JAMIE SERB (SBN 289601)
jamie@crosnerlegal.com
NIKKI TRENNER (SBN 316007)
nikki@crosnerlegal.com
ZACHARY M. CROSNER (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

Attorneys for Plaintiff PHILLIP INIGUEZ

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

PHILLIP INIGUEZ, on behalf of the State of California, and others similarly situated and aggrieved, Plaintiff, v. REVCHEM COMPOSITES, INC., a California Corporation; And DOES 1-100, inclusive Defendants.	Case No.: CIVSB2218779 Assigned for all purposes to: Hon. Kevin Lee Dept. S-26 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT UNDER PRIVATE ATTORNEYS GENERAL ACT** Date: September 2, 2026 Time: 8:30 a.m. Dept.: S-26

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Plaintiff Phillip Iniguez hereby seeks Court approval of a proposed settlement of claims brought under the Private Attorneys General Act ("PAGA") against defendant Revchem Composites, Inc. ("Revchem" or "Defendant"). Consistent with PAGA, the proposed settlement releases claims under PAGA only and has no impact on the individual claims of any allegedly aggrieved employee other than Plaintiff. Since the settlement resolves nothing more than claims under PAGA, it requires only a one-step review and approval process by the Court, and for the reasons discussed below, the proposed settlement is fair, reasonable, and adequate, and advances the statutory purposes of PAGA. Plaintiff respectfully requests the Court approve the Settlement in its entirety.

II. BACKGROUND

Defendant Revchem provides composite materials such as resin, additive, fabric, and filler to customers across California. Plaintiff Iniguez worked for Defendant as a non-exempt warehouse associate and delivery driver from approximately February 3, 2020 to October 22, 2021 at Defendant's San Fernando location. While employed with Defendant, Plaintiff alleges he was subjected to a number of wage and hour violations. [Declaration of Nikki Trenner ("Trenner Decl."), ¶ 4.]

After notice to the LWDA and Defendant, and exhausting administrative remedies Plaintiff filed a class action and PAGA representative complaint against Revchem on September 27, 2022, seeking damages and civil penalties for the following alleged wage and hour violations: (a) failure to pay all wages due, including minimum and overtime wages; (b) failure to provide meal and rest periods; (c) failure to provide complete and accurate wage statements; (d) failure to reimburse expenses, and (e) failure to pay wages due on separation of employment. The Court subsequently granted Defendant's motion to compel arbitration and sent Plaintiff's individual claims to arbitration, dismissed the class claims without prejudice, and stayed the representative PAGA claims. On May 11, 2023 Plaintiff then filed his Demand for Arbitration with JAMS on his individual claims, including his individual PAGA claim. [Trenner Decl., ¶ 5; Exh. 3.]

After meeting and conferring, the Parties eventually agreed to attempt mediation before expending significant time and expense on the arbitration, and agreed to stay the arbitration pending mediation.. The Parties also agreed to and did informally exchange information to permit both sides to evaluate Plaintiff's allegations and pursue meaningful settlement negotiations. Through this informal discovery, Defendant 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 Defendant's time keeping and reporting policies and meal and rest break policies, among other pertinent materials. [Trenner Decl., ¶ 6.]

In August 2025, the Parties mediated the case with Scott Radovich, Esq., 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 penalties, 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 Defendant's defenses, and the Parties' data analyses and conclusions based on data provided by Defendant. 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, Defendant will pay a non-reversionary settlement amount of $140,000 (the "Gross Settlement Amount" or "GSA"). The GSA is inclusive of payments to the LWDA and Aggrieved Employees, costs of settlement administration (estimated at no more than $3,250), and reasonable attorney's fees and costs.[1] After payment of settlement administration

[1] Plaintiff's counsel is requesting 1/3 of the GSA ($46,666.67) in fees and costs of $13,056.51. Plaintiff requests $5,000 for a service award. [Trenner Decl., ¶ 8.]

costs, and reasonable attorney's fees and costs from the GSA, Plaintiff presently estimates about $72,026.82 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five percent of the NSA (about $54,020.11) will go to the LWDA, and the remaining 25% (about $18,006.71) will be distributed to the Aggrieved Employees in proportion to the total number of Pay Periods each individual worked during the PAGA Period of July 24, 2021 to August 27, 2025. The average award currently is estimated at about $264 per individual, and it is estimated awards will range from about $2.54 to $538. [Trenner Decl., ¶ 8.]

