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SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

TROY UMBERTUS, on behalf of all others
similarly aggrieved,

Plaintiff,

v.

SUPERBA BAKING LLC, a California
Limited Liability Company; SUPERBA
FOOD AND BREAD HOLLYWOOD
LLC, a California Limited Liability
Company; SUPERBA RESTAURANTS IP,
LLC, a California Limited Liability
Company; SUPERBA FB VENICE, LLC, a
California Limited Liability Company;
SUPERBA ROSE, LLC, a California
Limited Liability Company; and DOES 1-
100, inclusive

Defendants.

CASE NO. 24STCV33043

Assigned for All Purposes to:
Hon. Virginia Keeny
Dept. 529

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

Date: September 30, 2026
Time: 8:30 a.m.
Dept.: 529

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1 **I. INTRODUCTION**

2 Plaintiff Troy Umbertus hereby seeks Court approval of a proposed settlement of claims
3 brought under the Private Attorneys General Act (“PAGA”) against Defendants Superba Baking,
4 LLC, Superba Food and Bread Hollywood, LLC, Superba Restaurants IP, LLC, Superba FB
5 Venice, LLC, and Superba Rose, LLC (collectively, “Superba” or “Defendants”). Consistent with
6 PAGA, the proposed settlement releases claims under PAGA only and has no impact on the
7 individual claims of any allegedly aggrieved employee other than Plaintiff. Since the settlement
8 resolves nothing more than claims under PAGA, it requires only a one-step review and approval
9 process by the Court, and for the reasons discussed below, the proposed settlement is fair,
10 reasonable, and adequate, and advances the statutory purposes of PAGA. Plaintiff respectfully
11 requests the Court approve the Settlement in its entirety.

12 **II. BACKGROUND**

13 The Superba Defendants operate restaurants in the Los Angeles area. Plaintiff was
14 employed by Defendants Superba Baking LLC as a delivery driver from June 2023 to September
15 2024. While employed with Defendants Superba Baking LLC, Plaintiff alleges he was subjected
16 to a number of wage and hour violations. [Declaration of Nikki Trenner (“Trenner Decl.”), ¶ 4.]

17 After notice to the LWDA and Defendants, and exhausting administrative remedies, on
18 December 12, 2024, Plaintiff commenced this action by filing his complaint alleging causes of
19 action against Defendants for alleged violations of the PAGA, including the following alleged
20 wage and hour violations: (a) failure to pay all wages due, including minimum and overtime
21 wages; (b) failure to provide meal and rest periods; (c) failure to provide complete and accurate
22 wage statements; (d) failure to reimburse expenses, and (e) failure to pay wages due on separation
23 of employment. Plaintiff filed the matter on behalf of himself and on behalf of the Aggrieved
24 Employees defined to include all current and former non-exempt employees who worked either
25 directly or via a staffing agency for any one or more Superba Defendants at any location in
26 California during the PAGA Period of October 8, 2023 to June 7, 2026. Superba denies the
27 allegations in the Operative Complaint, denies any failure to comply with the laws identified in in
28 the Operative Complaint and denies any and all liability for the claims alleged. [Trenner Decl.,

¶ 5; Exh. 3.]

Once the case was at issue, the Parties began meeting and conferring regarding discovery, potential law and motion, and other case management issues, and eventually agreed to attempt early mediation. They also agreed to and did informally exchange information to permit both sides to evaluate Plaintiff's allegations. Through this informal discovery, Defendants provided Plaintiff with information including, inter alia, Plaintiff's personnel file, the number of potential Aggrieved Employees, the number of aggregate pay periods, pay stubs and time records for a sampling of the Aggrieved Employees, and relevant policy documents regarding Defendants' time keeping and reporting policies and meal and rest break policies, among other pertinent materials. [Trenner Decl., ¶ 6.]

In April 2026, the Parties mediated the case with the Hon. Daniel J. Buckley (Ret.), a respected professional neutral with extensive class action/wage and hour experience. Before and during the mediation, Plaintiff and his counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiff's ability to proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and Defendants' defenses, and the Parties' data analyses and conclusions based on data provided by Defendants. After a contentious day of negotiations, the Parties reached agreement and subsequently formalized their tentative settlement in the Settlement Agreement now before the Court for approval. [Trenner Decl., ¶ 7.] A fully executed, true and correct copy of the PAGA Settlement Agreement ("Settlement Agreement") is attached to the Trenner Declaration as Exhibit 1.

