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8

9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF RIVERSIDE**
11

12 JUAN CALDERON, on behalf of all others
similarly aggrieved,

13 Plaintiff,

14 vs.

15 PHYSICIANS FOR HEALTHY HOSPITALS,
INC., a Delaware corporation; PETER
16 BARONOFF, an individual; and DOES 1-50,
Inclusive,

17 Defendants.
18

CASE NO. MCC2001482

Assigned for All Purposes to:
Hon. Raquel A. Marquez
Dept. S303

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

[Filed concurrently with Memorandum of
Points and Authorities; Declarations of
Zachary M. Crosner and Juan Calderon;
[Proposed] Order]

Date: May 18, 2022
Time: 8:30 a.m.
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1 **I. INTRODUCTION**

2 Plaintiff Juan Calderon (“Plaintiff”) hereby seeks Court approval of a proposed settlement
3 of claims brought under the Private Attorneys General Act (“PAGA”) against defendant KPC
4 Global Medical Centers, Inc. (“KPC”). Consistent with PAGA, the proposed settlement releases
5 claims under PAGA only and has no impact on the individual claims of any alleged aggrieved
6 employee. Since the settlement resolves nothing more than claims under PAGA, it requires only a
7 one-step review and approval process by the Court, and for the reasons discussed below, the
8 proposed settlement is fair, reasonable, adequate, and advances the purposes underlying PAGA.
9 Plaintiff respectfully requests the Court approve the Settlement in its entirety.

10 **II. BACKGROUND**

11 Defendant Physicians for Healthy Hospitals, Inc. (“PHH”), is a limited liability company
12 formed in 2009, and it previously owned and operated Hemet Valley Medical Center and Meniffee
13 Valley Medical Center in Riverside County. Defendant KPC Global Medical Centers, Inc.
14 (“KPC”), owns and operates hospitals and medical centers in Riverside, San Bernardino and
15 Orange County. On August 11, 2020, PPH became part of KPC and converted its name to KPC.
16 Plaintiff Juan Calderon was employed by Defendant as a non-exempt security guard from January
17 2018 – June 2019. During his employment with KPC, Plaintiff was a member of the union SEIU -
18 UHW. [Declaration of Zachary M. Crosner (“Crosner Decl.”), ¶ 4.]

19 Plaintiff contends Defendant failed to provide Plaintiff and the allegedly aggrieved
20 employees with compliant meal periods for several reasons. First, Plaintiff argues the applicable
21 written meal period policy compelled employees to be back at their work station exactly 30
22 minutes from the time that they clocked out, but since Plaintiff and other employees had to travel
23 to and from the break room, sometimes located on a different floor, they could lose 5-10 minutes
24 from their meal period while walking there and back. Plaintiff contends he and other employees
25 likewise did not receive fully compliant rest periods for the same reason, as well as having to be
26 “on call” during their rest periods to respond to calls and inquiries from other employees.
27 Plaintiff contends further that he and other employees worked “off the clock” when they lost time
28 during their meal periods, and also that Defendant failed to compensate overtime at the correct

1 rate because they failed to properly incorporate split shift premiums and other non-discretionary
2 pay into the regular rate of compensation for purposes of calculating overtime. This also rendered
3 the wage statements issued by Defendant inaccurate on their face. [Crosner Decl., ¶ 5.]

4 Based on these allegations, and after appropriate notice to the Labor & Workforce
5 Development Agency (“LWDA”),¹ Plaintiff filed his PAGA-only complaint on August 5, 2020,
6 seeking civil penalties for the following alleged wage and hour violations: (a) failure to pay
7 wages, including overtime wages; (b) failure to provide meal and rest periods; (c) failure to
8 provide complete and accurate wage statements; and (d) waiting time penalties. Plaintiff filed the
9 matter on behalf of alleged aggrieved employees defined as all individuals employed by KPH as
10 non-exempt employee in California during the relevant time period. [Crosner Decl., ¶ 6.]

