

1 JAMIE SERB (SBN 289601)
jamie@crosnerlegal.com
2 NIKKI TRENNER, ESQ. (SBN 316007)
sepideh@crosnerlegal.com
3 ZACHARY M. CROSNER (SBN 272295)
zach@crosnerlegal.com
4 **CROSNER LEGAL, PC**
5 9440 Santa Monica Blvd. Suite 301
6 Beverly Hills, CA 90210
7 Tel: (866) 276-7697
8 Fax: (310) 510-6429

Attorneys for Plaintiff CRISTIAN MONTOYA

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**
11

12 CRISTIAN MONTOYA, on behalf of the
13 State of California, the Labor & Workforce
14 Development Agency, as a private attorney
15 general, and on behalf of all aggrieved
16 employees,

Plaintiff,

v.

17 GRECO ENTERTAINMENT GROUP,
18 INC., a California corporation; 2454
19 WILSHIRE RESTAURANT, LLC, a
20 California limited liability company; 2460
21 WILSHIRE RESTAURANT LLC, a
22 California limited liability company; and
23 DOES 1-100, inclusive

Defendants

Case No.: 23STCV00656

Assigned for All Purposes to:
Hon. Mel Red Recana
Dept. 45

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

[Filed Concurrently with Notice of Motion and
Motion; Declarations of Nikki Trenner, Cristian
Montoya, and Jodey Lawrence; [Proposed] Order

Date: July 17, 2024
Time: 8:30 a.m.
Dept. 45

Reservation ID: 683678529442

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	BACKGROUND.....	1
III.	SUMMARY OF SETTLEMENT TERMS	3
A.	Terms of the Settlement and Distribution of PAGA Penalties.....	3
B.	Payment and Notice	3
C.	The Release	4
IV.	THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE, FURTHERS THE PURPOSES UNDERLYING PAGA, AND WARRANTS APPROVAL.....	4
A.	Nature of the Alleged Violations	5
B.	Number of Alleged Violations and Potential Penalties.....	6
C.	The Settlement Meets the Moniz/Kullar Factors and is Fair, Reasonable and Adequate	6
V.	SUBMISSION TO THE LWDA.....	9
VI.	PLAINTIFF’S ENHANCEMENT AWARD	10
VII.	THE REQUESTED ATTORNEY’S FEES AND COSTS ARE FAIR AND REASONABLE	10
A.	Plaintiff’s Counsel Are Entitled to Recover Attorney’s Fees Under the Common Fund Doctrine.....	11
B.	A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award	12
C.	The Requested Costs Are Reasonable	13
VII.	CONCLUSION	14

TABLE OF AUTHORITIES

Page(s)

Cases

<u>7-Eleven Owners for Fair Franchising v. Southland Corp.</u> (2000) 85 Cal.App.4th 1135.....	9
<u>Bank of America v. Cory</u> (1985) 164 Cal.App.3d 66.....	11
<u>Bell v. Farmers Ins. Exch.</u> (2004) 115 Cal.App.4th 715.....	12
<u>Boeing Co. v. Van Gemert</u> (1980) 444 U.S. 472	11, 12
<u>Carrington v. Starbucks Corp.</u> (2018) 30 Cal.App.5th 504.....	8
<u>Cochran v. Schwan's Home Serv., Inc.</u> (2014) 228 Cal.App.4th 1137.....	5
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794.....	12
<u>Echavez v. Abercrombie & Fitch Co., Inc.</u> (C.D. Cal. Mar. 23, 2017) 2017 WL 3669607	9
<u>Fleming v. Covidien</u> (C.D. Cal. 2011) 2011 U.S.	8
<u>Harris v. Marhoefer</u> (9th Cir. 1994) 24 F.3d 16.....	13
<u>Jordan v NCI Grp., Inc.</u> (C.D. Cal. Jan. 5, 2018) 2018 U.S. Dist. LEXIS 25297.....	10
<u>Kim v. Reins Int'l California, Inc.</u> (2020) 9 Cal.5th 73.....	11
<u>Kullar v. Foot Locker Retail, Inc.</u> (2008) 168 Cal.App.4th 116.....	5
<u>Laffitte v. Robert Half Int'l Inc.</u> (2016)	12

