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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

DORIAN JEFFCOAT, on behalf of the State of California and all Aggrieved Employees, Plaintiff, v. SIDECAR DOUGHNUTS LLC, a California Limited Liability Company; and DOES 1-100, inclusive, Defendants.	Case No.: 24CU005608C Hon.: Blaine K. Bowman Dept.: C-74 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT UNDER PRIVATE ATTORNEYS GENERAL ACT** **Date: January 23, 2026** **Time: 8:30 a.m.** **Dept.: C-74**

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I. INTRODUCTION

Plaintiffs Dorian Jeffcoat and Jorge Rodriguez ("Plaintiffs") hereby seek Court approval of a proposed settlement of claims brought under the Private Attorneys General Act ("PAGA") against Defendant Sidecar Doughnuts LLC dba Sidecar Doughnuts & Coffee ("Sidecar" or "Defendant"). Consistent with PAGA, the proposed settlement releases claims under PAGA only, and has no impact on the individual claims of any other allegedly aggrieved employee. 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. Plaintiffs respectfully request the Court approve the Settlement in its entirety.

II. BACKGROUND

Defendant Sidecar owns and operates a chain of donut shops in California. Plaintiff Jeffcoat worked for Defendant as an hourly-paid "Skill 5" associate at the Del Mar location from about July 2023 - January 2024. Plaintiff Rodriguez worked for Defendant from August 2022 to May 17, 2023, as a manager and assistant general manager in Los Angeles, California. [Declaration of Chad Saunders ("Saunders Decl."), ¶ 4.]

After notice to Defendant and the LWDA, and exhausting administrative remedies, on August 12, 2024, Plaintiff Jeffcoat commenced this Action by filing a PAGA-only complaint alleging a single cause of action against Defendant, alleging PAGA penalties for violations of the California Labor Code committed against himself and the other Aggrieved Employees for failure to pay minimum wages, failure to pay timely wages during employment, failure to pay wages and overtime wages, failure to properly pay unused vacation pay, failure to properly pay accrued sick days, failure to provide required meal periods, failure to provide required rest periods, failure to furnish accurate itemized wage statements, failure to maintain required records, failure to pay all wages due to discharged and quitting employees, failure to pay reporting time pay, failure to reimburse necessary business expenses, failure to provide suitable resting facilities, failure to pay predictability pay, unlawful wage deductions, failure to pay final wages at the place of discharge, unlawful inquiries into criminal history, unlawful agreements, unlawful conditions of labor, civil penalties, and premium wages, and engaging in other conduct that resulted in violations of the California Labor Code. [Saunders Decl., ¶ 5; Exh. 2.]

Plaintiff Rodriguez filed a class action complaint against Defendant on May 15, 2024, and filed a First Amended Complaint adding a cause of action under the PAGA on August 21, 2024. He alleged the (1) failure to pay minimum wages; (2) failure to pay overtime; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to provide accurate wage statements; (6) employment records upon written request; (9) failure to provide suitable resting facilities; (10) failure to provide suitable seating; (11) failure to provide paid sick leave; and (12) unlawful employment agreements. Plaintiff Rodriguez's class claims and allegations subsequently were dismissed on September 6, 2024. [Saunders Decl., ¶ 6.]

Once both matters were at issue, the Parties engaged in several meet and confer discussions and ultimately agreed to a global mediation. The Parties further agreed to an informal exchange of documents and information before the mediation. Through this informal discovery, Defendant 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 Defendant's time keeping and reporting policies, among other pertinent materials. [Saunders Decl., ¶ 7.]

In April 2025 the Parties mediated the case with Gail Glick, Esq., a respected employment litigator and neutral with extensive class action/wage and hour experience. Before and during the mediation, Plaintiffs and 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 Defendant's defenses, and the Parties' data analyses and conclusions based on data provided by Defendant. With the mediator's assistance, the Parties reached agreement on all major issues and subsequently formalized their tentative settlement in the Settlement Agreement now before the Court for approval. [Saunders Decl., ¶ 8.] A fully executed, true and correct copy of the PAGA Settlement Agreement ("Settlement Agreement") is attached to the Saunders Declaration as Exhibit 1.

