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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

WILBUR JIMENEZ RIVAS, on behalf of the State of California, and others similarly situated Plaintiff, v. LOU SOBH OF CERRITOS SATURN, a Delaware Corporation and DOES 1 through 100 inclusive Defendants.	CASE NO. 23STCV19508 Assigned for All Purposes to: Hon. Gary D. Stevens Dept. 73 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT UNDER PRIVATE ATTORNEYS GENERAL ACT Date: January 28, 2026 Time: 8:30 a.m. Dept.: 73 **Reservation ID: 108220794731**

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I. INTRODUCTION

Plaintiff Wilbur Jimenez Rivas hereby seeks Court approval of a proposed settlement of claims brought under the Private Attorneys General Act ("PAGA") against defendant Lou Sobh of Cerritos Saturn ("Lou Sobh" or "Defendant").[1] Consistent with PAGA, the proposed settlement releases claims under PAGA only and has no impact on the individual claims of any allegedly aggrieved employee other than Plaintiff. 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, and adequate, and advances the statutory purposes of PAGA. Plaintiff respectfully requests the Court approve the Settlement in its entirety.

II. BACKGROUND

Defendant Lou Sobh owns and operates a car dealership in Cerritos during the relevant time period in this case. Plaintiff Rivas worked for Defendant as a technician performing reparis and maintenance work on customer vehicles from May 13, 2022 until July 19, 2022 when he was terminated for purportedly causing $4,000.00 in damage. While employed with Lou Sobh, Plaintiff alleges he was subjected to a number of wage and hour violations. [Declaration of Brandon K. Brouillette ("Brouillette Decl."), ¶ 4.]

After notice to the LWDA and Defendant, and exhausting administrative remedies Plaintiff filed a complaint against Lou Sobh on August 15, 2023, seeking PAGA civil penalties for the following alleged wage and hour violations: (a) failure to pay all wages due, including minimum and overtime wages; (b) failure to provide meal and rest periods; (c) failure to provide complete and accurate wage statements; (d) failure to reimburse expenses, and (e) failure to pay wages due on separation of employment. Plaintiff filed the matter on behalf of herself and on behalf of the Aggrieved Employees defined to include all individuals employed by Lou Sobh as non-exempt employees in California during the relevant PAGA time frame. [Brouillette Decl., ¶¶ 5-6; Exh. 3.]

[1] All references to "PAGA" or statutory citations to California Labor Code section 2698, *et seq.* refer to the PAGA statute in effect prior to the July 1, 2024 amendment.

After Plaintiff initiated this matter, the Parties initiated formal discovery, and Plaintiff successfully moved to compel further discovery responses. Ultimately, after several meet and confer sessions the Parties agreed to attempt mediation. They also agreed to and did informally exchange information to permit both sides to evaluate Plaintiff's allegations. Through this informal discovery, Defendant provided Plaintiff with information including, inter alia, Plaintiff's personnel file, the number of potential Aggrieved Employees, the number of aggregate pay periods, pay stubs and time records for a sampling of the Aggrieved Employees, and relevant policy documents regarding Defendant's time keeping and reporting policies and meal and rest break policies, among other pertinent materials. [Brouillette Decl., ¶ 7.]

In February 2025, the Parties mediated the case with Abe Melmed, Esq., a respected professional neutral with extensive class action/wage and hour experience. Before and during the mediation, Plaintiff and his counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of penalties, trial, and appellate issues and risks. During mediation, 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 a contentious day of negotiations, the Parties reached agreement and subsequently formalized their tentative settlement in the Settlement Agreement now before the Court for approval. [Brouillette Decl., ¶ 8.] A fully executed, true and correct copy of the PAGA Settlement Agreement ("Settlement Agreement") is attached to the Brouillette Declaration as Exhibit 1.

III. SUMMARY OF SETTLEMENT TERMS

A. SETTLEMENT TERMS AND DISTRIBUTION OF PAGA PENALTIES

Under the settlement, Defendant will pay a non-reversionary settlement amount of $325,000 (the "Gross Settlement Amount" or "GSA"). The GSA is inclusive of payments to the LWDA and Aggrieved Employees, costs of settlement administration (estimated at no more than

$5,990), a modest service award to Plaintiff, and reasonable attorney's fees and costs.[2] After payment of settlement administration costs, Plaintiff's service award, and reasonable attorney's fees and costs from the GSA, Plaintiff presently estimates about $187,992.00 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five percent of the NSA (about $140,994.00) will go to the LWDA, and the remaining 25% (about $46,998.00) will be distributed to the Aggrieved Employees in proportion to the total number of Pay Periods each individual worked during the PAGA Period of November 22, 2021, through September 4, 2024. The average award currently is estimated at about $176 per individual, and it is estimated that awards will range from about $3.60 to $315. [Brouillette Decl., ¶ 9.]

