a high likelihood the Court would find imposition of significantly more in penalties would be "unjust, arbitrary, or confiscatory." [Saunders Decl., ¶ 25.]

Thus, Defendant raised various and multi-layered defenses to each of Plaintiff's claims, any one of which, if successful, could have decimated Plaintiff's case. And Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with this litigation, and it could have taken years to realize any recovery in this action along with the possibility of post-trial appeals. In additional to its merits defenses and arguing trial would be unmanageable, Defendant also intended to raise additional defenses on damages, including the proper measure of civil penalties and the appropriate discount to place on any assessment of such penalties. [Saunders Decl., ¶ 26]

Although Plaintiff and her counsel believe they could have prevailed, there was no such guarantee. When the risks of overcoming a manageability defense and prevailing at trial on the merits are factored into the equation, the settlement value is reasonable and supported. Indeed, to recover maximum penalties Plaintiff would have to shoot the moon and win on liability as to all claims and convince the Court to award full penalties, which outcome is highly unlikely. Given Defendant's procedural and merits defenses, as well as the substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed settlement is reasonable. [Saunders Decl., ¶ 27.] It further comports with other PAGA settlements approved by courts in California. McLeod v. Bank of Am., N.A., No. 16-CV-03294-EMC, 2018 U.S. Dist. LEXIS 195314, 2018 WL 5982863, at *4 (N.D. Cal. Nov. 14, 2018) (finding $50,000 PAGA allocation for claims estimated at $4.7 million — approximately 1.1% — adequate); Smith v. Kaiser Found. Hosps., 2020 WL 5064282, at *17 (S.D. Cal. Aug. 26, 2020) (finding that PAGA award that was 2.4% of maximum estimated value of PAGA claims was not "unfair, inadequate, or unreasonable given the risks of continued litigation"); Gilmore v. McMillan-Hendryx Inc., 2022 WL 184004, at *4 (E.D. Cal. Jan. 20, 2022) (PAGA award of 4.2% of the maximum estimated value of PAGA claims and 2.3% of the total settlement amount was "not unreasonable and weighs in favor of settlement"); North v. Superior Hauling & Fast Transit, Inc., No. EDCV 18-2564 JGB (KKx), 2020 WL 12967997, at *4 (C.D. Cal. May 29, 2020) (approving settlement that included PAGA average payout of $21.01).

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims).

In sum, when the risks of litigation, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, and the Court's substantial discretion to reduce any penalty award all are accounted for, it is clear a settlement amount of $200,000 for the PAGA claim is within the ballpark of reasonableness, and approval is appropriate.

V. SUBMISSION TO THE LWDA

Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and notified the LWDA of this approval hearing. [Saunders Decl., ¶ 28; Exh. 4.] Accordingly, the LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings, 2018 WL 4773057, at *9; Jordan v NCI Grp., Inc. (C.D. Cal. Jan. 5, 2018) 2018 U.S. Dist. LEXIS 25297, at

*7 ("Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and no comment or objection has been received.").

VI. THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE

For their efforts and the contingent risk undertaken in obtaining a common fund settlement that benefits the LWDA and aggrieved employees, thirty-five percent of the gross settlement, or $105,000, is allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs. These fees are warranted under the law and within the range of fees commonly awarded in similar cases.

A. Plaintiff's Counsel Are Entitled to Recover Attorney's Fees Under the Common Fund Doctrine

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

"A *qui tam* action is one brought under a statute that allows a private person to sue as a private attorney general to recover damages or penalties, all or part of which will be paid to the government." People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487, 491-492. As our Supreme Court recently affirmed, a PAGA action is a *qui tam* action because the statute allows the employee plaintiff, acting as the proxy of the State's labor law enforcement agency, to sue his or her employer for Labor Code violations and recover civil penalties that otherwise could only be assessed and collected by the LWDA. Kim v. Reins Int'l California, Inc. (2020) 9 Cal.5th 73; Iskanian v. CLS Transportation of Los Angeles, 59 Ca1.4th at 380-82 ("[a] PAGA representative action is therefore a type of qui tam action"). Indeed, the majority of the civil penalties recovered in a PAGA action are paid to the State, with a smaller portion paid to the aggrieved employees (e.g. 75% paid to the state; 25% paid to the aggrieved employees). Lab. Code § 2699(i). Where a common fund is created in a *qui tam* action by the successful litigation of a plaintiff, the plaintiff's attorneys are entitled to recover their fees from the common fund. Bank of America v. Cory (1985) 164 Cal.App.3d 66, 89-91.

