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8 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 LOS ANGELES**

12 WALTER WALKER, on behalf of the State
of California, and others similarly situated
13 and aggrieved,

14 Plaintiff,

15 v.

16
17 PELICAN PRODUCTS, INC., a Delaware
Corporation; STAFFMARK INVESTMENT
18 LLC, a Delaware Limited Liability
Company; and DOES 1-100, inclusive,

19 Defendants.
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Case No.: 23STCV19531

Assigned for All Purposes to:
Hon. Richard L. Fruin
Dept. 15

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

Date: November 14, 2024
Time: 9:15 a.m.
Dept.: 15

Reservation: 226528229837

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1 **I. INTRODUCTION**

2 Plaintiff Walter Walker hereby seeks Court approval of a proposed settlement of claims
3 brought under the Private Attorneys General Act (“PAGA”) against defendants Pelican Products,
4 Inc. and Staffmark Investments, LLC (“Defendants”). Consistent with PAGA, the proposed
5 settlement releases claims under PAGA only and has no impact on the individual claims of any
6 aggrieved employee other than Plaintiff Walker. Since the settlement resolves nothing more than
7 claims under PAGA, it requires only a one-step review and approval process by the Court, and for
8 the reasons discussed below, the Court should approve the settlement in its entirety as it is fair,
9 reasonable and adequate, and consistent with PAGA’s underlying purposes.

10 **II. BACKGROUND**

11 Defendant Pelican Products is an American multinational company that designs and
12 manufactures portable lighting systems, temperature controlled packaging and protective cases.
13 Their products are used in many industries including military, law enforcement, fire safety, and
14 consumer entertainment. The company's flagship product, Pelican cases, are molded plastic cases
15 that seal with an airtight and watertight gasket. Defendant Staffmark Investment is a staffing
16 company that, inter alia, placed workers with Pelican. Plaintiff was employed by Defendant
17 Staffmark and placed to work on an assembly line at Pelican's facility in Torrance, California from
18 about May 2022 through September 2022. He assembled cases for rifles and other similar products.
19 [Declaration of Chad Saunders (“Saunders Decl.”), ¶ 4.]

20 Plaintiff alleged he was a joint employee of Defendants, and that jointly Defendants
21 committed a number of Labor Code violations as to the allegedly aggrieved employees. First, he
22 alleged employees waited in long lines to clock in for their shifts and when clocking back in from
23 their meal breaks because there were only three available time clocks for use by hundreds of
24 employees. Per Plaintiff, this practice results in employees being underpaid by 10-15 minutes per
25 shift. He further alleged employees at Pelican would frequently be instructed to continue working
26 past the fifth hour of their shifts rather than going on their meal breaks, and that Pelican would
27 record that they took precisely 30-minute meal breaks within the fifth hour of work in order to avoid
28 paying meal period premiums and regardless of how much time they were eventually permitted to

1 take their meals. He also contended that employees frequently were not provided with second 10-
2 minute rest periods due to the pressure to complete their work, and did not receive net 10-minute
3 breaks due to the time it takes to walk to and from the break room. Finally, he alleged employees
4 have to pay for many of the tools to do their jobs because the tools provided by Pelican are
5 inadequate or not provided at all. He also alleged other violations and theories in his notice to the
6 Labor & Workforce Development Agency (“LWDA”). [Saunders Decl., ¶ 5; Exh. 3.]

7 After notice to the LWDA, on August 15, 2020³, Plaintiff filed the underlying PAGA-only
8 representative action against Defendants, alleging Defendants (1) failed to pay minimum wages for
9 all work performed; (2) failed to pay all overtime wages; (3) failed to provide meal periods; (4)
10 failed to provide rest periods; (5) failed to provide accurate, itemized wage statements; (6) failed to
11 maintain accurate and complete payroll records; (7) maintained unlawful labor conditions; (8) failed
12 to pay employees all wages due at least twice each calendar month; (9) failed to pay all wages due
13 at termination and during employment; (10) failed to keep timekeeping records; (11) failed to
14 reimburse expenses; (12) failed to provide suitable seating; (13) failed to produce employment
15 records; and (14) failed to provide sick pay, among other violations. [Saunders Decl., ¶ 6.]

