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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

CUAUHTEMOC RAMIREZ CASTANEDA, individually, and on behalf of all others similarly aggrieved, Plaintiff, vs. ARTISTIC GEOMETRY, INC., a California corporation, ALESSANDRO BALDO, an individual, and DOES 1 through 50, inclusive, Defendants.	CASE NO. CGC-24-615195 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT UNDER PRIVATE ATTORNEYS GENERAL ACT** Date: April 9, 2026 Time: 9:00 a.m. Dept. 301

I. INTRODUCTION

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

II. BACKGROUND

Artistic is a tile and stone contractor located in Berkeley. Plaintiff Castaneda worked for Artistic as an hourly paid stone cutter for about 2.5 years, from November 2021 to March 2024. While he worked with Artistic, Plaintiff alleged he was not paid for all hours worked because his time punches were rounded off, He further alleges he did not receive all required meal and rest breaks on a fully-compliant basis, and further required to use his personal cell phone for work purposes without reimbursement. [Declaration of J. Kirk Donnelly ("Donnelly Decl."), ¶ 4.]

On or about August 23, 2023, Plaintiff submitted appropriate notice to the Labor & Workforce Development Agency ("LWDA") regarding the alleged Labor Code violations at issue in this matter. After exhausting administrative remedies, Plaintiff filed a complaint on June 3, 2024, alleging both individual wage and hour claims and further seeking civil penalties under PAGA for the alleged: (a) failure to pay all wages due, including minimum wages; (b) failure to provide meal and rest periods; (c) failure to provide complete and accurate wage statements; and (d) failure to pay wages due on separation of employment. Plaintiff filed the matter on behalf of Aggrieved Employees defined to include all individuals employed by Artistic as non-exempt employees during the relevant PAGA time frame of March 31, 2023 to September 4, 2025. [Donnelly Decl., ¶ 5; Exh. 2.]

Artistic has at all times denied Plaintiff's allegations and maintained its timekeeping and payroll policies accurately tracked and paid for all hours worked by its employees, that its meal and rest break and payroll policies and procedures comply with California law, and that there would be no need for Plaintiff or other employees to use their personal phones for work purposes. Additionally, Artistic strongly contends the case cannot be maintained as a representative action as, to the extent Aggrieved Employees did not receive compliant breaks or used personal phones on company business, it was against company policy, was intermittent and infrequent and evidence of such violations would be purely anecdotal, and therefore individualized issues predominate, which would render a trial under PAGA unmanageable. [Donnelly Decl., ¶ 6.]

After filing the complaint, Plaintiff served an initial round of written discovery to which Artistic served both initial and supplemental responses. Thereafter, upon discussing the merits of the case and engaging in further meet and confer sessions, the Parties agreed to mediation. The Parties also agreed to an informal exchange of documents and information before the mediation. Through this informal discovery, Defendant provided Plaintiff with information including, inter alia, Plaintiff's personnel files, the number of potential Aggrieved Employees, the number of aggregate pay periods, pay stubs and time records for a sampling of the Aggrieved Employees, and relevant policy documents regarding Defendant's time keeping and reporting policies, among other pertinent materials. [Donnelly Decl., ¶ 7.]

On September 1, 2025, the Parties mediated the case with Craig Ackermann, Esq., a respected professional neutral with extensive class action/wage and hour experience. Before and during the mediation, Plaintiff 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 Plaintiff's ability to proceed on a representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and Defendant's defenses, and the Parties' data analyses and conclusions based on data provided by Defendant. After a contentious day of negotiations, the Parties reached agreement and subsequently formalized their tentative settlement in the Settlement Agreement now before the Court for approval. [Donnelly Decl., ¶ 8.] A fully executed, true and correct copy of the PAGA Settlement Agreement ("Settlement Agreement") is attached to the Donnelly Declaration as

Exhibit 1.

