

1 JAMIE SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
2 NIKKI TRENNER, ESQ. (SBN316007)
nikki@crosnerlegal.com
3 ZACHARY M. CROSNER, ESQ. (SBN 272295)
zach@crosnerlegal.com
4 **CROSNER LEGAL, PC**
5 9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
6 Tel: (866) 276-7637
Fax: (310) 510-6429
7

8 Attorneys for Plaintiff RICARDO RAMIREZ
Individually and on behalf of the State of California,
9 and others similarly situated and aggrieved

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ORANGE**

12 RICARDO RAMIREZ, individually and on
13 behalf of the State of California, and others
similarly situated and aggrieved,

14 Plaintiff,

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16 v.

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18 INGARDIA BROS. PRODUCE, INC., a
California Corporation; and DOES 1-100,
19 inclusive,

20 Defendants.
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Case No.: 30-2023-01336578-CU-OE-CXC

Assigned for All Purposes to:
Hon. Lon Hurwitz
Dept. CX-103

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

Date: December 6, 2024
Time: 1:30 p.m.
Dept. CX-103

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1 **I. INTRODUCTION**

2 Plaintiff Ricardo Ramirez hereby seeks Court approval of a proposed settlement of claims
3 brought under the Private Attorneys General Act (“PAGA”) against defendant Ingardia Bros.
4 Produce, Inc. (“Ingardia” or “Defendant”). Consistent with PAGA, the proposed settlement releases
5 claims under PAGA only and has no impact on the individual claims of any alleged aggrieved
6 employee. Since the settlement resolves nothing more than claims under PAGA, it requires only a
7 one-step review and approval process by the Court, and for the reasons discussed below, the
8 proposed settlement is fair, reasonable, adequate, and advances the purposes underlying PAGA.
9 Plaintiff respectfully requests the Court approve the Settlement in its entirety.

10 **II. BACKGROUND**

11 Defendant Ingardia is a is a wholesale food supplier that services restaurants, hotels, country
12 clubs, resorts, hospitals, caterers, senior living homes, and more, throughout most of Southern
13 California. Plaintiff worked for Defendant as a non-exempt warehouseman from about May 2021 to
14 August 2022. He typically worked between 8-10 hours per day, 6 days per week in the dairy and avocado
15 departments. [Declaration of Nikki Trenner (“Trenner Decl.”), ¶ 4.]

16 Plaintiff contends Defendant violated California wage and hour laws in several respects.
17 First, he alleges Ingardia failed to pay all wages due by rounding off employee time punches such
18 that employees lost hours worked and related pay. He next contends he and other Aggrieved
19 Employees did not receive all required meal and rest periods on a fully compliant basis, and were
20 not relieved of all employee control while on their meal and rest breaks. Finally, he alleged
21 derivative violations for failure to provide accurate wage statements and failure to timely pay final
22 wages. Based on these allegations and after appropriate notice to the Labor & Workforce
23 Development Agency (“LWDA”) and exhausting administrative remedies, on July 11, 2023
24 Plaintiff filed a PAGA-only action against Defendant on behalf of himself and all other similarly
25 aggrieved employees. [Trenner Decl., ¶ 5.]

26 Defendant has at all times denied Plaintiff’s allegations and maintained it complied with all
27 relevant provisions of the Labor Code and Wage Orders. Specifically, Defendant contends among
28 other things that Plaintiff and all alleged aggrieved employees were timely paid for all hours worked

1 at the correct hourly rates in conformance with all applicable laws, that it authorized and permitted
2 Plaintiff and the alleged aggrieved employees to take all required breaks on a fully compliant basis
3 and in accordance with all applicable laws. Ingardia also strongly contends the case cannot be
4 maintained as a representative action because among other things Plaintiff's off the clock and
5 missed/interrupted/late/short meal and rest period allegations necessarily require detailed
6 individualized assessments and accordingly individualized issues predominate and a trial under
7 PAGA would be unmanageable. [Trenner Decl., ¶ 6.]

