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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

10
11 STEVE PAURA, on behalf of the State of
California, and others similarly situated and
12 aggrieved,

13 Plaintiff,

14 v.

15 CENTINELA FEED, INC., a
16 California Corporation; and DOES 1-100,
17 inclusive,

18 Defendants.

Case No.: 23STCV28435

Assigned for all purposes to
Hon. Christopher Lui
Dept. 76

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

Date: May 27, 2025
Time: 8:30 AM
Dept.: 76
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1 **I. INTRODUCTION**

2 Plaintiff Steve Paura hereby seeks Court approval of a proposed settlement of claims brought
3 under the Private Attorneys General Act (“PAGA”) against defendant Centinela Feed, Inc.
4 (“Centinela” or “Defendant”). Consistent with PAGA, the proposed settlement releases claims under
5 PAGA only and has no impact on the individual claims of any Aggrieved Employee other than
6 Plaintiff. Since the settlement resolves nothing more than claims under PAGA, it requires only a one-
7 step review and approval process by the Court, and for the reasons discussed below, Plaintiff
8 respectfully requests the Court approve the Settlement in its entirety.

9 **II. BACKGROUND**

10 Defendant owns and operates several pet food stores in the greater Los Angeles area. Plaintiff
11 worked for Defendant as a non-exempt warehouse worker in Torrance, California from approximately
12 October 2021, until June 2023. [Declaration of Chad Saunders (“Saunders Decl.”), ¶ 4.]

13 After notice to the Labor & Workforce Development Agency (“LWDA”) and Defendant and after
14 exhausting administrative remedies, on November 20, 2023, Plaintiff commenced this Action by filing a
15 Complaint alleging causes of action against Defendant for alleged Labor Code violations including unpaid
16 minimum wages, unpaid overtime wages, meal period violations, rest period violations, inaccurate wage
17 statements, unlawful deductions, unreimbursed business expenses, and failure to timely pay all wages
18 upon separation of employment. [Saunders Decl., ¶ 5; Exh. 3.]

19 After Plaintiff filed the complaint, and upon discussing the merits of the allegations and
20 engaging in several meet and confer sessions regarding prospective discovery, law and motion, etc.,
21 the Parties agreed to mediation. The Parties further agreed to a protocol for exchanging additional
22 documents and information before the mediation. Through this informal discovery, Defendant
23 provided Plaintiff with information including, inter alia, the number of potential Aggrieved
24 Employees, the number of aggregate pay periods, pay stubs and time records for a sampling of about
25 85% of the allegedly Aggrieved Employees, employee handbooks and manuals, and other relevant
26 policy documents regarding Defendant’s time keeping and reporting policies. [Saunders Decl., ¶ 6.]

27 The mediation took place in August 2024 with Chris Barnes, Esq., a well-respected neutral
28 with extensive wage and hour experience. Before and during the mediation, Plaintiff and his counsel

1 analyzed, researched, and investigated the alleged claims, including matters related to the calculation
2 of damages, trial, and appellate issues and risks. During mediation, the Parties vigorously debated the
3 likelihood of Plaintiff's ability to proceed on a representative basis as to the PAGA claims, the legal
4 grounds for Plaintiff's claims and Defendant's defenses, and the Parties' data analyses and
5 conclusions based on data provided by Defendant. After a contentious full day of negotiations, the
6 Parties reached agreement and subsequently formalized their tentative settlement in the Settlement
7 Agreement now before the Court for approval. [Saunders Decl., ¶ 7.] A fully executed, true and
8 correct copy of the Parties' PAGA Settlement Agreement ("Settlement Agreement") is attached to
9 the Saunders Declaration as Exhibit 1.