Finally, Plaintiff's investigation suggested a potential claim for independent contractor misclassification, which claim was not alleged in Plaintiff's initial complaint. After the Parties agreed to include this alleged claim in the settlement Plaintiff submitted an amended PAGA notice and exhausted administrative remedies. On November 17, 2025, the Parties submitted a Stipulation and [Proposed] Order seeking leave for Plaintiff to file an amended complaint adding the misclassification claim; unfortunately the Court has not yet approved the Stipulation or issued its order granting leave to amend. Plaintiff accordingly requests that the Court approve the Stipulation and the filing of Plaintiff's First Amended Complaint either prior the hearing on this Motion, or concurrently therewith. [Donnelly Decl., ¶ 5; Exhs. 3-4.]

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 $35,000 (the "Gross Settlement Amount" or "GSA") in five monthly payments (October 1, 2026, November 1, 2026, December 1, 2026, January 1, 2027, February 1, 2027). The GSA is inclusive of all payments to the LWDA and Aggrieved Employees, a modest service award to Plaintiff, costs of settlement administration (estimated at no more than $3,490), and reasonable attorney's fees and costs.[1] After payment of the settlement administration costs, Plaintiff's enhancement, and reasonable attorney's fees and costs from the GSA, Plaintiff presently estimates about $8,343.33 will remain (the "Net Settlement Amount" or "NSA"). 75% of the NSA (about $6,257.50) will go to the LWDA, and the remaining 25% (about $2,085.83) will be distributed to the Aggrieved Employees in proportion to the total number of Pay Periods each individual worked during the PAGA Period of March 31, 2023 to September 4, 2025, with an average award currently estimated at about $53 per individual. [Donnelly Decl., ¶ 9.]

B. PAYMENT AND THE NOTICE

The Parties propose using Apex Class Action, LLC as the Settlement Administrator. Apex

[1] Plaintiff's counsel requests 1/3 of the PAGA Allocation ($11,666.67) in fees and costs of $7,500.00. Plaintiff requests a service award of $4,000 for his service as the named PAGA plaintiff.

has extensive experience administering PAGA settlements, and has agreed to cap its fees at $3,490. [Declaration of Mike Sutherland, ¶¶ 2-9; Exhs. A-B.] Artistic will fund the GSA in five monthly installments starting in October 2026 and running to February 2027. Within 10 days of full funding Phoenix will mail a Notice and settlement check to all Aggrieved Employees via regular First-Class U.S. Mail, using the most current, known mailing addresses identified in Artistic'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. [Donnelly Decl., ¶ 10.]

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 PAGA Release is inapplicable to any claims other than those brought under PAGA. Only the named plaintiff is entering into a general release of claims and waiver of Civil Code § 1542. [Donnelly Decl., ¶ 11.]

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). Recently, the appellate court in Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56, defined the standard for courts to apply when reviewing settlements under PAGA. The court held a trial court must ensure that the settlement is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." Id. at 77.

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

A. NATURE OF THE ALLEGED VIOLATIONS

Plaintiff's complaint alleged Defendant failed to pay all wages due, but after receipt of Defendant's discovery and informal production it became apparent that Defendant did in fact track employee hours to the minute, and further paid for all hours worked at the correct regular rate or overtime rate. Accordingly, Plaintiff ultimately did not assign any value to the unpaid wage allegations as the time and payroll records simply didn't support the claims. The pay records did suggest, however, that Artistic treated Plaintiff and at least some other aggrieved employees as independent contractors, as the pay records reflect Artistic took no deductions for payroll taxes and the paystubs further refer to employees as a "contractor" or "subcontractor." To the extent Artistic did classify Plaintiff or any other aggrieved employee as a contractor, it does not appear Artistic could establish any of the three elements of the applicable "ABC test" applied to determine if a worker is considered an employee and not an independent contractor under

Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903. Accordingly Plaintiff contended Artistic can be liable for civil penalties for under Labor Code § 226.8 for the alleged independent contractor misclassification. [Donnelly Decl., ¶ 11.]

