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13 on behalf of the State of California and all Aggrieved Employees

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF CONTRA COSTA**

16 LEIGHA SCHARSCH, on behalf of the State
17 of California and all Aggrieved Employees,

18 Plaintiff,

19 v.

20 VICI COLLECTION, LLC, a Delaware
21 Limited Liability Company; and DOES 1-
22 100, inclusive,

23 Defendants.

Case No.: C24-02031

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

Date: TBD

Time: 9:00 a.m.

Dept.: 39

1 **I. INTRODUCTION**

2 Plaintiff Leigha Scharsch hereby seeks Court approval of a proposed settlement of claims
3 brought under the California Private Attorneys General Act (“PAGA”) against defendant VICI
4 Collection, LLC (“VICI” or “Defendant”). Consistent with PAGA, the proposed settlement releases
5 claims under PAGA only and has no impact on the individual claims of any alleged aggrieved
6 employee. Since the settlement resolves nothing more than claims under PAGA, it requires only a
7 one-step review and approval process by the Court. For the reasons discussed below, the proposed
8 settlement is fair, reasonable, adequate, and advances the purposes underlying PAGA. Plaintiff
9 respectfully requests the Court approve the Settlement in its entirety.

10 **II. BACKGROUND**

11 Defendant VICI is a retailer of women’s fashions. Plaintiff worked for Defendant as a non-
12 exempt warehouse worker from approximately November 2021 through October 6, 2023 at the VICI
13 warehouse located in Fairfield, California. [Declaration of Raymond Wendell (“Wendell Decl.”),
14 ¶ 4.]

15 Plaintiff contends VICI violated the Labor Code in several ways during the relevant time
16 period. First, she contends Defendant failed to pay Plaintiff and the Aggrieved Employees for all
17 hours worked including time spent pre-shift and post-shift waiting to clock in and out for the day,
18 and during meal periods. She also alleges VICI failed to correctly calculate and pay for overtime
19 wages by failing to incorporate certain non-discretionary compensation into the regular rate of pay.
20 She next claims VICI did not provide Plaintiff and the Aggrieved Employees with compliant meal
21 periods because meal periods were cut short by the need to wait in line at the time clocks to ensure
22 employees clocked back in after no more than 30 minutes. She also contends Defendant failed to
23 pay her for all accrued vacation pay at the time she separated from employment. [Wendell Decl., ¶
24 5.]

25 Based on these allegations, and after appropriate notice to the Labor & Workforce
26 Development Agency (“LWDA”),¹ Plaintiff filed a PAGA-only complaint on August 1, 2024. The
27 Complaint sought only PAGA civil penalties for the following alleged wage and hour violations:

28 ¹ Plaintiff’s May 21, 2024 PAGA notice letter is attached as Exhibit 2 to the Wendell Declaration.

1 (a) failure to pay wages, including minimum, overtime and vacation wages; (b) failure to provide
2 meal and rest periods; (c) failure to provide complete and accurate wage statements; and (d) waiting
3 time penalties, on behalf of all individuals employed by VICI as non-exempt employee in California
4 during the PAGA Period. [Wendell Decl., ¶ 6.]

5 Defendant has at all times denied Plaintiff's allegations and maintained it complied with all
6 relevant provisions of the Labor Code and Wage Orders. Specifically, Defendant contends among
7 other things that Plaintiff and all alleged aggrieved employees were timely paid for all hours worked
8 at the correct hourly rates in conformance with all applicable laws, that it authorized and permitted
9 Plaintiff and the alleged aggrieved employees to take fully compliant meal and rest periods in
10 accordance with all applicable laws, and that Plaintiff and the alleged aggrieved employees received
11 accurate and complete itemized wage statements. Defendant also strongly contends the case cannot
12 be maintained as a representative action because among other things Plaintiff's
13 missed/interrupted/late/short meal and rest period allegations necessarily require detailed
14 individualized assessments and accordingly individualized issues predominate and a trial under
15 PAGA would be unmanageable. [Wendell Decl., ¶ 7.]