8 After Plaintiff filed his complaint, the Parties then began discussing the merits of the case
9 and holding several meet and confer sessions regarding prospective law and motion and discovery
10 issues, agreed to attempt mediation. The Parties further agreed to a protocol for exchanging
11 additional documents and information before the mediation. Through this informal discovery,
12 Defendant provided Plaintiff with information including, inter alia, the number of potential alleged
13 aggrieved employees, the number of aggregate pay periods, sample pay stubs, time and payroll
14 records for a 15% sampling of aggrieved employees, employee handbooks and manuals, and
15 relevant policy documents on Defendant's time keeping and reporting policies, etc. Plaintiff had
16 that information reviewed by Berger Consulting Group to help evaluate potential violation rates,
17 potential damages, etc. [Trenner Decl., ¶ 7.]

18 The parties then attended a full day mediation before highly-regarded mediator Marc Feder,
19 Esq., who has extensive experience mediating wage and hour class and PAGA actions. Before and
20 during the mediation, Plaintiff and counsel analyzed, researched, and investigated the potential
21 issues, including matters related to the calculation of damages, trial, and appellate issues and risks.
22 During mediation, the Parties vigorously debated the likelihood of Plaintiff's ability to proceed on a
23 representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and Defendant's
24 defenses, and the Parties' data analyses and conclusions based on data provided by Defendant. After
25 a contentious full day of negotiations, the Parties were able to reach agreement on all major issues.
26 The Parties then formalized the tentative settlement in the settlement agreement now before the
27 Court for approval. [Trenner Decl., ¶ 8.] A true and correct copy of the Settlement Agreement is
28 attached to the Trenner Declaration as Exhibit 1.

1 **III. SUMMARY OF SETTLEMENT TERMS**

2 **A. Terms of the Settlement and Distribution of PAGA Penalties**

3 Under the settlement, Defendant will pay a non-reversionary settlement amount of \$450,000
4 (the “Gross Settlement Amount” or “GSA”) within 30 days of the Effective Date. The GSA is
5 inclusive of payments to the LWDA and Aggrieved Employees, costs of settlement administration,
6 Plaintiff’s service award, and reasonable attorney’s fees and costs. Plaintiff’s Counsel seeks a fee equal
7 to one-third (\$150,000.00) of the GSA, and reimbursement of actual litigation costs of \$13,228.91. Plaintiff
8 requests a service award of no more than \$10,000. After payment of settlement administration costs,
9 service award and reasonable attorney’s fees and costs from the GSA, the Parties presently estimate
10 about \$272,771.09 will remain (the “Net Settlement Amount” or “NSA”). Seventy-five percent of
11 the NSA (about \$204,578.32) will go to the LWDA, and the remaining 25% (about \$68,192.77) will
12 be distributed to the Aggrieved Employees in proportion to the total number of eligible Pay Periods
13 each individual worked during the PAGA Period. The average award currently is estimated at about
14 \$239, and will range from about \$3.60 to \$364. [Trenner Decl., ¶ 9.]

15 **B. Payment and Notice**

16 The Parties propose using Simpluris, Inc. (“Simpluris”) as the Settlement Administrator.
17 Simpluris has extensive experience administering PAGA settlements, and has agreed to cap its fees
18 at \$4,000.00. As noted, Defendant will fund the settlement within 30 days of the Effective Date, and
19 Simpluris thereafter will mail a Notice and settlement check to all PAGA Members via regular First-
20 Class U.S. Mail, using the most current, known mailing addresses identified in Defendant’s records.
21 Recipients need not submit claim forms and will automatically receive a Notice and settlement
22 check. Settlement checks will be negotiable for 180 days, after which time any unclaimed residual
23 funds will be forwarded to the State Controller’s Unclaimed Property Fund. [Trenner Decl., ¶ 10;
24 Exh. 2; Declaration of Eric Springer, ¶¶ 2-9, Exhs. A-C.]