For his meal and rest break claims, Plaintiff alleges Artistic's time records show numerous "de facto" violations, as Plaintiff contended Artistic combined meal periods and rest periods into a single one-hour long break. Per Plaintiff, he and other aggrieved employees did not receive 10-minute rest breaks except to the extent they were combined with a meal break. Plaintiff further alleges he occasionally worked shifts of 10+ hours but did not receive the required second meal break or third rest break when this happened. [Donnelly Decl., ¶ 11.]

Plaintiff also alleges Artistic required employees to use their personal cell phones for work purposes, such as communicating with supervisors and each other while on duty, or taking pictures of ongoing projects. Per Plaintiff, he did not receive any reimbursement for this. Cochran v. Schwan's Home Serv., Inc. (2014) 228 Cal.App.4th 113. [Donnelly Decl., ¶ 11.]

Plaintiff also brings claims derivative of the foregoing claims, including a derivative wage statement claim based on the failure to pay all wages due, and failure to pay all wages due and owing upon separation of employment under Labor Code §§ 201-203. [Donnelly Decl., ¶ 12.]

B. NUMBER OF ALLEGED VIOLATIONS AND POTENTIAL PENALTIES

For mediation, Artistic indicated it employed approximately 39 non-exempt employees in California during the relevant time frame, and these individuals worked approximately 1,067 pay periods at during that time. Based on the data provided by Defendant, Plaintiff estimated Defendant's maximum PAGA exposure at approximately $452,700 including approximately about $106,700 on the meal and rest break claims, about $106,700 on expense reimbursement claims, $106,700 on the wage statement claims, about $130,000 in penalties on the independent contractor misclassification claim, and about $2,600 in civil penalties for failing to timely pay wages on separation of employment. [Donnelly Decl., ¶ 13.]

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 meal and rest break claims, Artistic emphasized its written policies are compliant and that it authorized and permitted employees to take all required breaks and thus met its obligations under the law. Defendant further argued its records accurately reflect that employees took timely and compliant meal breaks that lasted a full hour rather than the 30 minutes required under the law. Artistic also noted that, in light of its compliant policies, whether a employee missed a meal period, received a late meal period, or missed a rest break would have been aberrational and against company policy. Thus, per Defendant, these issues are not amenable representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant. Artistic similarly argued it provided employees with the opportunity to take all required rest breaks consistent with California law. [Donnelly Decl., ¶ 11.]

On the expense reimbursement claim, Defendant argued there would be no conceivable need for employees to use their phones for work while working a cutting and installing stone slabs, tile, etc., and that employees weren't supposed to use personal devices unless they were on a break. Thus, per Artistic, any use of employee phones while working was against company policy and, to the extent it occurred, was purely for personal convenience and therefore not reimbursable as a "reasonable and necessary" business expense. [Donnelly Decl., ¶ 15.]

Plaintiff also alleged derivative violations of Labor Code § 226 (wage statement violations) and §§ 201-203 (waiting time penalties). Both claims, since they are entirely derivative, will rise or fall along with the primary unpaid wage claims, in addition to being subject to "good faith" and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay living wages). Accordingly, Plaintiff discounted 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. [Donnelly Decl., ¶ 16.]

Defendant further emphasized PAGA gives the Court wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(h). Several state and federal courts in California have applied significant reductions to PAGA civil penalties even after plaintiffs prevailed on the merits. In Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 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).

Defendant also emphasized that its business was and is suffering due to the imposition of significant tariffs on imported stone and tile by the current presidential administration. Defendant provided financial information to the mediator suggesting its business dropped by around 30-40% in 2025 over prior years, and argued persuasively that its ability to pay a larger settlement amount, or to make a large lump sum payment at this time, is limited. [Donnelly Decl., ¶ 17.]

Thus, Defendant raised various and multi-layered defenses to each of Plaintiff's claims, anyone of which, if successful, could have derailed Plaintiff's case and Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with litigation, and it could have taken years to realize any recovery in this action along with the possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be unmanageable, Defendant also intended to raise additional defenses on damages, including the proper measure of civil penalties and the appropriate discount to place on any assessment of such penalties. Further, Finally, Plaintiff accounted for Defendant's diminished financial position and ability to pay a larger sum without jeopardizing its ability to remain in business and continue to meet payroll obligations to current employees. [Donnelly Decl., ¶ 18.]