Through the efforts of Plaintiff and his attorneys here, a common fund was created in the amount of $300,000 for the benefit of the allegedly aggrieved employees and the State. Thus, these beneficiaries should bear their share of the costs and attorney's fees out of the overall recovery under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

Not long ago, the California Supreme Court upheld the use of the common fund theory of recovery for attorney's fees in Laffitte v. Robert Half Int'l Inc. (2016) 1 Ca1.5th 480, 506. There, the Court upheld an award of attorney's fees of one-third of the gross settlement (*e.g*., awarded $6.33 million in fees) under the common fund theory of recovery. Lafitte is consistent with prior decisions recognizing "when a number of persons are entitled in common to a specific fund, and an action brought by ... plaintiffs for the benefit of all results in the creation or preservation of that fund, such ... plaintiffs may be awarded attorneys' fees out of the fund." Serrano v. Priest (1977) 20 Ca1.3d 25, 34; Boeing, 444 U.S. at 478 ("[A] lawyer who recovers a common fund ... is entitled to reasonable attorneys' fees from the fund as a whole]; Lealao v. Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 26 ("[f]ee spreading occurs when a settlement or adjudication results in the establishment of a separate or so-called common fund for the benefit of the class").

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

Awarding attorney's fees as a percentage of the recovery is favored by California courts when a fund established for the common benefit of others is involved, such as here. Accordingly, awarding fees on this basis out of the $300,000 GSA, for a total of $105,000 (or 35% of the GSA), is reasonable and appropriate. [Saunders Decl., ¶¶ 29-46.]

B. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award

Despite the recognized limitations of the so-called lodestar method, some California and federal courts acknowledge the utility of a lodestar "cross-check" when assessing a proposed percentage-based fee award. Lealao, 82 Cal.App.4th at 46-47. Under the "lodestar multiplier" method of cross-checking proposed fee awards, the court first ascertains counsel's total "lodestar" amount by multiplying the number of hours reasonably expended by each attorney's reasonable hourly rate, and then enhances or reduces this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree of success achieved. PLCM Group, Inc. v. Drexler (2000) 22 Ca1.4th 1084, 1095-96; Lealao, 82 Cal.App.4th at 43 (court has discretion to use a multiplier to ensure that the "fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation").

Here, Crosner Legal's lodestar is approximately $150,865, based on 202.4 attorney hours spent litigating the case. [Saunders Decl., ¶¶ 32-46; Exh. 5.] On a lodestar basis, the fee request of $105,000 results in an amount that is less than the unadorned lodestar, and accordingly there is no request for a multiplier. Plaintiff's counsel submits this effectively operates to show the percentage fee request, even at 35%, is reasonable considering the requested fees are less than the value of the services rendered when valued via traditional hourly billing.

C. The Requested Costs Are Reasonable

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

Plaintiff's Counsel's actual costs presently are $12,436.03. This includes filing fees, service of process, mediation costs, costs of notice to the aggrieved employees, postage, and expert consultant fees, while waiving photocopying costs and legal research charges. These costs are reasonable and uncontested, and were necessary to the successful prosecution of the action. The costs should be approved in full. [Saunders Decl., ¶¶ 47-48.]

VII. PLAINTIFF'S ENHANCEMENT AWARD

Under the Settlement Agreement, Plaintiff seeks an incentive awards of $10,000. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from $2,000 to $25,000). This request is reasonable given her efforts in this case and the risks she undertook on behalf of the Aggrieved Employees and State. Additionally, by contacting and retaining counsel to pursue these claims, Plaintiff made this settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also exposed herself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing her 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 my office, attended numerous meetings with my office to discuss the case, and generally participated in all phases of the litigation. Accordingly, the requested enhancement payments to Plaintiff is appropriate and justified as part of the Settlement for her service and risks undertaken. [Saunders Decl., ¶ 49; Declaration of Marina Ramirez, ¶¶ 2-9.]

VIII. CONCLUSION

For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement under PAGA, approve the requested award of reasonable attorney's fees and costs, approve Simpluris as the settlement administrator and approve its fees in the amount of $11,000, approve Plaintiff's

////

////

////

enhancement award in the amount of $10,000, approve the proposed distributions to the LWDA and Aggrieved Employees, and enter its Order of final approval and judgment thereon.

Dated: March 25, 2025

CROSNER LEGAL, PC

By: ______________________
Chad Saunders
Attorneys for Plaintiff
MARINA RAMIREZ