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12 Workforce Development Agency

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN**

11 **JAIME DOJAQUEZ, an individual and
12 as proxy for the Labor and Workforce
13 Development Agency**

14 **Plaintiff,**

15 **vs.**

16 **KERN RIVER CONSULTING, INC., a
17 corporation; SME STEEL
18 CONTRACTORS, INC., a corporation;
19 SOUTHWEST STEEL OF
20 CALIFORNIA, INC., a corporation;
21 JAMES RIVERA, an individual, and
22 DOES 1-100, inclusive,**

23 **Defendants.**

CASE NO: BCV-24-101168

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
TO APPROVE PAGA SETTLEMENT**

**Date:
Time:
Dept.:**

Table of Contents

I.	INTRODUCTION	1
II.	STATEMENT OF the CASE AND THE SETTLEMENT.....	2
A.	Pertinent Facts and Procedural History.....	2
B.	The Proposed Settlement.....	3
III.	LEGAL ARGUMENT	5
A.	Standards for Approval of a PAGA Settlement	5
B.	The Settlement Meets the Criteria for Approval.....	6
1.	The Factors Giving Rise to a Presumption of Fairness Exist.....	6
2.	The Proposed Settlement Furthers the Purposes of the PAGA, Taking into Consideration Defendant’s Defenses and Mitigating Factors, and Should Be Approved.	7
i.	Misclassification Claim.	7
ii.	Waiting Time Penalty Claim.....	8
iii.	Meal Period/Rest Period Claims.	8
iv.	Sick Pay Claim.	9
v.	Wage Statement Claim.	9
vi.	Business Reimbursement Claim.....	10
vii.	Total PAGA Exposure and Settlement Value	10
viii.	Defendant’s Defenses	11
3.	The Scope of the Release is Appropriately Tailored	11
4.	Plaintiff’s Requested Fees and Costs Are Reasonable.....	12
IV.	CONCLUSION	13

Table of Authorities

CASES

<i>Abelar v. Am. Residential Servs., LLC</i> (C.D. Cal. Nov. 14, 2019) 2019 WL 6054607.....	13
<i>Anderson v. Nextel Retail Stores, LLC</i> , 2010 U.S. Dist. LEXIS 43377, 44 (C.D. Cal. Apr. 12, 2010).....	6
<i>Arias v. Superior Court</i> (2009), 46 Cal. 4 th 969.....	4, 12
<i>Bowen v. Jea Senior Living Health and Welfare Benefit Plan, LLC</i> (E.D. Cal, Dec. 8, 2023) 2023 WL 8527732	10
<i>Carrington v. Starbucks</i> (2018) 30 Cal.App.5 th 504	10
<i>Culley v. Lincare, Inc.</i> (E.D. Cal 2017), 236 F.Supp.3d 1184	8
<i>Donohue v. AMN Services, LLC</i> (2021) 11 Cal.5 th 58	8
<i>Gutilla v. Aerotek, Inc.</i> , 2017 WL 2729864 (E.D. Cal. 2017)	5
<i>Hernandez v. Best Buy Stores, LP</i> , 2017 WL 2445438 (S.D. Cal. 2017)	5
<i>In re TD Ameritrade Account Holder Litig.</i> , 2011 U.S. Dist. LEXIS 103222, 24 (N.D. Cal. Sept. 12, 2011).....	5
<i>Ingram v. Coca-Cola Co.</i> (N.D. Ga. 2001) 200 F.R.D. 685	13
<i>Manzo v. McDonald's Restaurants of California, Inc.</i> (E.D. Cal., Sep. 29, 2022) 2022 WL 4586236	6, 10
<i>Mendez v. Tween Brands, Inc.</i> , 2010 U.S. Dist. LEXIS 66454 (E.D. Cal. June 30, 2010)	6
<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal.App.5 th 56.....	5
<i>Noori v. Countrywide Payroll & HR Solutions, Inc.</i> (2019) 43 Cal.App.5 th 957	9
<i>Ochoa-Hernandez v. CAJDER Foods, Inc.</i> (N.D. Cal. Apr. 2, 2010) 2010 U.S. Dist. LEXIS 32774.....	6
<i>Officers for Justice v. Civil Service Com.</i> , 688 F.2d 615, 624 (9 th Cir., 1982)	5
<i>Raines v. Coastal Pacific Food Distributors, Inc.</i> (2018) 23 Cal.App.5 th 667	9
<i>Raziano v. Albertsons LLC</i> (C.D. Cal. Dec. 13, 2019) 2019 WL 9464279	8
<i>Roberts v. Texaco, Inc.</i> (S/D.N.Y. 1997) 979 F. Supp. 185.....	13
<i>Rodriguez v. Danell Custom Harvesting, LLC</i> (E.D. Cal. 2018) 293 F.Supp.3d 1117.....	10
<i>Staton v. Boeing Co.</i> (9 th Cir. 2003) 327 F.3d 938.....	13
<i>Van Vranken v. Atl. Richfield Co.</i> (N.D. Cal. 1995) 901 F. Supp. 294.....	13
<i>ZB, N.A. v. Superior Court</i> (2019) 8 Cal.5 th 175	9

