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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF TULARE

GUADALUPE BRISENO on behalf of the State of California, and others similarly situated and aggrieved, Plaintiffs, v. PERFECTION PET FOODS, LLC, a California Limited Liability Company; VOLT INFORMATION SCIENCES, INC., a New York Corporation; VOLT MANAGEMENT CORP., a Delaware Corporation; and DOES 1-100, inclusive, Defendants.	Case No.: VCU308266 Assigned for All Purposes to: Hon. David Mathias Dept. 1 MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT UNDER PRIVATE ATTORNEY'S GENERAL ACT Date: August 20, 2026 Time: 8:30 a.m. Dept.: 1

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I. INTRODUCTION

Plaintiff Guadalupe Briseno[1] hereby seeks Court approval of a proposed settlement of claims brought under the Private Attorneys General Act ("PAGA") against Defendants Perfection Pet Foods, LLC, Post Brands Pet Care, LLC, Volt Information Sciences, Inc., and Volt Management Corp. ("Defendants"). 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 Plaintiffs. 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 Briseno respectfully requests the Court approve the Settlement in its entirety.

II. BACKGROUND

Defendant Perfection Pet Foods, LLC ("Perfection") is a large supplier of pet foods and treats located in Visalia. Post Holdings, Inc., a consumer-packaged goods holding company, acquired Perfection's assets in 2023. Defendant Volt is a staffing company that placed employees to work at Perfection. Plaintiff Briseno was hired by Defendant Volt and assigned to perform work as a dog food packer at Perfection from April 2023 through May 2023. Plaintiff Delayo was employed by Perfection as an hourly-paid Machine Operator from approximately July 2022 to approximately July 2023. While employed, Plaintiffs allege they were subjected to a number of wage and hour violations. [Declaration of Jamie Serb ("Serb Decl."), ¶ 5.]

After notice to the LWDA and Defendants, and exhausting administrative remedies, on November 8, 2023, Plaintiff Briseno commenced this action by filing her complaint alleging causes of action against Defendants Perfection Pet Foods, Volt Information Sciences, Inc., and Volt Management Corp. for violations of the PAGA. On April 22, 2024, and after notice to the LWDA and Defendants and exhausting administrative remedies, Plaintiff Delayo filed his representative PAGA complaint against Perfection Pet Foods, LLC, Post Brands Pet Care, LLC seeking PAGA civil penalties. Plaintiffs' complaints collectively alleged wage and hour violations

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[1] Counsel for Plaintiff Raymond Delayo withdrew from this matter and accordingly Mr. Delayo is unrepresented at this time. For this reason this motion is brought by Plaintiff Briseno only.

for: (1) Failure to Keep Accurate Records (Cal. Labor Code § 1174); (2) Failure to Produce Records (Cal. Labor Code §§ 226(b)-(c), 432, and 1198.5); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Periods (Cal. Lab. Code § 226.7); (5) Failure to Provide Suitable Resting Facilities (IWC Wage Order § 13(B), Cal. Lab. Code § 1198); (6) Failure to Pay Minimum and Overtime Wages (Cal. Lab. Code §§ 218.5, 510, 511, 558, 558.1, 1194, 1197, 1198, and 1199); (7) Failure to Pay Statutory Wages (Cal. Lab. Code § 223); (8) Failure to Pay Wages Due (Cal. Labor Code § 216); (9) Failure to Reimburse Business Expenses (Cal. Lab. Code § 2800 and 2802); (10) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); (11) Unlawful Deductions (Cal. Labor Code §§ 221-222); (12) Failure to Pay for Reporting Time (IWC Wage Order § 5, Cal. Lab. Code § 1198); (13) Violation of California Day of Rest Law (Cal. Lab. Code §§ 551, 552); (14) Failure to Provide Suitable Seating (IWC Wage Order §§ 14(A-B), Cal. Lab. Code §§ 1198, 1199); (15) Sick Leave and Supplemental Sick Leave Violations (Cal. Lab. Code §§ 233, 234, and 245-248.6); (16) Failure to Pay Vested Vacation Time (Cal. Labor Code § 227.3); (17) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (18) Failure to Pay Final Wages at Place of Discharge (Cal. Lab. Code § 208); and (19) Unlawful Agreements/Unlawful Inquiries into Criminal History (Cal. Lab. Code §§ 432.5, 432.7). Defendants deny Plaintiffs' collective allegations, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged. [Serb Decl., ¶ 6; Exh. 3.]

