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9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF RIVERSIDE**
11

12 JUAN ANGUIANO, as an individual and on
behalf of all others similarly situated,

13
14 Plaintiff,

15 v.
16

17 KANA PIPELINE, INC., a California
corporation; DANIEL A. LOCKE, an
18 individual; and DOES 1-50, inclusive,

19 Defendants.
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Case No.: CVRI2102234

Assigned for All Purposes to:
Hon. Harold Hopp
Dept. 1

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

[Filed concurrently with Memorandum of
Points and Authorities; Declarations of Chad
Saunders and Michael Moore; [Proposed]
Order]

Date: February 21, 2024
Time: 8:30 a.m.
Dept.: 1

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1 **I. INTRODUCTION**

2 Plaintiff Juan Anguiano (“Plaintiff”) hereby seeks Court approval of a proposed
3 settlement of claims brought under the Private Attorneys General Act (“PAGA”) against
4 defendants Kana Pipeline, Inc. and Daniel A. Locke (together “Kana” or “Defendant”).
5 Consistent with PAGA, the proposed settlement releases claims under PAGA only and has no
6 impact on the individual claims of any alleged aggrieved employee. Since the settlement resolves
7 nothing more than claims under PAGA, it requires only a one-step review and approval process
8 by the Court, and for the reasons discussed below, the proposed settlement is fair, reasonable,
9 adequate, and advances the purposes underlying PAGA. Plaintiff respectfully requests the Court
10 approve the Settlement in its entirety.

11 **II. BACKGROUND**

12 Defendant Kana is an underground wet utility contractor that, in general, installs and
13 repairs water and sewer lines at various locations in Southern California. Defendant Daniel A.
14 Locke is the founder, CEO and President of Kana Pipeline, Inc. Plaintiff worked for Defendant as
15 an hourly paid pipe layer from approximately March 2014 to April 2020. [Declaration of Chad
16 Saunders (“Saunders Decl.”), ¶ 4.]

17 Plaintiff contends Defendant failed to provide Plaintiff and the allegedly aggrieved
18 employees with compliant meal periods for several reasons. First, Plaintiff argues the applicable
19 written meal period policy During the PAGA Period, Defendants failed to provide Plaintiff and
20 the aggrieved employees with compliant meal periods. Plaintiff’s and the aggrieved employees’
21 meal period times appear to be rounded to exactly 30 minutes regardless of the time they actually
22 took meal periods. This is evident in the time records provided by Defendants. The times
23 recorded for meal periods are always exactly 30 minutes and always at the same time of day for
24 each person, Plaintiff contends he and other employees likewise did not receive fully compliant
25 rest periods, and Plaintiff contends Defendants did not have any structured rest break policy or
26 procedure. PAGA members were not authorized or permitted to take off-duty 10-minute rest
27 breaks for every four hours worked or major fraction thereof. [Saunders Decl., ¶ 5.]

28 Plaintiff contends further that he and other employees worked “off the clock” when they

1 lost time during their meal periods, and also that Defendant rounded employee time s Defendants
2 also maintain a company-wide practice of automatically deducting 30 minutes' worth of wages
3 from the aggrieved employees' wages based on the assumption that meal periods were being
4 provided. Defendants' practice of "auto-deducting" 30 minutes for meal periods violates
5 California law because, on days when the aggrieved employees had not been provided a 30-
6 minute meal period, they were being shorted wages for hours worked resulting in minimum wage
7 and overtime violations, and Defendants were not keeping accurate records of meal periods as
8 required by law. Furthermore, Plaintiff alleges that Defendants knew that non-exempt employees
9 were working off the clock to pick up supplies and bring them to the worksite. These trips would
10 take between 1-2 hours per day, but employees were not "clocked-in" until they began work at
11 the worksite. Because they worked long shifts, this off-the-clock work should have been paid as
12 overtime or double time, but it was not. This also rendered the wage statements issued by
13 Defendant inaccurate on their face. [Saunders Decl., ¶ 6.]