B. PAYMENT AND THE NOTICE

The Parties propose using Phoenix Settlement Administrators as the Settlement Administrator. Phoenix has extensive experience administering PAGA settlements and has agreed to cap its fees at $3,250. [Declaration of Jodey Lawrence, ¶¶ 2-16; Exhs. A-B.] Revchem will fund the GSA within 14 days after the Effective Date, and within 14 days of funding Phoenix will mail a Notice and settlement check to all Aggrieved Employees via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in Revchem's records. Aggrieved Employees need not submit claim forms and will automatically receive a Notice and settlement check. Settlement checks will be negotiable for 180 days, after which time any unclaimed residual funds will be forwarded to the California State Controller's Unclaimed Property Fund, subject to Court approval. [Trenner Decl., ¶ 9; Exh. 2.]

C. THE RELEASE

The California Supreme Court has explained that a judgment in "a representative action brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 . . . is binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." Arias v. Superior Court (2009) 46 Cal.4th 969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty claims brought under PAGA. Under Arias, the order the Parties request the Court enter is intended to be "binding not only on the named employee plaintiff but also on government agencies and any aggrieved employee not a party to the proceeding." The Settlement Agreement protects the rights of the Aggrieved Employees to bring their own individual claims should they wish. For these reasons, the Parties contend the release narrowly applies only to the PAGA claims alleged, and the Settlement Agreement specifically provides the Release is inapplicable to any claims other than those brought under PAGA. [Trenner Decl., ¶ 10.]

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

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

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

A. NATURE OF THE ALLEGED VIOLATIONS

Plaintiff first alleges Revchem failed to pay for all overtime wages due and owing, and alleges Aggrieved Employees were paid additional non-discretionary compensation such as non-discretionary bonuses that Defendant failed to properly incorporated into the regular rates of pay for purposes of calculating overtime pay. "An employee's 'regular rate of pay' for purposes of Labor Code § 510 and the IWC wage orders is not the same as the employee's straight time rate (i.e., his or her normal hourly wage rate). Regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly compensation the employee has earned." Alvarado v. Dart Container Corp. (2018) 4 Cal. 5th 542, 553. Plaintiff also alleges Defendant underpaid Aggrieved Employee for the sick pay for the same reasons, as sick pay likewise must be paid at the "regular rate" of pay rather than the base hourly rate. Labor Code § 246(l); Flores v. Dart Container Corp. (E.D. Cal. May 28, 2020) No. 2019CV00083 WBS EFB, 2020 WL 2770073, at *3 (holding plaintiff stated a claim for unpaid wages where the complaint alleged she was not paid the regular rate for sick leave taken). [Trenner Decl., ¶ 11.]

Plaintiff next alleges that Defendant had a policy and practice of failing to provide compliant meal and rest periods. Plaintiff alleges he and other Aggrieved Employees regularly suffered these violations directly by getting meal breaks late, having them cut short, missing first meal breaks entirely, and not being provided with second meal breaks. Plaintiff also claims Defendant required employees, including Plaintiff, to "waive" their second meal periods when they worked shifts over 10 hours with blanket waivers required as a condition of employment. Plaintiff further contends Defendant failed to fully release employees from all employer control during meal and rest breaks by prohibiting certain activities, such as napping, such that the breaks were not compliant. Further, Plaintiff alleges employees did not receive full 10 minute rest breaks because they spent part of their rest break traveling to and from their assigned work station and the break room. [Trenner Decl., ¶ 12.]

On the expense reimbursement claim, Plaintiff contends employees had to use personal cell phones, and that employees regularly were required to use their personal phones while working to respond to phone calls and text messages from supervisors for work-related purposes. An employer must reimburse employees for use of personal devices, and if the employee has an unlimited monthly plan, then the employer must reimburse an amount that equates to the employee's percentage of use for work. Cochran v. Schwan's Home Serv. (2014) 228

Cal.App.4th 1137. [Trenner Decl., ¶ 13.]

