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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF LOS ANGELES**

15 LEO ANGEL MARTINEZ, individually and on
16 behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 GLOBAL AVIATION MANAGEMENT
20 GROUP, CORP.; and DOES 1 through 20,
21 inclusive,

22 Defendants.

Case No. 22STCV21065

Assigned for All Purposes to:
Judge Armen Tamzarian
Dept. 52

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR APPROVAL
OF PAGA SETTLEMENT**

Date: March 5, 2025
Time: 9:00 a.m.
Dept: 52
Reservation: 894108766893

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1 **I. INTRODUCTION**

2 Plaintiff Leo Angel Martinez (“Plaintiff”) seeks approval of a settlement of claims under the
3 Private Attorneys General Act of 2004, California Labor Code § 2698 *et seq.* (“PAGA”) against
4 Defendant Global Aviation Management Group, Corp. (“Defendant”) in the amount of \$550,000.00.
5 The Parties estimate there are approximately 450 aggrieved employees who worked for Defendant
6 that were allegedly not paid at least minimum wages for all hours worked, not paid overtime
7 compensation, not provided with meal periods or compensation in lieu thereof, not provided with rest
8 breaks or compensation in lieu thereof, not provided with accurate wage statements, were not
9 reimbursed for Defendant’s necessary business expenses, and were not paid all wages owed upon
10 separation of employment.

11 Under Labor Code § 2699(1)(2), the Court must review and approve any proposed PAGA
12 settlement. Here, the proposed Settlement is sufficient to deter and punish future violations. The
13 Settlement is attached to the Declaration of Alex J. Valle (“Valle Decl.”) as **Exhibit 1**, and the
14 proposed letter to be sent to the aggrieved employees is attached thereto as **Exhibit 1A**. Plaintiff now
15 seeks this Court’s approval of the Settlement terms.

16 **II. FACTUAL AND PROCEDURAL BACKGROUND**

17 Defendant operates a private security company servicing Los Angeles International Airport and
18 San Diego International Airport. Valle Decl., ¶ 3. Plaintiff worked for Defendant as a security agent
19 in 2021. Declaration of Leo Angel Martinez (“Martinez Decl.”), ¶ 3. On June 28, 2022, Plaintiff’s
20 counsel sent a letter to the California Labor & Workforce Development Agency (“LWDA”) via online
21 submission and to Defendant via certified mail regarding Defendant’s alleged violations. Valle Decl.,
22 ¶ 3, Exhibit 3. The LWDA did not respond to this notice within 65 days, indicating it did not intend
23 to investigate, thus allowing Plaintiff to file the instant lawsuit pursuant to Labor Code Section
24 2699.3(a)(2)(A). *Id.*

25 On June 28, 2022 Plaintiff filed his Complaint as a class action lawsuit, alleging that, Defendant
26 failed to: (1) pay minimum wages, (2) pay overtime wages, (3) provide lawful meal periods or
27 compensation in lieu thereof, (4) authorize or permit lawful rest breaks or provide compensation in
28 lieu thereof, (5) reimburse class members for necessary business expenses, (6) provide accurate

1 itemized wage statements, (7) timely pay all wages during employment, (8) pay all wages timely
2 upon separation of employment and, (9) abide by the requirements of California Business and
3 Professions Code Section 17200 *et seq.* Valle Decl. at ¶ 5. On November 2, 2022, Plaintiff filed his
4 First Amended Complaint adding a claim for Enforcement of PAGA. *Id.*

5 Due to the presence of arbitration agreements that Plaintiff and putative class members allegedly
6 signed, Plaintiff dismissed his class causes of action on January 23, 2023. Valle Decl., ¶ 6. Defendant
7 also filed a motion to dismiss the representative claims and compel Plaintiff to arbitration. *Id.* On
8 May 5, 2023, the Court denied the motion, and this case proceeded on a PAGA-only basis. *Id.*

9 The Parties engaged in formal discovery. Valle Decl., ¶ 7. Defendant produced Plaintiff's
10 personnel file, its employment handbook and policy documents, the class list, the number of total pay
11 periods during the PAGA Period, the number of employees who signed meal break waivers, and other
12 employee's timekeeping and payroll records. *Id.* Plaintiff's Counsel engaged an expert to quantify
13 the potential exposure using the time and payroll records, and then assessed the risks associated with
14 each of the claims. *Id.* Plaintiff's counsel also used the class list that was provided by Defendant to
15 contact over 140 employees regarding potential Labor Code violations they experienced while
16 working for Defendant, and ultimately spoke to 19 employees. *Id.*

17 Furthermore, Plaintiff's counsel deposed Defendant's person most knowledgeable on August 28,
18 2024, while Defendant deposed Plaintiff on July 30, 2024. *Id.* at ¶ 9.