16 Although Plaintiff's position is that the matter is not subject to the newly revised version of
17 PAGA (since Plaintiff filed her PAGA notice prior to June 19, 2024), the Parties' pursued an early
18 neutral evaluation process pursuant to the Court's order dated December 10, 2024 (per Labor Code
19 § 2699.3(f)). The Parties further agreed to a protocol for exchanging additional documents and
20 information before the evaluation conference. Through this informal discovery, Defendant provided
21 Plaintiff with information including, inter alia, the number of potential alleged aggrieved employees,
22 the number of aggregate pay periods, sample pay stubs and time records for around 20% of the
23 alleged aggrieved employees, employee handbooks and manuals, and relevant policy documents on
24 Defendant's time keeping and reporting policies, etc. [Wendell Decl., ¶ 8.]

25 The parties then attended the evaluation conference before highly-regarded professional
26 neutral Todd Smith, Esq., who has extensive experience mediating wage and hour class and PAGA
27 actions. Before and during the evaluation, Plaintiff and counsel analyzed, researched, and
28 investigated the potential issues, including matters related to the calculation of damages, trial, and

1 appellate issues and risks. At the evaluation, the Parties vigorously debated the factual and legal
2 grounds for Plaintiff's claims and Defendant's defenses, and the parties' data analyses and
3 conclusions based on data provided by Defendant. After lengthy and contentious negotiations, the
4 Parties were able to reach agreement on all major issues. The Parties subsequently formalized the
5 tentative settlement in their PAGA Settlement Agreement now before the Court for approval.
6 [Wendell Decl., ¶ 9.] A true and correct, fully-executed copy of the Settlement Agreement is
7 attached to the Wendell Declaration as Exhibit 1.

8 **III. SUMMARY OF SETTLEMENT TERMS**

9 **A. Terms of the Settlement and Distribution of PAGA Penalties**

10 Under the settlement, Defendant will pay a non-reversionary settlement amount of \$200,000
11 (the "Gross Settlement Amount" or "GSA"), which is inclusive of payments to the LWDA and
12 Aggrieved Employees, costs of settlement administration, a modest service award to Plaintiff, and
13 reasonable attorneys' fees and costs.² After payment of settlement administration costs, the service
14 award, and reasonable attorneys' fees and costs from the GSA, Plaintiff presently estimates about
15 \$105,538.13 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five percent of the
16 NSA (about \$79,153.60) will go to the LWDA, and the remaining 25% (about \$26,384.53) will be
17 distributed to the Aggrieved Employees in proportion to the total number of Eligible Pay Periods
18 each individual worked during the PAGA Period. The average award currently is estimated at about
19 \$175. [Wendell Decl., ¶ 10.]

20 **B. Payment and Notice**

21 The Parties propose using Simpluris, Inc. as the Settlement Administrator. Simpluris has
22 extensive experience administering PAGA settlements, and has agreed to cap its fees at \$4,000.
23 Within 60 calendar days of the Settlement's Effective Date, Defendant will fund the settlement.
24 Within 14 days thereafter, Simpluris will mail a Notice and settlement check to all alleged aggrieved
25 employees via regular First-Class U.S. Mail, using the most current, known mailing addresses
26 identified in Defendant's records. Recipients need not submit claim forms and will automatically

27 _____
28 ² As discussed below, Plaintiff's Counsel seeks a fee equal to one-third (\$66,666.67) of the GSA, and reimbursement
of actual litigation costs of \$13,795.20. Plaintiff requests a service award in the amount of \$10,000.00.

1 receive a Notice and settlement check. Settlement checks will be negotiable for 180 days, after
2 which time any unclaimed residual funds will be forwarded to the State Controller's Unclaimed
3 Property Fund. [Wendell Decl., ¶ 11; Declaration of Denise Islas, ¶¶ 2-9; Exhs. A-C.]