STATUTES

Labor Code § 226.....	1, 2, 9
Labor Code § 226.7.....	1, 2, 8
Labor Code § 226.8.....	1, 2, 7

1	Labor Code § 512.....	1, 2, 8
2	Labor Code § 558.....	8
3	Labor Code § 2699(g)(1)	12
4	Labor Code § 2699(e)(2).....	11
5	Labor Code § 2699(f).....	9, 10
6	Labor Code § 2802.....	1, 2, 10
7	Labor Code Private Attorneys General Act of 2004 ("PAGA")	<i>passim</i>

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2 **I. INTRODUCTION**

3 Plaintiff Jaime Dojaquez ("Plaintiff") respectfully moves this Court for an Order granting
4 approval of the proposed PAGA Settlement in his action against Defendants Kern River Consulting,
5 Inc. ("Kern River"), SME Steel Contractors, Inc. ("SME Steel"), Southwest Steel of California,
6 Inc. ("Southwest Steel"), and James Rivera ("Rivera") (Kern River, SME Steel, Southwest Steel,
7 and Rivera are referred to collectively herein as the "Defendants"). Following mediation of the
8 matter before a highly experienced PAGA mediator, Plaintiff and Defendants reached a resolution
9 of all of Plaintiff's claims in this Action, both his individual claims and the PAGA claim asserted
10 as Plaintiff's Eighth Cause of Action. The PAGA portion of the Settlement resolves claims for
11 PAGA penalties involving a total of 23 individuals who performed work for Defendant Kern River
12 ("Aggrieved Employees") from December 23, 2022, through the date of entry of an order
13 approving the settlement ("PAGA Period"). In exchange for the release provided to Defendants
14 under the Settlement and the dismissal of this action with prejudice, etc., Kern River and Rivera
15 have agreed to pay a total of \$135,000. The \$135,000 settlement amount covers approximately 385
16 overall pay periods for claims with an estimated maximum potential value of \$750,500 (i.e., the
17 Settlement represents 17.9% of the maximum potential value).

18 The PAGA portion of this case addresses alleged violations of Labor Code Sections 201,
19 202, 204, 226(a), 226.7, 226.8, 510, 512, 1197, 1197.1, 1197.2, 2802, and the applicable IWC Wage
20 Order(s), etc. Relevant to this claim, Plaintiff alleges that Defendants misclassified him and other
21 safety professionals as independent contractors, failed to furnish accurate itemized wage
22 statements, failed to furnish meal and rest breaks, failed to reimburse for business expenses, failed
23 to pay minimum wages and overtime for all hours worked, and failed to pay all wages at termination
24 or within 72 hours of resignation.

25 As set forth herein, the proposed Settlement embodies all of the features of an appropriate
26 settlement as it is the product of (1) arms-length negotiations, (2) negotiated by attorneys
27 experienced in wage and hour issues, and (3) it reflects a reasoned compromise based directly on
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1 the relative strength and value of the alleged PAGA claims, as well as the risks, expense, complexity
2 and likely duration of further litigation.