19 The Parties attended a mandatory settlement conference with Resolve Law L.A on October 29,
20 2024. Valle Decl., ¶ 7. After negotiating for the entire settlement conference, the Parties agreed to a
21 settlement amount and executed a Memorandum of Understanding with the material terms the Parties
22 had agreed to on November 15, 2024. *Id.* The Parties spent the next few weeks negotiating the terms
23 of the Settlement, which was finalized in December 2024. *Id.* Plaintiff provided notice of the
24 Settlement to, and served a copy of this Motion on the LWDA on December 17, 2024. *Id.* at ¶ 10.

25 **III. PAGA REQUIREMENTS**

26 Based on the California Supreme Court's opinions in *Arias v. Superior Court*, 46 Cal. 4th 969
27 (2009), and *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014), plaintiffs can
28 seek appropriate civil penalties as called for under PAGA on behalf of the State of California and

1 other similarly aggrieved employees without seeking class certification or meeting the requirements
2 of class certification (i.e. numerosity, typicality, commonality and adequacy). As such, the class
3 action two-step preliminary and final approval process is not required.

4 PAGA was enacted to allow enforcement of the Labor Code and recovery of penalties by the
5 State and by private individuals who have been aggrieved by their employers. The pre-2024 statute
6 (which governs this action filed in 2022) calls for 75% of any penalties recovered to be paid to
7 California's LWDA and the remaining 25% to the aggrieved employees. Lab. Code § 2699(i) (2016).

8 In order to enforce and seek penalties under PAGA in a civil action, an aggrieved employee must
9 first provide written notice to the LWDA and the employer of the particular Labor Code violations
10 the aggrieved employee alleges the employer has violated. See Labor Code § 2699.3(a)(1)(A) (2016).
11 Once the LWDA notifies the aggrieved employee that it does not intend to investigate the alleged
12 violations, or if the LWDA does not respond within a certain time period, the aggrieved employee is
13 then allowed to proceed in a civil action against the employer on behalf of the LWDA and all other
14 similarly aggrieved employees. See Cal. Labor Code § 2699.3(a)(2)(A) (2016).

15 In 2009, the California Supreme Court considered the issue of whether an aggrieved employee
16 who brings a PAGA representative claim needs to meet class certification requirements. *Arias*, 46
17 Cal. 4th at 976. After a substantial review of the legislative history of PAGA, the Court held that an
18 aggrieved employee's representative action brought on behalf of other aggrieved employees against
19 an employer for PAGA violations does not need to meet the requirements for class certification. *Id.*
20 at 975, 980-88. As the Court held, a plaintiff bringing suit under PAGA does so as the proxy or agent
21 of California's labor law enforcement agencies. *Id.* at 986. Because the employee's PAGA action
22 functions as a substitute for an action brought by the government, a judgment in the PAGA action
23 binds all those who would be bound by a judgment in an action brought by the government. *Id.*

24 Finally, in a settlement of a PAGA action brought by an aggrieved employee, the court need only
25 "review and approve" the settlement. Lab. Code § 2699(1)(2) (2016). The Parties to this PAGA action
26 have reached such an agreement and now seek this Court's approval of the proposed settlement.