11 Defendant has at all times denied Plaintiff’s allegations and maintained it complied with
12 all relevant provisions of the Labor Code and wage orders. Specifically, Defendant contends
13 among other things that Plaintiff and all alleged aggrieved employees were timely paid for all
14 hours worked at the correct hourly rates in conformance with all applicable laws, that it
15 authorized and permitted Plaintiff and the alleged aggrieved employees to take fully compliant
16 meal and rest periods in accordance with all applicable laws, and that Plaintiff and the alleged
17 aggrieved employees received accurate and complete itemized wage statements. Defendant also
18 strongly contend the case cannot be maintained as a representative action because among other
19 things Plaintiff’s missed/interrupted/late/short meal and rest period allegations necessarily require
20 detailed individualized assessments and accordingly individualized issues predominate and a trial
21 under PAGA would be unmanageable. [Crosner Decl., ¶ 7.]

22 After Plaintiff filed his complaint, Defendant removed the matter to federal court. After
23 the District Court granted Plaintiff’s motion to remand, the case returned to this Court. The
24 Parties then began engaging in discovery and, upon discussing the merits of the case and holding
25 several meet and confer sessions regarding prospective law and motion and discovery issues,
26 agreed to attempt early mediation. The Parties further agreed to a protocol for exchanging
27 additional documents and information before the mediation. Through this formal and informal

28 ¹ Plaintiff’s PAGA notice letter is attached as Exhibit 2 to the Crosner Declaration.

1 discovery, Defendant provided Plaintiff with information including, inter alia, the number of
2 potential alleged aggrieved employees, the number of aggregate pay periods, sample pay stubs
3 and time records for around 20% of the alleged aggrieved employees, employee handbooks and
4 manuals, and relevant policy documents on Defendant's time keeping and reporting policies, etc.
5 Plaintiff had that information reviewed by Berger Consulting Group to assist with evaluating
6 potential violation rates, potential damages, etc. [Crosner Decl., ¶ 8; Exh. 3.]

7 The parties then attended a full day mediation before highly-regarded mediator Louis
8 Marlin, Esq., who has extensive experience mediating wage and hour class and PAGA actions.
9 Before and during the mediation, Plaintiff and his counsel analyzed, researched, and investigated
10 the potential issues, including matters related to the calculation of damages, trial, and appellate
11 issues and risks. During mediation, the Parties vigorously debated the likelihood of Plaintiff's
12 ability to proceed on a representative basis as to the PAGA claims, the legal grounds for
13 Plaintiff's claims and Defendant's defenses, and the parties' data analyses and conclusions based
14 on data provided by Defendant. After a contentious full day of negotiations, the Parties were able
15 to reach agreement on all major issues. The Parties then reduced their agreement to an MOU and
16 subsequently formalized the tentative settlement in the settlement agreement now before the
17 Court. [Crosner Decl., ¶ 9.] A true and correct copy of the Settlement Agreement is attached to
18 the Crosner Declaration as Exhibit 1.

19 **III. SUMMARY OF SETTLEMENT TERMS**

20 **A. Terms of the Settlement and Distribution of PAGA Penalties**

21 Under the settlement, Defendant will pay a non-reversionary settlement amount of
22 \$750,000 (the "Gross Settlement Amount" or "GSA") in two equal payments approximately 1
23 year apart. The GSA is inclusive of payments to the LWDA and alleged aggrieved employees,
24 costs of settlement administration, a modest service award to Plaintiff as well as a settlement of
25 Plaintiff's individual claims, and reasonable attorney's fees and costs.² After payment of
26

27 ² As discussed below, Plaintiff's Counsel seeks a fee equal to one-third (\$250,000) of the GSA, and reimbursement
28 of actual litigation costs of \$13,231.19. Plaintiff is requesting a service award in the amount of \$5,000.00, and the
Parties agreed to allocate \$13,000 to settlement of Plaintiff's individual claims.

1 settlement administration costs, service award and reasonable attorney's fees and costs from the
2 GSA, Plaintiff presently estimates about \$434,000 will remain (the "Net Settlement Amount" or
3 "NSA"). 75% of the NSA (about \$325,500) will go to the LWDA, and the remaining 25% (about
4 \$108,500) will be distributed to the alleged aggrieved employees in proportion to the total number
5 of Eligible Pay Periods each individual worked during the PAGA Period. The average award
6 currently is estimated at about \$38. [Crosner Decl., ¶ 10.]