14 Based on these allegations, and after appropriate notice to the Labor & Workforce
15 Development Agency ("LWDA"),¹ Plaintiff filed a class action complaint on May 3, 2021, and
16 filed a First Amended Complaint on July 30, 2021, that added a cause of action under PAGA.
17 After learning there were potentially applicable arbitration agreements, Plaintiff dismissed his
18 individual and class claims on November 15, 2021. The FAC, as the operative complaint, seeks
19 only PAGA civil penalties for the following alleged wage and hour violations: (a) failure to pay
20 wages, including overtime wages; (b) failure to provide meal and rest periods; (c) failure to
21 provide complete and accurate wage statements; and (d) waiting time penalties, all on behalf of
22 all individuals employed by Kana as non-exempt employee in California during the PAGA Period
23 of May 26, 2020 to April 1, 2023. [Saunders Decl., ¶ 7.]

24 Defendant has at all times denied Plaintiff's allegations and maintained it complied with
25 all relevant provisions of the Labor Code and Wage Orders. Specifically, Defendant contends
26 among other things that Plaintiff and all alleged aggrieved employees were timely paid for all
27 hours worked at the correct hourly rates in conformance with all applicable laws, that it

28 ¹ Plaintiff's PAGA notice letter is attached as Exhibit 2 to the Saunders Declaration.

1 authorized and permitted Plaintiff and the alleged aggrieved employees to take fully compliant
2 meal and rest periods in accordance with all applicable laws, and that Plaintiff and the alleged
3 aggrieved employees received accurate and complete itemized wage statements. Defendant also
4 strongly contend the case cannot be maintained as a representative action because among other
5 things Plaintiff's missed/interrupted/late/short meal and rest period allegations necessarily require
6 detailed individualized assessments and accordingly individualized issues predominate and a trial
7 under PAGA would be unmanageable. [Saunders Decl., ¶ 8.]

8 After Plaintiff filed his initial complaint, the Parties then began engaging in discovery and,
9 upon discussing the merits of the case and holding several meet and confer sessions regarding
10 prospective law and motion and discovery issues, agreed to attempt mediation. The Parties further
11 agreed to a protocol for exchanging additional documents and information before the mediation.
12 Through this formal and informal discovery, Defendant provided Plaintiff with information
13 including, inter alia, the number of potential alleged aggrieved employees, the number of
14 aggregate pay periods, sample pay stubs and time records for around 20% of the alleged
15 aggrieved employees, employee handbooks and manuals, and relevant policy documents on
16 Defendant's time keeping and reporting policies, etc. Plaintiff had that information reviewed by
17 Berger Consulting Group to assist with evaluating potential violation rates, potential damages,
18 etc. [Saunders Decl., ¶ 9.]

19 The parties then attended a full day mediation before highly-regarded mediator Lisa
20 Klerman, Esq., who has extensive experience mediating wage and hour class and PAGA actions.
21 Before and during the mediation, Plaintiff and his counsel analyzed, researched, and investigated
22 the potential issues, including matters related to the calculation of damages, trial, and appellate
23 issues and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiff's
24 ability to proceed on a representative basis as to the PAGA claims, the legal grounds for
25 Plaintiff's claims and Defendant's defenses, and the parties' data analyses and conclusions based
26 on data provided by Defendant. After a contentious full day of negotiations, the Parties were able
27 to reach agreement on all major issues. The Parties then reduced their agreement to an MOU and
28 subsequently formalized the tentative settlement in the settlement agreement now before the

1 Court. [Saunders Decl., ¶ 10.] A true and correct copy of the Settlement Agreement is attached to
2 the Saunders Declaration as Exhibit 1.

3 **III. SUMMARY OF SETTLEMENT TERMS**

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

5 Under the settlement, Defendant will pay a non-reversionary settlement amount of
6 \$410,000 (the “Gross Settlement Amount” or “GSA”), which is inclusive of payments to the
7 LWDA and PAGA Members, costs of settlement administration, and reasonable attorney’s fees
8 and costs.² After payment of settlement administration costs, service award and reasonable
9 attorney’s fees and costs from the GSA, Plaintiff presently estimates about \$257,684.07 will
10 remain (the “Net Settlement Amount” or “NSA”). 75% of the NSA (about \$193,263.05) will go
11 to the LWDA, and the remaining 25% (about \$64,421.02) will be distributed to the PAGA
12 Members in proportion to the total number of Eligible Pay Periods each individual worked during
13 the PAGA Period. The average award is estimated at about \$274. [Saunders Decl., ¶ 11.]

