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Attorneys for Plaintiff CHARLES KEOPIMPHA

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CHARLES KEOPIMPHA, on behalf of the State of California, and others similarly situated and aggrieved,

Plaintiff,

v.

MANPOWER US INC., a Delaware Corporation; MANPOWERGROUP US INC., a Wisconsin Corporation; HONEYWELL INTERNATIONAL, INC., a Delaware Corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: 22STCV26888 (Lead Case)
23STCV18670 (Related Case)

Assigned for All Purposes to:
Hon. Michael Schultz
Dept. 40

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

Date: August 212025
Time: 8:30 a.m.
Dept.: 40

Reservation ID: 166053299611

Table of Contents

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TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

I. INTRODUCTION

Plaintiff Charles Keopimpha hereby seeks Court approval of a proposed settlement of claims brought under the Private Attorneys General Act ("PAGA") against Manpower US Inc. and Manpowergroup US Inc. ("Manpower") and Honeywell International, Inc. ("Honeywell") (with Manpower, "Defendants"). 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

Manpower is a national staffing agency which employs workers and offers workforce solutions to customers throughout the United States. Plaintiff Keopimpha worked for Manpower and was staffed at Honeywell's Torrance, California facility from July 18, 2022 through October 11, 2022. While purportedly jointly employed with Defendants, Plaintiff alleges he was subjected to a number of wage and hour violations, which Manpower denies. [Declaration of Brandon Brouillette ("Brouillette Decl."), ¶ 4.]

After notice to the LWDA and Defendants, and exhausting administrative remedies, on August 7, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for civil penalties on behalf of the LWDA and all other allegedly "aggrieved employees" under the PAGA for (1) Unpaid Minimum and Overtime Wages, (2) Meal Period Violations, (3) Rest Period Violations, (4) Inaccurate Wage Statements, (5) Unlawful Deductions, (6) Failure to Produce Employment Records, (7) Inaccurate Records, (8) Unreimbursed Business Expenses, (8) Sick Leave Violations, (9) Failure To Provide Supplemental Paid Sick Leave, (10) Seating Violations, (11) Failure to Pay Vested Vacation/Paid Time Off, (12) Failure to Timely Pay All Wages Upon Separation of Employment, (13) Unlawful Agreements-Unlawful Criminal History Inquiries, and (14) Failure to Provide a Safe and Healthful Workplace. The Complaint is the operative complaint in the Action (the "Operative Complaint."). Plaintiff filed the matter on behalf of himself and on behalf of the Aggrieved Employees defined to include all non-exempt, hourly paid persons employed by Manpower who was placed to work and performed work for Honeywell in California during the PAGA Period. Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged. [Brouillette Decl., ¶ 5; Exh. 2.]

Once the case was at issue, the matter was deemed related to an earlier-filed putative class and PAGA action, styled <u>Fernando Allencaster v. Honeywell International, Inc.</u>, Case No. 22STCV26888 ("Allencaster Action"), filed on August 18, 2022 in Los Angeles Superior Court. Manpower is not a party to the Allencaster Action. Thereafter, the Parties began meeting and conferring regarding discovery, potential law and motion, and other case management issues, and eventually agreed to attempt a global mediation of this matter and the Allencaster Action. They also agreed to and did informally exchange information to permit both sides to evaluate Plaintiff's allegations. Through this informal discovery, Defendants provided Plaintiff with information including, inter alia, Plaintiff's personnel file, the number of potential Aggrieved Employees, the number of aggregate pay periods, pay stubs and time records for a sampling of the Aggrieved Employees, and relevant policy documents regarding Defendants' time keeping and reporting policies and meal and rest break policies, among other pertinent materials. [Brouillette Decl., ¶ 6.]

In September 2024, the Parties mediated with Brandon McKelvey, Esq., a respected professional neutral with extensive class action/wage and hour experience, and the mediation was global and covered both this Action and the Allencaster Action, which led to this Agreement to settle the instant Action. Before and during the mediation, Plaintiff and his counsel analyzed, researched, and investigated the potential issues, including matters related to the calculation of damages, trial, and appellate issues and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiff's ability to proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and Defendants' defenses, and the Parties' data analyses and conclusions based on data provided by Defendants. After a contentious day of negotiations, the

Parties reached agreement and subsequently formalized their tentative settlement in the Settlement Agreement now before the Court for approval.[1] [Brouillette Decl., ¶ 7.] A fully executed, true and correct copy of the PAGA Settlement Agreement ("Settlement Agreement") is attached to the Brouillette Declaration as Exhibit 1.