Plaintiff also brings claims derivative of the foregoing claims, including a derivative wage statement claim based on the failure to pay all wages due, and a claim for failure to pay all wages due and owing upon separation of employment under Labor Code §§ 201-203. [Trenner Decl., ¶ 14.]

B. NUMBER OF ALLEGED VIOLATIONS AND POTENTIAL PENALTIES

For mediation, Revchem indicated it employed approximately 68 non-exempt employees in California during the relevant time frame, and these individuals worked approximately 7,095 pay periods during that time. Based on the data provided by Defendant, Plaintiff estimated Defendant's maximum PAGA exposure at approximately $2,358,400, including approximately $85,100 on unpaid/underpaid overtime claims; $170,200 on the meal break claims, $681,100 on the rest break claims, $709,500 on the expense reimbursement claims, about $709,500 on the derivative claims for wage statement violations and $3,000 for failing to timely pay wages on separation of employment. [Trenner Decl., ¶¶ 15-16.]

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

On the unpaid and underpaid overtime wage claims, Defendant emphasized its timekeeping and payroll policies are fully compliant with California law, and that it captured and paid for all hours worked by its employees at the correct hourly rates. On the unpaid overtime issues, Defendant again pointed to its compliant time and payroll policies and argued many of the pay codes at issue did need to be included in a regular rate calculation as they related to discretionary payments and otherwise were not intended as additional compensation. Clarke v. AMN Services, LLC (9th Cir. 2021) 987 F.3d 848, 856 ("determining whether a per diem must be included in the regular rate of pay is a case-specific inquiry that turns on whether the payments function to reimburse employees for expenses or instead operate to compensate employees for hours worked"). [Trenner Decl., ¶ 17.]

On Plaintiff's meal and rest break claims, Revchem offered multiple defenses. First, it emphasized it authorized and permitted all necessary breaks, and that employees received full uninterrupted lunch periods as reflected in the time records. Defendant further argued that it relieved employees of all employer control while they were on their breaks and that employees were free to spend the time as they wished. Defendant further maintained that, in light of its compliant policies, whether a class member missed a meal period, received a late meal/rst period, or missed a rest break would have been aberrational and against company policy. Thus, per Defendant, these issues are not amenable to representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant. Defendant further argued that its meal break waivers were valid and enforceable, and that employees voluntarily and effectively waived their right to a second meal period on shifts of 10-12 hours. Finally, Defendant argued that employees received full 10 minute rest breaks and that time spent getting to and from the break room was in addition to, rather than part of, the rest break time. [Trenner Decl., ¶ 18.]

For Plaintiff's expense reimbursement claim, Revchem emphasized its written policies prohibited employees from using their own phones while on the clock and working, and there would be no need for employees to use their personal phones to communicate with supervisors at the job site. Per Revchem, any use of personal cell phones would have been purely for personal convenience and not reimbursable as a "necessary" business expense. [Trenner Decl., ¶ 19.]

On the alleged derivative violations of Labor Code § 226 (wage statement violations) and §§ 201-203 (waiting time penalties), both claims, since they are entirely derivative, will rise or fall along with the primary claims, in addition to being subject to "good faith" and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay living wages). Accordingly, Plaintiff had to discount the value of these claims significantly in light of these multiple potential defenses. Defendant also contended a substantial discount should be applied to the civil penalties for these derivative (i.e., "stacked") violations, as it would be unfair to penalize Defendant multiple times for the same violation. [Trenner Decl., ¶ 20.]

Defendant also emphasized PAGA gives the Court wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(h). Several state and federal courts in California have applied significant reductions to PAGA civil penalties even after plaintiffs prevailed on the merits. In Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXlS 154590, *8-9, for instance, the district court reduced the potential penalties by over 82% after a bench trial. More recently, in Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of just $5 per pay period, a 90% reduction, which decision was upheld on appeal. In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial). [Trenner Decl., ¶ 21.]

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

Although Plaintiff and his counsel believe they could have prevailed, there was no such guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits on all claims, securing the maximum theoretical civil penalties, and appellate risks all are factored into the equation, the settlement value is reasonable and supported. Of course, to recover anywhere near the maximum penalties Plaintiff would have to shoot the moon and win both liability and secure maximum penalties on all claims for every single pay period at issue, which, for the reasons discussed, is unlikely. Given Defendant's various procedural and merits defenses, as well as the substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed settlement is reasonable. [Trenner Decl., ¶ 23.]