III. SUMMARY OF SETTLEMENT TERMS

A. SETTLEMENT TERMS AND DISTRIBUTION OF PAGA PENALTIES

Under the settlement, Defendants will pay a non-reversionary settlement amount of \$185,000 (the "Gross Settlement Amount" or "GSA"). The GSA is inclusive of payments to the

1 LWDA and Aggrieved Employees, costs of settlement administration (estimated at no more than
2 \$5,990), a service award to Plaintiff, and reasonable attorney's fees and costs.¹ After payment of
3 settlement administration costs, Plaintiff's service award, and reasonable attorney's fees and costs
4 from the GSA, Plaintiff presently estimates about \$92,576.67 will remain (the "Net Settlement
5 Amount" or "NSA"). Sixty-five percent of the NSA (about \$60,174.83) will go to the LWDA,
6 and the remaining 35% (about \$32,401.84) will be distributed to the Aggrieved Employees in
7 proportion to the total number of Pay Periods each individual worked during the PAGA Period,
8 with an average award currently estimated at about \$91.79 per individual. [Trenner Decl., ¶ 8.]

9 **B. PAYMENT AND THE NOTICE**

10 The Parties propose using Apex Class Action, LLC as the Settlement Administrator. Apex
11 has extensive experience administering PAGA settlements, and has agreed to cap its fees at
12 \$5,990.00. [Declaration of Michael Sutherland, ¶¶ 2-8; Exhs. A-B.] Superba will fund the GSA
13 within 39 days of approval, and within 14 days of funding Apex will mail a settlement check to
14 all Aggrieved Employees via regular First-Class U.S. Mail, using the most current, known
15 mailing addresses identified in Superba's records. Aggrieved Employees need not submit claim
16 forms and will automatically receive a Notice and settlement check. Settlement checks will be
17 negotiable for 180 days, after which time any unclaimed residual funds will be forwarded to the
18 California State Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 9; Exh. A to Settlement
19 Agreement.]

20 **C. THE RELEASE**

21 The California Supreme Court has explained that a judgment in "a representative action
22 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004
23 ... is binding not only on the named employee plaintiff but also on government agencies and any
24 aggrieved employee not a party to the proceeding." Arias v. Superior Court (2009) 46 Cal.4th
25 969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil
26

27 ¹ Plaintiff's counsel is requesting 1/3 of the GSA (\$61,666.66) in fees and costs of \$14,766.67. Plaintiff
28 requests a service award of \$10,000.00. [Trenner Decl., ¶ 9.]

1 penalty claims brought under PAGA. Under Arias, the order the Parties request the Court enter is
2 intended to be “binding not only on the named employee plaintiff but also on government
3 agencies and any aggrieved employee not a party to the proceeding.” The Settlement Agreement
4 protects the rights of the Aggrieved Employees to bring their own individual claims should they
5 wish. For these reasons, the Parties contend the release narrowly applies only to the PAGA claims
6 alleged, and the Settlement Agreement specifically provides the Release is inapplicable to any
7 claims other than those brought under PAGA. [Trenner Decl., ¶ 10.]

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

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

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

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

2 Plaintiff first contends Defendants failed to pay all wages due because Superba required
3 Plaintiff and the Aggrieved Employees to frequently work off the clock, particularly as
4 Defendants' supervisors and representatives frequently contact employees on their personal cell
5 phones to discuss work-related issues while employees are away from the restaurants and off the
6 clock. Additionally, Plaintiff alleges he and other driver employees were not relieved of all duties
7 during unpaid meal periods. "An employer that requires its employees to work minutes off the
8 clock on a regular basis or as a regular feature of the job may not evade the obligation to
9 compensate the employee for that time by invoking the de minimis doctrine." Troester v.
10 Starbucks Corp. (2018) 5 Cal. 5th 829, 847. Plaintiff estimates at least 80% of pay periods reflect
11 lost hours worked due to alleged off the clock work. [Trenner Decl., ¶ 11.]

12 Plaintiff also alleges that he and the aggrieved employees did not receive compliant meal
13 periods and that, regardless of whether Superba's written policies were compliant, it nevertheless
14 committed numerous "de facto" meal period violations. Plaintiff's expert's review of the
15 sampling of time and wage records produced suggested Superba: (1) failed to provide timely meal
16 periods before the end of the fifth hour in shifts over five hours; (2) failed to record a first meal
17 period in shifts over six hours; (3) failed to provide meal periods of at least 30 minutes; and
18 (4) failed to provide second meal periods in shifts over ten hours. Plaintiff estimated about 69.7%
19 of the pay periods at issue had at least one unique violation for a missed, untimely, or short meal
20 period. [Trenner Decl., ¶ 12.]