1	<u>Lane v. Facebook, Inc.</u>	
2	(9th Cir. 2012) 696 F.3d 811	9
3	<u>Lealao v. Beneficial California, Inc.</u>	
4	(2000) 82 Cal.App.4th 19.....	12, 13
5	<u>Moniz v. Adecco USA, Inc.</u>	
6	(2021) 72 Cal.App.5th 56.....	4
7	<u>PLCM Group, Inc. v. Drexler</u>	
8	(2000)	13
9	<u>Rider v. County of San Diego</u>	
10	(1992) 11 Cal.App.4th 1410.....	13
11	<u>Sanders v. City of Los Angeles</u>	
12	(1970)	12
13	<u>Serrano v. Priest</u>	
14	(1977)	12, 13
15	<u>Six (6) Mexican Workers v. Arizona Citrus Growers</u>	
16	(9th Cir. 1990) 904 F.2d 1301	11
17	<u>Staton v. Boeing</u>	
18	(9th Cir. 2003) 327 F.3d 938.....	10
19	<u>People ex rel. Stratham v. Acacia Research Corp.</u>	
20	(2012) 210 Cal.App.4th 487.....	11
21	<u>In re Taco Bell Wage and Hour Actions</u>	
22	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557	8
23	<u>White v. Experian Information Solutions, Inc.</u>	
24	(C.D. Cal. 2011) 803 F.Supp.2d 1086.....	9
25	<u>White v. Starbucks Corp.</u>	
26	(N.D. Cal. 2007) 497 F.Supp.2d 1080	6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Statutes

Labor Code § 201 6

Labor Code § 203 6

Labor Code section 351 1, 5

Labor Code § 2699(e)(2) 8

Labor Code § 2699(g)(1) 11

Labor Code § 2699(i) 11

Labor Code § 2699(l)(2) 4

Labor Code § 2802 7

1 **I. INTRODUCTION**

2 Plaintiff Cristian Montoya hereby seeks Court approval of a proposed settlement of claims
3 brought under the Private Attorneys General Act (“PAGA”) against defendants Greco
4 Entertainment Group, Inc., 2454 Wilshire Restaurant, LLC, or 2460 Wilshire Restaurant, LLC
5 (collectively “Greco” or “Defendants”). Consistent with PAGA, the proposed settlement releases
6 claims under PAGA only and has no impact on the individual claims of any alleged aggrieved
7 employee. Since the settlement resolves nothing more than claims under PAGA, it requires only a
8 one-step review and approval process by the Court, and for the reasons discussed below, the
9 proposed settlement is fair, reasonable, adequate, and advances the purposes underlying PAGA.
10 Plaintiff respectfully requests the Court approve the Settlement in its entirety.

11 **II. BACKGROUND**

12 Defendants are a Los Angeles based restaurant group operating as Fia Restaurant in Santa
13 Monica, and Dono restaurant, also in Santa Monica (which opened in June 2022 and later closed
14 operations in December 2022). Plaintiff has worked for Defendants as a non-exempt cook since
15 October 2021, and generally works 8-9 hours per day, 4-5 days per week. [Declaration of Nikki
16 Trenner (“Trenner Decl.”), ¶ 4.]

17 Plaintiff contends Defendants violated California wage and hour laws in several respects.
18 First, he alleges Greco failed to pay all wages due by requiring “off the clock” work, as employees
19 frequently continued working after clocking out in order to completely finish the day’s work. He
20 next contends he and other Aggrieved Employees did not receive all required meal and rest periods,
21 He further alleges employees were required to be available by phone to respond to calls and texts
22 from the restaurant but did not receive any reimbursement. Finally, he alleged Defendant violated
23 Labor Code section 351 by failing to properly distribute employee tips. [Trenner Decl., ¶ 5.]