16 After Plaintiff filed his complaint, the Parties stipulated to send Plaintiff’s “individual”
17 PAGA claims to arbitration, and to stay the “representative” PAGA claims. They further agreed to
18 attempt an early mediation pending initiation of the individual arbitration, and also agreed to a
19 protocol for exchanging additional documents and information before the mediation. Through this
20 informal discovery, Defendants provided Plaintiff with information including, inter alia, the number
21 of potential aggrieved employees, the number of aggregate pay periods, sample pay stubs and time
22 records for around 10% of the aggrieved employees,¹ employee handbooks and manuals, and
23 relevant policy documents regarding Defendants’ time keeping and reporting policies, information
24 regarding the number of allegedly aggrieved employees, pay periods at issue, etc. [Saunders Decl.,
25 ¶ 7.]

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28 ¹ Plaintiff’s experts at Berger Consulting suggested this sample would be statistically significant and enable them to
extrapolate to the entire Aggrieved Employee population.

1 The parties then attended a full day mediation before highly-regarded mediator Louis Marlin,
2 Esq., who has extensive experience mediating wage and hour class and PAGA actions. Before and
3 during the mediation, Plaintiff and his counsel analyzed, researched, and investigated the potential
4 issues, including matters related to the calculation of damages, trial, and appellate issues and risks.
5 During mediation, the Parties vigorously debated the likelihood of Plaintiff's ability to proceed on a
6 representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and Defendants'
7 defenses, and the Parties' data analyses and conclusions based on data provided by Defendants. After
8 a contentious full day of negotiations, the Parties reached agreement on all major issues. The Parties
9 subsequently formalized their tentative settlement in the Settlement Agreement before the Court for
10 approval. [Saunders Decl., ¶ 8.] A fully executed, true and correct copy of the PAGA Settlement
11 Agreement ("Settlement Agreement") is attached to the Saunders Declaration as Exhibit 1.

12 **III. SUMMARY OF SETTLEMENT TERMS**

13 **A. TERMS OF THE SETTLEMENT AND DISTRIBUTION OF PAGA**
14 **PENALTIES**

15 Under the settlement, Defendants will pay a non-reversionary settlement amount of
16 \$400,000 (the "Gross Settlement Amount" or "GSA"), with \$250,000 to be paid by Pelican and
17 \$150,000 by Staffmark. The GSA is inclusive of payments to the LWDA and Aggrieved Employees,
18 costs of settlement administration, a service award to Plaintiff Walker, and reasonable attorney's
19 fees and costs.² After payment of settlement administration costs, Plaintiff's service award, and
20 reasonable attorney's fees and costs from the GSA, Plaintiff presently estimates about \$240,796.48,
21 will remain (the "Net Settlement Amount" or "NSA"). Seventy five percent of the NSA (about
22 \$180,597.39) will go to the LWDA, and the remaining 25% (about \$60,199.13) will be distributed
23 to the Aggrieved Employees in proportion to the total number of Eligible Pay Periods each
24 individual worked during the PAGA Period, with an average award currently estimated at about
25 \$73.86. [Saunders Decl., ¶ 9.]

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28 ² As discussed below, Plaintiff's Counsel seeks a fee equal to 1/3 (\$133,333.33) of the GSA, and reimbursement of
actual litigation costs of \$12,370.15. Plaintiff requests a service award of \$10,000.00.

1 The Aggrieved Employees include all non-exempt, hourly workers in California who, at any
2 time during the PAGA Period (June 9, 2022 through either the date on which the Court enters the
3 Approval Order or October 20, 2024, whichever occurs first), were either (i) assigned to work at Pelican
4 Products, Inc. and were employed by Staffmark Investment LLC, or (ii) directly employed by Pelican
5 Products, Inc. [Settlement Agreement, §1.4.]

6 **B. PAYMENT AND THE NOTICE**

7 The Parties propose using Simpluris, Inc. as the Settlement Administrator. Simpluris has
8 extensive experience administering PAGA settlements, and has agreed to cap its fees at \$3,500.00.
9 No later than fourteen (14) days of the Effective Date or January 22, 2025, whichever occurs latest,
10 Defendants will fund the settlement and then within 14 days thereafter Simpluris will mail a Notice
11 and settlement check to all Aggrieved Employees via regular First-Class U.S. Mail, using the most
12 current, known mailing addresses identified in Defendants' records. Aggrieved Employees need not
13 submit claim forms and will automatically receive a Notice and settlement check. Settlement checks
14 will be negotiable for 180 days, after which time any unclaimed residual funds will be forwarded to
15 the California State Controller's Unclaimed Property Fund. [Saunders Decl., ¶ 10; Declaration of
16 Denise Islas, ¶¶ 2-9; Exhs. A-C.]