Ultimately, the Parties began meeting and conferring regarding discovery, potential law and motion, and other case management issues, and eventually agreed to attempt a global mediation. The Parties also agreed to and did informally exchange data and information to permit both sides to evaluate Plaintiffs' allegations. Through this informal discovery, Defendants provided Plaintiffs with information including, inter alia, Plaintiffs' personnel files, 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 Defendants' time keeping and policies and meal and rest break policies, among other pertinent materials. [Serb Decl., ¶ 7.]

In December 2024, the Parties mediated the case with Scott Radovich, Esq., a respected professional neutral with extensive class action/wage and hour experience. Before and during the mediation, Plaintiffs and their counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiffs' ability to proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiffs' claims and Defendants' defenses, and the Parties' data analyses and conclusions based on data provided by Defendants. 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. [Serb Decl., ¶ 8.] A fully executed, true and correct copy of the PAGA Settlement Agreement ("Settlement Agreement") is attached to the Serb Declaration as Exhibit 1. Plaintiff Briseno also filed a First Amended Complaint in this matter adding Delayo as a party-plaintiff, and the FAC is the operative pleading for settlement purposes.

Thereafter, counsel for Plaintiff Delayo filed a motion to withdraw as counsel, which motion the Court granted on or about April 29, 2026. Plaintiff Delayo signed the Settlement Agreement, however, even though he is not currently represented by counsel in this matter. [Serb Decl., ¶ 8.]

III. <u>SUMMARY OF SETTLEMENT TERMS</u>

A. <u>SETTLEMENT TERMS AND DISTRIBUTION OF PAGA PENALTIES</u>

Under the settlement, Defendants will pay a non-reversionary settlement amount of $300,000 (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 $6,000), and reasonable attorney's fees and costs.[2] After payment of settlement administration costs, Plaintiffs' service awards, and reasonable attorney's fees and costs from the GSA, Plaintiffs presently estimate about $162,331.94 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five percent of the NSA (about $121,748.95) will go to the LWDA, and the remaining 25% (about $40,582.99) will be distributed to the Aggrieved Employees in proportion to the total number

[2] Plaintiff Briseno's counsel are requesting 35% of the GSA ($105,000.00) in fees and costs of $11,668.06. Plaintiff Briseno requests a service award of $10,000. The Settlement Agreement provides for a $5,000 award for Plaintiff Delayo. [Serb Decl., ¶ 9.]

of Pay Periods each individual worked during the PAGA Period, with an average award currently estimated at about $106.74 per individual. [Serb Decl., ¶ 9.]

B. PAYMENT AND THE NOTICE

The Parties propose using Simpluris, Inc. as the Settlement Administrator. Simpluris has extensive experience administering PAGA settlements, and has agreed to cap its fees at $6,000.00. [Declaration of Denise Islas, ¶¶ 2-17; Exhs. A-B.] Defendants will fund the GSA within 45 days of approval, and within 14 days of funding Simpluris 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 Defendants' 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. [Serb Decl., ¶ 10; Exh. 2.]

C. THE RELEASE

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." Arias v. Superior Court (2009) 46 Cal.4th 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. [Serb Decl., ¶ 11.]

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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). Recently, 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, Plaintiffs submit 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

Plaintiffs first contend Defendants failed to pay all wages due because employees lost several minutes of compensable time each shift while waiting in line to use the time clocks, and they contend there were insufficient working time clocks available for the number of employees needed to clock in at the same time. As a result, Plaintiffs allege that they and the Aggrieved Employees were continually and systematically not paid for their actual work time. Frlekin v. Apple Inc. (2020) 8 Cal. 5th 1038 (time spent by employees waiting to clock in and out was compensable time. [Serb Decl., ¶ 12.]

Plaintiffs also allege employees did not receive compliant meal periods. Here, Plaintiffs allege the applicable written policies were non-compliant as they allege the meal period policy fails to set forth the number of meal periods non-exempt employees are entitled to per shift, the length of each meal period, and the timing of meal periods. Further, even assuming that Defendants' meal period policies are legally compliant, Plaintiffs' expert review of a 20% sampling of Employees' time and corresponding wage statements suggests there were "de facto" violations for late, short, missed, or exactly 30 minutes in length, meal periods, in about 57% of all eligible shifts. Plaintiffs similarly contend that Defendants failed to provide Plaintiffs and the Aggrieved Employees with compliant rest periods for essentially the same reasons, and that anecdotal evidence will show employees regularly missed rest breaks or received non-compliant breaks. [Serb Decl., ¶ 13.]