24 On November 4, 2022, Plaintiff filed a class action against Defendants on behalf of himself
25 and all other similarly aggrieved non-exempt employees. Thereafter, the Parties met and conferred
26 regarding applicable arbitration agreements and stipulated to submit Plaintiff’s individual claims to
27 arbitration and stay the action pending the completion of arbitration. On January 12, 2022, Plaintiff
28

1 filed a separate PAGA action on behalf of himself and all similarly aggrieved non-exempt
2 employees of Defendants in California. [Trenner Decl., ¶ 6.]

3 Defendants have at all times denied Plaintiff's allegations and maintained they complied
4 with all relevant provisions of the Labor Code and Wage Orders. Specifically, Defendants contend
5 among other things that Plaintiff and all alleged aggrieved employees were timely paid for all hours
6 worked at the correct hourly rates in conformance with all applicable laws, that it authorized and
7 permitted Plaintiffs and the alleged aggrieved employees to take all required breaks on a fully
8 compliant basis and in accordance with all applicable laws. Defendants further argued they properly
9 distributed all employee tips, and that any use of personal phones on the job was unnecessary and
10 therefore not reimbursable. Greco also strongly contends the case cannot be maintained as a
11 representative action because among other things Plaintiff's off the clock and
12 missed/interrupted/late/short meal and rest period allegations necessarily require detailed
13 individualized assessments and accordingly individualized issues predominate and a trial under
14 PAGA would be unmanageable. [Trenner Decl., ¶ 7.]

15 After Plaintiffs filed the initial PAGA complaint, the Parties then began engaging in
16 discovery and, upon discussing the merits of the case and holding several meet and confer sessions
17 regarding prospective law and motion and discovery issues, agreed to attempt mediation. The Parties
18 further agreed to a protocol for exchanging additional documents and information before the
19 mediation. Through this formal and informal discovery, Defendants provided Plaintiff with
20 information including, inter alia, the number of potential alleged aggrieved employees, the number
21 of aggregate pay periods, sample pay stubs, time records for over 45,000 employee shifts, employee
22 handbooks and manuals, and relevant policy documents on Defendants' time keeping and reporting
23 policies, etc. Plaintiff had that information reviewed by Berger Consulting Group to help evaluate
24 potential violation rates, potential damages, etc. [Trenner Decl., ¶ 8.]

25 The parties then attended a full day mediation before highly-regarded mediator Steven Pearl,
26 Esq., who has extensive experience mediating wage and hour class and PAGA actions. Before and
27 during the mediation, Plaintiff and counsel analyzed, researched, and investigated the potential
28

1 issues, including matters related to the calculation of damages, trial, and appellate issues and risks.
2 During mediation, the Parties vigorously debated the likelihood of Plaintiff's ability to proceed on a
3 representative basis as to the PAGA claims, the legal grounds for Plaintiff's claims and Defendant's
4 defenses, and the Parties' data analyses and conclusions based on data provided by Defendant. After
5 a contentious full day of negotiations, the Parties were able to reach agreement on all major issues.
6 The Parties then formalized the tentative settlement in the settlement agreement now before the
7 Court for approval. [Trenner Decl., ¶ 9.] A true and correct copy of the Settlement Agreement is
8 attached to the Trenner Declaration as Exhibit 1.