7 **B. Payment and Notice**

8 The Parties propose using ILYM Group, Inc. ("ILYM") as the Settlement Administrator.
9 ILYM has extensive experience administering PAGA settlements, and has agreed to cap its fees
10 at \$20,000. Within 60 calendar days of the Settlement's Active Date, Defendant will fund the
11 initial installment payment, and fund the second installment payment on or before June 1, 2023.
12 There will be two distributions, one after each installment payment, at which time ILYM will
13 mail a Notice and settlement check to all allegedly aggrieved employees via regular First-Class
14 U.S. Mail, using the most current, known mailing addresses identified in Defendant's records.
15 Recipients need not submit claim forms and will automatically receive a Notice and settlement
16 check. Settlement checks will be negotiable for 120 days, after which time any unclaimed
17 residual funds will be forwarded to Crime Survivors as *cy pres* beneficiary (subject to Court
18 approval). [Crosner Decl., ¶ 11; Exh. 4.]

19 **C. The Release**

20 The release in the Settlement Agreement narrowly releases only civil penalty claims
21 brought under PAGA, as asserted in Plaintiff's PAGA notice to the LWDA and the operative
22 Complaint. While Plaintiff is separately entering into a general release of any and all claims
23 against Defendant, the Settlement Agreement protects the rights of the alleged aggrieved
24 employees to bring their own individual claims should they wish. For these reasons, the Parties
25 contend the release narrowly applies only to the PAGA claims alleged or that could have been
26 alleged, based on the factual and legal allegations pled in the operative Complaint. [Crosner
27 Decl., ¶ 12.]

28 /////

1 **IV. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS**
2 **THE PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL**

3 PAGA requires the Court “review and approve any settlement of any civil action filed
4 pursuant to this part.” Labor Code § 2699(l)(2). Recently, in November 2021, the appellate court
5 in Moniz v. Adecco USA, Inc. (2021) 72 Cal.App.5th 56, 2021 WL 5578298, defined the
6 standard for courts to apply when reviewing settlements under PAGA. The court held a trial
7 court must ensure that the settlement is “fair, reasonable, and adequate in view of PAGA’s
8 purposes to remediate present labor law violations, deter future ones, and to maximize
9 enforcement of state labor laws.” WL 5578298, at *9.

10 In so holding, Moniz noted many federal district courts had imported class action
11 settlement approval principles, demanding that PAGA settlements be “fair, reasonable, and
12 adequate,” and weighing factors such as “the strength of the plaintiff’s case, the risk, the stage of
13 the proceeding, the complexity and likely duration of further litigation, and the settlement
14 amount[.]” Id. at *8-9 (collecting cases). Observing that “PAGA’s purpose” is to “protect the
15 public interest”—especially the allegedly aggrieved employees—the Moniz Court agreed with
16 these federal authorities, concluding the same principles that ensure fairness in class action
17 settlements likewise serve the public interest in the PAGA context. These factors are more or less
18 identical to those California courts use to evaluate class action settlements per Kullar v. Foot
19 Locker Retail, Inc. (2008) 168 Cal.App.4th 116 and, consistent with Moniz, Plaintiff submits they
20 should inform the Court’s analysis as well. For the reasons below, the proposed settlement is fair,
21 reasonable and adequate, advances the purposes underlying PAGA, and should be approved.

22 **A. Nature of the Alleged Violations**

23 Plaintiff alleges claims for civil penalties for unpaid wages, meal/rest break violations,
24 and facial wage statement violations, as well as derivative wage statement and waiting time
25 penalty claims. First, Plaintiff contends Defendant failed to pay Plaintiff and other allegedly
26 aggrieved employees for all hours worked since the employees lost time by having their meal
27 periods cut short or interrupted even though 30 minutes was “auto deducted” from their time.
28 Plaintiff also contends Defendant failed to pay for overtime at the correct premium rate by failing

1 to include non-discretionary pay, such as split shift premiums, in the regular rate of pay which, in
2 turn, resulted in an incorrect overtime rate and underpayment of overtime. [Crosner Decl., ¶ 13.]