14 **B. Payment and Notice – CMO §§ D.8 and D.10**

15 The Parties propose using Phoenix Settlement Administrators (“Phoenix”) as the
16 Settlement Administrator. Phoenix has extensive experience administering PAGA settlements,
17 and has agreed to cap its fees at \$6,000. Within 10 calendar days of the Settlement’s Effective
18 Date, Defendant will fund the settlement. Phoenix thereafter will mail a Notice and settlement
19 check to all PAGA Members via regular First-Class U.S. Mail, using the most current, known
20 mailing addresses identified in Defendant’s records. Recipients need not submit claim forms and
21 will automatically receive a Notice and settlement check. Settlement checks will be negotiable for
22 180 days, after which time any unclaimed residual funds will be forwarded to the State
23 Controller’s Unclaimed Property Fund. [Saunders Decl., ¶ 12; Declaration of Michael Moore, ¶¶
24 4-17; Exhs. A-B.]

25 /////

26 _____
27 ² As discussed below, Plaintiff’s Counsel seeks a fee equal to one-third (\$135,300) of the GSA, and reimbursement
28 of actual litigation costs of \$11,015.93. Plaintiff entered a separate settlement agreement of his individual claims and
is not requesting a service award. [Saunders Decl., ¶ 49.]

1 **C. The Release – CMO § D.7.**

2 The release in the Settlement Agreement narrowly releases only civil penalty claims
3 brought under PAGA, as asserted in Plaintiff’s PAGA notice to the LWDA and the operative
4 Complaint. While Plaintiff is separately entering into a general release of any and all claims
5 against Defendant, the Settlement Agreement protects the rights of the alleged aggrieved
6 employees to bring their own individual claims should they wish. For these reasons, the Parties
7 contend the release narrowly applies only to the PAGA claims alleged or that could have been
8 alleged, based on the factual and legal allegations pled in the operative Complaint. [Saunders
9 Decl., ¶ 13.]

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

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

18 In so holding, Moniz noted many federal district courts had imported class action
19 settlement approval principles, demanding that PAGA settlements be “fair, reasonable, and
20 adequate,” and weighing factors such as “the strength of the plaintiff’s case, the risk, the stage of
21 the proceeding, the complexity and likely duration of further litigation, and the settlement
22 amount[.]” Id. at 75-76 (collecting cases). Observing that “PAGA’s purpose” is to “protect the
23 public interest” – especially the allegedly aggrieved employees – the Moniz Court agreed with
24 these federal authorities, concluding the same principles that ensure fairness in class action
25 settlements likewise serve the public interest in the PAGA context. These factors are more or less
26 identical to those California courts use to evaluate class action settlements per Kullar v. Foot
27 Locker Retail, Inc. (2008) 168 Cal.App.4th 116 and, consistent with Moniz, Plaintiff submits they
28 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 – CMO § D.2.a.

Plaintiff alleges claims for civil penalties for unpaid wages, meal/rest break violations, and facial wage statement violations, as well as derivative wage statement and waiting time penalty claims. First, Plaintiff contends Defendant failed to pay Plaintiff and other allegedly aggrieved employees for all hours worked since the employees lost time by having their meal periods cut short or interrupted even though 30 minutes was “auto deducted” from their time. Plaintiff further alleges he and other employees frequently were required to ‘work off the clock’ securing supplies needed for the job and transporting those supplies to the job site, but were not compensated for such time even though it could take 1-2 hours to finish. [Saunders Decl., ¶ 14.]