21 Plaintiff similarly alleged Superba failed to provide all required rest breaks. Here,
22 Superba's policies prohibit employees from engaging in certain behaviors (such as napping, using
23 social media, etc.) throughout the entirety of the employees' work shifts that are not abated during
24 rest periods. As a result, Plaintiff claims Superba does not provide duty-free rest periods to
25 employees by failing to relinquish control over how Plaintiff and the Aggrieved Employees
26 utilize their rest period time. Plaintiff further alleges Superba would improperly combine multiple
27 rest periods into a single, longer break, and further prohibited driver employees from taking
28 compliant breaks. [Trenner Decl., ¶ 13.]

1 For his expense reimbursement claims, Plaintiff alleges Defendants required employees to
2 use their personal cell phones for company purposes, such as using personal cell phones to access
3 Defendants' timekeeping system and record hours worked and managers frequently contacted
4 Plaintiff and the Aggrieved Employees on their personal cell phones outside of working hours
5 with various work-related issues such as problems with orders and status of deliveries. Cochran v.
6 Schwan's Home Service, Inc. (2014) 228 Cal. App. 4th 1137. [Trenner Decl., ¶ 14.]

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

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

11 For mediation, Superba indicated it employed approximately 353 non-exempt employees
12 in California during the relevant time frame, and these individuals worked approximately 9,120
13 pay periods during that time. Based on the data provided by Defendants, Plaintiff estimated
14 Defendants' maximum PAGA exposure at approximately \$4,120,700, including approximately
15 \$729,600 on the unpaid wage/time rounding claims, about \$635,700 on the meal period claims,
16 \$912,000 on the rest period claims, \$912,000 on the wage statement claims, and about \$19,400 in
17 civil penalties for failing to timely pay wages on separation of employment. [Trenner Decl.,
18 ¶¶ 16-17.]

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

22 In response to Plaintiff's unpaid wage and off the clock claims, Superba argued its
23 timekeeping and payroll policies fully comply with California and that it paid Plaintiff and the
24 Aggrieved Employees for all hours worked the correct rates of pay. It further argued its policies
25 strictly prohibited "off the clock" work and, that to the extent any such work occurred, it was
26 unsanctioned and performed without management's knowledge. White v. Starbucks Corp. (N.D.
27 Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of
28 the off the clock work). Thus, per Superba, this issue would be unmanageable to try as it would
require innumerable "mini trials" to determine potential liability. [Trenner Decl., ¶ 18.]

1 On the meal break claims, Superba offered multiple defenses. First, it emphasized it
2 authorized and permitted all necessary breaks, and that employees received full uninterrupted
3 lunch periods as reflected in Defendants' time records. It also argued that many of the alleged
4 violations, especially for second meal periods, were validly waived by the employees who signed
5 valid meal period waivers. Bradsbery v Vicar Operating, Inc. (2025) 110 Cal.App.5th 899.
6 Defendants further argued that even to the extent meal or rest breaks were missed or arguably
7 non-compliant, it was in violation of company policy and aberrational, and would require
8 significant individual inquiries to determine the reasons underlying any such alleged violations
9 and whether it was by employee choice or some other reason. Thus, per Defendants, any trial on
10 this issue would be unmanageable because of these individualized issues. [Trenner Decl., ¶ 19.]

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

19 On the expense reimbursement claim, Superba argued it made its payroll system available
20 to employees via their personal cell phones as a convenience, and employees were never required
21 to use their own phones for timekeeping purposes, and that its policies prohibited use of phones
22 while on the clock and not on a break. Similarly, it argued any other use of personal phones was
23 purely for personal convenience and therefore not reimbursable under Labor Code § 2802 as a
24 "reasonable" or "necessary" expense. [Trenner Decl., ¶ 21.]