3 Plaintiff also contends Defendant failed to maintain proper meal and rest break policies,
4 and that company memoranda and other documents required employees to be back at their work
5 station exactly 30 minutes after they clocked out for a meal period, which frequently resulted in
6 employees not receiving a full 30 minute meal period. Plaintiff also alleges there are numerous
7 “de facto” violations where employees had their meal periods interrupted and where Defendant’s
8 own records show missed and non-compliant meal periods. Plaintiff further alleges that during
9 the PAGA period, Defendant failed to provide Plaintiff and the alleged aggrieved employees with
10 compliant rest periods for the same reasons as the alleged meal violations. [Crosner Decl., ¶ 14.]

11 Lastly, Plaintiff also brings claims for inaccurate wage statements, alleging the wage
12 statements were invalid on their face due to, inter alia, the overtime regular rate issue, and also on
13 a derivative basis. Lastly, there are derivative claims for failure to pay all wages due and owing
14 upon separation of employment under Labor Code §§ 201-203. [Crosner Decl., ¶ 15.]

15 **B. Number of Alleged Violations and Potential Penalties**

16 For mediation, Defendant indicated there are approximately 2,800 individuals who fit
17 within Plaintiff’s definition of alleged aggrieved employees in California during the relevant
18 PAGA period, and these individuals worked approximately 83,000 pay periods. Based on the data
19 and information provided by Defendant, and with his expert’s assistance and analysis, Plaintiff
20 estimated Defendant’s theoretical maximum PAGA exposure at over \$18 million. On a risk
21 discounted basis, however, Plaintiff estimates damages in the \$3.6 million range, for the reasons
22 discussed in detail below. [Crosner Decl., ¶¶ 16-17.]

23 **C. The Settlement Meets the Moniz/Kullar Factors and is Fair, Reasonable and**
24 **Adequate**

25 In response to Plaintiff’s unpaid wage claims for the alleged “auto deduct” policy and off
26 the clock work, Defendant took the position that their time keeping policies are legally compliant,
27 that they accurately tracked all hours worked, and paid the allegedly aggrieved employees for all
28 hours worked consistent with those policies. Defendant argued any trial of this issue on a

1 representative basis would be unmanageable since it would depend entirely on a myriad of
2 individualized inquiries as to each employee regarding any discrepancies in actual time worked
3 versus what was reported and paid for. On the unpaid overtime/regular rate issue, Defendant
4 contended they properly calculated and paid for all overtime hours worked, including correctly
5 calculating employee regular and overtime rates. [Crosner Decl., ¶ 18.]

6 For the meal and rest break claims, Defendant offered multiple defenses. First, Defendant
7 emphasized that the written meal and rest break policy generally was compliant, that they
8 authorized and permitted all necessary breaks, and that alleged aggrieved employees received full
9 uninterrupted lunch periods as reflected in the time records. Defendant also argued that even to
10 the extent missed/non-compliant breaks occurred, it was in violation of company policy and
11 would require significant individual inquiries to determine the reasons underlying any such
12 alleged violations and whether it was by employee choice or some other reason. Thus, per
13 Defendant, any trial would be unmanageable as held recently in Wesson v. Staples The Office
14 Superstore LLC (2021) 68 Cal.App.5th 746, because of these individualized issues. Further,
15 Defendant noted it paid at least some meal period premiums when missed breaks were
16 documented. [Crosner Decl., ¶ 19.]

17 As with meal breaks, Defendant argued the applicable rest break policies complied with
18 California law and authorized and permitted employees to take all required breaks. Defendant
19 further contended that, in light of the fact that recording rest periods is not required, any evidence
20 of failure to authorize rest periods and/or discouragement from taking rest periods would be
21 purely anecdotal and individual issues would predominate on liability. Defendant also contended
22 that they are only liable if Plaintiff can prove, on a shift-by-shift basis, that each alleged
23 aggrieved employee actually did not receive a fully-compliant rest break. This arguably would
24 once again make a trial unmanageable since the instances an employee missed a rest break would
25 have to be tested on a case by case basis to determine compliance. [Crosner Decl., ¶ 20.]