Plaintiff also contends Defendant failed to maintain proper meal and rest break policies, and that company meal period times appear to be rounded to exactly 30 minutes regardless of the time they actually took meal periods. The times recorded for meal periods are always exactly 30 minutes and always at the exact same time for each employee, suggesting Defendant was not properly recording meal periods and “auto-deducting” and/or “rounding” for meal periods regardless of the actual time received by the employee. Donohue v. AMN Servs. (2021) 11 Cal.5th 58, 61 (meal period times may not be rounded). Plaintiff further alleges that during the PAGA period, Defendant failed to provide Plaintiff and the alleged aggrieved employees with compliant rest periods for the same reasons. [Saunders Decl., ¶ 15.]

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

B. Number of Alleged Violations and Potential Penalties – CMO §§ D.2.b.-c.

For mediation, Defendant indicated there are approximately 235 individuals who fit within Plaintiff’s definition of alleged aggrieved employees in California during the relevant PAGA period, and these individuals worked approximately 9,332 pay periods. Based on the data and information provided by Defendant, and with his expert’s assistance and analysis, Plaintiff estimated Defendant’s theoretical maximum PAGA exposure at over \$3,743,200. On a risk

discounted basis, however, Plaintiff estimates recoverable penalties in the \$750,000 range after applying an 80% risk discount to account for Defendant's procedural and merits defenses, of which there are many. [Saunders Decl., ¶¶ 17-18.]

C. **The Settlement Meets the Moniz/Kullar Factors and is Fair, Reasonable and Adequate – CMO § D.2.d.-h.**

In response to Plaintiff's unpaid wage claims for the alleged "auto deduct" policy and off the clock work, Defendant took the position that their time keeping policies are legally compliant, that they accurately tracked all hours worked as reflected in the time records, and paid the allegedly aggrieved employees for all hours worked consistent with those policies. Defendant argued any trial of this issue on a representative basis would be unmanageable since it would depend entirely on a myriad of individualized inquiries as to each employee regarding any discrepancies in actual time worked versus what was reported and paid. [Saunders Decl., ¶ 19.]

For the meal and rest break claims, Defendant offered multiple defenses. First, Defendant emphasized that the written meal and rest break policy generally was compliant, that they authorized and permitted all necessary breaks, and that alleged aggrieved employees received full 30 minute lunch periods as reflected in the time records. Defendant also argued that even to the extent missed/non-compliant breaks occurred, it was in violation of company policy and would require significant individual inquiries to determine the reasons underlying any such alleged violations and whether it was by employee choice or some other reason. Thus, per Defendant, any trial would be unmanageable. [Saunders Decl., ¶ 20.]

As with meal breaks, Defendant argued the applicable rest break policies complied with California law and authorized and permitted employees to take all required breaks. Defendant further contended that, in light of the fact that recording rest periods is not required, any evidence of failure to authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal and individual issues would predominate on liability. Defendant also contended that they are only liable if Plaintiff can prove, on a shift-by-shift basis, that each alleged aggrieved employee actually did not receive a fully-compliant rest break. This arguably would once again make a trial unmanageable since the instances an employee missed a rest break would

1 have to be tested on a case by case basis to determine compliance. [Saunders Decl., ¶ 21.]

2 Plaintiff also alleged derivative violations of Labor Code § 226 (wage statement
3 violations) and §§ 201-203 (waiting time penalties). The derivative wage statement claims and
4 the waiting time penalties claim are based on the primary unpaid wage and meal/rest break
5 claims, and will rise or fall along with the primary claims, in addition to being subject to “good
6 faith” and other defenses available to Defendant. Accordingly, Plaintiff had to discount the value
7 of these claims significantly in light of these multiple potential defenses. Defendant also
8 contended a substantial discount should be applied to the civil penalties for these derivative (i.e.,
9 “stacked”) violations, as it would be unfair to penalize Defendant multiple times for the same
10 violation. [Saunders Decl., ¶ 22.]