4 **C. The Release**

5 Alleged aggrieved employees' release in the Settlement Agreement narrowly releases only
6 civil penalty claims brought under PAGA, as asserted in Plaintiff's PAGA notice to the LWDA and
7 the operative Complaint. The Settlement Agreement protects the rights of the alleged aggrieved
8 employees to bring their own individual claims should they wish. In sum, the release narrowly
9 applies only to the PAGA claims alleged or that could have been alleged, based on the factual and
10 legal allegations pled in the operative Complaint and PAGA notice. [Wendell Decl., ¶ 12.]

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

13 PAGA requires the Court to "review and approve any settlement of any civil action filed
14 pursuant to this part." Labor Code § 2699(1)(2). Recently, the appellate court in Moniz v. Adecco
15 USA, Inc. (2021) 72 Cal.App.5th 56, defined the standard for courts to apply when reviewing
16 settlements under PAGA. The court held a trial court must ensure that the settlement is "fair,
17 reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations,
18 deter future ones, and to maximize enforcement of state labor laws." Id.

19 In so holding, Moniz noted many federal district courts had imported class action settlement
20 approval principles, demanding that PAGA settlements be "fair, reasonable, and adequate," and
21 weighing factors such as "the strength of the plaintiff's case, the risk, the stage of the proceeding,
22 the complexity and likely duration of further litigation, and the settlement amount[.]" Id. (collecting
23 cases). Observing that "PAGA's purpose" is to "protect the public interest" – especially the
24 allegedly aggrieved employees – the Moniz Court agreed with these federal authorities, concluding
25 the same principles that ensure fairness in class action settlements likewise serve the public interest
26 in the PAGA context. These factors are more or less identical to those California courts use to
27 evaluate class action settlements per Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116
28 and, consistent with Moniz, Plaintiff submits they should inform the Court's analysis as well. For

1 the reasons below, the proposed settlement is fair, reasonable and adequate, advances the purposes
2 underlying PAGA, and should be approved.

3 **A. Nature of the Alleged Violations**

4 Plaintiff alleges claims for civil penalties for unpaid wages, meal/rest break violations, and
5 failure to reimburse expenses, as well as derivative wage statement and waiting time penalty claims.
6 First, Plaintiff contends Defendant failed to pay Plaintiff and other allegedly aggrieved employees
7 for all hours worked because employees lost time waiting in long lines while trying to clock in. Per
8 Plaintiff, around 30-90 employees would be trying to clock in at the same time with only five tablets
9 available (and frequently one or two of those would not actually work), and the fingerprint scanners
10 employees had to use regularly malfunctioned and made the process last even longer. Plaintiff
11 alleges this resulted in five or six minutes of off-the-clock time every morning, and five or six
12 minutes of off-the-clock time after every meal break, and that the warehouse workers were subject
13 to VICI's control when they were waiting to clock in. Frlekin v. Apple, Inc. (2020) 8 Cal.5th 1038,
14 1047. This regular off-the-clock work resulted in Defendant underpaying both minimum wages and
15 overtime wages owed to Plaintiff and Aggrieved Employees. [Wendell Decl., ¶ 13.]

16 Next, Plaintiff alleges VICI failed to incorporate certain non-discretionary payments into the
17 regular rate of pay and therefore underpaid for overtime. Here, Plaintiff claims employees would
18 receive gift cards of around \$100-150 whenever they were required to work on a Saturday. Review
19 of employee wage statements suggests the amounts, where in effect were a bonus, were not factored
20 into her overtime rate as required under California law. Alvarado v. Dart Container Corp. (2018) 4
21 Cal.5th 542 (the "regular rate of pay, which can change from pay period to pay period, includes
22 adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour
23 value of any non-hourly compensation the employee has earned."); [Wendell Decl., ¶ 14].