Plaintiffs next allege a failure to reimburse for business expenses, including use of personal cell phones on company business, as Plaintiffs claim they had to use their own phones to communicate with supervisors and others for work purposes. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal.App.4th 1137, 1144. Plaintiffs also allege they had to purchase steel-toed boots to wear while working but received no reimbursement. [Serb Decl., ¶ 14.]

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

B. NUMBER OF ALLEGED VIOLATIONS AND POTENTIAL PENALTIES

During settlement negotiations, Defendants indicated they employed approximately 382 non-exempt employees who worked at a Perfection facility in California during the relevant time frame, and these individuals worked approximately 22,991 pay periods during that time. Based on the data provided by Defendants, Plaintiffs estimated Defendants' maximum PAGA exposure at approximately $10,486,200, including approximately $2,291,100 on the unpaid wage/off the clock claims, about $1,305,900 on the meal period claims, $2,291,100 on the rest period claims, $2,291,100 on the wage statement claims, and about $15,900 in civil penalties for failing to timely pay wages on separation of employment. [Serb Decl., ¶¶ 16-17.]

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

In response to Plaintiffs' unpaid wage/off the clock claims, Defendants argued its time keeping and payroll policies fully comply with California and that it paid Plaintiffs and the Aggrieved Employees for all hours worked the correct rates of pay. Defendants further argued that their written policies strictly prohibited off the clock work, and to the extent any such work occurred it was against company policy performed without authorization and without the company's knowledge. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083. Defendants also argued there were ample time clocks available and clocking in/out was simple, straightforward process that took minimal time. [Serb Decl., ¶ 18.]

On the meal break claims, Defendants offered multiple defenses. First, they emphasized that they authorized and permitted all necessary breaks, and that employees received full uninterrupted lunch periods as reflected in Defendants' time records. Defendants further argued that even to the extent meal or rest breaks were missed or arguably non-compliant, it was in violation of company policy and aberrational, and would require significant individual inquiries to determine the reasons underlying any such alleged violations and whether it was by employee choice or some other reason. Thus, per Defendants, any trial on this issue would be unmanageable because of these individualized issues. [Serb Decl., ¶ 19.]

As with rest breaks, Defendants argued the applicable rest break policies complied with California law, and that they authorized and permitted employees to take all required breaks. Further, per Defendants, in light of the fact that they are not required to maintain a record of rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal and individual issues would predominate on liability. This arguably would once again make a trial unmanageable since the number of instances an employee missed a rest break would have to be tested on a case by case basis to determine compliance. [Serb Decl., ¶ 20.]

On the expense reimbursement claims, Defendants argued there would be no need for employees working on the production line, packaging lines, etc. to ever use their personal phones while working for safety reasons, among others. Defendants argued once again that using phones while on the clock was against company policy and to the extent it happened for some reason it would have been purely for personal convenience rather than business necessity and accordingly no reimbursement is owed under Labor Code § 2802. Defendants also noted employees only were required to wear ordinary every day boots that could be used at any other job, and were not obligated to purchase any special boots or equipment. [Serb Decl., ¶ 21.]

Plaintiffs also alleged derivative violations of 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 Defendants. 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, Plaintiffs had to discount the value of these claims significantly in light of these multiple potential defenses. Defendants 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 Defendants multiple times for the same alleged violation. [Serb Decl., ¶ 22.]

Defendants 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). [Serb Decl., ¶ 23.]

Thus, Defendants raised various and multi-layered defenses to each of Plaintiffs' claims, anyone of which, if successful, could have derailed Plaintiffs' case. And Defendants vowed to raise all these defenses at trial. Accordingly, Plaintiffs 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 additional to its merits defenses and arguing trial would be unmanageable, Defendants 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. [Serb Decl., ¶ 24.]

Although Plaintiffs and their 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, Plaintiffs would have to shoot the moon and win both liability and maximum penalties on all claims for every single pay period at issue, which outcome, for the reasons discussed, is unlikely. After evaluating Defendants various procedural and merits defenses, of which there are many, as well as the substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed settlement is reasonable. [Serb Decl., ¶ 25.]