10 **III. SUMMARY OF SETTLEMENT TERMS**

11 **A. SETTLEMENT TERMS AND DISTRIBUTION OF PAGA PENALTIES**

12 Under the settlement, Defendant will pay a non-reversionary settlement amount of \$250,000
13 (the "Gross Settlement Amount" or "GSA"). The GSA is inclusive of payments to the LWDA and
14 Aggrieved Employees, costs of settlement administration, a modest service award to the Plaintiff, and
15 reasonable attorney's fees and costs.¹ After payment of settlement administration costs, Plaintiff's
16 service award, and attorney's fees and costs from the GSA, Plaintiff presently estimates about
17 \$144,753.02 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five percent of the NSA
18 (\$108,565.44) will go to the LWDA, and the remaining 25% (\$36,188.48) will be distributed to the
19 Aggrieved Employees in proportion to the total number of Pay Periods each individual worked during
20 the PAGA Period, with an average award currently estimated at about \$86 per Aggrieved Employee.
21 [Saunders Decl., ¶ 8.]

22 **B. PAYMENT AND THE NOTICE**

23 The Parties propose using Simpluris, Inc. as the Settlement Administrator. Simpluris has
24 extensive experience administering PAGA settlements and has agreed to cap its fees at \$3,000.00.
25 Defendant shall fully fund the Gross Settlement Amount by transmitting the funds to the
26 Administrator no later than 35 days after the Effective Date. Within 14 days of receipt of the
27 _____

28 ¹ Plaintiff's counsel requests 1/3 of the GSA, or \$83,333.33 for attorney's fees and costs of \$8,912.75.
Plaintiff requests a service award of \$10,000.

1 settlement funds, Simpluris will mail a Notice and settlement check to all Aggrieved Employees via
2 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in
3 Defendant's records. Aggrieved Employees need not submit claim forms and will automatically
4 receive a Notice and settlement check. Settlement checks will be negotiable for 180 days, after which
5 time any unclaimed residual funds will be forwarded to the California State Controller's Unclaimed
6 Property Fund. [Saunders Decl., ¶ 9; Declaration of Eric Springer, ¶¶ 2-9, Exhs. A-C.]

7 C. THE RELEASE

8 The California Supreme Court has explained that a judgment in "a representative action
9 brought by an Aggrieved Employee under the Labor Code Private Attorneys General Act of 2004 ...
10 is binding not only on the named employee plaintiff but also on government agencies and any
11 Aggrieved Employee not a party to the proceeding." Arias v. Superior Court (2009) 46 Cal.4th 969,
12 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty
13 claims brought under PAGA. Under Arias, the order the Parties request the Court enter is intended to
14 be "binding not only on the named employee plaintiff but also on government agencies and any
15 Aggrieved Employee not a party to the proceeding." While Plaintiff is entering into a general release
16 any and all claims against Defendant, the Settlement Agreement protects the rights of the Aggrieved
17 Employees to bring their own individual claims should they wish. For these reasons, the Parties
18 contend the release narrowly applies only to the PAGA claims alleged, and the Settlement Agreement
19 specifically provides the Release is inapplicable to any claims other than those brought under PAGA.
20 [Saunders Decl., ¶ 10.]

21 IV. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS THE 22 PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL

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

1 In so holding, Moniz noted many federal district courts had imported class action settlement
2 approval principles when evaluating PAGA settlements, demanding that PAGA settlements be “fair,
3 reasonable, and adequate,” and weighing factors such as “the strength of the plaintiff’s case, the risk,
4 the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement
5 amount[.]” Id. at 75-76 (collecting cases). Observing that “PAGA’s purpose” is to “protect the public
6 interest”—especially the allegedly Aggrieved Employees—the Court agreed with this district court
7 authority, concluding that much the same principles that ensure fairness in class action settlements
8 serve the public interest in the PAGA context. Essentially, these factors are more or less identical to
9 those California courts use to evaluate class action settlements per Kullar v. Foot Locker Retail, Inc.
10 (2008) 168 Cal.App.4th 116 and, accordingly, Plaintiff submits they should inform the Court’s
11 analysis as well. For the reasons below, the proposed settlement is fair, reasonable and adequate,
12 advances the purposes underlying PAGA, and should be approved.