17 **C. THE RELEASE.**

18 The California Supreme Court has explained that a judgment in "a representative action
19 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ...
20 is binding not only on the named employee plaintiff but also on government agencies and any
21 aggrieved employee not a party to the proceeding." Arias v. Superior Court (2009) 46 Cal.4th 969,
22 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty
23 claims brought under PAGA. Under Arias, the order the Parties request the Court enter is intended
24 to be "binding not only on the named employee plaintiff but also on government agencies and any
25 aggrieved employee not a party to the proceeding." While Plaintiff is entering into a general release
26 any and all claims against Defendant, the Settlement Agreement protects the rights of the Aggrieved
27 Employees to bring their own individual claims should they wish (except for those claims released
28 in the Settlement). For these reasons, the Parties contend the release applies only to the PAGA

1 claims alleged, and the Settlement Agreement specifically provides the Release is inapplicable to
2 any claims other than those brought under PAGA. [Saunders Decl., ¶ 11.]

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

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

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

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

24 First, Plaintiff alleged Defendant failed to pay all minimum and overtime wages. Per
25 Plaintiff, the Pelican warehouse where he worked is very large and only has three stations where
26 employees can clock in and out, and when a large number of employees for each shift arrive at the
27 same time employees must wait in long lines to clock in for their shifts despite arriving on time and
28

1 ready to begin. The same is true when they try to clock back in from their meal breaks. This practice
2 results in employees being underpaid by 10-15 minutes per shift. [Saunders Decl., ¶ 12.]

3 Plaintiff next claims that, due to the pressure to complete their work quickly, employees
4 frequently were instructed to continue working past the fifth hour of their shifts rather than going
5 on their meal breaks. When this occurred, Plaintiff alleges Defendants still would record that they
6 took precisely 30-minute meal breaks within the fifth hour of work in order to avoid paying them
7 meal period premiums and regardless of how much time they were eventually permitted to take their
8 meals. According to Plaintiff's expert, about 60% of the pay periods at issue contain at least one
9 unique meal period violation. Plaintiff also claims employees are frequently not provided with
10 second 10-minute rest periods due to the pressure to complete their work, and also do not received
11 net 10-minute breaks due to the time it takes to walk to and from the break room. [Saunders Decl.,
12 ¶ 13.]

13 Next, Plaintiff alleged the aggrieved employees have to pay for many of the tools needed to
14 do their jobs because the tools provided by Defendants are inadequate or not provided at all. These
15 items can include hammers, box cutters, gloves, steel-toed boots, and masks, among other things.
16 Plaintiff and the aggrieved employees received no reimbursement for these expenses. [Saunders
17 Decl., ¶ 14.]

18 Plaintiff also brings claims derivative of the foregoing claims, including a derivative wage
19 statement claim based on the alleged failures to pay accurately track and report hours worked and
20 to pay all wages due, and failure to pay all wages due and owing upon separation of employment
21 under Labor Code §§ 201-203. Plaintiff alleged additional violations for failure to provide suitable
22 seating, failure to provide safe work spaces, failure to produce employment records, and failure to
23 provide sick pay. Plaintiff's investigation of these claims, however, suggested they were not
24 particularly viable. For example, it appeared Plaintiff was the only individual for whom employment
25 records were not produced on demand, or that there were any issues related to seating or cognizable
26 safety violations. Accordingly, these claims did not factor significantly in Plaintiff's evaluation of
27 liability and damages. [Saunders Decl., ¶ 15.]

28 ////

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

2 For mediation, Defendants indicated they collectively employed approximately 815 non-
3 exempt employees in California during the applicable PAGA period, and these individuals worked
4 approximately 25,508 pay periods during that time. Based on the data and information provided by
5 Defendant, Plaintiff estimated Defendants' maximum PAGA exposure at approximately
6 \$8,997,300. [Saunders Decl., ¶¶ 16-17.]

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

10 In response to Plaintiff's unpaid wage claims for alleged "off the clock work" due to waiting
11 in line to clock in, Defendants argued that their time keeping policies are legally compliant and that
12 they accurately tracked and paid for all hours worked. Defendants strongly disputed that employees
13 spent any excessive amount of time waiting to clock in or out, and that clocking in and out was
14 efficiently accomplished given the layout of the facilities, the number of time clocks available, and
15 employee schedules. Per Defendants, to the extent any kind of off the clock work may have
16 happened, it was intermittent, against company policy, and done without company authorization or
17 knowledge. White v. Starbucks Corp., 497 F.Supp.2d 1080, 1083 (N.D. Cal. 2007) (employer must
18 have actual or constructive knowledge of off the clock work for liability to attach). [Saunders Decl.,
19 ¶ 18.]