9 **III. SUMMARY OF SETTLEMENT TERMS**

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

11 Under the settlement, Defendant will pay a non-reversionary settlement amount of \$175,000
12 (the "Gross Settlement Amount" or "GSA") in three payments (\$125,000, \$25,000, and \$25,000)
13 within four months of the Effective Date. The GSA is inclusive of payments to the LWDA and
14 Aggrieved Employees, costs of settlement administration, Plaintiff's service award, and reasonable
15 attorney's fees and costs.¹ After payment of settlement administration costs, service award and
16 reasonable attorney's fees and costs from the GSA, the Parties presently estimate about \$82,166.67
17 will remain (the "Net Settlement Amount" or "NSA"). 75% of the NSA (about \$61,625.25) will go
18 to the LWDA, and the remaining 25% (about \$20,541.67) will be distributed to the Aggrieved
19 Employees in proportion to the total number of Eligible Pay Periods each individual worked during
20 the PAGA Period. The average award currently is estimated at about \$67. [Trenner Decl., ¶ 10.]

21 **B. Payment and Notice**

22 The Parties propose using Phoenix Settlement Administration ("Phoenix") as the Settlement
23 Administrator. Atticus has extensive experience administering PAGA settlements, and has agreed
24 to cap its fees at \$4,500.00. As noted, Defendant will fund the settlement within four months of the
25 Effective Date, and Phoenix thereafter will mail a Notice and settlement check to all PAGA

26 ¹ As discussed below, Plaintiff's Counsel seeks a fee equal to one-third (\$58,333.33) of the GSA, and
27 reimbursement of actual litigation costs of \$20,000.00. Plaintiff requests a service award of no more than
28 \$10,000.

1 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
2 identified in Defendant's records. Recipients need not submit claim forms and will automatically
3 receive a Notice and settlement check. Settlement checks will be negotiable for 180 days, after
4 which time any unclaimed residual funds will be forwarded to the State Controller's Unclaimed
5 Property Fund. [Trenner Decl., ¶ 11; Exh. 2; Declaration of Jodey Lawrence, ¶¶ 2-16, Exhs. A-B.]

6 **C. The Release**

7 The release in the Settlement Agreement narrowly releases only civil penalty claims brought
8 under PAGA, as asserted in Plaintiffs' PAGA notice to the LWDA and the operative Complaint.
9 While Plaintiff is entering into a general release of any and all claims against Defendants, the
10 Settlement Agreement protects the rights of the alleged aggrieved employees to bring their own
11 individual claims should they wish. For these reasons, the Parties contend the release narrowly
12 applies only to the PAGA claims alleged or that could have been alleged, based on the factual and
13 legal allegations pled in the operative complaint. [Trenner Decl., ¶ 12.]

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

16 PAGA requires the Court to "review and approve any settlement of any civil action filed
17 pursuant to this part." Labor Code § 2699(1)(2). Recently, the appellate court in Moniz v. Adecco
18 USA, Inc. (2021) 72 Cal.App.5th 56, defined the standard for courts to apply when reviewing
19 settlements under PAGA. The court held a trial court must ensure that the settlement is "fair,
20 reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations,
21 deter future ones, and to maximize enforcement of state labor laws." Id. at 77.

22 In so holding, Moniz noted many federal district courts had imported class action settlement
23 approval principles when evaluating PAGA settlements, demanding that PAGA settlements be "fair,
24 reasonable, and adequate," and weighing factors such as "the strength of the plaintiff's case, the
25 risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the
26 settlement amount[.]" Id. at 75-76 (collecting cases). Observing that "PAGA's purpose" is to
27 "protect the public interest"—especially the allegedly Aggrieved Employees—the Court agreed
28 with this district court authority, concluding that₄ much the same principles that ensure fairness in

1 class action settlements serve the public interest in the PAGA context. Essentially, these factors are
2 more or less identical to those California courts use to evaluate class action settlements per Kullar
3 v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116 and, accordingly, Plaintiff submits they
4 should inform the Court’s analysis as well. For the reasons below, the proposed settlement is fair,
5 reasonable and adequate, advances the purposes underlying PAGA, and should be approved.