3 The value achieved by the Settlement Agreement may be gleaned from the fact that the
4 LWDA and the Aggrieved Employees encompassed by the Settlement Agreement will receive a
5 penalty that is well within the range regularly approved by courts for PAGA settlements.

6 It is also important to underscore that all penalty amounts paid to Aggrieved Employees
7 will be an unexpected windfall, as civil penalties are normally collected solely by the Labor
8 Commissioner and are not distributed to employees, serve as a penalty against the employer and
9 are not designed to compensate employees, and do not impact any Aggrieved Employees' potential
10 individual claims.

11 For these reasons, as set forth more fully herein, Plaintiff respectfully requests that this
12 Court enter the Order submitted herewith.

13 **II. STATEMENT OF THE CASE AND THE SETTLEMENT**

14 **A. Pertinent Allegations and Procedural History.**

15 Plaintiff Dojaquez alleges that he worked for Defendant Kern River as a safety professional
16 assigned to work at various clients, including Defendants SME Steel and Southwest Steel.
17 Plaintiff was classified as an independent contractor but alleges that he was instead jointly
18 employed by Kern River, and when assigned to work on their projects, SME Steel and Southwest
19 Steel. Plaintiff alleges that other workers were similarly misclassified as independent contractors
20 but were employees of Defendants. As a result of this alleged misclassification, Plaintiff alleges
21 that he and other employees were denied minimum and overtime wages, payment of wages for all
22 hours worked, meal and rest breaks, business expense reimbursements (including mileage and
23 lodging costs), not furnished with accurate itemized wage statements, not timely paid all wages
24 earned, and not paid all wages earned but unpaid after cessation of employment.

25 Plaintiff filed a notice with the LWDA alleging violations of Labor Code §§ 201, 202, 204,
26 226(a), 226.7, 226.8, 510 512, 1197, 1197.1, 1197.2, 2802, and the applicable IWC Wage Order(s).

VJK Decl., ¶ 4. Plaintiff also alleged individual causes of action against Defendants for related Labor Code violations. Defendants deny all of Plaintiff's allegations and are not admitting any liability as part of the Settlement.

Plaintiff and Defendants conducted substantial informal discovery, exchanged information and documents as part of the mediation, and participated in a full-day mediation with experienced class action and PAGA mediator Tagore Subramaniam, Esq. The Parties reached a settlement at the end of the mediation session and executed a Memoranda of Understanding. VJK Decl., ¶¶ 5-6. Long-form agreements were then subsequently prepared and executed by the Parties. VJK Decl., ¶¶ 7-8, Exhibit 1.

Plaintiff submitted a copy of the PAGA settlement agreement and these moving papers to the LWDA concurrently with the filing of this motion. VJK Decl., ¶ 9, Exhibit 2.

B. The Proposed Settlement

The Parties jointly prepared and executed the PAGA Settlement Agreement ("Settlement Agreement," "Settlement", or "SA"). VJK Decl., Exhibit 1. The Settlement Agreement sets forth the terms of the Settlement reached by the Parties, including the following key points:

1. Kern River and Rivera agree to settle all of the PAGA claims alleged against Defendants for the payment of one hundred thirty-five thousand dollars (\$135,000.00) (hereinafter the "Gross Settlement Amount"). SA at § 1.10.

2. Plaintiff's counsel seeks payment of one-third of this amount (\$45,000.00) as attorneys' fees and up to \$8,000.00 in declared costs related to prosecution of the PAGA claims in this action. Settlement Agreement at § 3.2.1. This amount will be funded within 10 days of the Effective Date of the Settlement Agreement. SA at § 4.2.

3. Plaintiff will request a payment of \$2,500.00 in exchange for his release of claims and in recognition of his service to the LWDA in prosecuting this action. SA at § 3.2.2.

4. The Parties have agreed to employ Phoenix Class Action Administration Solutions who have submitted a not to exceed bid of \$1,795.00 to administer the settlement. SA at § 1.3.