27 //

28 //

1 **IV. THE SETTLEMENT TERMS AND DISTRIBUTION OF PENALTIES**

2 The Parties have agreed that Defendant will pay a total settlement amount of \$550,000.00 (the
3 “Gross Settlement Amount”). Settlement Agreement, § 3.1. From this amount, up to one-third (1/3)
4 of the Gross Settlement Amount, equating to \$183,333.33, is allocated to attorneys’ fees and up to
5 \$23,000.00 to actual litigation costs. *Id.* at § 3.2.1. Including fees associated with this Motion,
6 Plaintiff’s counsel has spent \$13,278.05 in actual litigation costs,¹ and has incurred \$190,245.00 in
7 attorneys’ fees as of December 17, 2024. Valle Decl., ¶¶ 41-42, Exhibit 4. The Settlement allocates
8 up to \$5,500.00 to payment for Phoenix Settlement Administrators’ costs associated with
9 administration of the Settlement. Settlement Agreement, § 3.2.3. For Plaintiff’s efforts in assisting
10 with the Lawsuit and in exchange for a general release of his individual employment claims,
11 \$10,000.00 is allocated to Plaintiff. *Id.* at § 3.2.2.

12 After deducting the above amounts for attorneys’ fees and costs, Settlement Administrator’s
13 costs, and Plaintiff’s individual settlement award, the remaining fund will constitute the “PAGA
14 Penalties” in which 75% will be paid to the LWDA (the “LWDA PAGA Payment”) and 25% will be
15 paid to the Aggrieved Employees as their “Individual PAGA Payments”. Settlement Agreement, ¶
16 3.2.4. The Aggrieved Employees are all non-exempt employees employed by Defendant at any time
17 during the PAGA Period. *Id.* at ¶ 1.4. The PAGA Period means the period from June 28, 2021 to
18 October 29, 2024. *Id.* at ¶ 1.21.

19 The Individual PAGA Payments will be calculated pro rata based on the number of pay periods
20 working during the PAGA Period. Settlement Agreement, § 3.2.4.1. If the number of PAGA Pay
21 Period worked by the Aggrieved Employees exceeds 14,887 by more than 10%, then the Gross
22 Settlement Amount will increase pro rata per additional PAGA Pay Period. *Id.* at § 8. The Individual
23 PAGA Payments shall be paid to the Aggrieved Employees by way of a single check which will be
24 valid for 180 days. *Id.* at § 4.4.1. All funds not claimed within 180 days of mailing of payment shall
25 be sent to the California State Controller’s Office Unclaimed Property Fund with an identification of

26 _____
27 ¹ While the Settlement allows for a cost award of up to \$23,000.00. Plaintiff’s counsel’s actual
28 costs incurred do not exceed \$13,278.05, and Plaintiff’s counsel seeks approval of that amount.
The remaining \$9,721.95 will revert to and increase the Net Settlement Amount. Settlement
Agreement, § 3.2.1.

1 the amount of unclaimed funds attributable to each PAGA Employee. *Id.* at § 4.4.3. The Individual
2 PAGA Payments will be characterized as penalties for tax purposes and reported on IRS Form 1099.
3 *Id.* at § 3.2.4.2.

4 Prior to this disbursement, the Settlement Administrator shall check the Aggrieved Employees'
5 addresses provided by Defendant using the National Change of Address database. Settlement
6 Agreement, § 4.4.1. For any returned payments without a forwarding address, the Settlement
7 Administrator shall run a skip trace. *Id.* at § 4.4.2. Aggrieved Employees will receive their Individual
8 PAGA Payment along with a letter in English and Spanish explaining the reason for the payment, the
9 content of which has been submitted to the Court for approval. *Id.* at § 4.4.1. The proposed letter is
10 attached to the Settlement Agreement as Exhibit 1A to the Declaration of Alex J. Valle.

11 In exchange for the settlement payment, the State of California and the Aggrieved Employees
12 will release the "Released Parties" meaning "Defendant and each of its former and present directors,
13 officers, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns" from "all
14 PAGA claims alleged or which could have been alleged based on the facts alleged in the Operative
15 Complaint, which arose during the PAGA Period." Settlement Agreement, §§ 1.27, 5.2. Plaintiff will
16 also release all claims against Defendant and sign a Civil Code § 1542 waiver. *Id.* at §§ 5.1, 5.11.