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

7 Plaintiff alleges claims for civil penalties for unpaid wages, meal/rest break violations, tip
8 violations, and failure to reimburse expenses, as well as derivative wage statement and waiting time
9 penalty claims. First, Plaintiff contends Defendants failed to pay employees all wages due because
10 of “off the clock” work. Here, Plaintiff alleges Defendants’ policies required employees to clock
11 out no later than 5 minutes after the scheduled end of a shift, while simultaneously requiring them
12 to complete all of their work, such as ensuring the restaurant was completely cleaned, cleaning and
13 putting away all equipment and supplies, etc., such that employees had to continue working after
14 clocking out. [Trenner Decl., ¶ 13.]

15 Plaintiff also contends Defendants failed to provide proper meal and rest breaks, and that
16 review of the time records provided shows numerous “de facto” violations where meal breaks were
17 not provided at all (especially as to second meal periods), or otherwise non-compliant. On the rest
18 break claims, Plaintiff claims many breaks were not a net 10 minutes, and further that Greco did not
19 provide a suitable area for employees to take their breaks. [Trenner Decl., ¶ 14.]

20 Plaintiff next alleges he and other aggrieved employees regularly received work-related
21 phone calls and texts on their personal cell phones, but did not get any reimbursement for using the
22 personal phones. Cochran v. Schwan’s Home Serv., Inc. (2014) 228 Cal.App.4th 1137, 1143-1144.
23 Plaintiff also alleged Defendants improperly distributed employee tips to pay managers and other
24 non-service employees, and to pay other overhead costs, all in violation of Labor Code section 351.
25 [Trenner Decl., ¶ 15.]

1 Lastly, Plaintiff also brings derivative claims for inaccurate wage statements and failure to
2 pay all wages due and owing upon separation of employment under Labor Code §§ 201-203, based
3 on the above-described alleged wage violations. [Trenner Decl., ¶¶ 16.]

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

5 Defendants estimate that, as of the date of this Settlement Agreement, there are
6 approximately 307 Aggrieved Employees who worked approximately 6,550 Pay Periods during
7 the PAGA Period. Based on the data and information provided by Defendants, and with his
8 expert's assistance and analysis, Plaintiff estimated Defendants' theoretical maximum PAGA
9 exposure at about \$2,744,200. Plaintiff, however, discounted that number to account for
10 Defendants' procedural and merits defenses, of which there are many. [Trenner Decl., ¶¶ 17-18.]

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

13 In response to Plaintiff's off the clock claims, Defendants emphasized they accurately
14 tracked employee time and paid the allegedly aggrieved employees for all hours worked at the
15 correct rates consistent with their compliant policies. They further argued employees regularly
16 received supervisor approval to work beyond the scheduled end of a shift when necessary to
17 complete their job duties, and further that any alleged "off the clock" would have been against
18 company policy and done without Defendants' actual or constructive knowledge. [Trenner Decl., ¶
19 19.] Thus, per Defendants, any such off the clock work was not actionable. White v. Starbucks Corp.
20 (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge
21 of the off the clock work).

22 For the meal and rest break claims, Defendants offered multiple defenses. First, Defendants
23 emphasized that the written meal and rest break policy generally was compliant, that they authorized
24 and permitted all necessary breaks, and that alleged aggrieved employees received full 30 minute
25 lunch periods without interruption as reflected in the time records. Defendants also argued that even
26 to the extent missed/non-compliant breaks occurred, it was in violation of company policy and
27 would require significant individual inquiries to determine the reasons underlying any such alleged
28 violations and whether it was by employee choice or some other reason. Thus, per Defendants, any

1 trial would be unmanageable on a representative basis because of these individualized issues.
2 [Trenner Decl., ¶ 20.]

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

12 For the expense reimbursement claim, Defendants argued it there would be no conceivable
13 need for employees to use their phones for work while at the restaurant and, to the extent they did it
14 was purely for personal convenience and therefore neither required nor reasonable. Labor Code §
15 2802. Thus, per Greco it owed no reimbursement for cell phone use. On the tip claims, Defendants
16 argued that all tips were properly distributed only to those employees entitled to receive them, and
17 that its written tip pooling policy specified that no supervisors were eligible to receive any part of
18 employee tips. [Trenner Decl., ¶ 22.]