III. SUMMARY OF SETTLEMENT TERMS

A. SETTLEMENT TERMS AND DISTRIBUTION OF PAGA PENALTIES

Under the settlement, Manpower will pay a non-reversionary settlement amount of $80,000 (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 $2,500), and reasonable attorney's fees and costs.[2] After payment of settlement administration costs, Plaintiff's service award, and reasonable attorney's fees and costs from the GSA, Plaintiff presently estimates about $32,759.72 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five percent of the NSA (about $24,569.79) will go to the LWDA, and the remaining 25% (about $8,189.93) will be distributed to the estimated 56 Aggrieved Employees in proportion to the total number of Pay Periods each individual worked during the PAGA Period, with an average award currently estimated at about $146 per individual. [Brouillette 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 $2,500.00. [Declaration of Jodey Lawrence, ¶¶ 2-17; Exhs. A-B.] Manpower will fund the GSA within 14 days of approval, 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 Manpower's records. Aggrieved Employees need not submit claim forms and will automatically receive a Notice and

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[1] There is no overlap between the proposed class/PAGA settlement in the Allencaster Action and this matter. [Brouillete Decl., ¶ 3; Settlement Agreement, § 2.5.]

[2] Plaintiff's counsel is requesting 1/3 of the GSA ($26,666.66) in fees and costs of $8,073.62. Plaintiff requests a reasonable service award of $10,000. [Brouillette Decl., ¶ 9.]

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. [Brouillette Decl., ¶ 9.]

C. <u>THE RELEASE</u>

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." <u>Arias v. Superior Court</u> (2009) 46 Cal.4th 969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty claims brought under PAGA. Under <u>Arias</u>, 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. [Brouillette Decl., ¶ 10.]

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

PAGA requires the Court to "review and approve any settlement of any civil action filed pursuant to this part." Labor Code § 2699(*l*)(2). Recently, the appellate court in <u>Moniz v. Adecco USA, Inc</u>. (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." <u>Id.</u> at 77.

In so holding, <u>Moniz</u> 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 contends Defendants failed to pay all wages due because it rounded employee time punches off to the nearest tenth of an hour, which resulted in the Aggrieved Employees losing a few minutes of compensable hours worked on many shifts despite the fact that time punches were recorded to the nearest minute. Per Plaintiff, this policy violated California law under Camp v. Home Depot U.S.A., Inc. (2022) 84 Cal.App.5th 638, 660 and Woodworth v. Loma Linda University Medical Center (2023) 93 Cal.App.5th 1038, 1056. In Camp, the Court ultimately concluded that "if an employer, as in this case, can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for 'all the time' worked." 84 Cal.App.5th at 660. Here, Plaintiff contends his analysis of the time records suggests employees systematically lost hours worked due to rounding and a corresponding failure to be paid for this time. [Brouillette Decl., ¶ 11.]

Plaintiff also alleges that he and the aggrieved employees did not receive compliant meal periods. Here, he alleges multiple "de facto" violations where employee meal periods either were not provided at all (particularly with respect to second meal periods on shifts of 10+ or 12+ hours), were untimely, or were cut short. Per Plaintiff, his review of the relevant time records suggest regular de facto violations for reasons identified, and his review of the corresponding pay records likewise suggest Defendants did not pay the required one hour of premium pay for these documented violations. For the same reasons, Plaintiff alleges "de facto" rest break violations and that he and the Aggrieved Employees did not receive all required rest breaks (again with respect to third breaks on shifts of 10+ hours), and likewise did not receive the required premium pay when a rest break was missed or non-compliant. [Brouillette Decl., ¶ 12.]

On the expense reimbursement claim, Plaintiff alleges Defendants' management and supervisors regularly called or texted Plaintiff and other employees on their cell phones to communicate with them on work-related issues, and that no reimbursement was paid. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal. App. 4th 1137; Stuart v. RadioShack (N.D. Cal. 2009) 641 F.Supp.2d 901, 903-04 (if an employer "knows or has reason to know that the employee has incurred a reimbursable expense. . . it has the duty to exercise due diligence and take any and all reasonable steps to ensure that the employee is paid for the expense."). [Brouillette 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 failure to pay all wages due and owing upon separation of employment under Labor Code §§ 201-203. [Brouillette Decl., ¶ 14.]

B. NUMBER OF ALLEGED VIOLATIONS AND POTENTIAL PENALTIES

For mediation, Manpower indicated it employed approximately 56 non-exempt employees in California and staffed at Honeywell during the relevant time frame, and these individuals worked approximately 2,660 pay periods during that time. Based on the data provided by Defendants, Plaintiff estimated Defendants' maximum PAGA exposure at approximately $1,332,500 assuming a 100% violation rate on all claims, including approximately $266,600 on the unpaid wage/time rounding claims, about $266,000 on the meal period claims, $266,000 on the rest period claims, $266,000 on the expense reimbursement claims, $266,000 on the wage statement claims, and about $2,500 in civil penalties for failing to timely pay wages on separation of employment. [Brouillette 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

In response to Plaintiff's unpaid wage/rounding claim, Manpower argued it never had any rounding policy during the relevant period, and, alternatively, that any rounding was done by

Plaintiff and other Aggrieved Employees and is entirely neutral in effect and did not deprive Aggrieved Employees of compensable hours worked over time and, accordingly, does not violate California law. See's Candy Shops, Inc. v. Super. Ct. (2012) 210 Cal. App. 4th 889, 901. Beyond that, Manpower argued the timekeeping and payroll policies fully comply with California and that it paid Plaintiff and the Aggrieved Employees for all hours worked the correct rates of pay. [Brouillette Decl., ¶ 17.]