25 **C. The Release**

26 The release in the Settlement Agreement narrowly releases only civil penalty claims brought
27 under PAGA, as asserted in Plaintiff’s PAGA notice to the LWDA and the operative Complaint.
28 While Plaintiff is entering into a general release of any and all claims against Defendant, the

1 Settlement Agreement protects the rights of the alleged aggrieved employees to bring their own
2 individual claims should they wish. For these reasons, the Parties contend the release narrowly
3 applies only to the PAGA claims alleged or that could have been alleged, based on the factual and
4 legal allegations pled in the operative complaint and Plaintiff's PAGA Notice. [Trenner Decl., ¶ 11.]

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 this part.” Labor Code § 2699(1)(2). Recently, the appellate court in Moniz v. Adecco
9 USA, Inc. (2021) 72 Cal.App.5th 56, defined the standard for 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,
12 deter 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
16 risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the
17 settlement amount[.]” Id. at 75-76 (collecting cases). Observing that “PAGA’s purpose” is to
18 “protect the public interest”—especially the allegedly Aggrieved Employees—the Court agreed
19 with this district court authority, concluding that much the same principles that ensure fairness in
20 class action settlements serve the public interest in the PAGA context. Essentially, these factors are
21 more or less identical to those California courts use to evaluate class action settlements per Kullar
22 v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116 and, accordingly, Plaintiff submits they
23 should inform the Court’s analysis as well. For the reasons below, the proposed settlement is fair,
24 reasonable and adequate, advances the purposes underlying PAGA, and should be approved.

25 **A. Nature of the Alleged Violations**

26 Plaintiff alleges claims for civil penalties for unpaid wages and meal/rest break
27 violations, as well as derivative wage statement and waiting time penalty claims. First, Plaintiff
28 contends Defendant engaged in improper rounding of employee time punches. While under

1 present law time rounding may be permissible, it must be entirely neutral in its overall effect and
2 employees must not lose compensable hours worked. See's Candy Shops, Inc. v. Superior Court
3 (2012) 210 Cal. App. 4th 889. Here, according to Plaintiff's expert's analysis of the time and pay
4 records, Defendant underpaid 3,637.8 hours and overpaid 74.1 (for an average of 3.7 minutes
5 underpaid per shift), during the PAGA period, which suggests the time rounding favors Defendant
6 considerably. Per Plaintiff's experts, approximately 73.6% of the total pay periods reflect a *net*
7 underpayment of wages due to Defendant's rounding practice. [Trenner Decl., ¶ 12.]

8 Plaintiff also contends Defendant failed to provide proper meal and rest breaks, and that
9 review of the time records provided shows numerous "de facto" violations where meal breaks were
10 not provided at all (especially as to second meal periods), or otherwise non-compliant. Further,
11 Plaintiff contends Ingardia failed to fully relieve employees of all employer control during meal and
12 rest breaks because it prohibited napping and use of personal electronics for certain purposes while
13 on break, and thus employees were not fully able to use their break time as they saw fit. Beyond
14 that, expert analysis of the time records suggested Defendant failed to provide a second meal breaks
15 99.9% of the time, and Plaintiff was not shown a signed waiver by Plaintiff, but Defendant provided a
16 small sample of second meal period waivers signed by other employees. Overall, per Plaintiff's analysis
17 there were 10,305 pay periods containing at least one unique meal break violation (late, short, or missing
18 1st/2nd meal break) in the time records. [Trenner Decl., ¶ 13.]

19 Lastly, Plaintiff also brings derivative claims for inaccurate wage statements and failure to
20 pay all wages due and owing upon separation of employment under Labor Code §§ 201-203, based
21 on the above-described alleged violations. [Trenner Decl., ¶ 14.]

22 **B. Number of Alleged Violations and Potential Penalties**

23 Defendant estimates that, as of the date of this Settlement Agreement, there are
24 approximately 285 Aggrieved Employees who worked approximately 18,885 Pay Periods during
25 the PAGA Period .Based on the data and information provided by Defendant, and with his
26 expert's assistance and analysis, Plaintiff estimated Defendant's theoretical maximum PAGA
27 exposure at about \$7,065,000 in civil penalties. Plaintiff, however, discounted that number to
28

1 account for Defendant's procedural and merits defenses, of which there are many. [Trenner Decl.,
2 ¶¶ 15-16.]