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

14 First, Plaintiff alleged Defendant failed to pay all minimum and overtime wages to Plaintiff
15 and the Aggrieved Employees, primarily by requiring employees to undergo mandatory bag checks
16 when leaving the work premises each shift. As a result, employees were required to find a manager
17 prior to exiting the building at the end of their shifts, and subjected to employer control while off-the-
18 clock. Similarly, employees were required to wait in lines or find a manager to exit the building while
19 clocked out for meal breaks, remaining under employer control while off-the-clock. The California
20 Supreme Court has determined this is compensable time. Frlekin v. Apple, Inc. (2020) 8 Cal.5th 1038
21 (holding Apple’s exit searches equated to employer control, rendering the time compensable).
22 [Saunders Decl., ¶ 11.]

23 Next, Plaintiff alleged employees did not receive all required meal and rest breaks on a fully
24 compliant basis. Per Plaintiff, employees consistently unable to take timely, off duty, thirty-minute,
25 uninterrupted meal periods, as meal periods were cut short, interrupted, or worked through completely
26 due to the need to attend to customers, complete customer orders, or respond to work-related
27 communications from managers or other employees. Plaintiff alleged these “de facto” violations are
28 evident in Defendant’s time records, which creates a rebuttable presumption of break violations

1 particularly where no meal break has been recorded. Donohue v. AMN Servs., LLC, (2021) 11 Cal.5th
2 58, 78 (“[T]he employer’s duty is to ensure that it provides the employee with bona fide relief from
3 duty and that this is accurately reflected in the employer’s time records...If time records show
4 noncompliant meal periods, then a rebuttable presumption of liability arises.”). In addition, Plaintiff
5 alleged Defendant did not provide meal breaks when Aggrieved Employees’ shifts were between 5-
6 6 hours, and that Defendant’s purported meal period waivers are invalid since they were imposed as
7 a condition of employment and not voluntary on the employees’ part. [Saunders Decl., ¶ 12.]

8 Next, Plaintiff alleged Centinela failed to provide all required 10 minute rest breaks for several
9 reasons. First, Plaintiff argued Defendant’s policy required employees to stay on premises during
10 their rest periods, in violation of Augustus v. ABM Security Services, Inc. (2016) 2 Cal.5th 257,
11 272-273, which provides that employers are required to relinquish any control over how employees
12 spend their break time, and relieve their employees of all duties. Furthermore, Plaintiff also contended
13 Defendant did not provide second rest breaks for shifts that were less than eight hours, and that
14 employees received only first rest breaks on shifts of 7-8 hours instead of the two breaks required by
15 law. [Saunders Decl., ¶ 13.]

16 Plaintiff also alleged employees had to use their personal cellular phones as part of their work
17 duties, including responding to phone calls and text messages from their supervisors for work-related
18 purposes. Defendant did not reimburse Aggrieved Employees for the use of their personal cell phone
19 as required under law. Cochran v. Schwan’s Home Service, Inc. (2014) 228 Cal.App.4th 1137, 1144
20 (2014). [Saunders Decl., ¶ 14.]

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

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

25 For mediation, Defendant indicated that during the PAGA Period, it employed about 421 non-
26 exempt employees in California, including 190 former employees, who worked an aggregate 7,622
27 PAGA pay periods during that time. Based on the data and information provided by Defendant,
28 Plaintiff estimated Defendant’s maximum PAGA exposure at approximately \$3,448,900 assuming a

1 100% violation rate on all claims. This estimate includes approximately \$762,200 in civil penalties
2 for the unpaid wage claims, \$381,100 for the meal period claims based on a 50% violation rate, about
3 \$762,200 in civil penalties on the rest break claims, around approximately \$762,200 in civil penalties
4 on the inaccurate wage statement claim, \$762,200 in civil penalties for the unreimbursed business
5 expenses claim, and approximately \$19,000 in civil penalties for failing to timely pay wages on
6 separation of employment. [Saunders Decl., ¶¶ 16-17.]