1 5. The remaining portion, approximately \$77,705.00, is to be allocated as alleged
2 PAGA Penalties. SA at § 3.2.4. Seventy-five percent (75%) of this amount, or approximately
3 \$58,279.00, shall be distributed to the LWDA and the remaining twenty-five percent (25%) of this
4 amount, or approximately \$19,426.00, shall be distributed to the Aggrieved Employees. SA, at §
5 3.2.4.

6 6. All Aggrieved Employees, estimated to be twenty-three (23), will receive a pro rata
7 share of the approximately \$19,426.00 allocated to them, based on the number of pay periods that
8 he or she performed work for Defendant Kern River during the PAGA Period. Settlement
9 Agreement, at § 3.2.4.1.

10 7. In exchange for the above settlement consideration, all four Defendants and the
11 other Released Parties shall be entitled to the following release from each Aggrieved Employee,
12 including Plaintiff,¹ and the State of California:

13 For the entirety of the PAGA Period (i.e., from December 23, 2022
14 up through and including the date of the Approval Order)...any and
15 all claims for civil penalties under PAGA based on violations of
16 Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 226(a), 226.7,
17 226.8, 256, 510, 512, 558, 558.1, 1182.12, 1194, 1194.2, 1197,
18 1197.1, 1197.2, 1198, 2698-2699.5, 2802, 2810.3, 3357, Business
19 and Professions Code section 17203, and all other applicable wage
20 orders and Labor Code sections which were alleged in the PAGA
21 Notices and the Operative Complaint as well as all facts, theories, or
22 claims for civil penalties that would be considered administratively
23 exhausted under applicable law by the PAGA Notices and Operative
24 Complaint as well as all facts, theories, or claims for civil penalties
25 that would be considered administratively exhausted under
26 applicable law by the PAGA Notices and Operative Complaint.

27 Settlement Agreement, § 5.1.

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¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court* (2009) 46 Cal. 4th 969, 986 (concluding that “with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act . . .”).

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1 When evaluating the fairness, adequacy, and reasonableness of a PAGA penalty, courts
2 compare the potential penalty amount (its verdict value, as some courts refer to it) with the actual
3 recovery under the settlement.. There is no express or even baseline percentage of recovery
4 required. Under the express terms of the PAGA, a verdict value is not guaranteed even if the
5 plaintiff prevails, as courts have discretion to lower the amount of penalties based on the
6 circumstances of a particular case. *Manzo v. McDonald’s Restaurants of California, Inc.* (E.D.
7 Cal., Sep. 29, 2022) 2022 WL 4586236, *6 (approving settlement of less than 1% of “verdict value”
8 of PAGA claims). Further, while “[a PAGA] action is ... designed to protect the public and
9 penalize the employer for past illegal conduct” [*Mendez v. Tween Brands, Inc.*, 2010 U.S. Dist.
10 LEXIS 66454 (E.D. Cal. June 30, 2010), at 11], a reviewing Court must take into account the fact
11 that settlement of a PAGA claim – like any settlement – involves a “compromise” that stops short
12 of rendering findings of liability and damages. Moreover, the Court must not lose sight of the fact
13 that “[u]nlike a class action seeking damages or injunctive relief for injured employees, the purpose
14 of PAGA is to incentivize private parties to recover civil penalties for the government that otherwise
15 may not have been assessed and collected by overburdened state enforcement agencies.” *Ochoa-*
16 *Hernandez v. CAJDER Foods, Inc.* (N.D. Cal. Apr. 2, 2010) 2010 U.S. Dist. LEXIS 32774, at 12.