Finally, Plaintiff Jeffcoat also filed a First Amended Complaint adding Plaintiff Rodriguez as a party-plaintiff and to conform the operative complaint's allegations to the terms of the proposed settlement. The First Amended Complaint is the operative complaint for purposes of settlement. [Saunders Decl., ¶ 9.]

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 $280,000 (the "Gross Settlement Amount" or "GSA"). The GSA is inclusive all payments to the LWDA and Aggrieved Employees, costs of settlement administration (estimated at no more than $5,137.00), and reasonable attorney's fees and costs.[1] After payment of settlement administration costs, and reasonable attorney's fees and costs from the GSA, Plaintiffs presently estimate about $163,739.88 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five percent of the NSA (about $122,804.91) will go to the LWDA, and the remaining 25% (about $40,934.97) will be distributed to the Aggrieved Employees in proportion to the total number of Pay Periods each individual worked during the PAGA Period, with an average award currently estimated at about $72 per individual. [Saunders Decl., ¶ 10.]

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 $5,137.00. [Declaration of Michael Bui, ¶¶ 2-9, Exhs. A-C.] Defendant will fund the GSA within 20 business days of the Effective Date. Within 10 business days of funding, Simpluris will mail a Notice and settlement check to all Aggrieved Employees via First-Class U.S. Mail, using the most current, known mailing addresses identified in Defendant'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 any unclaimed residual funds will be forwarded to the California State Controller's Unclaimed Property Fund. [Saunders Decl., ¶ 11.]

[1] Plaintiffs' counsel request 1/3 of the GSA ($93,333.33) in fees and costs of $17,789.79. Plaintiffs both entered into separate individual settlement agreements are not requesting service awards. [Saunders Decl., ¶ 11.]

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 PAGA Release is inapplicable to any claims other than those brought under PAGA. [Saunders Decl., ¶ 12.]

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, 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 contend Defendant violated the Labor Code in multiple respects. First, they contend Defendant failed to pay wages for all hours worked, and more specifically that employees performed "off-the-clock" work, and had to work while purportedly clocked out for meal periods. Per Plaintiffs, employees would have to work while clocked out for a lunch break due to understaffing, and also regularly would be interrupted while on a lunch break to assist customers, respond to questions from other employees, etc. Plaintiffs also allege they would be contacted with work calls, texts, or emails while clocked out and away from the restaurant, all without any further compensation. [Saunders Decl., ¶ 13.]

Plaintiffs also contend Defendant failed to incorporate bonus payments, and other non-discretionary compensation, into the regular rate when paying sick and overtime. Alvarado v. Dart Container Corp. of California (2018) 4 Cal.5th 542, 554 ("Regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly compensation the employee has earned."). Here, Plaintiffs contend employees received anniversary bonuses and other non-discretionary bonuses and payments that Sidecar did not factor into the regular rate of pay used to determine the applicable overtime rate and sick pay rate. As a result, Plaintiffs allege Defendant regularly underpaid employees for their overtime and sick pay. [Saunders Decl., ¶ 14.]

Plaintiffs next alleged Sidecar committed meal and rest break violations by, among other things, requiring employees to remain on the premises and perform work off-the-clock during meal periods, and failing to pay premium payments for missed, late, and/or short meal periods. Plaintiffs similarly contend there were numerous "de facto" violations for missed, late, and short meal periods reflected in the time records produced by Sidecar. Plaintiffs next alleged rest breaks were further non-compliant because Defendant again required employees to remain on the premises and work through rest periods or were interrupted on their rest periods with work related interruptions such as phone calls, questions from coworkers, and customer complaints. [Saunders Decl., ¶ 15.]