26 Plaintiff also alleged derivative violations of Labor Code § 226 (wage statement
27 violations) and §§ 201-203 (waiting time penalties). The derivative wage statement claims and
28 the waiting time penalties claim are based on the primary unpaid wage and meal/rest break

1 claims, and will rise or fall along with the primary claims, in addition to being subject to “good
2 faith” and other defenses available to Defendant. Accordingly, Plaintiff had to discount the value
3 of these claims significantly in light of these multiple potential defenses. Defendant also
4 contended a substantial discount should be applied to the civil penalties for these derivative (i.e.,
5 “stacked”) violations, as it would be unfair to penalize Defendant multiple times for the same
6 violation. [Crosner Decl., ¶ 21.]

7 Finally, Defendant emphasized PAGA gives the Court wide latitude to reduce the amount
8 of civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise
9 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code §
10 2699(e)(2). This is particularly true here where both the unpaid wage and meal and rest break
11 claims essentially are premised on “de facto” violations and that could prove difficult to establish
12 on a representative basis. [Crosner Decl., ¶ 22.]

13 Thus, Defendant raised various and multi-layered defenses to each of Plaintiff’s claims,
14 any one of which, if successful, could have decimated Plaintiff’s case. And Defendant vowed to
15 raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with this
16 litigation, and it could have taken years to realize any recovery in this action along with the
17 possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be
18 unmanageable, which argument was reinforced by the recent Wesson decision, Defendant also
19 intended to raise additional defenses on damages, including the proper measure of civil penalties
20 and the appropriate discount to place on any assessment of such penalties. [Crosner Decl., ¶ 23]

21 Although Plaintiff’s counsel believes they could have prevailed, there was no such
22 guarantee. When the risks of overcoming a manageability defense and prevailing at trial on the
23 merits are factored into the equation, the settlement value is reasonable and supported. Notably,
24 the proposed settlement equates to around 21% of the estimated risk discounted liability, as
25 discussed above. Of course, to recover those sums Plaintiff would have to shoot the moon and
26 win both liability and recover significant penalties on one or more, which outcome, for the
27 reasons discussed, is unlikely. Given Defendant’s procedural and merits defenses, as well as the
28 substantial penalty reductions ordered in the cases above – which occurred after trial – the

1 proposed settlement is eminently reasonable. [Crosner Decl., ¶ 24.]

2 Importantly, the mere fact that a settlement does not provide the same recovery as might
3 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
4 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed
5 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
6 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
7 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven
8 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
9 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
10 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane
11 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is
12 fundamentally fair . . . is different from the question whether the settlement is perfect in the
13 estimation of the reviewing court”); White v. Experian Information Solutions, Inc. (C.D. Cal.
14 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable
15 even though it represented 99% discount off the maximum value of the claims).

16 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
17 the probability of appeal of a favorable judgment, and the Court’s substantial discretion to reduce
18 any penalty award all are accounted for, it is clear a settlement amount of \$750,000 for the PAGA
19 claim is within the ballpark of reasonableness, and approval is appropriate. Jennings v. Open
20 Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *9 (approving
21 settlement with PAGA penalties of 0.6% where “[p]laintiffs [have] submitted the settlement
22 agreement to the LWDA, and the LWDA has not objected to the settlement”).

23 **V. SUBMISSION TO THE LWDA**

24 Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and
25 notified the LWDA of this approval hearing. [Crosner Decl., ¶ 25; Exh. 5.] Accordingly, the
26 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
27 approval if the LWDA ultimately declines to offer any comment or objection to a proposed
28 PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017

1 WL 3669607, at *3 (court inferred the LWDA’s non-response as “tantamount to its consent to the
2 proposed settlement terms, namely the proposed PAGA penalty amount.”); Jennings, 2018 WL
3 4773057, at *9; Jordan v NCI Grp., Inc. (C.D. Cal. Jan. 5, 2018) 2018 U.S. Dist. LEXIS 25297, at
4 *7 (“Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to
5 the proposed settlement and no comment or objection has been received.”).