Moreover, the recovery is in line with a number of other PAGA settlements approved by California courts. The amount further is in line with many other PAGA settlements that have received approval from courts in California. McLeod v. Bank of Am., N.A., No. 16-CV-03294-EMC, 2018 U.S. Dist. LEXIS 195314, 2018 WL 5982863, at *4 (N.D. Cal. Nov. 14, 2018) (finding $50,000 PAGA allocation for claims estimated at $4.7 million — approximately 1.1% — adequate); Smith v. Kaiser Found. Hosps., 2020 WL 5064282, at *17 (S.D. Cal. Aug. 26, 2020) (finding that PAGA award that was 2.4% of maximum estimated value of PAGA claims was not "unfair, inadequate, or unreasonable given the risks of continued litigation"); Gilmore v. McMillan-Hendryx Inc., 2022 WL 184004, at *4 (E.D. Cal. Jan. 20, 2022) (PAGA award of 4.2% of the maximum estimated value of PAGA claims and 2.3% of the total settlement amount was "not unreasonable and weighs in favor of settlement"); Hartley v. On My Own, Inc., 2020 WL 5017608, * 4 (E.D. Cal. Aug. 25, 2020) (approving settlement at 3.47% of verdict value of PAGA penalty, resulting in average payment per employee of $61); 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 as well, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims).

In sum, when the risks of litigation, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, the Court's substantial discretion to reduce any penalty award all are accounted for, it is clear a settlement amount of $300,000 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. [Serb Decl., ¶ 26; Exh. 5.] Accordingly, the LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings, 2018 WL 4773057, at *9 ("Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement."); Jordan, 2018 U.S. Dist. LEXIS at *7 ("Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and no comment or objection has been received.").

VI. PLAINTIFFS' REQUESTED ENHANCEMENTS ARE REASONABLE

A modest incentive award for Plaintiff Briseno 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 devoted time and resources to the litigation, provided documents, assisted counsel with investigating the claims asserted and in preparing for mediation. The service payment provided to Plaintiff Briseno as the PAGA representative is typical in class and 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."). Plaintiff Briseno requests a service award of no more than $10,000.00 in recognition of her time spent on this matter, the risks she undertook on behalf of the aggrieved employees and State, and the benefit conferred to the aggrieved employees and State, as addressed in her declaration filed herewith. If the Court approves less than the above amount, the difference will remain in the Net Settlement Amount for distribution. [Serb Decl., ¶ 27; Declaration of Guadalupe Briseno, ¶¶ 2-9.] The Settlement Agreement also provides for a service award of no more than $5,000.00 to Plaintiff Delayo.

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, 35% of the gross settlement, or $105,000 is allocated to counsel for reasonable attorney's fees, plus actual litigation costs of no more than $40,000.00. These fees and costs are warranted under the law and within the range of fees commonly awarded in similar cases. [Serb Decl., ¶ 28.]

A. PLAINTIFFS' 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 recently affirmed, a PAGA action is a *qui tam* action because the statute allows the employee plaintiff, acting as the proxy of the State's labor law enforcement agency, to sue his or her employer for Labor Code violations and recover civil penalties that otherwise could only be assessed and collected by the LWDA. Kim v. Reins Int'l California, Inc. (2020) 9 Cal.5th 73; Iskanian, 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 Plaintiffs and their attorneys here, a common fund was created in the amount of $300,000 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 $300,000 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 as a percentage of a 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 $300,000 GSA, for a total of $105,000 or 35%, is reasonable and appropriate. [Serb Decl., ¶¶ 28-46.]

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

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

Here, Crosner Legal's lodestar is approximately $130,740, based on 166.9 attorney hours spent litigating the case. [Serb Decl., ¶¶ 29-46; Exh. 6.] On a lodestar basis, the fee request of $105,000 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. However, this suggests the fees requested on a percentage basis are reasonable since they are less than the value of the services performed when valued via traditional hourly billing.

C. The Requested Costs Are Fair And Reasonable

Crosner Legal also 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 plaintiffs counsel are 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, counsel are 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 $40,000, Plaintiff Briseno's Counsel's actual costs presently are $11,668.06. [Serb Decl., ¶¶ 47-48.] This includes filing fees, mediation costs, expert witness costs, and postage. These costs are reasonable and uncontested, and should be approved and reimbursed in full under the Settlement Agreement. There is no request for reimbursement of any costs incurred by Plaintiff Delayo's counsel.

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs request the Court approve the proposed settlement under PAGA, approve the requested enhancement awards to Plaintiffs, approve the requested award of reasonable attorney's fees and costs to Crosner Legal, approve Simpluris, Inc. as the settlement administrator and approve its fees in the amount of $6,000, approve the proposed distributions to the LWDA and Aggrieved Employees, and enter judgment.

Dated: June 22, 2026

CROSNER LEGAL PC

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