17 **B. The Settlement Meets the Criteria for Approval**

18 **1. The Factors Giving Rise to a Presumption of Fairness Exist**

19 In conducting a review of a settlement, it is generally recognized that an “agreement ...
20 reached through arms-length negotiation between experienced parties . . . is entitled to a
21 presumption of fairness.” See *Anderson v. Nextel Retail Stores, LLC*, 2010 U.S. Dist. LEXIS 43377,
22 44 (C.D. Cal. Apr. 12, 2010). A presumption of fairness exists here, as the proposed Settlement
23 (1) is the product of arms-length negotiations [VJK Decl., ¶¶ 5-7], (2) that was negotiated by
24 Counsel with significant experience in similar wage and hour litigation [*Id.*, ¶¶ 20-22], (3) which
25 occurred after Plaintiff’s Counsel had conducted sufficient investigation to evaluate the strength
26 and potential value of the PAGA claims, as well as evaluating the risks of litigating this claim
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1 through trial [*Id.*, at ¶¶ 5-7], and following a full day mediation with an experienced mediator. *Id.*,
2 ¶¶ 5-7. Based thereon, the court should give considerable weight to the competency and integrity
3 of counsel in assuring itself that the Settlement Agreement represents an arm's-length transaction
4 entered without self-dealing or other potential misconduct.

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6 **2. The Proposed Settlement Furthers the Purposes of the PAGA, Taking into**
7 **Consideration Defendants' Defenses and Mitigating Factors, and Should Be**
8 **Approved.**

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10 i. Misclassification Claim.

11 Plaintiff's misclassification claim, the most potentially valuable of those asserted in this
12 action, is based on the allegation that he and other safety professionals who worked for Defendants
13 during the PAGA period were misclassified as independent contractors in violation of Labor Code
14 section 226.8. Through discovery, it was determined that there was a total of 23 individuals who
15 fell within the "Aggrieved Employee" definition and who Plaintiff alleged to have been
16 misclassified. VJK Decl., ¶ 13.a. Labor Code section 226.8 sets a penalty of between \$5,000 and
17 \$15,000 per violation for willful misclassification, and between \$10,000 and \$25,000 per violation
18 for a "pattern and practice" of willful misclassification.

19 Accordingly, the maximum civil penalty that Defendants could have faced as a result of its
20 alleged misclassification of Plaintiff and others was \$575,000. Lab. Code § 226.8(c) (penalty is
21 \$10,000 to \$25,000 per violation for "pattern and practice"). Of course, obtaining the maximum
22 possible penalty is not guaranteed, as even where a pattern and practice of willful misclassification
23 is proved, the Court still has the discretion to set the applicable penalty as low as \$10,000 per
24 violation, which would reduce the exposure from \$575,000 to \$230,000. VJK Decl., ¶ 13.b-13.c.

25 Further, Defendant countered this claim with evidence that several of the alleged aggrieved
26 employees had established limited liability companies or corporations through which they were
27 contracted by Defendant Kern River, which would militate against a finding that they were
28 misclassified as independent contractors and would have further reduced the potential exposure.

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ii. Waiting Time Penalty Claim.

Under Labor Code sections 201 and 202, Plaintiff alleges that Defendants were required to pay employees for all wages earned and unpaid at termination or within 72 hours of resignation. As set forth above, this claim is predicated on the allegation that former employees did not receive all wages they were entitled to receive because they were not paid for all time worked, did not receive meal and rest premium pay for noncompliant meal/rest periods, and therefore left employment with earned but unpaid wages. The civil penalty for violation of Labor Code sections 201 and/or 202 is found at Labor Code section 2699(f), and is \$100 per employee per pay period, as there is no civil penalty defined for violations of these code sections². Based on the data provided to Plaintiff in connection with the mediation, there were a maximum of 23 former alleged employees. VJK Decl., ¶ 13.d. Accordingly, Defendants faced a maximum potential penalty liability of \$2,300 (23 * \$100).

iii. Meal Period/Rest Period Claims.

Plaintiff's meal and rest period allegations are based on the allegations that Plaintiff and others were not afforded the right to compliant meal and rest periods because they were misclassified as independent contractors. Further, Plaintiff alleges that the time records kept by Defendants did not show recorded meal periods, and therefore a presumption exists that compliant meal periods were not provided in violation of Labor Code sections 226.7 and 512. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 78. The civil penalty for non-complaint meal or rest periods is found at Labor Code section 558 and is \$50 per employee per pay period. Assuming the Aggrieved Employees suffered at least one meal period and at least one rest period violation in each pay period during the PAGA period (385 pay periods), the maximum value of these claims is \$19,250 on the meal period claims and another \$19,250 on the rest period claims. VJK Decl., ¶ 13.e.