6 **VI. THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE**

7 For their efforts and the contingent risk undertaken in obtaining a common fund
8 settlement that benefits the LWDA and aggrieved employees, one-third of the gross settlement, or
9 \$250,000, is allocated to Plaintiff’s counsel for reasonable attorney’s fees, plus actual litigation
10 costs. These fees are warranted under the law and within the range of fees commonly awarded in
11 similar cases.

12 **A. Plaintiff’s Counsel Are Entitled to Recover Attorney’s Fees Under the**
13 **Common Fund Doctrine**

14 PAGA provides a Plaintiff is entitled to recover reasonable attorney’s fees, expenses, and
15 costs under Labor Code § 2699(g)(1): “Any employee who prevails in any action shall be entitled
16 to an award of reasonable attorney’s fees and costs,” Reasonable attorney’s fees and costs
17 are typically awarded under the common fund doctrine in a *qui tam* such as this one, where, as
18 here, the litigation creates a common fund of money in a specific amount for the benefit of others.

19 “A *qui tam* action is one brought under a statute that allows a private person to sue as a
20 private attorney general to recover damages or penalties, all or part of which will be paid to the
21 government.” People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487,
22 491- 492. As our Supreme Court recently affirmed, a PAGA action is a *qui tam* action because
23 the statute allows the employee plaintiff, acting as the proxy of the State’s labor law enforcement
24 agency, to sue his or her employer for Labor Code violations and recover civil penalties that
25 otherwise could only be assessed and collected by the LWDA. Kim v. Reins Int’l California, Inc.
26 (2020) 9 Cal.5th 73; Iskanian v. CLS Transportation of Los Angeles, 59 Cal.4th at 380-82 (“[a]
27 PAGA representative action is therefore a type of *qui tam* action”). Indeed, the majority of the
28 civil penalties recovered in a PAGA action are paid to the State, with a smaller portion paid to the

1 aggrieved employees (e.g. 75% paid to the state; 25% paid to the aggrieved employees). Lab.
2 Code § 2699(i). Where a common fund is created in a *qui tam* action by the successful litigation
3 of a plaintiff, the plaintiff's attorneys are entitled to recover their fees from the common fund.
4 Bank of America v. Cory (1985) 164 Cal.App.3d 66, 89-91.

5 Through the efforts of Plaintiff and his attorneys here, a common fund was created in the
6 amount of \$750,000 for the benefit of the allegedly aggrieved employees and the State. Thus,
7 these beneficiaries should bear their share of the costs and attorney's fees out of the overall
8 recovery under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478-
9 482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

10 Not long ago, the California Supreme Court upheld the use of the common fund theory of
11 recovery for attorney's fees in Laffitte v. Robert Half Int'l Inc. (2016) 1 Cal.5th 480, 506. There,
12 the Court upheld an award of attorney's fees of one-third of the \$19 million gross settlement (e.g.,
13 awarded \$6.33 million in fees) under the common fund theory of recovery. Lafitte is consistent
14 with prior decisions recognizing "when a number of persons are entitled in common to a specific
15 fund, and an action brought by ... plaintiffs for the benefit of all results in the creation or
16 preservation of that fund, such ... plaintiffs may be awarded attorneys' fees out of the fund."
17 Serrano v. Priest (1977) 20 Cal.3d 25, 34; Boeing, 444 U.S. at 478 ("[A] lawyer who recovers a
18 common fund ... is entitled to reasonable attorneys' fees from the fund as a whole"); Lealao v.
19 Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 26 ("[f]ee spreading occurs when a
20 settlement or adjudication results in the establishment of a separate or so-called common fund for
21 the benefit of the class").