24 Plaintiff also contends Defendant failed to provide proper meal breaks due to the time clock
25 issue addressed above. Here, per Plaintiff, she and other employees typically took their meal break
26 at the same time, and all had to clock back in after a lunch break after no more than 30 minutes
27 exactly. Since around 30-90 employees all were trying to simultaneously clock back in, and given
28 the unreliable tablets used to clock in, it effectively forced employees to start lining up 5-10 minutes

1 before the end of the lunch or risk being disciplined. As a result, employees did not receive a full
2 net 30 minutes for their meal breaks. While Plaintiff alleged rest break violations in her operative
3 complaint, the evidence did not support rest period violations. [Wendell Decl., ¶ 15.]

4 Lastly, Plaintiff also brings derivative claims for inaccurate wage statements and failure to
5 pay all wages due and owing upon separation of employment under Labor Code §§ 201-203.
6 [Wendell Decl., ¶ 16.]

7 **B. Number of Alleged Violations and Potential Penalties**

8 For neutral evaluation/mediation, Defendant indicated there are approximately 151
9 individuals who fit within Plaintiff's definition of alleged aggrieved employees in California during
10 the relevant PAGA period, including 90 former employees, and these individuals worked
11 approximately 2,935 pay periods during the PAGA period. Based on the data and information
12 provided by Defendant, Plaintiff estimated Defendant's theoretical maximum PAGA exposure at
13 about \$904,700. [Wendell Decl., ¶¶ 17-18.] Plaintiff, however, substantially discounted that number
14 to account for Defendant's procedural and merits defenses, of which there are many.

15 **C. The Settlement Meets the Moniz/Kullar Factors and is Fair, Reasonable and**
16 **Adequate**

17 In response to Plaintiff's wage claims Defendant argued its time keeping policies are legally
18 compliant, that it accurately tracked all hours worked and paid the allegedly aggrieved employees
19 for all hours worked at the correct rates consistent with its compliant payroll policies. It further
20 argued that "off the clock" work by employees was strictly prohibited. Per VICI, the clock in
21 process was quick and efficient, there were ample devices available for each shift, and each
22 employee needed only a few seconds to place their thumb on the scanner and clock in/out. Per
23 Defendant, the process did not involve an amount of time that would even be capable of being
24 captured and paid for. On the regular rate issue, VICI argued that, even if the gift cards occasionally
25 distributed for Saturday work should have been factored into employees' regular rate for purposes
26 of calculating overtime, this practice was so infrequent that the exposure for this claim was minimal.
27 [Wendell Decl., ¶ 19.]

1 For the meal break claims, Defendant offered multiple defenses. First, Defendant
2 emphasized that the written meal and rest break policy generally was compliant, that it authorized
3 and permitted all required breaks, and that the allegedly aggrieved employees received full 30
4 minute lunch periods notwithstanding the need to clock back in. As with the off the clock claim,
5 Defendant argued employees spent a few brief seconds scanning their fingerprints on the tablets
6 used for timekeeping, and accordingly lost no cognizable amount of time from their otherwise fully
7 compliant meal periods. Defendant also argued that meal periods were scheduled on a staggered
8 basis, and that employees were not disciplined for meal breaks that exceeded thirty minutes.
9 [Wendell Decl., ¶ 20.]

10 On the wage statement and waiting time waiting time penalty claims, Defendant emphasized
11 that, to the extent they are derivative then they will rise or fall along with the primary claims, in
12 addition to being subject to “good faith” and other defenses available to Defendant. Accordingly,
13 Plaintiff had to discount the value of these claims significantly in light of these multiple potential
14 defenses. Defendant also contended a substantial discount should be applied to the civil penalties
15 for these derivative (i.e., “stacked”) violations, as it would be unfair to penalize Defendant multiple
16 times for the same violation. [Wendell Decl., ¶ 21.]

