JAMIE SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
BRANDON BROUILLETTE, ESQ. (SBN 273156)
bbrouillette@crosnerlegal.com
ZACHARY M. CROSNER, ESQ. (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 MARLON DE LEON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MARLON DE LEON and LEE RUN YU, on behalf of the State of California, and others similarly situated and aggrieved,

Plaintiff,

v.

HAIDILAO HOT POT CENTURY CITY INC, a California Corporation; HAIDILAO HOT POT SAN DIEGO, INC., a California Corporation; HAIDILAO HOT POT DALY CITY, INC., a California Corporation; HAIDILAO CATERING (U.S.A.) INC., a California Corporation; HAIDILAO HOT POT FREMONT INC., a California Corporation; HAIDILAO HOT POT INDUSTRY INC., a California Corporation; HAIDILAO RESTAURANT GROUP, INC., a California Corporation; HAIDILAO RESTAURANT CALIFORNIA INC., a California Corporation; HDL MANAGEMENT USA CORPORATION, a California corporation; and DOES 1-100, inclusive,

Case No.: 23STCV19515

Assigned for All Purposes to:
Hon. Jill Feeney
Dept. 78

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

DATE: August 20, 2025
TIME: 8:30 am
DEPT: 78

Reservation ID: 083685562472

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

I. INTRODUCTION

Plaintiffs Marlon De Leon and Lee Run Yu hereby seek Court approval of a proposed settlement of claims brought under the Private Attorneys General Act ("PAGA") against Defendants Haidilao Hot Pot Century City, Inc., Haidilao Hot Pot San Diego, Inc., Haidilao Hot Pot Daly City, Inc.; Haidilao Catering (U.S.A.) Inc.; Haidilao Hot Pot Fremont Inc.; Haidilao Hot Pot Industry Inc.; Haidilao Restaurant Group, Inc.; Haidilao Restaurant California Inc. and HDL Management USA Corporation (collectively "Defendants"). Consistent with PAGA, the proposed settlement releases claims under PAGA only and has no impact on the individual claims of any aggrieved employee other than Plaintiffs. 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, Plaintiffs respectfully request the Court approve the Settlement as it is fair, reasonable and adequate in all respects and advances the purposes underlying PAGA.

II. BACKGROUND

Defendants operate several "hot pot" style Chinese restaurants in California. Plaintiff De Leon worked for Haidilao Hot Pot Century City, Inc. in the Westfield shopping center as a busser/food runner from June 2022 to about July 9, 2022. Plaintiff Yu worked for Haidilao Hot Pot San Diego, Inc. as a server from about March 2022 to July 25, 2023. [Declaration of Brandon Brouillette ("Brouillette Decl."), ¶ 4.]

On June 5, 2023, Plaintiff De Leon submitted his PAGA Notice to Defendants and the LWDA, and thereafter, on August 15, 2023, he filed a PAGA representative action in the Los Angeles County Superior Court. Plaintiff Yu submitted her PAGA Notice letter on October 19, 2023, and filed a PAGA action on January 2, 2024, in the San Diego Superior Court. [Brouillette Decl., ¶ 5.]

Plaintiffs' respective complaints alleged a number of Labor Code violations by Defendants. First, they alleged a failure to pay all wages owed, including failing to calculate the correct "regular rate" of pay for purposes of paying overtime, break premiums, and sick pay. They also alleged a failure to provide meal and rest breaks, failure to pay all tip wages earned, wage statement violations, failure to provide business expense reimbursements for use of personal cell phones, failure to provide accurate wage statements, and failure to pay all wages owed at termination. Plaintiffs' complaints sought relief on behalf of all non-exempt current and former employees employed by Defendants in California during the relevant time frame (June 5, 2022 to August 23, 2024). Defendants have at all times denied Plaintiffs' allegations and maintained they accurately calculated and paid all employee wages, that their meal and rest break and payroll policies and procedures comply with California law, that they provided the aggrieved employees with required meal and rest breaks, paid all employee tips consistent with their compliant tip pooling policies, and that use of personal cell phones was neither necessary nor reasonable to perform the job and therefore they owed no reimbursements, among other positions and defenses. [Brouillette Decl., ¶ 6.]