20 For the meal and rest break claims, Defendants likewise offered multiple defenses. First,
21 they emphasized the applicable written meal and rest break policies were compliant, that they
22 authorized and permitted all necessary meal and rest breaks, and that employees received full
23 uninterrupted lunch periods and rest breaks free from employer control as reflected in the time
24 records that showed the vast majority of meal periods were timely and lasted a full 30 minutes.
25 Defendants also emphasized they paid thousands of dollars in meal period premium payments for
26 purportedly non-compliant break violations as reflected in their records. As with meal breaks,
27 Defendants argued employees likewise received all required breaks and the breaks lasted a full net
28 10 minutes of break time as required under California law. [Saunders Decl., ¶ 19.]

1 On the expense reimbursement claim, Defendants argued employees were provided with all
2 tools and equipment needed to perform their jobs and, to the extent employees brought their own
3 tools to work it was purely a matter of personal preference and was neither “reasonable” or
4 “necessary.” As such, Defendants argued no reimbursement was owed under Labor Code § 2802.
5 [Saunders Decl., ¶ 20.]

6 Plaintiff also alleged derivative violations of Labor Code § 226 (wage statement
7 violations) and §§ 201-203 (waiting time penalties). The derivative wage statement claims (based
8 on the unpaid wage and meal/rest claims). The waiting time penalties claim, also is entirely
9 derivative and will rise or fall along with the primary claims, in addition to being subject to “good
10 faith” and other defenses available to Defendants. Amaral v. Cintas Corp. No. 2 (2008) 163
11 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor
12 Code § 203 even though the class prevailed on the merits on the underlying claim for failing to
13 pay living wages). Accordingly, Plaintiff had to discount the value of this claim significantly in
14 light of these multiple potential defenses. Defendants also contended a substantial discount should
15 be applied to the civil penalties for these derivative (i.e., “stacked”) violations, as it would be
16 unfair to penalize Defendants multiple times for the same violation. [Saunders Decl., ¶ 21.]

17 Defendants also emphasized PAGA gives the Court wide latitude to reduce the amount of
18 civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise
19 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code §
20 2699(h). Several state and federal courts in California have applied significant reductions to
21 PAGA civil penalties even after plaintiff prevailed on the merits. In Fleming v. Covidien (C.D.
22 Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court reduced the
23 potential penalties by over 82% after a bench trial. More recently, in Carrington v. Starbucks
24 Corp. (2018) 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of just \$5
25 per pay period, a 90% reduction, which decision was upheld on appeal. In re Taco Bell Wage and
26 Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after
27 trial). [Saunders Decl., ¶ 22.]
28

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

8 [Saunders Decl., ¶ 23.]

9 Although Plaintiff and his counsel believe they could have prevailed, there was no such
10 guarantee. When the risks of overcoming prevailing at trial on the merits on all claims, and
11 securing 100% of the theoretical civil penalties for each and every pay period at issue, all are
12 factored into the equation, the settlement value is reasonable and supported. Of course, to recover
13 anywhere near the maximum penalties Plaintiff would have to shoot the moon and win both
14 liability and maximum penalties on all claims, which outcome, for the reasons discussed, is
15 unlikely. Given Defendants' various procedural and merits defenses, as well as the substantial
16 penalty reductions ordered in the cases above – which occurred after trial – the proposed
17 settlement is eminently reasonable. [Saunders Decl., ¶ 24.]

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

1 estimation of the reviewing court"); White v. Experian Information Solutions, Inc. (C.D. Cal.
2 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
3 though it represented 99% discount off the maximum value of the claims).

4 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
5 the probability of appeal of a favorable judgment, the Court's substantial discretion to reduce any
6 penalty award all are accounted for, it is clear a settlement amount of \$400,000 for the PAGA
7 claims is within the ballpark of reasonableness, and approval is appropriate. Jennings v. Open
8 Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *7 (approving
9 settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement
10 agreement to the LWDA, and the LWDA has not objected to the settlement").

11 **V. SUBMISSION TO THE LWDA**

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

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

24 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
25 that benefits the LWDA and Aggrieved Employees, 1/3 of the gross settlement, or \$133,333.33, is
26 allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs. These fees
27 are warranted under the law and within the range of fees commonly awarded in similar cases.
28

1 A. **PLAINTIFF’S COUNSEL ARE ENTITLED TO RECOVER ATTORNEY’S**
2 **FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM**
3 **ACTION**