B. <u>PAYMENT AND THE NOTICE</u>

The Parties propose using Apex Class Action, LLC ("Apex") as the Settlement Administrator. Apex has extensive experience administering PAGA settlements and has agreed to cap its fees at $5,990. [Declaration of Sean Hartranft, ¶¶ 2-9; Exhs. A-B.] Lou Sobh will fund the GSA within 35 days after the Administrator notifies it of the opening of the Qualified Settlement Fund, and within 14 days of funding Apex will mail a Notice and settlement check to all Aggrieved Employees via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in Lou Sobh's records. Aggrieved Employees 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 California State Controller's Unclaimed Property Fund, subject to Court approval. [Brouillette Decl., ¶ 10; Exh. 2.]

C. <u>THE RELEASE</u>

The California Supreme Court has explained that a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." <u>Arias v. Superior Court</u> (2009) 46 Cal.4th

[2] Plaintiff's counsel is requesting 1/3 of the GSA ($108,333.33) in fees and costs of $12,684.67. Plaintiff requests a service award of $10,000.00.

969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty claims brought under PAGA. Under Arias, the order the Parties request the Court enter is intended to be "binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." The Settlement Agreement protects the rights of the 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, and the Settlement Agreement specifically provides the Release is inapplicable to any claims other than those brought under PAGA. [Brouillette Decl., ¶ 11.]

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

PAGA requires the Court to "review and approve any settlement of any civil action filed pursuant to this part." Labor Code § 2699(*l*)(2). The appellate court in Moniz v. Adecco USA, Inc. (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." Id. at 77.

In so holding, Moniz noted many federal district courts had imported class action settlement approval principles when evaluating PAGA settlements, 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[.]" Id. at 75-76 (collecting cases). Observing that "PAGA's purpose" is to "protect the public interest"—especially the allegedly Aggrieved Employees—the Court agreed with this district court authority, concluding that much the same principles that ensure fairness in class action settlements serve the public interest in the PAGA context. Essentially, 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, accordingly, 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 primarily contends Defendant failed to pay provide Aggrieved Employees for certain overtime wages by improperly using an Alternative Workweek Schedule. Wage Order No. 7 permits employers to utilize alternative workweek schedules if certain conditions are met. Plaintiff was told upon hire that he had to work a 4 x 10 alternative workweek shift, even assuming Defendant has properly established an AWS schedule for technicians at its dealership, Defendant is liable for unpaid overtime because Plaintiff routinely failed to work 10-hour alternative workweek shifts. Wage Order No. 7 provides:

> If an employer whose employees have adopted an alternative workweek agreement permitted by this order requires an employee to work fewer hours than those that are regularly scheduled by the agreement, the employer shall pay the employee overtime compensation at a rate of one and one-half (11/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours

Here, Plaintiff alleges he and other aggrieved employees regularly worked less than the mandated 10 hours under the AWS and, accordingly, should have received overtime premiums on those shifts so long as they worked more than 8 hours. [Brouillette Decl., ¶ 12.]

Plaintiff further contends Defendant improperly paid employees for vested vacation pay upon separation of employment. Labor Code Section 227.3 provides, in part, that "whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate." Section 227.3 applies to PTO plans like Defendant's here. <u>See</u> <u>McPherson v. EF Intercultural Found., Inc.</u>, (2020) 47 Cal.App.5th 243, 261. Here, Plaintiff alleges Defendant paid final vacation wages at a lower "vacation rate" rather than the employee's regular, and typically higher, hourly rate in violation of Section 227.3. [Brouillette Decl., ¶ 12.]

On his meal break violation claims, Plaintiff primarily contends that Defendant did not provide second meal periods on shifts longer than 10 hours. He further argued that his review of the available payroll and time records suggested that there were numerous "de facto" violations for missed, untimely, and short meal periods, for which Defendant did not pay the required premium wage as compensation in lieu of providing the required meal break. While Defendant established that Plaintiff and the aggrieved employees waived their second meal periods by signing written waivers, Plaintiff argued those blanked waivers, signed as a condition of employment, were invalid. [Brouillette Decl., ¶ 12.]

Plaintiff also contends Defendant failed to provide Plaintiff and the Aggrieved Employees with compliant rest periods. While Lou Sobh's written rest break policies generally appeared compliant, Plaintiff contends that in practice Lou Sobh did not permit employees to leave the work premises while on a rest break. Augustus v. ABM Security Services, Inc. (2016) 2 Cal. 5th 257, 272-273. As a result, Plaintiff contends employees remained subject to employer control while on a rest break in violation of California law. [Brouillette Decl., ¶ 13.]