17 Defendant also emphasized that PAGA gives the Court wide latitude to reduce the amount
18 of civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise
19 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code §
20 2699(e)(2). This is particularly true here where the claims essentially are premised on “de facto”
21 violations that could prove difficult to establish on a representative basis, and in light of many cases
22 that have imposed substantial discounts on PAGA penalties awarded after trial. In Fleming v.
23 Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court
24 reduced the potential penalties by over 82% after a bench trial. More recently, in Carrington v.
25 Starbucks Corp. (2018) 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of
26 just \$5 per pay period, a 90% reduction, which decision was upheld on appeal. In re Taco Bell Wage
27 and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied
28 after trial). Additionally, no information came to light suggesting that any violations were knowing

1 and willful by Defendant. For these reasons, Plaintiff believes there is a high likelihood the Court
2 would find imposition of significantly more in penalties to be “unjust, arbitrary, and oppressive, or
3 confiscatory.” [Wendell Decl., ¶ 22.]

4 Thus, Defendant raised various and multi-layered defenses to each of Plaintiff’s claims, any
5 one of which, if successful, could have decimated Plaintiff’s case. Accordingly, Plaintiff faced risky
6 issues going forward with this litigation, and it could have taken years to realize any recovery in this
7 action, along with the possibility of post-trial appeals. In addition to its merits defenses and arguing
8 trial would be unmanageable, Defendant also intended to raise additional defenses on damages,
9 including the proper measure of civil penalties and the appropriate discount to place on any
10 assessment of such penalties. [Wendell Decl., ¶ 23]

11 Although Plaintiff and her counsel believe they could have prevailed, there was no such
12 guarantee. When the risks of overcoming a manageability defense and prevailing at trial on the
13 merits are factored into the equation, the settlement value is reasonable and supported. Indeed, to
14 recover maximum penalties Plaintiff would have to shoot the moon and win on liability as to all
15 claims and convince the Court to award full penalties, which outcome is highly unlikely. Given
16 Defendant’s procedural and merits defenses, as well as the substantial penalty reductions ordered in
17 the cases above – which occurred after trial – the proposed settlement is eminently reasonable.
18 [Wendell Decl., ¶ 24.]

19 Importantly, the mere fact that a settlement does not provide the same recovery as might be
20 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
21 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“[E]ven if ‘the relief afforded by the proposed
22 settlement is substantially narrower than it would be if the suits were to be successfully litigated,’
23 this is no bar to a class settlement because ‘the public interest may indeed be served by a voluntary
24 settlement in which each side gives ground in the interest of avoiding litigation.’”) (quoting *Air*
25 *Line Stewards, etc., Lc. 550 v. Am. Airlines, Inc.* (7th Cir. 1972) 455 F.2d 101, 109); 7-Eleven
26 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
27 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
28 itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”); Lane

1 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is
2 fundamentally fair . . . is different from the question whether the settlement is perfect in the
3 estimation of the reviewing court."); White v. Experian Information Solutions, Inc. (C.D. Cal.
4 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
5 though it represented 99% discount off the maximum value of the claims).

6 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
7 the probability of appeal of a favorable judgment, and the Court's substantial discretion to reduce
8 any penalty award all are accounted for, it is clear a settlement amount of \$200,000 for the PAGA
9 claim is within the ballpark of reasonableness, and approval is appropriate.

10 **V. SUBMISSION TO THE LWDA**

11 Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and
12 notified the LWDA of this approval hearing. [Wendell Decl., ¶ 25; Exh. 3.] Accordingly, the
13 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
14 approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA
15 settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL
16 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the
17 proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings, 2018 WL
18 4773057, at *9; Jordan v NCI Grp., Inc. (C.D. Cal. Jan. 5, 2018) 2018 U.S. Dist. LEXIS 25297, at
19 *7 ("Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to
20 the proposed settlement and no comment or objection has been received.").

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

22 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
23 that benefits the LWDA and aggrieved employees, one-third of the gross settlement, or \$66,666.67,
24 is allocated to Plaintiff's counsel for reasonable attorneys' fees, plus actual litigation costs. These
25 fees are warranted under the law and within the range of fees commonly awarded in similar cases.