25 Plaintiff also alleged derivative violations of Labor Code § 226 (wage statement
26 violations) and §§ 201-203 (waiting time penalties). Both claims, since they are entirely
27 derivative, will rise or fall along with the primary claims, in addition to being subject to "good
28 faith" and other defenses available to Defendants. Amaral v. Cintas Corp. No. 2 (2008) 163

1 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor
2 Code § 203 even though the class prevailed on the merits on the underlying claim for failing to
3 pay living wages). Accordingly, Plaintiff had to discount the value of these claims significantly in
4 light of these multiple potential defenses. Defendants also contended a substantial discount should
5 be applied to the civil penalties for these derivative (i.e., “stacked”) violations, as it would be
6 unfair to penalize Defendants multiple times for the same violation. [Trenner Decl., ¶ 22.]

7 Defendants also emphasized PAGA gives the Court wide latitude to reduce the amount of
8 civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise
9 would result in an award that is unjust, arbitrary and oppressive, or confiscatory,” or to reduce
10 penalties to 30% or 15% depending on any actions taken by Superba to cure potential violations.
11 Labor Code § 2699(e)-(h). Several state and federal courts in California have applied significant
12 reductions to PAGA civil penalties even after plaintiffs prevailed on the merits. In Fleming v.
13 Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court
14 reduced the potential penalties by over 82% after a bench trial. More recently, in Carrington v.
15 Starbucks Corp. (2018) 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties
16 of just \$5 per pay period, a 90% reduction, which decision was upheld on appeal. In re Taco Bell
17 Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties
18 denied after trial). [Trenner Decl., ¶ 23.]

19 Thus, Defendants raised various and multi-layered defenses to each of Plaintiff’s claims,
20 anyone of which, if successful, could have derailed Plaintiff’s case. And Defendants vowed to
21 raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with
22 litigation, and it could have taken years to realize any recovery in this action along with the
23 possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be
24 unmanageable, Defendants also intended to raise additional defenses on damages, including the
25 proper measure of civil penalties and the appropriate discount to place on any assessment of such
26 penalties. [Trenner Decl., ¶ 24.]

27 Although Plaintiff and his counsel believe they could have prevailed, there was no such
28 guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits

1 on all claims, securing the maximum theoretical civil penalties, and appellate risks all are factored
2 into the equation, the settlement value is reasonable and supported. Of course, to recover
3 anywhere near the maximum penalties Plaintiff would have to shoot the moon and win both
4 liability and maximum penalties on all claims for every single pay period at issue, which
5 outcome, for the reasons discussed, is unlikely. In light of this, and given Defendants' various
6 procedural and merits defenses, as well as the substantial penalty reductions ordered in the cases
7 above – which occurred after trial – the proposed settlement is reasonable. [Trenner Decl., ¶ 25.]

8 Importantly as well, the mere fact that a settlement does not provide the same recovery as
9 might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable,
10 and adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed
11 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
12 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
13 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven
14 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
15 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
16 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane
17 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is
18 fundamentally fair . . . is different from the question whether the settlement is perfect in the
19 estimation of the reviewing court”); White v. Experian Information Solutions, Inc. (C.D. Cal.
20 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable
21 even though it represented 99% discount off the maximum value of the claims).

22 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
23 the probability of appeal of a favorable judgment, the Court's substantial discretion to reduce any
24 penalty award all are accounted for, it is clear a settlement amount of \$185,000 for the PAGA
25 claims is within the ballpark of reasonableness, furthers the purposes underlying PAGA, and
26 approval is appropriate.

27 **V. SUBMISSION TO THE LWDA**

28 Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and

1 notified the LWDA of this approval hearing. [Trenner Decl., ¶ 26; Exh. 5.] Accordingly, the
2 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
3 approval if the LWDA ultimately declines to offer any comment or objection to a proposed
4 PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017
5 WL 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the
6 proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings, 2018 WL
7 4773057, at *9 ("Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has
8 not objected to the settlement."); Jordan, 2018 U.S. Dist. LEXIS at *7 ("Additionally, the Court
9 finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and
10 no comment or objection has been received.").