17 **V. THE SETTLEMENT IS FAIR AND REASONABLE**

18 **A. Standard for Approval**

19 PAGA settlements must be "fair, reasonable, and adequate in view of PAGA's purposes to
20 remediate present labor law violations, deter future ones, and to maximize enforcement of state labor
21 laws." *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56, 77 (2021). The court must find that the plaintiff
22 "has adequately represented the state's interests, and hence the public interest." *Id.* at 89. The LWDA
23 must be notified of the settlement and be given an opportunity to object. The court may look to parallel
24 class action guidelines to determine what is "fair, adequate and reasonable." *Kullar v. Foot Locker*
25 *Retail*, 168 Cal.App.4th 116, 126 (2008). In that analysis, the court has "broad discretion in making
26 this determination." *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006). Relevant factors
27 may include "the strength of the plaintiffs' case, the risk, expense, complexity and likely duration of
28 further litigation, ... the amount offered in settlement, the extent of discovery completed and the stage

1 of the proceedings, the experience and views of counsel, the presence of a governmental participant
2” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).

3 **B. The Settlement Meets the Standard for Approval**

4 Here, the \$550,000.00 Gross Settlement Amount is reasonable for a group of approximately 450
5 employees. Valle Decl., ¶ 11. A penalty of \$550,000.00 is large enough to punish Defendant for
6 alleged past violations and deter future violations. *Id.* The settlement amount is equivalent to a total
7 penalty amount of approximately \$1,225 per employee and about \$37 per PAGA Pay Period. *Id.* At
8 the same time, the penalty amount is not so large as to be unjust, oppressive or confiscatory,
9 considering the company’s potential exposure explained below. *Id.* The Gross Settlement Amount is
10 also reasonable in light of the facts of the foregoing action, the real risk that no PAGA penalties would
11 be paid, the risk that the Court could reduce PAGA penalties for any violations, and inherent risks
12 and uncertainties associated with PAGA claims. *Id.* at ¶ 12.

13 When calculating civil penalties under PAGA, Plaintiff only applied the penalty amounts
14 associated with the initial violations under PAGA. This is because a defendant is not subject to
15 heightened penalties for any Labor Code violations unless it is “notified by the Labor Commissioner
16 or any court that it [is] subject to the California Labor Code.” *Bernstein v. Virgin Am., Inc.*, 3 F.4th
17 1127, 1141 (9th Cir. 2021); *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008). Here,
18 Plaintiff’s counsel researched the existence of prior PAGA actions against Defendant, but did not
19 find that the Labor Commission had previously taken any action against Defendant, and no jury award
20 or motion for summary judgment/adjudication had been issued against Defendant for wage and hour
21 violations. Valle Decl., ¶ 13. As such, Plaintiff applied the penalty amounts associated with initial
22 violations based on the risk that the Court would find Defendant was not subject to heightened
23 penalties. *Id.*

24 Defendant provided Plaintiff’s counsel with the timekeeping and pay records for the Aggrieved
25 Employees, which was analyzed by an expert hired by Plaintiff’s counsel. Valle Decl., ¶ 7. The Parties
26 estimate that there are 14,887 total PAGA Pay Periods during the PAGA Period. *Id.* at ¶ 14. If the
27 Court stacked different types of penalties in each PAGA Pay Period and Plaintiff could recover
28 penalties for every violation, then the maximum potential exposure would be as follows:

1 Meal Period Claims: Plaintiff alleged that Defendant failed to provide employees with meal
2 periods if they worked over 5 hours in one shift; and failed to pay meal period premiums for these
3 violations. Valle Decl., ¶ 15. An expert retained by Plaintiff reviewed the records and found that
4 about 72.8% of pay periods had at least one shift over 5 hours in length where no first meal period
5 was provided, resulting in approximately \$1,083,800 as the total amount of penalties for meal period
6 violations. *Id.*

7 Rest Break Claims: Plaintiff alleged that Defendant failed to provide employees with rest breaks
8 if they worked over 3.5 hours in one shift; and failed to pay rest break premiums. Valle Decl., ¶ 16.
9 Defendant recorded rest breaks, but the records indicated that employees waived their rest breaks or
10 were provided with rest breaks. *Id.* Due to the presence of the records indicating waived breaks,
11 employee testimony would be critical to proving this claim. *Id.* Plaintiff's counsel spoke to the other
12 employees, and found that only about 45% stated that they were not provided with rest breaks during
13 their shifts. *Id.* As such, Plaintiff calculated \$670,000 as the total amount of penalties for rest break
14 violations. *Id.*