² *See Culley v. Lincare, Inc.* (E.D. Cal 2017), 236 F.Supp.3d 1184, 1191 (Holding that Labor Code section 256 does not apply to claims of violations of Labor Code sections 201/202 for employees other than seasonal workers); *Raziano v. Albertsons LLC* (C.D. Cal. Dec. 13, 2019) 2019 WL 9464279, *8 (same).

1 iv. Minimum Wage and Overtime Claims.

2 Plaintiff's minimum wage and overtime claims are predicated on the allegations that
3 Plaintiff and other alleged aggrieved employees were not paid overtime and minimum wages they
4 were due because, being misclassified as independent contractors, they often worked more time
5 than they were permitted to record. Plaintiff further alleged that he and other employees' time was
6 rounded to the nearest half-hour, which often resulted in underpayment of actual time worked.
7 Under PAGA, the penalty for failure to pay minimum wage is \$100 per employee per pay period.
8 Lab. Code § 1197.1. The civil penalty for failure to pay overtime wages is \$50 per employee per
9 pay period. Lab. Code § 558; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 198. Assuming
10 that there was an underpayment of both minimum wage and overtime in each of the 385 total overall
11 pay periods worked during the PAGA period, the maximum penalty exposure on these claims is
12 \$57,750 (385 x \$150). VJK Decl., ¶ 13.f.

13 v. Wage Statement Claim.

14 The wage statement allegations in this claim are derivative of the above facts. Plaintiff and
15 others, having been misclassified, were not furnished with wage statements that accurately stated
16 total hours worked, gross and net wages earned, or all applicable hourly rates and the total number
17 of hours worked at each rate in violation of Labor Code sections 226(a)(1), (a)(2), (a)(5), and (a)(9).

18 With respect to the maximum penalty exposure on this claim, it should first be noted that
19 California courts have not clearly determined whether the applicable penalty for noncompliant
20 wage statements is found under Labor Code section 226.3 or Labor Code section 2699(f). *See*
21 *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 673-674 (indicating
22 the \$250 penalty under Labor Code section 226.3 applies in all instances); *but see, Noori v.*
23 *Countrywide Payroll & HR Solutions, Inc.* (2019) 43 Cal.App.5th 957, 971 fn. 13 (indicating civil
24 penalties for noncompliant wage statements are available pursuant to 2699(f)). Given the lack of
25 clarity among the courts, and the explicit language of Labor Code section 226.3 stating that its
26 penalty applies where "the employer fails to provide the employee a wage deduction statement or
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1 fails to keep the records required in subdivision (a) of Section 226,” Plaintiff contends that the
2 appropriate measure of maximum exposure for inaccurate wage statements should be the \$100
3 “default” penalty set forth in Labor Code section 2699(f). Using that amount, the maximum
4 exposure faced by Defendants for the wage statement claim was \$38,500 (385 pay periods x \$100).
5 VJK Decl., ¶ 13.f-13.g.

6 vi. Business Reimbursement Claim

7 Plaintiff alleged that Defendants failed to reimburse him and others for business expenses,
8 including excess mileage, gas expenses, lodging, and work use of personal cellular phones, all in
9 violation of Labor Code section 2802. The civil penalty for violation of Labor Code section 2802
10 is the default penalty under Labor Code section 2699(f) of \$100 per employee per pay period.
11 Assuming a violation in each pay period as to all alleged aggrieved employees, the maximum
12 penalties that could be assessed for this claim is \$38,500 (385 x \$100). VJK Decl., ¶ 13.h.

13 vii. Total PAGA Exposure and Settlement Value

14 Based on the facts set forth above, the maximum exposure for the PAGA violations
15 asserted would be \$750,550. VJK Decl., ¶ 13.j. The PAGA settlement amount of \$135,000
16 therefore represents approximately 17.9% of the maximum PAGA exposure in this case.