19 On the wage statement and waiting time waiting time penalty claims, Defendants
20 emphasized that, to the extent they are derivative then they rise or fall along with the primary claims,
21 in addition to being subject to “good faith” and other defenses available to Defendant. Accordingly,
22 Plaintiff had to discount the value of these claims significantly in light of these multiple potential
23 defenses. Defendants also contended a substantial discount should be applied to the civil penalties
24 for these derivative (i.e., “stacked”) violations, as it would be unfair to penalize Defendant multiple
25 times for the same violation. [Trenner Decl., ¶ 23.]

26 Defendants also emphasized PAGA gives the Court wide latitude to reduce the amount of
27 civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise would
28

1 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(e)(2).
2 This is particularly true here where the claims essentially are premised on “de facto” violations and
3 that could prove difficult to establish on a representative basis, and in light of many cases that have
4 imposed substantial discounts on PAGA penalties awarded after trial. In Fleming v. Covidien (C.D.
5 Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court reduced the potential
6 penalties by over 82% after a bench trial. More recently, in Carrington v. Starbucks Corp. (2018)
7 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of just \$5 per pay period, a
8 90% reduction, which decision was upheld on appeal. In re Taco Bell Wage and Hour Actions (E.D.
9 Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial). Additionally,
10 no information came to light suggesting that any violations were knowing and willful by Defendants
11 and thus Plaintiff believes there is a high likelihood the Court would find imposition of significantly
12 more in penalties would be “unjust, arbitrary, or confiscatory.” [Trenner Decl., ¶ 24.]

13 Thus, Defendants raised various and multi-layered procedural and merits defenses to
14 Plaintiff’s claims, any one of which, if successful, could have decimated Plaintiff’s case. And
15 Defendants vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going
16 forward with this litigation, and it could have taken years to realize any recovery in this action along
17 with the possibility of post-trial appeals. In addition to its merits defenses and arguing trial would
18 be unmanageable, Defendants also intended to raise additional defenses on damages, including the
19 proper measure of civil penalties and the appropriate discount to place on any assessment of such
20 penalties. [Trenner Decl., ¶ 25.]

21 Although Plaintiff and his counsel believe they could have prevailed, there was no such
22 guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits
23 on all claims, and securing maximum civil penalties all are factored into the equation, the settlement
24 value is reasonable and supported. Indeed, to recover maximum penalties Plaintiff would have to
25 shoot the moon and win on liability as to all claims and all pay periods, and convince the Court to
26 award full penalties, which outcome is highly unlikely. Given Defendants’ procedural and merits
27
28

1 defenses, as well as the substantial penalty reductions ordered in the cases above – which occurred
2 after trial – the proposed settlement is eminently reasonable. [Trenner Decl., ¶ 26.]

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

17 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
18 the probability of appeal of a favorable judgment, and the Court’s substantial discretion to reduce
19 any penalty award all are accounted for, it is clear a settlement amount of \$175,000 for the PAGA
20 claim is within the ballpark of reasonableness, is fair, reasonable and adequate, and consistent with
21 PAGA’s underlying purposes. Plaintiff respectfully submits approval is appropriate.

22 **V. SUBMISSION TO THE LWDA**

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

1 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. PLAINTIFF’S ENHANCEMENT AWARD**

7 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of \$10,000
8 for his service in bringing these claims on behalf of the LWDA and Aggrieved Employees. Staton
9 v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service
10 and incentive payments ranging from \$2,000 to \$25,000). The request is reasonable given the risks
11 he undertook on behalf of the Class Members, and given he is entering into a full general release of
12 all claims. By contacting and retaining counsel to pursue these claims, Plaintiff helped make this
13 settlement possible for the State and other employees, while shouldering the risk of being liable for
14 Defendants’ litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a
15 public lawsuit (discoverable even through a simple google search) for the benefit of other
16 employees, placing himself at risk of discrimination by future prospective employers. As set forth
17 in more detail in his declaration submitted herewith, among taking many other actions assisting in
18 the successful litigation of this case, Plaintiff provided substantial factual information and
19 documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the
20 case, and kept abreast of all significant developments. [Declaration of Cristian Montoya, ¶¶ 2-9;
21 Trenner Decl., ¶ 28.] Accordingly, the requested service award is appropriate and should be
22 approved.