15 Regular Rate of Pay Claims: Plaintiff alleged that Defendant paid employees in four-hour
16 increments, but when an employee worked less than 4 hours, it paid the employee for the exact time
17 that employee worked plus a "shift premium" equal to the time of the 4-hour shift that the employee
18 did not work, but failed to include shift premiums into the regular rates of pay when paying overtime.
19 Valle Decl., ¶ 17. For example, if an employee worked 3.5 hours during one shift, it paid the employee
20 3.5 regular hours, plus a shift premium of 0.5 hours. *Id.* Plaintiff calculated \$223,400 as the total
21 amount of penalties for regular rate violations after comparing pay periods with overtime and shift
22 premiums. *Id.*

23 Minimum Wage Claim: For Plaintiff's minimum wages claims, Plaintiff alleged that (1)
24 Defendant forced airport security employees to undergo mandatory security checks with the TSA,
25 but did not compensate them for this time; and (2) Defendant required employees to monitor their
26 personal cell phones before their shift and communicate with supervisors without compensation for
27 this time. Valle Decl., ¶ 18. Plaintiff's counsel spoke to Defendant's employees regarding their
28 experiences working for Defendant, and Plaintiff's counsel found that about 15% of employees would

1 have been subject to the security screenings and about 30% of employees would have been subject
2 to the phone requirement. *Id.* Because there was crossover between these two groups of employees,
3 Plaintiff's counsel assumed that a maximum of 45% of all employees could have alleged at least one
4 of these claims. *Id.* Thus, Plaintiff assumed \$1,116,000 in total penalties for these violations. *Id.*

5 Reimbursement of Business Expenses: Plaintiff alleged that Defendant (1) required employees
6 for using their personal cellphones to respond to communications from supervisors and keep apprised
7 of changes in flight times during their shift; and (2) required employees to regularly clean their
8 uniforms at their own expense. Valle Decl., ¶ 19. However, Plaintiff alleges that Defendant failed to
9 reimburse employees for these expenses. *Id.* Again, Plaintiff found that about 30% of employees
10 could have alleged the personal phone claim. *Id.* Furthermore, since wearing uniforms was
11 mandatory, Plaintiff assumed that the uniform claim would apply to 100% of employees, and
12 calculated \$1,488,700 in total penalties for reimbursement. *Id.*

13 Derivative Wage Statement and Waiting Time Claims: Plaintiff calculated \$3,721,800 as the total
14 amount of penalties for wage statement. Valle Decl., ¶ 20. Furthermore, about 293 employees had
15 been terminated during the PAGA Period, resulting in \$29,300 in total penalties for waiting time
16 violations. *Id.*

17 Assuming Plaintiff could fully prove each violation according to the violations rates that are
18 included herein and recover \$100.00 for every violation, the total amount of alleged PAGA penalties
19 against Defendant would be approximately \$8,333,000. Valle Decl., ¶ 21. However, Defendant
20 disputed the expert's calculations, and argued it could have defeated Plaintiff's claims due to the
21 following: (1) Defendant's supervisors notified employees of their schedule, face-to-face, while at
22 work so they did not need to communicate with supervisors off-the-clock or using personal devices
23 regarding scheduling; (2) it has no policy or practice requiring employees to use phones at work or
24 to contact supervisors for any reason, so any communications sent or received were a matter of
25 convenience that was choice for these employees; (3) it issued uniforms to employees without charge,
26 did not require them to tailor or professional clean the uniforms, and such uniforms could be cleaned
27 with other laundry; (4) it had no control over TSA-checkpoints and did not operate them, so it did not
28 need to compensate employees for this time; (5) it trained employees regarding airport employee