On the expense reimbursement claim, Plaintiff contends employees had to use personal cell phones for work purposes. Plaintiff alleges she and other employees were required to download specific mobile applications to complete new hire paperwork and later had to download an app called "Workday" for scheduling and payroll purposes, but never received any reimbursement. An employer must reimburse employees for use of personal devices, and if the employee has an unlimited monthly plan, then the employer must reimburse an amount that equates to the employee's percentage of use for work. Cochran v. Schwan's Home Serv. (2014) 228 Cal.App.4th 1137. [Brouillette Decl., ¶ 14.]

For the inaccurate wage statement claims, Plaintiff alleges facial violations, and alleges Defendant's wage statements double counted the overtime hours that were worked during each pay period and reflected in inflated 'total hours worked' number being listed. In particular, Defendant's wage statements break overtime pay into 2 separate line items, one for the overtime hours at the base hourly rate, and then another line for all overtime hours and the 0.5 premium and as a result the tabulation of "total hours worked" included the number of overtime hours twice and overstated the hours worked. McKenzie v. Federal Express Corp. (S.D. Cal. 2011) 765 F.Supp.2d 1222 (2011) (granting summary judgement in favor of Plaintiff on the grounds that the pay statement incorrectly stated the total hours worked when overtime hours were broken down into multiple line items).

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

Finally, although Plaintiff's complaint alleges claims for unpaid minimum wages, no information came to light supporting those claims. More specifically, the evidence suggested Lou Sobh tracked and paid for hours worked to the minute, and there were no apparent violations that potentially could be resolved on a representative basis. Accordingly, these claims were given no weight for settlement purposes. [Brouillette Decl., ¶ 16.]

B. NUMBER OF ALLEGED VIOLATIONS AND POTENTIAL PENALTIES

For mediation, Lou Sobh indicated it employed approximately 266 non-exempt employees in California during the relevant time frame, and these individuals worked approximately 13,000 pay periods during that time. Based on the data provided by Defendant, Plaintiff estimated Defendant's maximum PAGA exposure at approximately $3,915,000 including approximately $1,300,000 on the unpaid overtime claims, $1,300,000 on the rest period claims, $1,300,000 on the wage statement claims, and about $15,000 on the derivative claims for failing to timely pay wages on separation of employment.[3] These figures assumed a 100% violation rate. [Brouillette Decl., ¶¶ 17-18.]

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

On the unpaid overtime claims, Defendant argued its time keeping and payroll policies fully and accurately recorded all hours worked and paid for those hours at the correct hourly rate, including overtime for employees working under a validly implemented AWS. Here, Defendant argued employees on a 4/10 AWS were required to work their full shift each day and prohibited to "bootstrap" overtime hours by regularly and deliberately working less than a full 10 hour shift.

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[3] As discussed infra, the recent decision in Bradsbery v. Vicar Operating, Inc. (2025) 110 Cal. App. 5th 899, 332 Cal. Rptr. 3d 73, 90, reh'g denied (May 14, 2025), as modified (May 20, 2025), as modified (May 21, 2025), established that blanket meal periods waivers like Defendant's are valid and enforceable under California law, therefore suggesting that the meal period violation claims likely have nominal value.

To the extent that did happen for whatever reason, Defendant contends it would have been intermittent and aberrational, and employees were properly compensated consistent with the applicable Wage Order provisions governing Alternative Work Schedules. [Brouillette Decl., ¶¶ 17-18.]

In response to Plaintiff's meal break claims, Lou Sobh offered multiple defenses. First, it emphasized it authorized and permitted all necessary breaks, and that employees received full uninterrupted lunch periods. Defendant further argued that its meal break waivers were valid and enforceable, and that employees who executed such waivers effectively waived their right to a meal period on shifts of 10+ hours. Furthermore, this claim is now likely worth little given the very recent decision in Bradsbery v. Vicar Operating, Inc. (2025) 110 Cal. App. 5th 899, 332 Cal. Rptr. 3d 73, 90, reh'g denied (May 14, 2025), as modified (May 20, 2025), as modified (May 21, 2025), that essentially found blanket meal waivers, similar to those at issue here, enforceable. [Brouillette Decl., ¶ 19.]

As with meal breaks, Defendant argued the applicable rest break policies complied with California law, that it authorized and permitted employees to take all required breaks, and that employees were fully relieved of all conceivable employer control while on a break. Further, per Defendant, in light of the fact that it is 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. [Brouillette Decl., ¶ 20.]

On the alleged violations of Labor Code § 226, Defendant argued its wage statements were fully compliant and accurately provided all required information, including an accurate statement of total hours worked. Lou Sohb argued Morgan v. United Retail, Inc. (2010) 186 Cal.App.4 th 1136 controls here because its pay stubs "listed the number of hours worked at the regular rate of pay and the number of hours worked at the overtime rate of pay," and there is no Section 226(a)(2) violation in this case. [Brouillette Decl., ¶ 21.]