Moreover, the recovery is in line with a number of other PAGA settlements approved by

California courts. McLeod v. Bank of Am., N.A., No. 16-CV-03294-EMC, 2018 U.S. Dist. LEXIS 195314, 2018 WL 5982863, at *4 (N.D. Cal. Nov. 14, 2018) (finding $50,000 PAGA allocation for claims estimated at $4.7 million — approximately 1.1% — adequate); Smith v. Kaiser Found. Hosps., 2020 WL 5064282, at *17 (S.D. Cal. Aug. 26, 2020) (finding that PAGA award that was 2.4% of maximum estimated value of PAGA claims was not "unfair, inadequate, or unreasonable given the risks of continued litigation"); Gilmore v. McMillan-Hendryx Inc., 2022 WL 184004, at *4 (E.D. Cal. Jan. 20, 2022) (PAGA award of 4.2% of the maximum estimated value of PAGA claims and 2.3% of the total settlement amount was "not unreasonable and weighs in favor of settlement"); North v. Superior Hauling & Fast Transit, Inc., No. EDCV 18-2564 JGB (KKx), 2020 WL 12967997, at *4 (C.D. Cal. May 29, 2020) (approving settlement that included PAGA average payout of $21.01).

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 246, 250 ("even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims).

In sum, when the risks of litigation, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, the Court's substantial discretion to reduce any penalty award all are accounted for, it is clear a settlement amount of $140,000 for the PAGA claims is within the ballpark of reasonableness, furthers the purposes underlying PAGA, and approval is appropriate.

V. SUBMISSION TO THE LWDA

Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and notified the LWDA of this approval hearing. [Trenner Decl., ¶ 24; Exh. 4.] Accordingly, the LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings v. Open Door Marketing, LLC, 2018 WL 4773057, at *9 ("Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement."); Jordan v. NCI Group, Inc., 2018 WL 1409590, at *3 ("Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and no comment or objection has been received.").

VI. PLAINTIFF'S ENHANCEMENT AWARD

Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of $5,000 for his service in bringing these claims on behalf of the State and Aggrieved Employees, in addition to the individual settlement he reached with Defendant in exchange for dismissal of his individual arbitration. The request is reasonable given the risks he undertook on behalf of the State and Aggrieved Employees, and by contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent employees, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing himself at risk of discrimination by future prospective employers. As set forth in more detail in his declaration filed herewith, among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. [Declaration of Phillip Iniguez, ¶¶ 2-8; Trenner Decl., ¶ 25.] Accordingly, the requested enhancement payment to Plaintiff is appropriate and justified as part of the settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from $2,000 to $25,000).

VII. THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE

For their efforts and the contingent risk undertaken in obtaining a common fund settlement that benefits the LWDA and Aggrieved Employees, 1/3 of the gross settlement, or $46,666.67, is allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs which amount to $___. These fees and costs are warranted under the law and within the range of fees commonly awarded in similar cases.

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

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

"A *qui tam* action is one brought under a statute that allows a private person to sue as a private attorney general to recover damages or penalties, all or part of which will be paid to the government." People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487, 491- 492. As our Supreme Court affirmed, a PAGA action is a *qui tam* action because the statute allows the employee plaintiff, acting as the proxy of the State's labor law enforcement agency, to sue his or her employer for Labor Code violations and recover civil penalties that otherwise could only be assessed and collected by the LWDA. Kim v. Reins Int'l California, Inc. (2020) 9 Cal.5th 73; Iskanian, 59 Ca1.4th at 380-82 ("[a] PAGA representative action is therefore a type of qui tam action"). Indeed, the majority of the civil penalties recovered in a PAGA action are paid to the State, with a smaller portion paid to the Aggrieved Employees (e.g. 75% paid to the state; 25% paid to the Aggrieved Employees). Lab. Code § 2699(i). As here, where a common fund is created in a *qui tam* action by the successful litigation of a plaintiff and his attorneys, the plaintiff's attorneys are entitled to recover their fees from the common fund. Bank of America v. Cory (1985) 164 Cal.App.3d 66, 89-91.