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

5 In response to Plaintiff's off the clock claims, Defendant emphasized they accurately tracked
6 employee time and paid the allegedly aggrieved employees for all hours worked at the correct rates
7 consistent with their compliant timekeeping and payroll policies. Per Ingardia any rounding was
8 neutral in its overall effect and accordingly allows under current law. [Trenner Decl., ¶ 17.] Thus,
9 per Defendant, any such off the clock work was not actionable.

10 For the meal and rest break claims, Defendant offered multiple defenses. First, Defendant
11 emphasized that the written meal and rest break policy generally was compliant, that it authorized
12 and permitted all necessary breaks, and that alleged aggrieved employees received full 30 minute
13 lunch periods without interruption as reflected in the time records, and that it placed no restrictions
14 on how employees used their break time. Defendant also argued employees typically waived their
15 second meal periods, which waivers are not required to be in writing; nonetheless, at least a portion
16 of the PAGA Group signed such waivers. Defendant argued that even to the extent missed/non-
17 compliant breaks occurred, it was in violation of company policy and would require significant
18 individual inquiries to determine the reasons underlying any such alleged violations and whether it
19 was by employee choice or some other reason. Thus, per Defendant, any trial would be
20 unmanageable on a representative basis because of these individualized issues. [Trenner Decl., ¶
21 18.]

22 As with meal breaks, Defendant argued the applicable rest break policies complied with
23 California law and authorized and permitted employees to take all required breaks. Defendant
24 further contended that, in light of the fact that recording rest periods is not required, any evidence
25 of failure to authorize rest periods and/or discouragement from taking rest periods would be purely
26 anecdotal and individual issues would predominate on liability. Defendant also contended that they
27 are only liable if Plaintiff can prove, on a shift-by-shift basis, that each alleged aggrieved employee
28 actually did not receive a fully-compliant rest break. This arguably would once again make a trial

1 unmanageable since the instances an employee missed a rest break would have to be tested on a
2 case by case basis to determine compliance. [Trenner Decl., ¶ 19.]

3 On the wage statement and waiting time waiting time penalty claims, Defendant emphasized
4 that, to the extent they are derivative then they rise or fall along with the primary claims, in addition
5 to being subject to “good faith” and other defenses available to Defendant. Accordingly, Plaintiff
6 had to discount the value of these claims significantly in light of these multiple potential defenses.
7 Defendant also contended a substantial discount should be applied to the civil penalties for these
8 derivative (i.e., “stacked”) violations, as it would be unfair to penalize Defendant multiple times for
9 the same violation. [Trenner Decl., ¶ 20.]

10 Defendant also emphasized PAGA gives the Court wide latitude to reduce the amount of
11 civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise would
12 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2).
13 This is particularly true here where the claims essentially are premised on “de facto” violations and
14 that could prove difficult to establish on a representative basis, and in light of many cases that have
15 imposed substantial discounts on PAGA penalties awarded after trial. In Fleming v. Covidien (C.D.
16 Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court reduced the potential
17 penalties by over 82% after a bench trial. More recently, in Carrington v. Starbucks Corp. (2018)
18 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of just \$5 per pay period, a
19 90% reduction, which decision was upheld on appeal. In re Taco Bell Wage and Hour Actions (E.D.
20 Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial). Additionally,
21 no information came to light suggesting that any violations were knowing and willful by Defendant
22 and thus Plaintiff believes there is a high likelihood the Court would find imposition of significantly
23 more in penalties would be “unjust, arbitrary, or confiscatory.” [Trenner Decl., ¶ 21.]