11 Defendant emphasized PAGA gives the Court wide latitude to reduce the amount of civil
12 penalties “based on the facts and circumstances of a particular case” if “to do otherwise would
13 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code §
14 2699(e)(2). This is particularly true here where both the unpaid wage and meal and rest break
15 claims essentially are premised on “de facto” violations and that could prove difficult to establish
16 on a representative basis, and in light of many cases that have imposed substantial discounts on
17 PAGA penalties awarded after trial. In Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist.
18 LEXIS 154590, *8-9, for instance, the district court reduced the potential penalties by over 82%
19 after a bench trial. More recently, in Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504,
20 after a bench trial, the trial court awarded penalties of just \$5 per pay period, a 90% reduction,
21 which decision was upheld on appeal. In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8,
22 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial). Additionally, no
23 information came to light suggesting that any violations were knowing and willful by Defendant.
24 For the same reasons, and further considering the Defendant’s modest size as a family-owned
25 business still run by its founder, Plaintiff suggests there is a high likelihood the Court would find
26 imposition of significantly more in penalties would be “unjust, arbitrary, or confiscatory.”
27 [Saunders Decl., ¶ 23.]

28 Thus, Defendant raised various and multi-layered defenses to each of Plaintiff’s claims,

1 any one of which, if successful, could have decimated Plaintiff's case. And Defendant vowed to
2 raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with this
3 litigation, and it could have taken years to realize any recovery in this action along with the
4 possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be
5 unmanageable, which argument has found purchase with a number of California courts.
6 Defendant also intended to raise additional defenses on damages, including the proper measure of
7 civil penalties and the appropriate discount to place on any assessment of such penalties.
8 [Saunders Decl., ¶ 24]

9 Although Plaintiff's counsel believes they could have prevailed, there was no such
10 guarantee. When the risks of overcoming a manageability defense and prevailing at trial on the
11 merits are factored into the equation, the settlement value is reasonable and supported. Notably,
12 the proposed settlement equates to around 60% of the estimated risk discounted liability, as
13 discussed above, and more than the likely penalties recovered assuming the Court applied a 50%
14 discount. Of course, to recover those sums Plaintiff would have to shoot the moon and win both
15 liability, recover significant penalties on one or more claims, which outcome is unlikely. Given
16 Defendant's procedural and merits defenses, as well as the substantial penalty reductions ordered
17 in the cases above – which occurred after trial – the proposed settlement is eminently reasonable.
18 [Saunders Decl., ¶ 25.]

19 Importantly, the mere fact that a settlement does not provide the same recovery as might
20 be 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 (“even 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”); 7-Eleven
25 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
26 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
27 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane
28 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is

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

5 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
6 the probability of appeal of a favorable judgment, and the Court's substantial discretion to reduce
7 any penalty award all are accounted for, it is clear a settlement amount of \$410,000 for the PAGA
8 claim is within the ballpark of reasonableness, and approval is appropriate.

9 **V. SUBMISSION TO THE LWDA – CMO § D.1.c.**

10 Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and
11 notified the LWDA of this approval hearing. [Saunders Decl., ¶ 26; Exh. 3.] Accordingly, the
12 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
13 approval if the LWDA ultimately declines to offer any comment or objection to a proposed
14 PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017
15 WL 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the
16 proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings, 2018 WL
17 4773057, at *9; Jordan v NCI Grp., Inc. (C.D. Cal. Jan. 5, 2018) 2018 U.S. Dist. LEXIS 25297, at
18 *7 ("Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to
19 the proposed settlement and no comment or objection has been received.").

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

21 For their efforts and the contingent risk undertaken in obtaining a common fund
22 settlement that benefits the LWDA and aggrieved employees, 33% of the gross settlement, or
23 \$135,300, is allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation
24 costs. These fees are warranted under the law and within the range of fees commonly awarded in
25 similar cases.

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

28 PAGA provides a Plaintiff is entitled to recover reasonable attorney's fees, expenses, and

1 costs under Labor Code § 2699(g)(1): “Any employee who prevails in any action shall be entitled
2 to an award of reasonable attorney’s fees and costs,” Reasonable attorney’s fees and costs
3 are typically awarded under the common fund doctrine in a *qui tam* such as this one, where, as
4 here, the litigation creates a common fund of money in a specific amount for the benefit of others.