26 **A. Plaintiff's Counsel Are Entitled to Recover Attorneys' fees Under the Common**
27 **Fund Doctrine**

1 PAGA provides that a plaintiff is entitled to recover reasonable attorneys' fees, expenses,
2 and costs under Labor Code § 2699(g)(1): "Any employee who prevails in any action shall be entitled
3 to an award of reasonable attorneys' fees and costs," Reasonable attorneys' fees and costs are
4 typically awarded under the common fund doctrine in a *qui tam* action such as this one, where, as
5 here, the litigation creates a common fund of money in a specific amount for the benefit of others.

6 "A *qui tam* action is one brought under a statute that allows a private person to sue as a
7 private attorney general to recover damages or penalties, all or part of which will be paid to the
8 government." People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487, 491-
9 492. As the California Supreme Court recently affirmed, a PAGA action is a *qui tam* action because
10 the statute allows the employee plaintiff, acting as the proxy of the State's labor law enforcement
11 agency, to sue his or her employer for Labor Code violations and recover civil penalties that
12 otherwise could only be assessed and collected by the LWDA. Kim v. Reins Int'l California, Inc.
13 (2020) 9 Cal.5th 73; Iskanian v. CLS Transportation of Los Angeles (2014) 59 Cal.4th at 382 ("A
14 PAGA representative action is therefore a type of *qui tam* action."). Indeed, the majority of the civil
15 penalties recovered in a PAGA action are paid to the State, with a smaller portion paid to the
16 aggrieved employees (e.g. 75% paid to the state; 25% paid to the aggrieved employees). Lab. Code
17 § 2699(i). Where a common fund is created in a *qui tam* action by the successful litigation of a
18 plaintiff, the plaintiff's attorneys are entitled to recover their fees from the common fund. Bank of
19 America v. Cory (1985) 164 Cal.App.3d 66, 89-91.

20 Through the efforts of Plaintiff and her attorneys here, a common fund was created in the
21 amount of \$200,000 for the benefit of the allegedly aggrieved employees and the State. Thus, these
22 beneficiaries should bear their share of the costs and attorneys' fees out of the overall recovery under
23 the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478-482; Six (6) Mexican
24 Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

25 Not long ago, the California Supreme Court upheld the use of the common fund theory of
26 recovery for attorneys' fees in Laffitte v. Robert Half Int'l Inc. (2016) 1 Cal.5th 480, 506. There,
27 the Court upheld an award of attorneys' fees of one-third of the \$19 million gross settlement
28 (awarded \$6.33 million in fees) under the common fund theory of recovery. Laffitte is consistent

1 with prior decisions recognizing “when a number of persons are entitled in common to a specific
2 fund, and an action brought by ... plaintiffs for the benefit of all results in the creation or preservation
3 of that fund, such ... plaintiffs may be awarded attorneys’ fees out of the fund.” Serrano v. Priest
4 (1977) 20 Ca1.3d 25, 34; Boeing, 444 U.S. at 478 (“[A] lawyer who recovers a common fund ... is
5 entitled to reasonable attorneys’ fees from the fund as a whole”; Lealao v. Beneficial California, Inc.
6 (2000) 82 Cal.App.4th 19, 26 (“[f]ee spreading occurs when a settlement or adjudication results in
7 the establishment of a separate or so-called common fund for the benefit of the class”).

8 Accordingly, the common fund doctrine allows a court to award attorneys’ fees based on a
9 percentage of the total fund created when the fund consists of a “certain or easily calculable sum of
10 money,” and California law has long applied the percentage of the recovery method for awarding
11 attorneys’ fees where a common fund is established. Serrano, 20 Ca1.3d at 34; Bell v. Farmers Ins.
12 Exch. (2004) 115 Cal.App.4th 715, 726; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794,
13 1809; Sanders v. City of Los Angeles (1970) 3 Ca1.3d 252, 261-63 (affirming award of attorney’s
14 fee based on percentage of recovery).