11 **VI. PLAINTIFF'S ENHANCEMENT AWARD**

12 Pursuant to the terms of the settlement, Plaintiff seeks a reasonable incentive award of
13 \$10,000 for his service in bringing these claims on behalf of the State and Aggrieved Employees,
14 for agreeing to a full general release of claims against Defendants rather the far more limited
15 release applicable to the Aggrieved Employees. This requests is reasonable given the risks he
16 undertook on behalf of the Aggrieved Employees, and by contacting and retaining counsel to
17 pursue these claims, Plaintiff helped make this settlement possible for the absent employees,
18 while shouldering the risk of being liable for Defendants' litigation costs. Plaintiff also exposed
19 himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a
20 simple google search) for the benefit of other employees, placing him at risk of discrimination by
21 future prospective employers. As set forth in more detail in his declaration filed herewith, among
22 taking many other actions assisting in the successful litigation of this case, Plaintiff provided
23 substantial factual information and documents to counsel, attended numerous meetings/phone
24 conferences with counsel to discuss the case, and kept abreast of all significant developments.
25 [Declaration of Troy Umbertus, ¶¶ 2-9; Trenner Decl., ¶ 27.] Accordingly, the requested
26 enhancement payments to the Plaintiffs are appropriate and justified as part of the settlement.
27 Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class
28 representatives service and incentive payments ranging from \$2,000 to \$25,000).

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

2 For their efforts and the contingent risk undertaken in obtaining a common fund
3 settlement that benefits the LWDA and Aggrieved Employees, 1/3 of the gross settlement, or
4 \$61,666.66, is allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation
5 costs of \$14,766.67. These fees and costs are warranted under the law and within the range of
6 fees commonly awarded in similar cases.

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

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

16 "A *qui tam* action is one brought under a statute that allows a private person to sue as a
17 private attorney general to recover damages or penalties, all or part of which will be paid to the
18 government." People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487,
19 491- 492. As our Supreme Court recently affirmed, a PAGA action is a *qui tam* action because
20 the statute allows the employee plaintiff, acting as the proxy of the State's labor law enforcement
21 agency, to sue his or her employer for Labor Code violations and recover civil penalties that
22 otherwise could only be assessed and collected by the LWDA. Kim v. Reins Int'l California, Inc.
23 (2020) 9 Cal.5th 73; Iskanian, 59 Cal.4th at 380-82 ("[a] PAGA representative action is therefore
24 a type of *qui tam* action"). Indeed, the majority of the civil penalties recovered in a PAGA action
25 are paid to the State, with a smaller portion paid to the Aggrieved Employees (e.g. 75% paid to
26 the state; 25% paid to the Aggrieved Employees). Lab. Code § 2699(i). As here, where a
27 common fund is created in a *qui tam* action by the successful litigation of a plaintiff and his
28 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.

1 Through the successful efforts of Plaintiff and his attorneys here, a common fund was
2 created in the amount of \$185,000 for the benefit of the Aggrieved Employees and the State.
3 Thus, these beneficiaries should bear their share of the costs and attorney's fees out of the overall
4 \$185,000 in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444
5 U.S. 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d
6 1301, 1311.

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

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

26 Awarding attorney's fees of one-third of gross common fund amount is favored by
27 California courts when a fund established for the common benefit of others is involved, such as
28 here. Accordingly, awarding fees on this basis out of the \$185,000 GSA, for a total of \$61,666.66,

1 is reasonable and appropriate. [Trenner Decl., ¶¶ 28-44.]

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

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

14 Here, Plaintiff’s counsel’s lodestar is approximately \$82,110, based on 99.5 attorney
15 hours spent litigating the case. [Trenner Decl., ¶¶ 28-44; Exh. 6.] On a lodestar basis, the fee
16 request of \$61,666.66 results in a base lodestar that is larger than the fees requested on a
17 percentage basis, and therefore there is no request for a lodestar modifier. However, this
18 suggests the fees requested on a percentage basis are reasonable since they are less than the
19 value of the services performed when valued via traditional hourly billing.

20 **C. The Requested Costs Are Fair And Reasonable**

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

entitled to recover “those out-of-pocket expenses that would normally be charged to a fee-paying client.” Harris v. Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

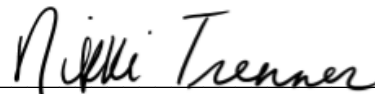
While the Settlement Agreement authorizes litigation costs not to exceed \$25,000, although Plaintiff’s Counsel’s actual costs presently are \$14,766.67. [Trenner Decl., ¶¶ 45-46.] This includes filing fees, mediation costs, and postage, while waiving photocopying costs and legal research charges. These costs are reasonable and uncontested, and should be approved and reimbursed in full.

VIII. CONCLUSION

For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement under PAGA, approve the requested award of reasonable attorney’s fees and costs, approve Phoenix Settlement Administrators as the settlement administrator and approve its fees in the amount of \$5,990.00, approve the proposed distributions to the LWDA and Aggrieved Employees, and enter judgment.

Dated: September 1, 2026

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