5 “A *qui tam* action is one brought under a statute that allows a private person to sue as a
6 private attorney general to recover damages or penalties, all or part of which will be paid to the
7 government.” People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487,
8 491- 492. As our Supreme Court recently affirmed, a PAGA action is a *qui tam* action because
9 the statute allows the employee plaintiff, acting as the proxy of the State’s labor law enforcement
10 agency, to sue his or her employer for Labor Code violations and recover civil penalties that
11 otherwise could only be assessed and collected by the LWDA. Kim v. Reins Int’l California, Inc.
12 (2020) 9 Cal.5th 73; Iskanian v. CLS Transportation of Los Angeles, 59 Cal.4th at 380-82 (“[a]
13 PAGA representative action is therefore a type of *qui tam* action”). Indeed, the majority of the
14 civil penalties recovered in a PAGA action are paid to the State, with a smaller portion paid to the
15 aggrieved employees (e.g. 75% paid to the state; 25% paid to the aggrieved employees). Lab.
16 Code § 2699(i). Where a common fund is created in a *qui tam* action by the successful litigation
17 of a plaintiff, the plaintiff’s attorneys are entitled to recover their fees from the common fund.
18 Bank of America v. Cory (1985) 164 Cal.App.3d 66, 89-91.

19 Through the efforts of Plaintiff and his attorneys here, a common fund was created in the
20 amount of \$410,000 for the benefit of the allegedly aggrieved employees and the State. Thus,
21 these beneficiaries should bear their share of the costs and attorney’s fees out of the overall
22 recovery under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478-
23 482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

24 Not long ago, the California Supreme Court upheld the use of the common fund theory of
25 recovery for attorney’s fees in Laffitte v. Robert Half Int’l Inc. (2016) 1 Cal.5th 480, 506. There,
26 the Court upheld an award of attorney’s fees of one-third of the \$19 million gross settlement (e.g.,
27 awarded \$6.33 million in fees) under the common fund theory of recovery. Laffitte is consistent
28 with prior decisions recognizing “when a number of persons are entitled in common to a specific

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

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

15 Awarding attorney's fees of one-third of gross common fund amount is favored by
16 California courts when a fund established for the common benefit of others is involved, such as
17 here. Accordingly, awarding fees on this basis out of the \$410,000 GSA, for a total of \$135,300,
18 is reasonable and appropriate. [Saunders Decl., ¶¶ 27-46.]

19 **B. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award –**
20 **CMO § D.3.**

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

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

3 Here, Crosner Legal’s lodestar is approximately \$189,425.00, based on 240.16 attorney
4 hours spent litigating the case. [Saunders Decl., ¶¶ 31-46; Exh. 4.] This results in a lodestar that
5 is larger than the fees requested on a percentage basis and, accordingly, there is no request for a
6 lodestar enhancement. It also is important to note this fact serves to highlight the reasonableness
7 of the fees requested on a percentage-of-the-recovery basis, as it shows the requested fees are
8 lower than the market rate of the services rendered when valued via traditional hourly billing.
9 [Saunders Decl., ¶¶ 27-46.]

10 **C. The Requested Costs Are Reasonable – CMO § D.3.**

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

21 While the Settlement Agreement authorizes litigation costs not to exceed \$20,000,
22 Plaintiff’s Counsel’s actual costs presently are \$11,015.93. This includes filing fees, service of
23 process, mediation costs, postage, and expert consultant fees, while waiving photocopying costs
24 and legal research charges. These costs are reasonable and uncontested, and should be approved.
25 [Saunders Decl., ¶¶ 47-48.]

26 **VIII. CONCLUSION**

27 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
28 under PAGA, approve the requested award of reasonable attorney’s fees and costs, approve

1 Phoenix Settlement Administrators as the settlement administrator and approve its fees in the
2 amount of \$6,000, approve the proposed distributions to the LWDA and alleged aggrieved
3 employees, and enter its Order of final approval and judgment thereon.
4

5 Dated: January 9, 2024

CROSNER LEGAL, P.C.

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8 Jamie Serb
9 Chad Saunders
10 Zachary Crosner
11 Attorneys for Plaintiff JUAN ANGUIANO
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