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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

CANDICE VALENZUELA, on behalf of the State of California, and others similarly situated and aggrieved, Plaintiff, v. KAZI FOODS, INC., a California Corporation; and DOES 1-100, inclusive, Defendants.	Case No.: 23STCV29564 Assigned for All Purposes to: Hon. Colin Leis Dept. 74 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT UNDER PRIVATE ATTORNEYS GENERAL ACT** Date: December 27, 2024 Time: 8:30 am Dept.: 74 Reservation ID: 873883866180

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I. INTRODUCTION

Plaintiff Candice Valenzuela hereby seeks Court approval of a proposed settlement of claims brought under the Private Attorneys General Act ("PAGA") against defendant Kazi Foods, Inc. ("Kazi"). 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 Plaintiff Valenzuela. 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, Plaintiff respectfully requests the Court approve the Settlement as it is fair, reasonable and adequate in all respects and advances the purposes underlying PAGA.

II. BACKGROUND

Defendant Kazi a fast food franchisee that operates dozens of restaurants, most notably KFC restaurants, in several states including California, Colorado and New Jersey. Plaintiff Valenzuela began working for Defendant on or about November 15, 2020 as a Cashier at Defendant's Pacoima, California location. Around April 2022 she transferred to Defendant's Canoga Park, California location as a temporary manager, but later transferred back to Pacoima where she continues to work part-time. [Declaration of Nikki Trenner ("Trenner Decl."), ¶ 4.]

During her employment, Plaintiff alleges she routinely performed work off the clock and had to work while purportedly clocked out for meal breaks. She also alleges she was denied the opportunity to take rest and meal periods, and consistently was interrupted during her breaks and asked to perform work while clocked out for lunch as noted above. She further alleges she was prohibited from leaving the restaurant for her meal and rest periods at times, particularly if a discounted meal provided by Kazi, or otherwise subject to employer control while on break. Finally, Plaintiff alleges Kazi's wage statements were inaccurate on their face and failed to list the inclusive dates of the pay period and did not list the employer's address. [Trenner Decl., ¶ 5.]

Based on these allegations, and after appropriate notice to the Labor & Workforce Development Agency ("LWDA"),[1] Plaintiff filed her PAGA-only complaint on December 4, 2023,

[1] A copy of Plaintiff's PAGA notice letter is attached to the Trenner Declaration as Exhibit 3.

seeking civil penalties for the following alleged wage and hour violations: (a) failure to pay wages, including overtime wages; (b) failure to provide meal and rest periods; (c) failure to provide complete and accurate wage statements; and (d) waiting time penalties. Plaintiff filed the matter on behalf of aggrieved employees including all non-exempt employees of Kazi in California during the relevant time frame (September 30, 2022 until October 15, 2024). [Trenner Decl., ¶ 6.]

Kazi has at all times denied Plaintiff's allegations and maintained it properly calculated and paid all wages due, that its meal and rest break and payroll policies and procedures comply with California law, that it provided the class members with required meal and rest breaks on a fully compliant basis, and that its wage statements accurately reflect all information required by the Labor Code. Additionally, Kazi strongly contends the case cannot be maintained as a representative action as, to the extent aggrieved employees missed meal and/or rest breaks, it was intermittent and infrequent and evidence of such missed breaks would be purely anecdotal, and therefore individualized issues predominate, which would render a trial under PAGA unmanageable. [Trenner Decl., ¶ 7.]

After Plaintiff filed her complaint, upon discussing the merits of the case and engaging in several meet and confer sessions regarding prospective law and motion and discovery issues, the Parties agreed to an early mediation. The Parties further agreed to a protocol for exchanging additional documents and information before the mediation. Through this formal and informal discovery, Defendant provided Plaintiff with information including, inter alia, the number of potential aggrieved employees, the number of aggregate pay periods, sample pay stubs and time records for around 25% of the aggrieved employees,[2] employee handbooks and manuals, and relevant policy documents on Defendant's time keeping and reporting policies, etc. Plaintiff had that information reviewed by Berger Consulting Group to assist with evaluating potential violation rates, potential damages, etc. [Trenner Decl., ¶ 8.]

The parties then attended a full day mediation in August 2024 before highly-regarded mediator Gig Kyriacou, Esq., who has extensive experience mediating wage and hour class and

[2] Plaintiff's experts at Berger Consulting advised this sampling would be statistically significant and enable them to extrapolate to the entire Aggrieved Employee population. [Trenner Decl., ¶ 8.]