24 Thus, Defendant raised various and multi-layered procedural and merits defenses to
25 Plaintiff’s claims, any one of which, if successful, could have decimated Plaintiff’s case. And
26 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going
27 forward with this litigation, and it could have taken years to realize any recovery in this action along
28 with the possibility of post-trial appeals. In addition to its merits defenses and arguing trial would

1 be unmanageable, Defendant also intended to raise additional defenses on damages, including the
2 proper measure of civil penalties and the appropriate discount to place on any assessment of such
3 penalties. After accounting for these many and varied risk factors, Plaintiff applied an 80% litigation
4 risk discount to the PAGA claims, and then assumed the Court would apply a minimum 50%
5 discount to any penalties awarded, resulting in a final risk-discounted estimate of about \$620,680
6 as the potential recovery after trial. [Trenner Decl., ¶ 22.]

7 Although Plaintiff and his counsel believe they could have prevailed, there was no such
8 guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits
9 on all claims, and securing maximum civil penalties all are factored into the equation, the settlement
10 value is reasonable and supported. Indeed, to recover maximum penalties Plaintiff would have to
11 shoot the moon and win on liability as to all claims and all pay periods at issue, and convince the
12 Court to award full penalties, which outcome is highly unlikely. Given Defendant's procedural and
13 merits defenses, as well as the substantial penalty reductions ordered in the cases above – which
14 occurred after trial – the proposed settlement is eminently reasonable. [Trenner Decl., ¶ 23.]

15 Importantly, the mere fact that a settlement does not provide the same recovery as might be
16 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
17 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed
18 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
19 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
20 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven
21 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
22 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
23 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane
24 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is
25 fundamentally fair . . . is different from the question whether the settlement is perfect in the
26 estimation of the reviewing court”); White v. Experian Information Solutions, Inc. (C.D. Cal.
27 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
28 though it represented 99% discount off the maximum value of the claims).

1 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
2 the probability of appeal of a favorable judgment, and the Court's substantial discretion to reduce
3 any penalty award all are accounted for, it is clear a settlement amount of \$450,000 for the PAGA
4 claim is within the ballpark of reasonableness, is fair, reasonable and adequate, and consistent with
5 PAGA's underlying purposes. Plaintiff respectfully submits approval is appropriate.

6 **V. SUBMISSION TO THE LWDA**

7 Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and
8 notified the LWDA of this approval hearing. [Trenner Decl., ¶ 24; Exh. 5.] Accordingly, the
9 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
10 approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA
11 settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL
12 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the
13 proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings, 2018 WL
14 4773057, at *9; Jordan v NCI Grp., Inc. (C.D. Cal. Jan. 5, 2018) 2018 U.S. Dist. LEXIS 25297, at
15 *7 ("Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to
16 the proposed settlement and no comment or objection has been received.").

17 **VI. PLAINTIFF'S ENHANCEMENT AWARD**

18 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of \$10,000
19 for his service in bringing these claims on behalf of the LWDA and Aggrieved Employees. Staton
20 v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service
21 and incentive payments ranging from \$2,000 to \$25,000). The request is reasonable given the risks
22 he undertook on behalf of the Class Members, and given he is entering into a full general release of
23 all claims. By contacting and retaining counsel to pursue these claims, Plaintiff helped make this
24 settlement possible for the State and other employees, while shouldering the risk of being liable for
25 Defendant's litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a
26 public lawsuit (discoverable even through a simple google search) for the benefit of other
27 employees, placing himself at risk of discrimination by future prospective employers. As set forth
28 in more detail in his declaration submitted herewith, among taking many other actions assisting in

1 the successful litigation of this case, Plaintiff provided substantial factual information and
2 documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the
3 case, and kept abreast of all significant developments. [Declaration of Ricardo Ramirez, ¶¶ 2-9;
4 Trenner Decl., ¶ 25.] Accordingly, the requested service award is appropriate and should be
5 approved.

6 **VII. THE REQUESTED ATTORNEY'S FEES AND COSTS ARE FAIR AND**
7 **REASONABLE**

8 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
9 that benefits the LWDA and aggrieved employees, one-third of the gross settlement, or \$150,000.00,
10 is allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs. These
11 fees are warranted under the law and within the range of fees commonly awarded in similar cases.
12 [Trenner Decl., ¶ 26.]