bypasses of TSA security checkpoints so employees did not need to wait at TSA security checkpoints; (6) the payment of the shift premiums compensated employees for extra time spent due to the sporadic schedule of flights and for their rest break, and was not incentive based compensation akin to a bonus; (7) it had compliant rest break policies and did not require employees to perform any work during rest breaks; (8) even if there was no evidence a rest break was not recorded, it was not required to record rest breaks by law, and Defendant scheduled shifts in four-hour increments so that employees could pay employees for such time, and employees would have ample time to take breaks between scheduled flights; (9) it had compliant meal period policies, and entered into on-duty meal period agreements and meal period waivers with nearly all employees; (10) any delay in providing meal periods was due to airline flights being delayed or re-scheduled through no control of Defendant, and on-duty meal period agreements would exempt Defendant from liability; (11) employees who worked at airport-adjacent warehouses received compliant meal periods as shown in their records; (12) employees were scheduled in 4 hour shifts to give them time to take a meal period between both shifts; (13) many employees did not work shifts long enough to entitle them to breaks; and (14) Defendant followed TSA guidelines regarding security procedures for its employees. *Id.* at ¶ 22. Additionally, when Plaintiff's counsel spoke to employees about each of Plaintiff's claims, Plaintiff's counsel also found that: (1) employees understood Defendant's 4-hour shift payment practice, and did not consider this pay to be an incentive; and (2) many employees stated that were provided meal periods or chose to waive them to go home earlier. *Id.* As such, the settlement negotiations took the risk that these defenses and lack of employee testimony could prevent Plaintiff from obtaining any recovery, or that such recovery would be greatly reduced. *Id.*

The settlement negotiations also took into consideration that Defendant could also further reduce penalties based on derivative violations if it could defeat Plaintiff's underlying claims. Valle Decl., ¶ 23. This was especially true here, as \$3,751,100 of penalties (nearly 45% of the total exposure) came from penalties associated with derivative §§ 226 and 203 violations, and would not be recoverable if Plaintiff failed to prove his other claims. *Id.*

Another crucial factor in evaluating the value of a PAGA-only case is that all PAGA awards are discretionary and can be reduced by the Court. Valle Decl., ¶ 24. Under Labor Code § 2699(e)(2),

1 the Court can reduce the PAGA penalties “if, based on the facts and circumstances of the particular
2 case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
3 confiscatory.” In other words, were this matter to go to trial, any award granted would be at the
4 discretion of the Court. *Id.* In settling this case, Plaintiff recognizes that, although he believes there
5 would be no persuasive grounds to reduce the penalties, the Court could determine otherwise and
6 significantly reduce the PAGA penalties, especially where Defendant’s meal and rest period policies
7 were largely compliant, Defendant recorded meal and rest breaks provided to and waived by
8 employees, most employees executed on-duty meal agreements and meal period waivers, and
9 Defendant complied with TSA guidelines. Valle Decl., ¶ 24. Plaintiff also anticipated that Defendant
10 would argue that it overpaid employees due to the 4-hour shift scheduling and off-set any
11 underpayment. *Id.* The wide range of potential recovery and the additional delays and risks of trial
12 justified settling for a reasonable amount of recovery. *Id.*

13 **VI. THE COURT SHOULD APPROVE THE REQUESTED ATTORNEY’S FEES**

14 For their efforts and the substantial risks Plaintiff’s counsel undertook in obtaining a settlement
15 that benefits the LWDA and Aggrieved Employees, the Parties allocated one-third of the Settlement
16 Amount to Plaintiff’s counsel for reasonable attorneys’ fees, plus actual litigation costs. These fees
17 are warranted under the law and within the range of fees commonly awarded in similar cases.

18 **A. Plaintiff’s Counsel Is Entitled to Recover Attorneys’ Fees Under the Common** 19 **Fund Doctrine in This Quasi Qui Tam Action.**

20 PAGA provides that a Plaintiff is entitled to recover reasonable attorneys’ fees, expenses, and
21 costs under Labor Code § 2699(g)(1), which provides that “[a]ny employee who prevails in any action
22 shall be entitled to an award of attorneys’ fees and costs, including any filing fee paid pursuant to . .
23 . Section 2699.3.” As discussed below, in a *qui tam* action, reasonable attorneys’ fees and costs are
24 typically awarded under the common fund doctrine, where, as here, the litigation creates a common
25 fund of money in a specific amount for the benefit of others.

26 A PAGA action is a *quasi qui tam* action because the statute allows the employee plaintiff, acting
27 as the proxy of the state’s labor law enforcement agency, to sue his employer for Labor Code
28 violations and recover civil penalties that otherwise would have been assessed and collected by the

1 LWDA. *Iskanian*, *supra*, 59 Cal. 4th at 380. “A PAGA representative action is therefore a type of
2 *qui tam* action.” *Id.* at 382. Indeed, the majority of the civil penalties recovered in a PAGA action
3 are paid to the state, with the smaller portion paid to the aggrieved employees (*e.g.* 75% to the state,
4 and 25% to the aggrieved employees). Lab. Code § 2699(i).