After Plaintiff De Leon filed his complaint, and upon discussing the merits of the claims asserted and engaging in several meet and confer sessions regarding prospective law and motion and discovery issues, De Leon and Defendants agreed to attempt early mediation. The Parties further agreed to a protocol for exchanging additional documents and information before the mediation. Through this informal discovery, Defendants provided Plaintiffs with information including, inter alia, the number of potential Aggrieved Employees, the number of aggregate pay periods, sample pay stubs and time records for sampling of allegedly Aggrieved Employees, employee handbooks and manuals, and other policy documents regarding Defendants' time keeping and reporting policies. Plaintiffs then reviewed and analyzed this information with the assistance of consulting experts from Berger Consulting Group to, inter alia, determine potential violation rates for meal and rest breaks, construct a damages, model, etc. After Plaintiff Yu filed her complaint, the Parties further agreed to include both cases in the mediation and pursue a global settlement. [Brouillette Decl., ¶ 7.]

The Parties then mediated the case in June 2024 with Todd Smith, Esq., a respected mediator with extensive class action/wage and hour experience. Before and during the mediation, Plaintiffs and 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 Plaintiffs' ability to proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiffs' claims and Defendant's defenses, and the parties' data analyses and conclusions based on data provided by Defendants. After a contentious full day of negotiations, the Parties reached agreement on all major issues and subsequently formalized their tentative settlement in the Settlement Agreement now before the Court for approval. [Brouillette Decl., ¶ 8.] A fully executed, true and correct copy of the Parties' Joint Stipulation of Representative PAGA Action Settlement and Release of Claims ("Settlement Agreement") is attached to the Brouillette Declaration as Exhibit 1.

Finally, in order to effectuate the proposed global settlement, Plaintiff De Leon filed a First Amended Complaint in this matter adding Yu as a party-plaintiff and to otherwise incorporate all the allegations and claims asserted in Plaintiffs' respective complaints and PAGA notice letters. Plaintiff Yu subsequently dismissed her complaint without prejudice. [Brouillette Decl., ¶ 9.]

III. SUMMARY OF SETTLEMENT TERMS

A. SETTLEMENT TERMS AND DISTRIBUTION OF PAGA PENALTIES

Under the settlement, Defendants will pay a non-reversionary settlement amount of $950,000 (the "Maximum Settlement Amount" or "MSA"). The MSA is inclusive of payments to the LWDA and Aggrieved Employees, costs of settlement administration (no more than $12,000), reasonable service awards to the Plaintiffs of $10,000 each ($20,000 total), and reasonable attorney's fees of 1/3 of the MSA, or $316,666.66, and actual litigation costs of $16,364.61. After all deductions from the MSA, Plaintiffs presently estimate about $584,968.73 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five percent of the NSA (about $438,726.55) will go to the LWDA, and the remaining 25% (about $146,242.18) will be distributed to the 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 $96 per Aggrieved Employee. Finally, each of the named Plaintiffs is entering into a separate individual settlement with Defendants to resolve their respective individual claims. [Brouillette Decl., ¶ 10.]

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 $12,000. [Declaration of Jodey Lawrence, ¶¶ 2-16; Exhs. A-B.] Defendants will fund the settlement within 20 days of the Effective date and, within 14 days of receipt of the MSA, 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 Defendants' 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 any unclaimed residual funds will be forwarded to the California State Controller's Unclaimed Property Fund. [Brouillette Decl., ¶ 11.]

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. [Brouillette Decl., ¶ 12.]