Although Plaintiff and counsel believe they could have prevailed, there was no such guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits on all claims, securing the maximum theoretical civil penalties, appellate risks, and Defendant's financial position 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 each and every pay period at issue, which outcome, for the reasons discussed, is unlikely. In Plaintiff accomplished that feat, its very possible it would be a pyrrhic victory and any judgment would prove uncollectible. Given Defendant's various procedural and merits defenses, its financial condition, as well as the substantial penalty reductions ordered in the cases above – which occurred after trial – the proposed settlement is reasonable. [Donnelly Decl., ¶ 19.]

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 $42,500 for the PAGA claims is within the ballpark of reasonableness, furthers the purposes underlying PAGA, and approval is appropriate.

V. SUBMISSION TO THE LWDA

Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and notified the LWDA of this approval hearing. [Donnelly Decl., ¶ 20; Exh. 4.] Accordingly, the LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings, 2018 WL 4773057, at *9 ("Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement."); Jordan, 2018 U.S. Dist. LEXIS at *7 ("Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and no comment or objection has been received.").

VI. PLAINTIFF'S ENHANCEMENT IS REASONABLE

Pursuant to the Settlement Agreement, Plaintiff seeks an incentive award of $4,000. This request is reasonable given the much broader release that Plaintiff is agreeing to. 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 himself 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. [Donnelly Decl., ¶ 55; Declaration of Cuauhtemoc Ramirez Castaneda, ¶¶ 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).

V11. 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 PAGA Allocation, or

$11,666.67, is allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs not to exceed $7,500.00. These fees and costs are warranted under the law and within the range of fees commonly awarded in similar cases.

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

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." <u>People ex rel. Stratham v. Acacia Research Corp.</u> (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. <u>Kim v. Reins Int'l California, Inc.</u> (2020) 9 Cal.5th 73; <u>Iskanian</u>, 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. <u>Bank of America v. Cory</u> (1985) 164 Cal.App.3d 66, 89-91.

Through the successful efforts of Plaintiff and his attorneys here, a common fund was created in the amount of $35,000 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

$35,000 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 $35,000 Gross Settlement Amount, for a total of $11,666.67, is reasonable and appropriate. [Donnelly Decl., ¶¶ 21-33.]

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

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

Here, Plaintiff's counsel's lodestar is approximately $31,935, based on 41.7 attorney/paralegal hours spent litigating the case. [Donnelly Decl., ¶¶ 24-32; Exh. 6.] On a lodestar basis, the fee request of $11,666.67 is less than the base lodestar, and accordingly there is no request for a lodestar enhancement.

C. The Requested Costs Are Fair And Reasonable

Plaintiff's Counsel requests reimbursement of actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the employees, and Plaintiff's Counsel is permitted to recover their litigation costs and expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of attorneys' fees by ... [Plaintiffs'] attorneys"). Furthermore, Plaintiff's Counsel is entitled to recover "those out-of-pocket expenses that would normally be charged to a fee-paying client." Harris v. Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

While the Settlement Agreement authorizes litigation costs not to exceed $7,500 Plaintiff's Counsel's actual costs presently are $7,607.47. [Donnelly Decl., ¶¶ 34-35.] This includes filing fees, mediation costs, and postage, while waiving photocopying costs and legal research charges. These costs are reasonable and uncontested, and should be approved up to the cap imposed under the Settlement Agreement.

VIII. CONCLUSION

For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement under PAGA, approve the requested award of reasonable attorney's fees and costs, approve Phoenix Settlement Administrators as the settlement administrator and approve is fees in the amount of $3,490.00, approve the proposed distributions to the LWDA and Aggrieved Employees, and enter judgment.

Dated: 3/10, 2026

LAW OFFICES OF J. KIRK DONNELLY, APC

J. Kirk Donnelly

J. Kirk Donnelly
Attorneys for Plaintiff Cuauhtemoc Ramirez Castaneda