On the alleged derivative violations for Labor Code § 226 (wage statement violations) and §§ 201-203 (waiting time penalties), both claims, since they are entirely derivative, 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. [Brouillette Decl., ¶ 22.]

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(h). Several state and federal courts in California have applied significant reductions to PAGA civil penalties even after plaintiffs prevailed on the merits. In Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXlS 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). [Brouillette Decl., ¶ 23.]

Thus, Defendant raised various and multi-layered defenses to each of Plaintiff's claims, any one of which, if successful, could have derailed Plaintiff's case. And Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with litigation, and it could have taken years to realize any recovery in this action along with the possibility of post-trial appeals. In addition 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. [Brouillette Decl., ¶ 24.]

Although Plaintiff and her counsel believe they could have prevailed, there was no such guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits on all claims, securing the maximum theoretical civil penalties, and appellate risks all are factored into the equation, the settlement value is reasonable and supported. Of course, to recover anywhere near the maximum penalties Plaintiff would have to shoot the moon and win both liability and maximum penalties on all claims for every single pay period at issue, which, for the reasons discussed, is unlikely. Given Defendant's various 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. [Brouillette Decl., ¶ 25.]

Moreover, the recovery is in line with a number of other PAGA settlements approved by California courts. 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 v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 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, the Court's substantial discretion to reduce any penalty award all are accounted for, it is clear a settlement amount of $325,000 for the PAGA claims is within the ballpark of reasonableness, furthers the purposes underlying PAGA, 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. [Brouillette Decl., ¶ 26; 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 v. Open Door Marketing, LLC, 2018 WL 4773057, at *9 ("Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement."); Jordan v. NCI Group, Inc., 2018 WL 1409590, at *3 ("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.").

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VI. PLAINTIFF'S SERVICE AWARD

A modest incentive award for Plaintiff is appropriate under applicable law. See 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). She not only devoted time and resources to the litigation, provided documents, and assisted her counsel with investigating the claims asserted and in preparing for mediation, but also is agreeing to dismiss her pending individual arbitration and enter into a full general release of her alleged claims. The service payment provided to Plaintiff as the PAGA representative is typical in representative action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563 F.3d 948, 958-59 (incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.").

Here, the Settlement Agreement provides for a service payment of up to $10,000.00 to Plaintiff. The request is reasonable given he is releasing all claims against Lou Sobh, all in addition to the risks he undertook on behalf of the Aggrieved Employees and State. By contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent employees, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing himself at risk of discrimination by future prospective employers. As stated in his declaration filed herewith, among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. [Brouillette Decl., ¶ 27.]

VII. 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, 1/3 of the gross settlement, or $108,333.33, is allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs which amount to $12,684.67. These fees and costs 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 IN THIS QUI TAM ACTION**

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, ..." As discussed below, 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 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, 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). As here, where a common fund is created in a *qui tam* action by the successful litigation of a plaintiff and his attorneys, 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 successful efforts of Plaintiff and her attorneys here, a common fund was created in the amount of $325,000 for the benefit of the Aggrieved Employees and the State. Thus, these beneficiaries should bear their share of the costs and attorney's fees out of the overall amount in civil penalties 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. In Laffitte, the Supreme Court upheld an award of attorney's fees of one-third of the $19 million 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 of one-third of gross common fund amount 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 $325,000 GSA, for a total of $108,333.33, is reasonable and appropriate. [Brouillette Decl., ¶¶ 28-52.]

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, Plaintiff's counsel's lodestar is approximately $108,333.33 based on 234.4 attorney hours spent litigating the case. [Brouillette Decl., ¶¶ 32-52; Exh. 6.] On a lodestar basis, the fee request of $108,333.33 results in a base lodestar that is larger than the fees requested on a percentage basis, and therefore there is no request for a lodestar modifier. Plaintiff submits, however, that this supports the reasonableness of the fee request since the value of fees requested is less than the actual value of the services rendered when valued via traditional hourly billing.

C. The Requested Costs Are Fair And 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.

While the Settlement Agreement authorizes litigation costs not to exceed $20,000, Plaintiff's Counsel's actual costs are $12,684.67. [Brouillette Decl., ¶¶ 53-54.] This includes filing fees, service of process, court reporter charges, and mediation costs, while waiving photocopying costs, postage, and legal research charges. These costs are reasonable and uncontested, and should be approved.

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 Apex as the settlement administrator and approve its fees in the amount of $5,990, approve the proposed distributions to the LWDA and Aggrieved Employees, and enter judgment.

Dated: October 24, 2025

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