On the meal break claims, Manpower offered multiple defenses. First, it emphasized the applicable written policies were fully compliant, that it authorized and permitted all necessary breaks, and that employees received timely and full uninterrupted lunch periods as reflected in Manpower's time records. Manpower further argued that even to the extent meal or rest breaks were missed or arguably non-compliant, it was in violation of company policy and aberrational, 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 Manpower, any trial on this issue would be unmanageable because of these individualized issues. [Brouillette Decl., ¶ 18.]

As with meal breaks, Manpower argued the applicable rest break policies complied with California law, and that it authorized and permitted employees to take all required rest breaks. Further, per Manpower, in light of the fact that it is not required to maintain a record of rest periods, 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. This arguably would once again make a trial unmanageable since the number of instances an employee missed a rest break would have to be tested on a case by case basis to determine compliance. [Brouillette Decl., ¶ 19.]

On the expense reimbursement claim, Manpower argued there would be no conceivable need for employees to use their own phones while working or for any work-related purposes, and if they did so it was purely for personal convenience rather than business necessity. Thus, per Manpower, no reimbursement was owed as any such expenses were neither "reasonable" nor "necessary" as required under Labor Code § 2802. [Brouillette Decl., ¶ 20.]

Plaintiff also 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 Defendants. 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. Manpower 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 it multiple times for the same violation. [Brouillette Decl., ¶ 21.]

Manpower 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). [Brouillette Decl., ¶ 22.]

Thus, Manpower raised various and multi-layered defenses to each of Plaintiff's claims, anyone of which, if successful, could have derailed Plaintiff's case. And Manpower 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 additional to its merits defenses and arguing trial would be unmanageable, Manpower 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. [Brouillette Decl., ¶ 23.]

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 maximum penalties on all claims for every single pay period at issue, which outcome, for the reasons discussed, is unlikely. Given Defendants' 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. [Brouillette Decl., ¶ 24.]

Moreover, the recovery is in line with a number of other PAGA settlements approved by California courts. The amount further is in line with many other PAGA settlements that have received approval from courts in California. 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"); Hartley v. On My Own, Inc., 2020 WL 5017608, * 4 (E.D. Cal. Aug. 25, 2020) (approving settlement at 3.47% of verdict value of PAGA penalty, resulting in average payment per employee of $61); 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 as well, 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, 91 Cal.App.4th at 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 $80,000 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. [Brouillette Decl., ¶ 25; 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, 2018 WL 4773057, at *9 ("Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement."); Jordan, 2018 U.S. Dist. LEXIS at *7 ("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. THE REQUESTED SERVICE AWARD IS REASONABLE

A modest incentive award for Plaintiff is appropriate under applicable law. See 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). He devoted time and resources to the litigation, provided documents, assisted his counsel with investigating the claims asserted and in preparing for mediation. The service payment provided to Plaintiff as the PAGA representative is typical in PAGA actions and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563 F.3d 948, 958-59 (incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.").

Here, the Settlement Agreement provides for an enhancement of up to $10,000.00 to Plaintiff. This request is reasonable given the risks he undertook on behalf of the Aggrieved Employees. By contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the Aggrieved 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 stated in his declaration in support of approval, 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 Charles Keopimpha, ¶¶ 2-9; Brouillette Decl., ¶ 26.]

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 $26,666.66, is allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs of $8,073.62. 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 recently 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 $80,000 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 $172,500 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 $80,000 GSA, for a total of $26,666.66, is reasonable and appropriate. [Brouillette Decl., ¶¶ 27-47.]

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 $34,315.00, based on 47.6 attorney hours spent litigating the case. [Brouillette Decl., ¶¶ 30-47; Exh. 5.] On a lodestar basis, the fee request of $26,666.66 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. However, this suggests the fees requested on a percentage basis are reasonable since they are less than the value of the services performed when valued via traditional hourly billing.

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 $14,000, and Plaintiff's Counsel's actual costs presently are $8,073.62. [Brouillette Decl., ¶¶ 50-51.] This includes filing fees, mediation costs, and postage, while waiving photocopying costs and legal research charges. These costs are reasonable and uncontested, and should be approved and reimbursed in full.

VIII. CONCLUSION

For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement under PAGA, approve the requested award of reasonable attorney's fees and costs, approve Phoenix Settlement Administrators as the settlement administrator and approve is fees in the amount of $2,500.00, approve the proposed distributions to the LWDA and Aggrieved Employees, and enter judgment.

Dated: June 17, 2025

CROSNER LEGAL, PC

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