On the expense reimbursement claim, Plaintiffs allege employees had to use their personal phones for business purposes, but Defendant did not pay any portion of employee cell phone bills. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal. App. 4th 1137, 1144. Plaintiffs also alleged that, on occasion, employees had to drive their personal vehicles on company business, for tasks such as taking/picking up supplies at another store, or going to the grocery store if their store ran out of something. Per Plaintiffs no reimbursement for mileage or other vehicles expenses was paid. Gattuso v Harte-Hank Shoppers, Inc. (2007) 42 Cal.4th 554. [Saunders Decl., ¶ 16.]

Finally, 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 timely pay all wages due on separation of employment under Labor Code §§ 201-203. [Saunders Decl., ¶ 17.]

B. NUMBER OF ALLEGED VIOLATIONS AND POTENTIAL PENALTIES

For mediation, Defendant indicated it employed approximately 568 non-exempt employees (including about 313 former employees) in California during the relevant time frame, and these individuals collectively worked approximately 9,719 pay periods. Based on the data provided by Defendant, Plaintiffs estimated Defendant's maximum PAGA exposure at approximately $4,623,000 in civil penalties, including approximately $971,900 on the unpaid wage/off the clock claims, around $171,100 on the regular rate/underpaid overtime and sick time claim, about $533,000 on the meal break claims, about $971,900 on the rest break claims, about $971,900 on the expense reimbursement claims, about $971,900 on the wage statement claims, and about $31,300 in civil penalties for failing to timely pay wages on separation of employment. [Saunders Decl., ¶¶ 18-19.]

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

Defendants vigorously denied the allegations made against it. Defendant asserted that the company maintained proper employment policies and procedures regarding meal and rest breaks, timekeeping and recordkeeping procedures, timely payment of all earned wages and overtime, and reimbursement of expenses; issued accurate wage statements; and provided suitable seating when feasible. In particular, in response to Plaintiffs' unpaid wage/off-the-clock claim, Sidecar argued its time keeping policies are entirely consistent with California law and did not deprive Aggrieved Employees of compensable hours worked. Defendant argued the time records showing Plaintiffs and the Aggrieved Employees clocked out for their meal periods are accurate and employees never were required or ordered to work while on a meal break. Per Defendant, these policies also strictly prohibited any "off-the-clock" work and to the extent any such off-the-clock occurred, whether during a meal break or otherwise, it was aberrational and intermittent, and done without the employer's knowledge or consent. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). Thus, per Defendant it is not liable for any alleged work performed off-the-clock. [Saunders Decl., ¶ 20.]

On the regular rate claim, Defendant emphasized that all bonuses were entirely discretionary or in the nature of gifts, even the so called "anniversary bonuses," and depended entirely on management's discretion, or after an evaluation of the employee's overall performance based on multiple performance factors. Thus, per Sidecar, none of these payments triggered its obligation to factor those payments into the regular rate of pay and accordingly all employees were paid for their overtime and sick pay at the correct rate. [Saunders Decl., ¶ 21.]

On the meal and rest break claims, Defendant emphasized their written policies are compliant and that it authorized and permitted employees to take all required breaks and thus met their obligations under the law. Defendant also noted it provided employees with a full 30-minute break, if not more. Defendant further argued the records accurately reflect that employees took timely and compliant meal breaks. Defendant also noted that, in light of the compliant policies and records, whether an employee missed a meal period, received a late meal period, or missed a rest break, would have been aberrational and against company policy. Thus, per Defendant, these issues are not amenable to representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant. [Saunders Decl., ¶ 22.]

On the expense reimbursement claim, Defendant argued there would be no conceivable need for employees to use their phones for work purposes and that their policies prohibited use of personal phones while clocked in and on duty. Thus, per Defendant, any use of employee phones while working was against company policy and, to the extent it occurred, was purely for personal convenience and therefore not reimbursable as a "reasonable and necessary" business expense. Defendant also contended employees did not drive personal vehicles on company business, especially due to potential liability and insurance concerns. [Saunders Decl., ¶ 23.]