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

10 In response to Plaintiff’s unpaid wage claims for alleged “off the clock work” due to bag
11 checks, Centinela took the position that its time keeping policies are legally compliant, that it
12 accurately tracked all hours worked, paid the allegedly Aggrieved Employees for all hours
13 worked consistent with those policies. Centinela further argued that bag checks were done “on the
14 clock” and compensated, that not all employees carried a bag or purse to work and, regardless, the
15 checks were minimally intrusive and short such that any time would have been difficult to even
16 record. Lastly, Defendant argued any trial of this issue on a representative basis would be
17 unmanageable since it would depend entirely on a myriad of individualized inquiries as to each
18 employee regarding any discrepancies in actual time worked versus what was reported and paid
19 for. [Saunders Decl., ¶ 18.]

20 For the meal and rest break claims, Centinela likewise offered multiple defenses. First, it
21 emphasized its written meal and rest break policy generally was compliant, that it authorized and
22 permitted all necessary breaks, and that employees received full uninterrupted lunch periods. While
23 Plaintiff’s review of the time records suggested a substantial violation rate for late and short meal
24 breaks, Defendant countered that even to the extent this occurred, it was in violation of company
25 policy and aberrational, and would require significant individual inquiries to determine the reasons
26 underlying any such alleged violations and whether it was by employee choice or some other reason.
27 Thus, per Defendant, any trial on this issue would be unmanageable because of these individualized
28 issues. Centinela further argued that its meal break waivers were valid with respect to both first and

1 second meal breaks and accordingly many allegedly “missed” meal breaks actually were waived by
2 the employees. [Saunders Decl., ¶ 19.]

3 As with meal breaks, Centinela argued the applicable rest break policies complied with
4 California law, and that it authorized and permitted employees to take all required breaks. Defendant
5 further contended that, in light of the fact that it is not required to maintain a record of rest periods,
6 any evidence of failure to authorize rest periods and/or discouragement from taking rest periods would
7 be purely anecdotal and individual issues would predominate on liability. This arguably would once
8 again make a trial unmanageable since the number of instances an employee missed a rest break
9 would have to be tested on a case by case basis to determine compliance. [Saunders Decl., ¶ 20.]

10 For the expense reimbursement claim, Centinela argued there was no conceivable reason an
11 hourly employee would be “required” to use their own phone while working and, to the extent they
12 did, it was purely for personal convenience and was not necessary for performance of their jobs.
13 Thus, per Centinela, any use of personal phones was neither “necessary” nor “reasonable” and no
14 reimbursement was required. [Saunders Decl., ¶ 21.]

15 Plaintiff also alleged derivative violations of Labor Code § 226 (wage statement violations)
16 and §§ 201-203 (waiting time penalties). The derivative claims (based on the unpaid wage and
17 meal/rest claims), will rise or fall along with the primary claims, while all of these claims also are
18 subject to “good faith” and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2
19 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under
20 Labor Code § 203 even though the class prevailed on the merits on the underlying claim for failing
21 to pay living wages). Accordingly, Plaintiff had to discount the value of this claim significantly in
22 light of these multiple potential defenses. Defendant also contended a substantial discount should be
23 applied to the civil penalties for these derivative (i.e., “stacked”) violations, as it would be unfair to
24 penalize Defendant multiple times for the same violation. [Saunders Decl., ¶ 22.]

25 Defendant further emphasized PAGA gives the Court wide latitude to reduce the amount of
26 civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise would
27 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h).
28 Several state and federal courts in California have applied significant reductions to PAGA civil

1 penalties even after plaintiff prevailed on the merits. In Fleming v. Covidien (C.D. Cal. 2011) 2011
2 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court reduced the potential penalties by
3 over 82% after a bench trial. More recently, in Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th
4 504, after a bench trial, the trial court awarded penalties of just \$5 per pay period, a 90% reduction,
5 which decision was upheld on appeal. In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8,
6 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial). [Saunders Decl., ¶ 23.]