15 Awarding attorneys’ fees of one-third of gross common fund amount is favored by California
16 courts when a fund established for the common benefit of others is involved, such as here.
17 Accordingly, awarding fees on this basis out of the \$200,000 GSA, for a total of \$66,666.67, is
18 reasonable and appropriate. [Wendell Decl., ¶¶ 26-40.]

19 **B. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award**

20 Despite the recognized limitations of the so-called lodestar method, some California and
21 federal courts acknowledge the utility of a lodestar “cross-check” when assessing a proposed
22 percentage-based fee award. Lealao, 82 Cal.App.4th at 46-47. Under the “lodestar multiplier”
23 method of cross-checking proposed fee awards, the court first ascertains counsel’s total “lodestar”
24 amount by multiplying the number of hours reasonably expended by each attorney’s reasonable
25 hourly rate, and then enhances or reduces this lodestar figure by a “multiplier” to account for a range
26 of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree of
27 success achieved. PLCM Group, Inc. v. Drexler (2000) 22 Ca1.4th 1084, 1095-96; Lealao, 82
28

1 Cal.App.4th at 43 (court has discretion to use a multiplier to ensure that the “fee awarded is within
2 the range of fees freely negotiated in the legal marketplace in comparable litigation”).

3 Here, Crosner Legal’s lodestar is approximately \$69,005, based on 91 attorney hours spent
4 litigating the case. [Wendell Decl., ¶¶ 30-40; Exh. 4.] On a lodestar basis, the fee request of
5 \$66,666.67 results in an amount that is less than the unadorned lodestar, and accordingly
6 there is no request for a multiplier. Plaintiff’s counsel submits this effectively operates to
7 show the percentage fee request is reasonable considering the requested fees are less than the
8 value of the services rendered when valued via traditional hourly billing. [Wendell Decl.,
9 ¶¶ 26-40.]

10 **C. The Requested Costs Are Reasonable**

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

21 Plaintiff’s Counsel’s actual costs presently are \$13,795.20. This includes filing fees, service
22 of process, mediation costs, costs of notice to the aggrieved employees, postage, and expert
23 consultant fees, while waiving photocopying costs and legal research charges. These costs are
24 reasonable and uncontested, and were necessary to the successful prosecution of the action. The
25 costs should be approved in full. [Wendell Decl., ¶¶ 41-42.]

26 **VII. PLAINTIFF’S ENHANCEMENT AWARD**

27 Under the Settlement Agreement, Plaintiff seeks an incentive awards of \$10,000. This
28 request is reasonable given her efforts in this case and the risks she undertook on behalf of the

1 Aggrieved Employees and State. Additionally, by contacting and retaining counsel to pursue
2 these claims, Plaintiff made this settlement possible for the other Aggrieved Employees and the
3 LWDA, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also
4 exposed herself to unwanted notoriety related to filing a public lawsuit (discoverable even through
5 a simple google search) for the benefit of other employees, placing her at risk of discrimination by
6 future prospective employers. Among taking many other actions assisting in the successful
7 litigation of this case, Plaintiff provided substantial factual information to counsel, attended
8 numerous meetings with counsel to discuss the case, and generally participated in all phases of the
9 litigation. Accordingly, the requested enhancement payments to Plaintiff is appropriate and
10 justified as part of the Settlement for her service and risks undertaken. [Wendell Decl., ¶ 43;
11 Declaration of Leigha Scharsch, ¶¶ 2-9.]

12 **VIII. CONCLUSION**

13 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement under
14 PAGA, approve the requested award of reasonable attorneys' fees and costs, approve Simpluris as
15 the settlement administrator and approve its fees in the amount of \$4,000, approve Plaintiff's
16 enhancement award in the amount of \$10,000, approve the proposed distributions to the LWDA and
17 Aggrieved Employees, and enter its Order of final approval and judgment thereon.

18
19 Dated: March 13, 2025

CROSNER LEGAL, P.C.

20
21 /s/ Raymond Wendell

22 Raymond Wendell
23 Brandon Brouillette
24 Zachary Crosner
25 Attorneys for Plaintiff Leigha Scharsch
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