Through the successful efforts of Plaintiff and his attorneys here, a common fund was created in the amount of $140,000 for the benefit of the Aggrieved Employees and the State. Thus, these beneficiaries should bear their share of the costs and attorney's fees out of the overall amount in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

Not long ago, the California Supreme Court upheld the use of the common fund theory of recovery for attorney's fees in Laffitte v. Robert Half Int'l Inc. (2016) 1 Ca1.5th 480, 506. In Laffitte, the Supreme Court upheld an award of attorney's fees of one-third of the $19 million gross settlement (*e.g*., awarded $6.33 million in fees) under the common fund theory of recovery. Lafitte is consistent with prior decisions recognizing "when a number of persons are entitled in common to a specific fund, and an action brought by . . . plaintiffs for the benefit of all results in the creation or preservation of that fund, such . . . plaintiffs may be awarded attorneys' fees out of the fund." Serrano v. Priest (1977) 20 Ca1.3d 25, 34; Boeing, 444 U.S. at 478 ("[A] lawyer who recovers a common fund . . . is entitled to reasonable attorneys' fees from the fund as a whole]; Lealao v. Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 26 ("[f]ee spreading occurs when a settlement or adjudication results in the establishment of a separate or so-called common fund for the benefit of the class").

Accordingly, the common fund doctrine allows a court to award attorney's fees based on a percentage of the total fund created when the fund consists of a "certain or easily calculable sum of money," and California law has long applied the percentage of the recovery method for awarding attorney's fees where a common fund is established. Serrano, 20 Ca1.3d at 34; Bell v.

Farmers Ins. Exch. (2004) 115 Cal.App.4th 715, 726; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1809; Sanders v. City of Los Angeles (1970) 3 Ca1.3d 252, 261-63 (affirming award of attorney's fee based on percentage of recovery).

Awarding attorney's fees of one-third of gross common fund amount is favored by California courts when a fund established for the common benefit of others is involved, such as here. Accordingly, awarding fees on this basis out of the $140,000 GSA, for a total of $46,666.67, is reasonable and appropriate. [Trenner Decl., ¶¶ 26-44.]

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

Despite the recognized limitations of the so-called lodestar method, some California and federal courts acknowledge the utility of a lodestar "cross-check" when assessing a proposed percentage-based fee award. Lealao, 82 Cal.App.4th at 46-47. Under the "lodestar multiplier" method of cross-checking proposed fee awards, the court first ascertains counsel's total "lodestar" amount by multiplying the number of hours reasonably expended by each attorney's reasonable hourly rate, and then enhances or reduces this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree of success achieved. PLCM Group, Inc. v. Drexler (2000) 22 Ca1.4th 1084, 1095-96; Lealao, 82 Cal.App.4th at 43 (court has discretion to use a multiplier to ensure that the "fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation").

Here, Plaintiff's counsel's lodestar is approximately $113,535 based on 142.9 attorney hours spent litigating the case. [Trenner Decl., ¶¶ 30-44; Exh. 6.] On a lodestar basis, the fee request of $46,666.67 results in a base lodestar that is larger than the fees requested on a percentage basis, and therefore there is no request for a lodestar modifier.

C. The Requested Costs Are Fair And Reasonable

Plaintiff's Counsel requests reimbursement of actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the employees, and Plaintiff's Counsel is permitted to recover their litigation costs and expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20

Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of attorneys' fees by . . . [Plaintiffs'] attorneys"). Furthermore, 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 $20,000, Plaintiff's Counsel's actual costs are $13,056.51. [Trenner Decl., ¶¶ 45-46.] This includes filing fees, service of process, court reporter charges, and mediation costs, while waiving photocopying costs, postage, and legal research charges. These costs are reasonable and uncontested, and should be approved.

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 $3,250, approve the proposed distributions to the LWDA and Aggrieved Employees, and enter judgment.

Dated: April 7, 2026

CROSNER LEGAL, PC

Nikki Trenner

____

Nikki Trenner
Jamie K. Serb
Zachary M. Crosner
Attorneys for Plaintiff Phillip Iniguez