7 Thus, Defendant raised various and multi-layered defenses to each of Plaintiff's claims,
8 anyone of which, if successful, could have decimated Plaintiff's case. And Defendant vowed to
9 raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with this
10 litigation, and it could have taken several more years to realize any recovery in this action along
11 with the possibility of post-trial appeals. In addition to its merits defenses and arguing trial would
12 be unmanageable, Defendant also intended to raise additional defenses on damages, including the
13 proper measure of civil penalties and the appropriate discount to place on any assessment of such
14 penalties. [Saunders Decl., ¶ 24.]

15 Although Plaintiff and counsel believe they could have prevailed, there was no such
16 guarantee. When the risks of overcoming a motion to compel arbitration, a manageability defense,
17 prevailing at trial on the merits on all claims, and securing 100% of the theoretical civil penalties for
18 every single pay period at issue all are factored into the equation, the settlement value is reasonable
19 and supported. Of course, to recover anywhere near the maximum penalties Plaintiff would have to
20 shoot the moon and win both liability and maximum penalties on all claims, which outcome, for the
21 reasons discussed, is unlikely. Given Defendant's various procedural and merits defenses, and the
22 substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed
23 settlement is eminently reasonable. [Saunders Decl., ¶ 25.]

24 Importantly, the mere fact that a settlement does not provide the same recovery as might be
25 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
26 Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed settlement is
27 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to
28 a class settlement because the public interest may indeed be served by a voluntary settlement in

1 which each side gives ground in the interest of avoiding litigation”); 7-Eleven Owners for Fair
2 Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed
3 settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean
4 that the proposed settlement is grossly inadequate and should be disapproved”); Lane v. Facebook,
5 Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair .
6 . . is different from the question whether the settlement is perfect in the estimation of the reviewing
7 court”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098
8 (rejecting contention settlement was not fair and reasonable even though it represented 99%
9 discount off the maximum value of the claims).

10 In sum, when the risks of litigation, the burdens of proof necessary to establish liability, the
11 probability of appeal of a favorable judgment, the Court’s substantial discretion to reduce any
12 penalty award all are accounted for, it is clear a settlement amount of \$49,270 for the PAGA claims
13 is within the ballpark of reasonableness, and approval is appropriate. Jennings v. Open Door Mktg.
14 Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *7 (approving settlement with
15 PAGA penalties of 0.6% where “[p]laintiffs [have] submitted the settlement agreement to the
16 LWDA, and the LWDA has not objected to the settlement”).

17 **V. SUBMISSION TO THE LWDA**

18 Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and
19 notified the LWDA of this approval hearing. [Saunders Decl., ¶ 26; Exh. 5.] Accordingly, the
20 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
21 approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA
22 settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL
23 3669607, at *3 (court inferred the LWDA’s non-response as “tantamount to its consent to the
24 proposed settlement terms, namely the proposed PAGA penalty amount.”); Jennings, 2018 WL
25 4773057, at *9 (“Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has
26 not objected to the settlement.”); Jordan, 2018 U.S. Dist. LEXIS at *7 (“Additionally, the Court
27 finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and
28 no comment or objection has been received.”).

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

2 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
3 that benefits the LWDA and Aggrieved Employees, 1/3 of the gross settlement, or \$83,333.33, is
4 allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs. These fees
5 are warranted under the law and within the range of fees commonly awarded in similar cases.

6 **A. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER ATTORNEY'S**
7 **FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM**
8 **ACTION**

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

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

27 Through the successful efforts of Plaintiff and his attorneys here, a common fund was created
28 in the amount of \$250,000.00 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 settlement

1 amount in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S.
2 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301,
3 1311.