17 Even without examining Defendants’ defenses, the settlement amount is well within the
18 range of PAGA settlements approved by courts. Courts have regularly approved PAGA
19 settlements representing less than 5% of the maximum exposure. *See Bowen v. Jea Senior Living*
20 *Health and Welfare Benefit Plan, LLC* (E.D. Cal, Dec. 8, 2023) 2023 WL 8527732 at *9-10
21 (approving PAGA settlement of approximately 3% of maximum liability); *Manzo v. McDonald’s*
22 *Restaurants of California, Inc.* (E.D. Cal. Sep. 29, 2022) at *7 (approving PAGA settlement of
23 less than 1% of maximum liability); *Rodriguez v. Danell Custom Harvesting, LLC* (E.D. Cal.
24 2018) 293 F.Supp.3d 1117, 1133 (approving PAGA settlement representing 0.6% of maximum
25 liability); Indeed, as low as 0.2 percent of total value has been approved. *Carrington v.*
26 *Starbucks* (2018) 30 Cal.App.5th 504, 517 (\$150,000 approved where maximum value was
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1 \$75,000,000).

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3 **viii. Defendants' Defenses**

4 As noted above, Defendants deny all of Plaintiff's allegations and are not admitting any
5 liability as part of the Settlement. Defendants' defenses include that Plaintiff and the other
6 allegedly aggrieved employees were all independent contractors and not employees. Defendants
7 maintain that Kern River's technicians ran their own businesses and were free to operate on their
8 own. Defendants also maintain that Plaintiff and the other 22 individuals in the PAGA group had
9 a reasonable opportunity to take compliant meal and rest periods, were paid for all time worked,
10 and that there are no violations of the California Labor Code of any kind. Defendants SME Steel
11 and Southwest Steel further contend that even if Plaintiff was determined to be an employee of
12 Kern River (which Defendants all vigorously dispute), SME Steel and Southwest Steel could not
13 be found to be a joint employer of Plaintiff. If Defendants' defenses were successful, any recovery
14 would be reduced or potentially eliminated altogether.

15 Second, courts are empowered by the plain language of the PAGA statute itself to reduce
16 PAGA awards and routinely exercise that discretion to approve amounts that are a small fraction
17 of the alleged maximum potential exposure. See Labor Code §2699(e)(2).

18 Finally, even if the court applied full value to the PAGA penalties but awarded the lower
19 end of the permissible penalty for misclassification (i.e., \$10,000 as opposed to \$25,000 per
20 individual), the overall exposure to Defendants would be reduced by \$345,000 and the settlement
21 would equal 33.2% of the total maximum exposure (i.e., \$135,000 divided by a maximum
22 exposure of \$405,550).

23 For these reasons, Plaintiff respectfully submits that r the \$135,000.00 PAGA settlement
24 is fair, reasonable, and just, and should be approved by the Court. VJK Decl., ¶ 14.

25 **3. The Scope of the Release is Appropriately Tailored**

26 The California Supreme Court has concluded that in the context of PAGA "the nonparty
27 employees, because they were not given notice of the action or afforded any opportunity to be
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1 heard, would not be bound by the judgment as to remedies other than civil penalties.” *Arias v.*
2 *Superior Court* (2009), 46 Cal. 4th 969, 987. Thus, the scope of the release provided in exchange
3 for the foregoing consideration is limited to the claims for civil penalties that were alleged, or
4 reasonably could have been alleged, based on the facts stated in the Complaint and Plaintiff’s
5 PAGA Notice and Amended PAGA Notice under Labor Code §§ 2698 *et seq.* Settlement
6 Agreement, at § 5.1. This Settlement has no impact on any individual claims other nonparty
7 aggrieved employees may have against Defendants.