5 As here, where a common fund is created in a *qui tam* action by the successful litigation of a
6 plaintiff and his attorneys, the attorneys are entitled to recover their fees from the common fund.
7 *Bank of America v. Cory* (1985) 164 Cal.App.3d 66, 89-91. In *Bank of America*, attorneys were
8 awarded their fees from the common fund in a taxpayer action to enforce unclaimed property law.
9 Affirming the award, the Court stated:

10 Those benefiting from the recovery of the fund, in this case some
11 depositors and eventually the People of the State of California, must bear
12 their share of the cost of litigation. Fees for taxpayers’ attorneys will be
13 deducted from the judgment, and each claimant’s share reduced
14 proportionately.

15 *Id.* at 91.

16 Likewise, in this case, through the successful efforts of Plaintiff and his attorneys, a common
17 fund was created in the amount of \$550,000.00 for the benefit of Defendant’s employees and the
18 State of California. Thus, these beneficiaries must bear their share of the costs and attorneys’ fees
19 which will be deducted from the Settlement Amount under the common fund theory.

20 In *Laffitte*, the California Supreme Court held that it is not an abuse of discretion for a trial court
21 to utilize the percentage method for calculating an attorneys’ fee award in a common fund case, which
22 this case is. *Laffitte v. Robert Half Int’l Inc.*, 1 Cal. 5th 480, 503 (2016); *see also Serrano v. Priest*,
23 20 Cal. 3d 25, 35-40 (1977); *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110
24 (1995) (the common fund doctrine has been applied “consistently in California when an action
25 brought by one party creates a fund in which other persons are entitled to share.”). The Court held
26 “that when class action litigation establishes a monetary fund for the benefit of the class members,
27 and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
28 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.”

1 *Laffitte, supra*, 1 Cal. 5th at 503. Explaining that the percentage method “is a valuable tool” for trial
2 courts to calculate attorneys’ fees, the Court extolled “[t]he recognized advantages” of the method,
3 such as “ease of calculation, alignment of incentives between counsel and the class, a better
4 approximation of market conditions in a contingency case, and the encouragement it provides counsel
5 to seek an early settlement and avoid unnecessarily prolonging the litigation.” *Id.* (citations omitted).

6 In applying the common fund doctrine, California courts routinely award attorneys’ fees
7 equaling one-third of the common fund’s total potential value. *See, e.g., Laffitte v. Robert Half Int’l*
8 *Inc.*, 231 Cal. App. 4th 860, 878 (2014) (“trial court’s use of a percentage of 33 1/3 percent of the
9 common fund is consistent with [] awards in other class action lawsuits” and “studies show that ...
10 fee awards in class actions average around one-third of the recovery”), *aff’d by Laffitte, supra*, 1
11 Cal. 5th at 489; *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) (“Empirical studies
12 show that, regardless of whether the percentage method or the lodestar method is used, fee awards
13 in class actions average around one-third of the recovery”); Eisenberg & Miller, *Attorney Fees in*
14 *Class Action Settlements: An Empirical Study*, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-
15 78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that a
16 one-third fee is consistent with market rates).

17 One-third of the common fund is also reasonable because it best reflects the market rate for
18 contingency fees. *See Lealoe, supra*, 82 Cal. App. 4th at 47 (“attorneys providing the essential
19 enforcement services must be provided incentives roughly comparable to those negotiated in the
20 private bargaining that takes place in the legal marketplace”). Fees representing up to forty percent
21 of the recovery reflect the rate negotiated in “typical contingency fee agreements [which] provide
22 that class counsel will recover 33% if the case is resolved before trial and 40% if the case is
23 tried.” *Fernandez v. Victoria Secret Stores LLC*, 2008 U.S. Dist. LEXIS 123546, *55-57 (C.D. Cal.
24 July 21, 2008) (citing an academic study collecting contingency fee agreements and finding that a
25 fee award constituting 34% of the fund is reasonable on that basis). Because the negotiated fee
26 structure mimics the marketplace, it is reasonable and should be approved.