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

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

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

1 a PAGA action are paid to the State, with a smaller portion paid to the aggrieved employees (e.g.
2 75% paid to the state; 25% paid to the aggrieved employees). Lab. Code § 2699(i). Where a common
3 fund is created in a *qui tam* action by the successful litigation of a plaintiff, the plaintiff's attorneys
4 are entitled to recover their fees from the common fund. Bank of America v. Cory (1985) 164
5 Cal.App.3d 66, 89-91.

6 Through the efforts of Plaintiff and his attorneys, a common fund was created in the amount
7 of \$450,000 for the benefit of the allegedly aggrieved employees and the State. Thus, these
8 beneficiaries should bear their share of the costs and attorney's fees out of the overall recovery under
9 the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478-482; Six (6) Mexican
10 Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

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

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

1 Awarding attorney's fees of one-third of gross common fund amount is favored by California
2 courts when a fund established for the common benefit of others is involved, such as here.
3 Accordingly, awarding fees on this basis out of the \$450,000 GSA, for a total of \$150,000.00 in
4 fees, is reasonable and appropriate. [Trenner Decl., ¶¶ 27-45.]

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

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

16 Here, Crosner Legal's lodestar is approximately \$119,170, based on 161.1 attorney hours
17 spent litigating the case through the filing of this motion. [Trenner Decl., ¶¶ 29-44; Exh. 6.] On a
18 lodestar basis, the fee request of \$119,170 results in a very modest 1.26 upward enhancement to
19 the base lodestar, which modifier is entirely in line with California precedent. Indeed, California
20 courts routinely approve multipliers in the in the 2-4 range to compensate for the time and
21 risk of class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming
22 attorneys' fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255
23 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders
24 (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34.) Class Counsel submits that the
25 requested 1.14 multiplier effectively operates to show that the percentage fee request is
26 reasonable considering the challenges presented in this contingency fee matter, and
27 appropriately compensates Class Counsel for the contingent risk assumed and delay in
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1 payment during the approximately two years counsel has been representing Plaintiff. Thus,
2 the multiplier results in a fee constituting a fair return on the contingency.

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4 **C. The Requested Costs Are Reasonable**

5 Plaintiff's counsel requests reimbursement of actual out-of-pocket expenses incurred to
6 prosecute this action. These expenses were incidental and necessary to the effective representation
7 of the employees, and Plaintiff's counsel is permitted to recover their litigation costs and expenses
8 under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35 (common
9 fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego
10 (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund "[o]f necessity,
11 and for precisely the same reasons discussed above with respect to the recovery of attorneys' fees
12 by ... [Plaintiffs'] attorneys"). Furthermore, Plaintiff's Counsel is entitled to recover "those out-of-
13 pocket expenses that would normally be charged to a fee-paying client." Harris v. Marhoefer (9th
14 Cir. 1994) 24 F.3d 16, 19.

15 Plaintiff's Counsel's actual costs presently are \$13,228.91. This includes filing fees, service
16 of process, mediation costs, postage, and expert consultant fees, while waiving photocopying costs
17 and legal research charges. These costs are reasonable and uncontested, and should be approved.
18 [Trenner Decl., ¶¶ 46-47.]

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1 **VII. CONCLUSION**

2 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement under
3 PAGA, approve the requested award of reasonable attorney's fees and costs, approve Atticus
4 Administration, Inc. as the settlement administrator and approve its fees in the amount of \$4,500.00,
5 approve Plaintiff's enhancement award in the amount of \$10,000, approve the proposed
6 distributions to the LWDA and Aggrieved Employees, and enter its Order of final approval and
7 judgment thereon.

8 Dated: September 4, 2024

CROSNER LEGAL, P.C.

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11 Nikki Trenner

12 Jamie Serb

13 Zachary Crosner

14 Attorneys for Plaintiff RICARDO RAMIREZ
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