23 **VII. THE REQUESTED ATTORNEY’S FEES AND COSTS ARE FAIR AND**
24 **REASONABLE**

25 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
26 that benefits the LWDA and aggrieved employees, one-third of the gross settlement, or \$58,333.33,
27 is allocated to Plaintiff’s counsel for reasonable attorney’s fees, plus actual litigation costs. These
28

1 fees are warranted under the law and within the range of fees commonly awarded in similar cases.
2 [Trenner Decl., ¶ 29.]

3 **A. Plaintiff's Counsel Are Entitled to Recover Attorney's Fees Under the Common**
4 **Fund Doctrine**

5 PAGA provides a plaintiff is entitled to recover reasonable attorney's fees, expenses, and
6 costs under Labor Code § 2699(g)(l): "Any employee who prevails in any action shall be entitled to
7 an award of reasonable attorney's fees and costs," Reasonable attorney's fees and costs are
8 typically awarded under the common fund doctrine in a *qui tam* such as this one, where, as here, the
9 litigation creates a common fund of money in a specific amount for the benefit of others.

10 "A *qui tam* action is one brought under a statute that allows a private person to sue as a
11 private attorney general to recover damages or penalties, all or part of which will be paid to the
12 government." People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487, 491-
13 492. As our Supreme Court recently affirmed, a PAGA action is a *qui tam* action because the statute
14 allows the employee plaintiff, acting as the proxy of the State's labor law enforcement agency, to
15 sue his or her employer for Labor Code violations and recover civil penalties that otherwise could
16 only be assessed and collected by the LWDA. Kim v. Reins Int'l California, Inc. (2020) 9 Cal.5th
17 73; Iskanian v. CLS Transportation of Los Angeles, 59 Cal.4th at 380-82 ("[a] PAGA representative
18 action is therefore a type of *qui tam* action"). Indeed, the majority of the civil penalties recovered in
19 a PAGA action are paid to the State, with a smaller portion paid to the aggrieved employees (e.g.
20 75% paid to the state; 25% paid to the aggrieved employees). Lab. Code § 2699(i). Where a common
21 fund is created in a *qui tam* action by the successful litigation of a plaintiff, the plaintiff's attorneys
22 are entitled to recover their fees from the common fund. Bank of America v. Cory (1985) 164
23 Cal.App.3d 66, 89-91.

24 Through the efforts of Plaintiff and his attorneys, a common fund was created in the amount
25 of \$175,000 for the benefit of the allegedly aggrieved employees and the State. Thus, these
26 beneficiaries should bear their share of the costs and attorney's fees out of the overall recovery under
27 the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478-482; Six (6) Mexican
28 Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

1 Not long ago, the California Supreme Court upheld the use of the common fund theory of
2 recovery for attorney's fees in Laffitte v. Robert Half Int'l Inc. (2016) 1 Cal.5th 480, 506. There,
3 the Court upheld an award of attorney's fees of one-third of the \$19 million gross settlement (e.g.,
4 awarded \$6.33 million in fees) under the common fund theory of recovery. Lafitte is consistent
5 with prior decisions recognizing "when a number of persons are entitled in common to a specific
6 fund, and an action brought by ... plaintiffs for the benefit of all results in the creation or preservation
7 of that fund, such ... plaintiffs may be awarded attorneys' fees out of the fund." Serrano v. Priest
8 (1977) 20 Cal.3d 25, 34; Boeing, 444 U.S. at 478 ("[A] lawyer who recovers a common fund ... is
9 entitled to reasonable attorneys' fees from the fund as a whole"); Lealao v. Beneficial California, Inc.
10 (2000) 82 Cal.App.4th 19, 26 ("[f]ee spreading occurs when a settlement or adjudication results in
11 the establishment of a separate or so-called common fund for the benefit of the class").