PAGA actions. Before and during the mediation, Plaintiff and her 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 Defendant's defenses, and the parties' data analyses and conclusions based on data provided by Defendant. After a contentious full day of negotiations, the Parties were able to reach agreement on all major issues and subsequently formalized the tentative settlement in the settlement agreement now before the Court. [Trenner Decl., ¶ 9.] A fully executed, true and correct copy of the Parties' Settlement Agreement and Release of PAGA Claim ("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 $330,000 (the "Gross Settlement Amount" or "GSA"). The GSA is inclusive of payments to the LWDA and Aggrieved Employees, costs of settlement administration (no more than $5,250), a reasonable service awards to Plaintiff of $7,500.00, and reasonable attorney's fees of 1/3 of the GSA, or $110,000, and actual litigation costs of $15,523.98. After all deductions from the GSA, Plaintiff presently estimates about $191,726.02 will remain (the "Net Settlement Amount" or "NSA"). Seventy-five percent of the NSA (about $143,974.51) will go to the LWDA, and the remaining 25% (about $47,931.51) 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 $100 per Aggrieved Employee. [Trenner Decl., ¶ 17.]

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 $5,250. [Declaration of Jodey Lawrence, ¶¶ 2-16; Exhs. A-B.] Kazi will fund the settlement within 30 days of the Effective date and, within 14 days of receipt of the GSA, 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 Kazi'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. [Trenner Decl., ¶ 18.]

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., ¶ 19.]

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 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

First, Plaintiff alleges Defendant failed to pay for all hours worked by requiring Plaintiff and other aggrieved employees to work while purportedly clocked out for meal periods or otherwise perform work off the clock. She further alleged Defendant on occasion underpaid employees for their overtime by failing to pay overtime at the premium rate and instead paying at the regular base hourly rate. [Trenner Decl., ¶ 12.]

Next, Plaintiff argued she and the Aggrieved Employees did not receive all required meal periods, or did not receive them on a compliant basis, and that Kazi's written policies were not fully compliant. As noted, Plaintiff alleges employees frequently worked through some part of their meal break or otherwise had their breaks interrupted by work, and she also alleged that second meal periods were not provided on shifts of more than 10 hours. She further alleged the Aggrieved Employees did not receive compliant rest periods for the same reasons in that their breaks could be interrupted by work or not provided at all depending on the volume of business. [Trenner Decl., ¶ 12.]

Plaintiff next alleged Kazi failed to reimburse necessary business expenses for use of personal cell phones, as supervisors would contact Plaintiff and other employees on their personal phones both at and away from work regarding a host of issues, such as scheduling, availability, illnesses, etc.. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal. App. 4th 1137. Plaintiff and the Aggrieved Employees received no reimbursement for using their own phones on company business. Lastly, Plaintiff 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. [Trenner Decl., ¶ 13.]

B. NUMBER OF ALLEGED VIOLATIONS AND POTENTIAL PENALTIES

For mediation, Kazi indicated it employed approximately 480 non-exempt employees in California during the applicable PAGA period, and these individuals worked approximately 11,000 pay periods during that time. Based on the data and information provided, Plaintiff estimated Defendant's maximum PAGA exposure at approximately $5,264,400. [Trenner Decl., ¶¶ 14-15.]

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 claims, Kazi argued its payroll and compensation policies paid employees for all hours worked at the correct hourly rates. Per Kazi, if any off the clock work occurred it was strictly against company policy and done voluntarily by the employees and without management's knowledge or consent. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). Accordingly, Defendant argued Plaintiff would be unable to show any alleged "off the clock" work was actually compensable. On the underpaid overtime claims, Kazi again emphasized it paid employees with the correct hourly rates, including overtime, and if any overtime was paid incorrectly it would have been rare, aberrational and likely a simple administrative error. Defendant therefore argued that even if this occurred it claim would not give rise to any significant liability for civil penalties. [Trenner Decl., ¶ 16.]

For the meal and rest break claims, Kazi offered multiple defenses. First, it emphasized its written meal and rest break policy generally was compliant, that it authorized and permitted all necessary breaks, and that employees received full uninterrupted lunch periods free from employer control. It further noted its time records generally showed employees took compliant meal periods and would be presumed correct. Defendant also asserted that even to the extent any late or short meal periods occurred, it was in violation of company policy and aberrational, and likely voluntary on the employee's part. Kazi also contended that on those occasions when an employee's meal period was non-compliant, Kazi provided the employee with premium pay. Per Kazi resolving this claim 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. [Trenner Decl., ¶ 17.]