On the alleged violations of Labor Code § 226 (wage statement violations) and §§ 201-203 (waiting time penalties), Defendant argued its wage statements complied with Section 226 and provided all required information. As far as the derivative claims, they will rise or fall along with the primary unpaid wage 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, Plaintiffs discounted 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. [Saunders Decl., ¶ 24.]

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). [Saunders Decl., ¶ 25.]

Thus, Defendant raised various and multi-layered defenses to each of Plaintiffs' claims, anyone of which, if successful, could have derailed Plaintiffs' case and Defendant 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, 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. Defendant also contended that Plaintiff Rodriguez was not an aggrieved employee given that he only worked one day within the PAGA statute of limitations period. [Saunders Decl., ¶ 26.]

Although Plaintiffs and 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 for the moon and win both liability and maximum penalties on all claims as to each and every pay period at issue, which outcome, 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. [Saunders Decl., ¶ 27; Declaration of Roman Shkodnik ("Shkodnik Decl."), ¶¶ 9-14, 23.] 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, 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 $380,000 for the PAGA claims is within the ballpark of reasonableness, furthers the purposes underlying PAGA, and approval is appropriate.

V. SUBMISSION TO THE LWDA

Plaintiffs timely served the LWDA with the Settlement Agreement and this Motion, and notified the LWDA of this approval hearing. [Saunders Decl., ¶ 28; Exh. 4; Shkodnik Decl., ¶ 36, 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.").

V1. 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 GSA, or $93,333.33, is allocated to Plaintiffs' counsel for reasonable attorney's fees, plus actual litigation costs not to exceed $20,000 (although only $17,789.79 is requested). These fees and costs are warranted under the law and within the range of fees commonly awarded in similar cases.

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 $280,000 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 $280,000 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.

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 (upholding an award of attorney's fees of one-third of the $19 million gross settlement). 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 $280,000 GSA, for a total of $93,333.33, is reasonable and appropriate. [Saunders Decl., ¶¶ 30-51; Shkondik Decl., ¶¶ 15-33, Exhs. 2-4.]

B. A LODESTAR CROSS-CHECK CONFIRMS THE FEE AWARD IS REASONABLE

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, Plaintiffs' counsel's lodestar is approximately $176,205.00. [Saunders Decl., ¶¶ 30-51; Exh. 5; Shkondik Decl., ¶¶ 25-33, Exhs. 2-4.] On a lodestar basis, the fee request of $93,333.33 is actually smaller than the unadorned lodestar and accordingly there is no request for a lodestar enhancement. Plaintiffs' counsel notes, however, this demonstrates the reasonableness of the fee request, since the fees sought on a percentage of the recovery basis are actually lower than the value of the services rendered when valued via traditional hourly billing

C. The Requested Costs Are Fair And Reasonable

Plaintiffs' Counsel also request 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 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, Plaintiffs' 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, Plaintiffs' Counsels' actual costs presently are $17,789.79, including $5,474.89 to Crosner Legal and $12,314.90 to D.Law. [Saunders Decl., ¶¶ 52-53; Shkondik Decl., ¶ 25, Exh. 1.] This includes filing fees, service of process, expert fees, mediation costs, and postage, while waiving photocopying costs and legal research charges. These costs are reasonable and uncontested, and should be approved.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs request the Court approve the proposed settlement under PAGA, approve the requested award of reasonable attorney's fees and costs, approve Simpluris, Inc. as the settlement administrator and approve its fees in the amount of $5,137.00, approve the proposed distributions to the LWDA and Aggrieved Employees, and enter judgment.

Dated: September 5, 2025

CROSNER LEGAL, PC

By: ______________________________
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Dated: September 5, 2025

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