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

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

24 Through the successful efforts of Plaintiff and his attorneys here, a common fund was created
25 in the amount of \$400,000 for the benefit of the Aggrieved Employees and the State. Thus, these
26 beneficiaries should bear their share of the costs and attorney’s fees out of the overall \$80,000
27 amount in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444
28 U.S. 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
3 Laffitte, the Supreme Court upheld an award of attorney's fees of one-third of the \$19 million gross
4 settlement (e.g., awarded \$6.33 million in fees) under the common fund theory of recovery. Lafitte
5 is consistent with prior decisions recognizing "when a number of persons are entitled in common to
6 a specific fund, and an action brought by ... plaintiffs for the benefit of all results in the creation or
7 preservation of that fund, such ... plaintiffs may be awarded attorneys' fees out of the fund." Serrano
8 v. Priest (1977) 20 Cal.3d 25, 34; Boeing, 444 U.S. at 478 ("[A] lawyer who recovers a common
9 fund ... is entitled to reasonable attorneys' fees from the fund as a whole]; Lealao v. Beneficial
10 California, Inc. (2000) 82 Cal.App.4th 19, 26 ("[f]ee spreading occurs when a settlement or
11 adjudication results in the establishment of a separate or so-called common fund for the benefit of
12 the class").

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

20 Awarding attorney's fees of one-third of gross common fund amount is favored by California
21 courts when a fund established for the common benefit of others is involved, such as here.
22 Accordingly, awarding fees on this basis out of the \$400,000 GSA, for a total of \$133,333.33, is
23 reasonable and appropriate. [Saunders Decl., ¶¶ 26-51.]

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

26 Despite the recognized limitations of the so-called lodestar method, some California and
27 federal courts acknowledge the utility of a lodestar "cross-check" when assessing a proposed
28 percentage-based fee award. Lealao, 82 Cal.App.4th at 46-47. Under the "lodestar multiplier"

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

8 Here, Crosner Legal’s lodestar is approximately \$159,148, based on 211.35 attorney hours
9 spent litigating the case. [Saunders Decl., ¶¶ 29-51; Exh. 6.] This results in a lodestar that is higher
10 than the fees requested on a percentage of the recovery basis and, accordingly, there is no request
11 for a multiplier. It also is important to note this fact serves to highlight the reasonableness of the
12 fees sought on a percentage-of-the-recovery basis, as it shows the requested fees are actually lower
13 than the market rate for the services rendered if those services are valued via traditional hourly
14 billing.

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

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

26 While the Settlement Agreement authorizes litigation costs not to exceed \$15,000, Plaintiff’s
27 Counsel’s actual costs presently are \$12,370.15. [Saunders Decl., ¶¶ 52-53.] This includes filing
28 fees, service of process, mediation costs, expert fees, deposition costs, and postage, while waiving

1 photocopying costs and legal research charges. These costs are reasonable and uncontested, and
2 should be approved in their entirety.

3 **VII. THE PROPOSED SERVICE AWARD FOR PLAINTIFF IS FAIR AND**
4 **REASONABLE**

5 Pursuant to the Settlement Agreement, Plaintiff seeks an incentive award of \$10,000. This
6 request is reasonable given the much broader release that Plaintiff is agreeing to, as well as
7 Plaintiff's efforts in this case and the risks he undertook on behalf of the Aggrieved Employees.
8 Additionally, by contacting and retaining counsel to pursue these claims, Plaintiff made this
9 settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the risk
10 of being liable for Defendant's litigation costs if he were unsuccessful. Plaintiff also exposed himself
11 to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google
12 search) for the benefit of other employees, placing Plaintiff at risk of discrimination by future
13 prospective employers. Among taking many other actions assisting in the successful litigation of
14 this case, Plaintiff provided substantial factual information to Plaintiff's Counsel, participated in
15 numerous phone calls and meetings with counsel to discuss the case, and general kept up to speed
16 and informed on the case's progress. The incentive payment to Plaintiff is appropriate and justified
17 as part of the Settlement. [Saunders Decl., ¶ 54; Declaration of Walter Walker, ¶¶ 2-9.]

18 Accordingly, Plaintiff submits the amount sought is well within the range of reasonableness
19 for such awards in other wage and hour actions. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977
20 (collecting cases awarding service and incentive payments ranging from \$2,000 to \$25,000).

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1 **VIII. CONCLUSION**

2 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement under
3 PAGA, approve the requested award of reasonable attorney's fees and costs, approve the requested
4 service award to Plaintiff in the amount of \$10,000, approve Simpluris, Inc. as the settlement
5 administrator and approve is fees in the amount of \$3,500, approve the proposed distributions to the
6 LWDA and Aggrieved Employees, and enter judgment.

7
8 Dated: October 9, 2024

CROSNER LEGAL, PC

9
10 By: 

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