27 Here, Plaintiff’s counsel efficiently litigated this matter, making the entire Net Settlement
28 Amount available to Aggrieved Employees with no reversion to Defendant. Valle Decl., ¶ 43. The

percentage of fees sought by Plaintiff's counsel is in line with awards in similar cases in California and is reasonable for the benefit obtained for Aggrieved Employees in this case. *Id.*

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

Indeed, advocating for a one-third percentage in a PAGA settlement, rather than a recovery based on lodestar plus a multiplier means that in some cases, Plaintiff's counsel might come out ahead and in some cases they might come out behind. This is a case where Plaintiff's counsel will come out behind in requesting 1/3 percentage when viewing the case through the prism of a lodestar cross-check. Valle Decl., ¶ 44.

Despite recognized limitations of the so-called lodestar method, California and federal courts acknowledge the utility of a lodestar "cross-check" for common fund awards. *Lealoe, supra*, 82 Cal.App.4th at 46-47. In *Laffitte*, the court permitted use of a "lodestar cross check," by which the trial court would first select a percentage of the common fund for the fee award, and then verify that the percentage chosen is fair and reasonable in light of the attorney hours spent on the case. *Laffitte, supra*, 1 Cal. 5th at 504. While some "multiplier" would be expected, the multiplier should be "evaluated for reasonableness;" "rough parity" between the lodestar and the percentage-based recovery would make sense. *Id.* at 496. Use of the lodestar cross-check, the court explained, represents a "blending of the two fee calculation methods" (percentage and lodestar), where "one method is used to confirm or question the reasonableness of the other's result." *Id.* at 497. The court, however, did not require a lodestar cross check, explaining that courts "retain the discretion to forego a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee." *Id.* at 505.

California's lodestar/multiplier method is a two-step process of fee calculation under which the court first determines a lodestar value for the fees by multiplying the time reasonably spent by plaintiff's counsel on the case by a reasonable hourly rate. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 556-557 (2014). The starting point in determining the appropriate hourly fee is to discern the prevailing rate for similar work in the pertinent geographic region. *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1096-97 (2000) (using prevailing hourly rate in community for comparable legal services even though party used in-house counsel); *see also* Herr, David F., *Manual*

1 for *Complex Litigation*, § 14.122 (“reasonable fees . . . are to be calculated according to the prevailing
2 market rates in the relevant community.”).

3 Here, Plaintiff’s counsel’s hourly rates are comparable to those charged by other class action
4 plaintiff’s counsel and the firms defending class actions. Valle Decl., ¶ 43. Further, the total attorney
5 hours expended on this action are reasonable and in line with comparable cases. *Id.* Plaintiff’s
6 counsel billed a total of 289.6 hours prosecuting this case as of December 17, 2024. Valle Decl., ¶
7 42. The firm dedicated significant resources to this case by dividing the tasks required according
8 to skill level; the professional hours generated by each attorney are not unreasonable or duplicative.
9 *Id.*

10 Multiplying the total hours billed by Plaintiff’s counsel in this litigation by their reasonable
11 hourly rates yields a lodestar of \$190,245.00. Valle Decl., ¶ 42. As this amount exceeds the fee
12 amount requested, Plaintiff’s counsel accordingly does not request a lodestar multiplier. *Id.*, at ¶
13 44. The fees sought by Plaintiff’s counsel are reasonable.

14 **VII. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE**

15 The Parties agreed to hire Phoenix Settlement Administrators as the Settlement Administrator.
16 The Settlement Administrator is responsible for calculating and mailing the settlement payments to
17 the Aggrieved Employees, mailing Exhibit 1A to each Aggrieved Employee (in English and Spanish)
18 along with the settlement payments, disbursing other payments as ordered by the Court, and
19 performing such other duties as described in the Agreement. *See generally* Settlement Agreement.
20 Following the granting of approval, Phoenix Settlement Administrators’ duties will continue through
21 final accounting. *Id.* The requested amount of \$5,500.00 for services to be rendered is fair and
22 reasonable and should be granted.

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1 **VIII. CONCLUSION**

2 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement pursuant
3 to PAGA in this Action.

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Dated: December 17, 2024

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AEGIS LAW FIRM, PC



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By _____

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Alex J. Valle

Attorneys for Plaintiff Leo Angel Martinez

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