8 **4. Plaintiff’s Counsel’s Requested Fees and Costs Are Reasonable**

9 PAGA provides for recovery of fees and costs for a prevailing plaintiff. Labor Code §
10 2699(g)(1). Plaintiff requests one-third of the overall settlement as fees, for a total of \$45,000.
11 This amount is substantially less than Plaintiff’s counsel’s calculated lodestar, detailed in the
12 accompanying declaration of Vladimir J. Kozina and is fair and appropriate given the efforts put
13 forth by counsel on a contingency basis as well as the substantial results achieved. VJK Decl., ¶¶
14 15-18, Exhibit 3. Plaintiff also requests \$7,537.34 in declared costs incurred in the prosecution of
15 this action. As set forth in detail in the accompanying declaration of Vladimir J. Kozina, this fee
16 and cost request is reasonable and should be approved. VJK Decl., ¶¶ 15-18, Exhibit 3.

17
18 **5. Phoenix Class Action Administration Solution’s Costs Are Reasonable and**
19 **Should be Approved.**

20 Plaintiff solicited and received bids from multiple reputable settlement administrators.
21 Following negotiations, Plaintiff ultimately selected Phoenix Class Action Administration
22 Solutions (“Phoenix”) to administer the PAGA settlement. Plaintiff’s counsel has worked with
23 Phoenix in the past in both PAGA-only and class action matters, has found their fees reasonable
24 and their service to be highly satisfactory, and their bid was the lowest among several bids Plaintiff
25 obtained from reputable settlement administrators. In connection with this Settlement, Phoenix
26 will, among other things, calculate the individual PAGA shares to be distributed to each Aggrieved
27 Employee, handle preparation of necessary tax forms and reporting, handle mailing of the
28

1 settlement checks, including performing skip traces and remailings as necessary, and handle
2 payment to the LWDA of its portion of the PAGA penalties. Phoenix' bid, which is a not-to-exceed
3 bid of \$1,795.00, represents a reasonable fee. VJK Decl., ¶ 19. Plaintiff respectfully requests that
4 the Court approve payment to Phoenix of \$1,795.00 out of the Gross Settlement Amount for its
5 services.

6 **6. Plaintiff Should Be Awarded His Requested Service Award.**

7 Plaintiff has requested a modest service award, \$2,500, in exchange for his efforts in
8 prosecuting this matter and securing a settlement that advances the public policy goals of the
9 PAGA. Courts regularly provide enhancement or service awards to plaintiffs in class action cases
10 to recognize a named Plaintiff's efforts and the risk of retaliation and other future negative
11 employment consequences for putting their name to a wage and hour employment case. *Staton v.*
12 *Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977. "Courts routinely approve incentive awards to
13 compensate plaintiffs for the services they provided and the risks they incurred during the course
14 of the class action litigation." *Ingram v. Coca-Cola Co.* (N.D. Ga. 2001) 200 F.R.D. 685, 694
15 (approving \$300,000 payment to each class representative in employment action settling before
16 certification).³ For similar reasons, courts have awarded incentive or service awards to PAGA
17 plaintiffs. *See Abelar v. Am. Residential Servs., LLC* (C.D. Cal. Nov. 14, 2019) 2019 WL 6054607,
18 *6. Here, Plaintiff has worked diligently with counsel throughout this entire litigation, including
19 participating in informal discovery, mediation, and taking numerous calls with counsel, and
20 assisting in securing a substantial penalty recovery under the PAGA. VJK Decl., ¶ 20; Dojaquez
21 Decl., ¶¶ 4-8.

22 **IV. CONCLUSION**

23 For all the reasons set forth above, Plaintiff respectfully requests that this Court grant the
24 instant motion and approve the PAGA Settlement as fair, reasonable, and adequate.

25
26 ³ *Roberts v. Texaco, Inc.* (S/D.N.Y. 1997) 979 F. Supp. 185 (approving incentive payments up to \$85,000 for named
27 plaintiffs in employment action settling before certification); *Van Vranken v. Atl. Richfield Co.* (N.D. Cal. 1995) 901
28 F. Supp. 294, 300 (\$50,000 service payment for named plaintiff in class action).

1 Dated: December 4, 2024

Respectfully submitted,

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3 **MAYALL HURLEY, P.C.**

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5 By: 

6 ROBERT J. WASSERMANN
7 VLADIMIR J. KOZINA
8 Attorneys for Plaintiff
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