22 Accordingly, the common fund doctrine allows a court to award attorney's fees based on a
23 percentage of the total fund created when the fund consists of a "certain or easily calculable sum
24 of money," and California law has long applied the percentage of the recovery method for
25 awarding attorney's fees where a common fund is established. Serrano, 20 Cal.3d at 34; Bell v.
26 Farmers Ins. Exch. (2004) 115 Cal.App.4th 715, 726; Dunk v. Ford Motor Co. (1996) 48
27 Cal.App.4th 1794, 1809; Sanders v. City of Los Angeles (1970) 3 Cal.3d 252, 261-63 (affirming
28 award of attorney's fee based on percentage of recovery).

1 Awarding attorney's fees of one-third of gross common fund amount is favored by
2 California courts when a fund established for the common benefit of others is involved, such as
3 here. Accordingly, awarding fees on this basis out of the \$750,000 GSA, for a total of \$250,000,
4 is reasonable and appropriate. [Crosner Decl., ¶¶ 26-44.]

5 **B. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award**

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

16 Here, Crosner Legal's lodestar is approximately \$236,915.00, based on 288.6 attorney
17 hours spent litigating the case. [Crosner Decl., ¶¶ 30-44; Exh. 6.] This results in a modest
18 lodestar multiplier of 1.06, which is justified, reasonable and appropriate. Indeed, California
19 courts routinely approve multipliers in the in the 2-4 range to compensate for the time and
20 contingent risk of these types of cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66
21 (affirming attorney's fee award including an upward multiplier of 2.5); Wershba v. Apple
22 Computer, Inc. (2001) 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even
23 higher"); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a
24 multiplier of 2.34).

25 It also is important to note this fact serves to highlight the reasonableness of the fees
26 requested on a percentage-of-the-recovery basis, as it shows the requested fees are within striking
27 distance of the market rate for the services rendered if those services are valued via traditional
28 hourly billing, and that the nominal enhancement requested adequately compensates counsel for

1 the contingent risk assumed and the delay in payment, and represents a fair return on the
2 contingency. [Crosner Decl., ¶¶ 26-44.]

3 **C. The Requested Costs Are Reasonable**

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

14 While the Settlement Agreement authorizes litigation costs not to exceed \$20,000,
15 Plaintiff's Counsel's actual costs presently are \$13,231.19. This includes filing fees, service of
16 process, mediation costs, postage, and expert consultant fees, while waiving photocopying costs
17 and legal research charges. These costs are reasonable and uncontested, and should be approved.
18 [Crosner Decl., ¶¶ 45-46.]

19 **VII. PLAINTIFF'S ENHANCEMENT AWARD**

20 Here, pursuant to the Settlement Agreement, Plaintiff seeks an incentive award of \$5,000.
21 This request is reasonable given the much broader release that Plaintiff is agreeing to, as well as
22 his efforts in this case and the risks he undertook on behalf of the Aggrieved Employees.
23 Additionally, by contacting and retaining counsel to pursue these claims, Plaintiff made this
24 settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the
25 risk of being liable for Defendant's litigation costs. Plaintiff also exposed himself to unwanted
26 notoriety related to filing a public lawsuit (discoverable even through a simple google search) for
27 the benefit of other employees, placing him at risk of discrimination by future prospective
28 employers. Among taking many other actions assisting in the successful litigation of this case,

1 Plaintiff provided substantial factual information to my office, attended numerous meetings with
2 my office to discuss the case, and generally participated in all phases of the litigation.

3 Accordingly, the requested enhancement payment to Plaintiff is appropriate and justified
4 as part of the Settlement, in addition to the amount allocated to resolve his individual claims and
5 for his entering into a full general release. [Crosner Decl., ¶ 47; Declaration of Juan Calderon, ¶¶
6 2-10.]

7 **VIII. CONCLUSION**

8 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
9 under PAGA, approve the requested award of reasonable attorney's fees and costs, approve
10 ILYM Group, Inc. as the settlement administrator and approve its fees in the amount of \$20,000,
11 approve Plaintiff's enhancement award in the amount of \$5,000, approve the proposed
12 distributions to the LWDA and alleged aggrieved employees, and enter its Order of final approval
13 and judgment thereon.

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15 Dated: April 22, 2022

CROSNER LEGAL, P.C.

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21 Michael Crosner
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