12 Accordingly, the common fund doctrine allows a court to award attorney's fees based on a
13 percentage of the total fund created when the fund consists of a "certain or easily calculable sum of
14 money," and California law has long applied the percentage of the recovery method for awarding
15 attorney's fees where a common fund is established. Serrano, 20 Cal.3d at 34; Bell v. Farmers Ins.
16 Exch. (2004) 115 Cal.App.4th 715, 726; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794,
17 1809; Sanders v. City of Los Angeles (1970) 3 Cal.3d 252, 261-63 (affirming award of attorney's
18 fee based on percentage of recovery).

19 Awarding attorney's fees of one-third of gross common fund amount is favored by California
20 courts when a fund established for the common benefit of others is involved, such as here.
21 Accordingly, awarding fees on this basis out of the \$175,000 GSA, for a total of \$58,333.33, is
22 reasonable and appropriate. [Trenner Decl., ¶¶ 29-47.]

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

24 Despite the recognized limitations of the so-called lodestar method, some California and
25 federal courts acknowledge the utility of a lodestar "cross-check" when assessing a proposed
26 percentage-based fee award. Lealao, 82 Cal.App.4th at 46-47. Under the "lodestar multiplier"
27 method of cross-checking proposed fee awards, the court first ascertains counsel's total "lodestar"
28

1 amount by multiplying the number of hours reasonably expended by each attorney's reasonable
2 hourly rate, and then enhances or reduces this lodestar figure by a "multiplier" to account for a range
3 of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree of
4 success achieved. PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-96; Lealao, 82
5 Cal.App.4th at 43 (court has discretion to use a multiplier to ensure that the "fee awarded is within
6 the range of fees freely negotiated in the legal marketplace in comparable litigation").

7 Here, Crosner Legal's lodestar is approximately \$99,400, based on 142.1 attorney hours
8 spent litigating the case. [Trenner Decl., ¶¶ 32-46; Exh. 7.] On a lodestar basis, the fee request of
9 \$58,333.33 results in a lodestar that is higher than the fees requested on a percentage of the recovery
10 basis and, accordingly, there is no request for a multiplier. It also is important to note this fact serves
11 to highlight the reasonableness of the fees sought on a percentage-of-the-recovery basis, as it shows
12 the requested fees are actually lower than the market rate for the services rendered if those services
13 are valued via traditional hourly billing.

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

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

25 Plaintiff's Counsel's actual costs presently are \$25,750.42. This includes filing fees, service
26 of process, mediation costs, postage, and expert consultant fees, while waiving photocopying costs
27

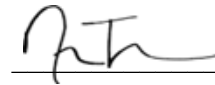
1 and legal research charges. These costs are reasonable and uncontested, and should be approved up
2 to the \$20,000 cap under the Settlement Agreement. [Trenner Decl., ¶¶ 48-49.]

3 **VII. CONCLUSION**

4 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement under
5 PAGA, approve the requested award of reasonable attorney's fees and costs, approve Atticus
6 Administration, Inc. as the settlement administrator and approve its fees in the amount of \$4,500.00,
7 approve Plaintiff's enhancement award in the amount of \$10,000, approve the proposed
8 distributions to the LWDA and Aggrieved Employees, and enter its Order of final approval and
9 judgment thereon.

10
11 Dated: May 14, 2024

CROSNER LEGAL, P.C.

12
13 

14 _____
15 Jamie K. Serb
16 Nikki Trenner
17 Zachary Crosner
18 Attorneys for Plaintiff Cristian Montoya
19
20
21
22
23
24
25
26
27
28