As with meal breaks, Defendant argued the applicable rest break policies complied with California law, and that it authorized and permitted employees to take all required breaks. Defendant further contended that, 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. [Trenner Decl., ¶ 18.]

For the expense reimbursement claim, Kazi 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 Defendant, to the extent Plaintiff 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 Defendant, no reimbursement was required. [Trenner Decl., ¶ 19.]

Plaintiff also alleged Kazi's wage statements violated Labor Code § 226 on their face because they did not list the inclusive dates for each pay period, and further did not list the employer's address. In addition to the alleged facial violations, Plaintiff further claimed derivative violations of Labor Code § 226 (wage statement violations) and §§ 201-203 (waiting time penalties) based on the unpaid wage and meal/rest claims. In addition to being subject to the same merits defenses as the primary claims, these claims also are 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 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 <u>Fleming v. Covidien</u> (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 <u>Carrington v. Starbucks Corp.</u> (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. <u>In re Taco Bell Wage and Hour Actions</u> (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial). Finally, Kazi argued most of the Aggrieved Employees, including Plaintiff, signed valid and enforceable arbitration agreements. Thus, if Plaintiff could be compelled to individual arbitration it would further delay and potentially derail resolution of the PAGA representative claims. [Trenner Decl., ¶ 21.]

Thus, Defendant raised various and multi-layered defenses to each of Plaintiff's claims, anyone of which, if successful, could have decimated Plaintiff's case. And Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff 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, 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., ¶ 23.]

Although Plaintiff and her counsel believe they could have prevailed, there was no such guarantee. When the risks of 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 Plaintiff would have to shoot the moon and win both liability and maximum penalties on all claims as to every pay period at issue, which outcome, for the reasons discussed, is unlikely and would take several years for trial and an almost certain appeal. 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 eminently reasonable. [Trenner Decl., ¶ 24.]

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 $900,000 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

Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and notified the LWDA of this approval hearing. [Trenner Decl., ¶ 25; 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 $110,000, is allocated to Plaintiff's 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.

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 her attorneys here, a common fund was created in the amount of $330,000 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 $330,000 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 $330,000 GSA, for a total of $110,000, is reasonable and appropriate. [Trenner Decl., ¶¶ 26-42.]

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, counsel's lodestar is approximately $116,580, based on 158.4 attorney hours spent litigating the case. [Trenner Decl., ¶¶ 29-42] On a lodestar basis, the fee request of $110,000 results in a base lodestar that is higher than the actual fees requested and, accordingly there is no request for a lodestar modifier. [Trenner Decl., ¶¶ 47-48.] Counsel submits this facts serves to verify the reasonableness of the fee request, since the actual value of the services rendered is higher than fee request when valued via traditional hourly billing.

C. THE REQUESTED COSTS ARE FAIR AND REASONABLE

Plaintiff's 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 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 $30,000, Plaintiff's Counsel's actual costs presently are$15,523.98. [Trenner Decl., ¶¶ 43-44.] This includes filing fees, service of process, expert fees, mediation costs, and postage, while waiving photocopying costs and legal research charges. These costs are reasonable and uncontested, and should be approved.

VII. THE PROPOSED SERVICE AWARD FOR PLAINTIFF IS FAIR AND REASONABLE

Pursuant to the Settlement Agreement, Plaintiff seeks an incentive award of $7,500 for her service as the PAGA representative plaintiff. The request is reasonable given the much broader release that Plaintiff is agreeing to, as well as her efforts in this case and the risks she undertook on behalf of the Aggrieved Employees. Additionally, by contacting and retaining counsel to pursue these claims, Plaintiff 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.

Plaintiff also exposed herself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing Plaintiff at risk of discrimination by future prospective employers. Among taking many other actions assisting in the successful litigation of this case, Plaintiff 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 payment to Plaintiff is appropriate and justified as part of the Settlement. [Trenner Decl., ¶ 45; Declaration of Candice Valenzuela, ¶¶ 2-9.]

Accordingly, Plaintiff submits the amount sought is 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 (collectingcases awarding service and incentive payments ranging from $2,000 to $25,000).

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 the requested service awards to Plaintiff in the amount of $5,000, approve Phoenix Settlement Administrators as the settlement administrator and approve its fees in the amount of $____, approve the proposed distributions to the LWDA and Aggrieved Employees, and enter judgment.

Dated: October 30, 2024

CROSNER LEGAL, PC

By: ______________________________
Nikki Trenner
Jamie K. Serb
Zachary M. Crosner
Attorneys for Plaintiff