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). In Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56, the appellate court defined the standard for trial 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 facors 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, Plaintiffs submit 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

First, Plaintiffs alleged Defendants failed to pay all wages due because they failed to incorporate non-discretionary bonuses in the employee's "regular rate of pay" for purposes of calculating the correct overtime rate, correct break premium rate, and correct sick pay rate. The California Supreme Court has held that "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. of California (2018) 4 Cal.5th 542, 554. Here, Plaintiffs allege Defendants paid Plaintiff De Leon and other aggrieved employees non-discretionary signing and/or retention bonuses that were not included in regular rate calculations for overtime, meal premiums, and sick pay, and further allege Plaintiff Lee Run Yu and other employees received non-discretionary bonuses tied to positive Google and Yelp reviews left by customers that Haidilao also did not included in the regular rate calculation. Plaintiffs contend their expert's analysis suggested about 3,686 pay periods where Defendants underpaid employees for their overtime, meal premiums, or sick pay. [Brouillette Decl., ¶ 13.]

Next, Plaintiffs argued they did not receive legally compliant meal periods, and alleged numerous "de facto" violations where Aggrieved Employees were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods. Plaintiffs also alleged that the meal waivers required by Defendants were ineffective because there were agreed to by all employees as a mandatory condition of employment and accordingly were invalid under California law. Plaintiffs further alleged the Aggrieved Employees did not receive compliant rest periods and that Defendants simply did not schedule rest breaks for employees and that they further were unaware of any procedure allowing them to request a 10 minute break. [Brouillette Decl., ¶ 14.]

Plaintiffs next contend that Defendants' tip policies violate California law and resulted in Aggrieved Employees not receiving all of their tip wages. Here, Plaintiff De Leon alleges he and other received tip wages during some pay periods but not others, as result of Defendants' purported failure to accurate track and distribute tips, and Plaintiff Yu contends she lost tips because Defendants purportedly had policies of deducting money from the tip pool and using those deductions as direct or indirect credits against an employee wages in violation of Labor Code § 353. On the other hand, Defendants argued their tip policies and practices were entirely compliant with the Labor Code and that they fully compensated all employees eligible to receive tip wages with their share of the gratuities consistent with Defendants' tip pooling policies and practices. [Brouillette Decl., ¶ 15.]

Plaintiffs next alleged Defendants failed to reimburse necessary business expenses for use of personal cell phones, as supervisors would contact Plaintiffs and other employees on their personal phones both at and away from work regarding a host of issues. <u>Cochran v. Schwan's Home Service, Inc</u>. (2014) 228 Cal. App. 4th 1137. Plaintiffs and the Aggrieved Employees received no reimbursement for purportedly using their own phones on company business. Plaintiffs also alleged they were required to maintain and press their work uniforms in order comply with Defendants' strict dress code, and likewise received no reimbursement for such costs. Lastly, Plaintiffs also brought 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., ¶¶ 16-17.]

B. <u>NUMBER OF ALLEGED VIOLATIONS AND POTENTIAL PENALTIES</u>

At the time of mediation, Defendants indicated they employed approximately 1,456 non-exempt employees in California during the applicable PAGA period, and these individuals worked approximately 25,000 pay periods during that time. Based on the data and information provided, Plaintiffs estimated Defendants' maximum PAGA exposure at approximately $12,615,600. [Brouillette Decl., ¶¶ 18-19.]

C. **<u>THE SETTLEMENT MEETS THE KULLAR FACTORS, INCLUDING THE STRENGTH OF PLAINTIFFS' CASE, THE DISCOVERY PERFORMED, AND AMOUNT OFFERED IN SETTLEMENT</u>**

In response to Plaintiffs' unpaid wage/regular rate claims, Defendants took the position that they accurately calculated and paid for all overtime wages, meal premiums, and sick pay consistent with California law. Defendants further suggested many of the alleged payments did not have to be included in the regular rate calculation as they were discretionary, and further noted the minimal number of pay periods where an employee both worked overtime and received any kind of bonus payment such that any potential penalties would be nominal in any event. [Brouillette Decl., ¶ 20.]