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

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

22 Awarding attorney's fees of one-third of gross common fund amount is favored by California
23 courts when a fund established for the common benefit of others is involved, such as here.
24 Accordingly, awarding fees on this basis out of the \$250,000 GSA, for a total of \$83,333.33, is
25 reasonable and appropriate. [Saunders Decl., ¶¶ 27-46.]

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1 **B. THE LODESTAR CROSS-CHECK VALIDATES THE REASONABLENESS**
2 **OF THE FEE AWARD**

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

13 Here, Plaintiff’s counsel’s lodestar is approximately \$121,375, based on a total of 163.2
14 attorney hours spent litigating the case. [Saunders Decl., ¶¶ 31-46; Exh. 6.] This results in a lodestar
15 that is higher than the fees requested on a percentage of the recovery basis and, accordingly, there is
16 no request for a multiplier. It also is important to note this fact serves to highlight the reasonableness
17 of the fees sought on a percentage-of-the-recovery basis, as it shows the requested fees are actually
18 lower than the market rate for the services rendered if those services are valued via traditional hourly
19 billing.

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

21 Plaintiff’s counsel request reimbursement of actual out-of-pocket expenses incurred to
22 prosecute this action. These expenses were incidental and necessary to the effective representation of
23 the employees, and Plaintiff’s Counsel are permitted to recover their litigation costs and expenses
24 under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35 (common
25 fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego (1992)
26 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund “[o]f necessity, and for
27 precisely the same reasons discussed above with respect to the recovery of attorneys’ fees by ...
28 [Plaintiffs’] attorneys”). Furthermore, Plaintiff’s counsel is entitled to recover “those out-of-pocket

1 expenses that would normally be charged to a fee-paying client.” Harris v. Marhoefer (9th Cir. 1994)
2 24 F.3d 16, 19.

3 Plaintiff’s counsel’s actual costs presently are \$8,912.75, including filing fees, mediation
4 costs, and postage, while waiving photocopying costs and legal research charges. [Saunders Decl.,
5 ¶¶ 47-48.] Since these costs are reasonable and uncontested, the full amount of \$8,912.75 should be
6 approved.

7 **VII. THE PROPOSED SERVICE AWARDS FOR PLAINTIFF IS FAIR AND**
8 **REASONABLE**

9 Pursuant to the Settlement Agreement, Plaintiff seeks an incentive award of \$10,000. These
10 requests are reasonable given the much broader release that Plaintiff is agreeing to, as well as
11 Plaintiff’s efforts in this case and the risks they undertook on behalf of the Aggrieved Employees.
12 Additionally, by contacting and retaining counsel to pursue these claims, Plaintiff made this
13 settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the risk of
14 being liable for Defendant’s litigation costs if unsuccessful. Plaintiff also exposed himself to
15 unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google
16 search) for the benefit of other employees, placing Plaintiff at risk of discrimination by future
17 prospective employers. Among taking many other actions assisting in the successful litigation of this
18 case, Plaintiff provided substantial factual information to his counsel, participated in numerous phone
19 calls and meetings with counsel to discuss the case, and general kept up to speed and informed on the
20 case’s progress. The incentive payment to Plaintiff is appropriate and justified as part of the
21 Settlement. [Saunders Decl., ¶ 49; Declaration of Steve Paura, ¶¶ 2-9.] Plaintiff submits the amount
22 sought is well within the range of reasonableness for such awards in other wage and hour actions.
23 Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives
24 service and incentive payments ranging from \$2,000 to \$25,000).

25 **VIII. CONCLUSION**

26 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement under
27 PAGA, approve the requested award of reasonable attorney’s fees and costs, approve the requested
28 service award to Plaintiff in the amount of \$10,000, approve Simpluris, Inc. as the settlement

1 administrator and approve is fees in the amount of \$3,000, approve the proposed distributions to the
2 LWDA and Aggrieved Employees, and enter judgment.

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4 Dated: January 22, 2025

CROSNER LEGAL, P.C.

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7 Zachary Crosner
8 Chad Saunders
9 Attorneys for Plaintiff Steve Paura
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