For the meal and rest break claims, Defendants offered multiple defenses. First, they emphasized their written meal and rest break policies were generally compliant, that they authorized and permitted all necessary breaks, and that employees received full uninterrupted lunch periods free from employer control. They further noted their time records showed employees regularly took compliant meal periods, and that they compensated employees with the required extra hour of pay for any documented violations. Defendants also asserted that even to the extent any late or short meal periods occurred, they were in violation of company policy and aberrational, and would require significant individual inquiries to determine the reasons underlying any such alleged violations and whether they were by employee choice or some other reason. Defendants also argued that they entered into valid meal waivers with employees where appropriate and accordingly many allegedly "missed" breaks actually were waived by the employees. [Brouillette Decl., ¶ 21.]

As with meal breaks, Defendants argued the applicable rest break policies complied with California law, and that they authorized and permitted employees to take all required breaks. Defendants further contended that, in light of the fact that they are 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., ¶ 22.]

Defendants next argued their tip policies were entirely compliant with the Labor Code and that they fully compensated all employees eligible to receive tip wages with their share of the gratuities consistent with each restaurant's tip pooling policies. They further argued they accurately tracked and recorded all tips at all restaurants, and that no deductions of any kind were made from the tip pool such that any employee ever lost any portion of their earned tip wages. Thus, per Defendants, there simply is no liability on this claim. [Brouillette Decl., ¶ 23.]

For the expense reimbursement claim, Defendants countered there typically would be no need for employees to communicate via phone or text while performing their job duties, or for them to otherwise use their personal phones for any reason. Per Defendants, to the extent Plaintiffs or other Aggrieved Employees used their individual phones for work purposes, it was done purely for personal convenience and was neither required nor necessary in order to perform their job duties. Thus, per Defendants, no reimbursement is required. On the uniform issue, Defendants argued no professional laundry services would be needed to comply with the dress code, and likewise any such costs were incurred at the employee's option were not "necessary" such that reimbursement was required under Labor Code § 2802. [Brouillette Decl., ¶ 24.]

Plaintiffs also alleged derivative violations of Labor Code § 226 (wage statement violations) and §§ 201-203 (waiting time penalties), which claims will rise or fall along with the primary claims addressed above, in addition to being subject to "good faith" and other defenses available to Defendants. <u>Amaral v. Cintas Corp. No. 2</u> (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, Plaintiffs had to discount the value of this claim significantly in light of these multiple potential defenses. Defendants 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 Defendants multiple times for the same violation. [Brouillette Decl., ¶ 25.]

Defendants next 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 plaintiff 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., ¶ 26.]

Thus, Defendants raised various and multi-layered defenses to each of Plaintiffs' claims, anyone of which, if successful, could have decimated Plaintiffs' case. And Defendants vowed to raise all these defenses at trial. Accordingly, Plaintiffs faced risky issues going forward with this 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, Defendants 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., ¶ 27.]

Although Plaintiffs and counsel believe they could have prevailed, there was no such guarantee. When the risks of the various individual arbitrations, prevailing at trial on the merits on all claims, securing 100% of the theoretical civil penalties, and the Court's significant discretion to reduce any penalty award, all are factored into the equation, the settlement value is reasonable and supported. Of course, to recover anywhere near the maximum penalties Plaintiffs would have to shoot the moon and win both liability and maximum penalties on all claims as to 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 eminently reasonable. [Brouillette Decl., ¶ 28; Declaration of Joseph M. Hekmat ("Hekmat Decl."), ¶¶ 10-11.]

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, 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 $830,000 for the PAGA claims is within the ballpark of reasonableness, and approval is appropriate. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *7 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement").

V. SUBMISSION TO THE LWDA

Plaintiffs timely served the LWDA with the Settlement Agreement and this Motion, and notified the LWDA of this approval hearing. [Brouillette Decl., ¶ 29; Exh. 5.] 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 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 $316,666.67, is allocated to Plaintiffs' counsel for reasonable attorney's fees, plus actual litigation costs. These fees are warranted under the law and within the range of fees commonly awarded in similar cases. Any fees awarded by the Court will be split 80% to Crosner Legal and 10% each to Hekmat Law Group and Law Office of Ben Rothman. [Brouillette Decl., ¶ 29.]

A. PLAINTIFFS' 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 Plaintiffs and their attorneys here, a common fund was created in the amount of $830,000 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 $830,000 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 $950,000 MSA, for a total of $316,666.66, is reasonable and appropriate. [Brouillette Decl., ¶¶ 34-54; Hekmat Decl., ¶¶ 2-9, 12-14.]

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, Plaintiffs' counsels' collective lodestar is approximately $145,075.00, based on 188.1 total attorney hours spent litigating the case. [Brouillette Decl., ¶¶ 33-54; Exh. 6; Hekmat Decl., ¶ 12.] On a lodestar basis, the fee request of $316,666.67 results in a multiplier of 2.18, which is a modest enhancement entirely in line with California law. Indeed, California courts routinely approve multipliers in the in the 2-4 range to compensate for the time and risk of class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that the requested 2.18

multiplier effectively operates to show that the percentage fee request is reasonable considering the challenges presented in this contingency fee matter, and appropriately compensates Class Counsel for the contingent risk assumed and delay in payment during the approximately two years counsel has been representing Plaintiffs. Thus, the multiplier results in a fee constituting a fair return on the contingency.

C. THE REQUESTED COSTS ARE FAIR AND REASONABLE

Plaintiffs' Counsel request 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 Plaintiffs' 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, Plaintiffs' 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 $18,000, Plaintiffs' Counsels' actual costs presently are $16,364.61, all incurred by Crosner Legal, PC. [Brouillette Decl., ¶¶ 55-56.] This includes filing fees, service of process, expert fees, mediation costs, and postage. These costs are reasonable and uncontested, and should be approved.

VII. THE PROPOSED SERVICE AWARDS FOR PLAINTIFFS ARE FAIR AND REASONABLE

Pursuant to the Settlement Agreement, Plaintiffs seek incentive awards of $10,000 each. These requests are reasonable given the much broader release that Plaintiffs are agreeing to, as well as Plaintiffs' efforts in this case and the risks each undertook on behalf of the Aggrieved Employees. Additionally, by contacting and retaining counsel to pursue these claims, Plaintiffs made this settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the risk of being liable for Defendant's litigation costs if unsuccessful. Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple Google search) for the benefit of other employees, placing Plaintiffs at risk of discrimination by future prospective employers. Among taking many other actions assisting in the successful litigation of this case, Plaintiffs both provided substantial factual information to counsel, participated in numerous phone calls and meetings with counsel to discuss the case, and general kept up to speed and informed on the case's progress. The incentive payments to Plaintiffs are appropriate and justified as part of the Settlement. [Brouillette Decl., ¶ 57; Declaration of Marlon De Leon, ¶¶ 2-9; Declaration of Lee Run Yu, ¶¶ 2-9.] Accordingly, Plaintiffs submit the amounts sought are well within the range of reasonableness for such awards in other wage and hour actions. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding service and incentive payments ranging from $2,000 to $25,000).

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs request the Court approve the proposed settlement under PAGA, approve the requested award of reasonable attorney's fees and costs, approve the requested service awards to Plaintiffs in the amount of $10,000 for each Plaintiff, approve Phoenix Settlement Administrators as the settlement administrator and approve is fees in the amount of $12,000.00, approve the proposed distributions to the LWDA and Aggrieved Employees, and enter judgment.

Dated: March 26, 2025

CROSNER LEGAL, PC

By: ______________________

Brandon Brouillette
Jamie K. Serb
Zachary M. Crosner
Attorneys for Plaintiff