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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

JOSE VENTURA, on behalf of the State of
California, and others similarly situated and
aggrieved,

Plaintiff,

v.

LIMONEIRA COMPANY, a Delaware
Corporation; USA STAFFING, INC., a
California corporation; UNITED STAFFING
ASSOCIATES, LLC, a California Limited
Liability Company; and DOES 1-100, inclusive,

Defendants.

Case No.: 56-2023-00575592-CU-OE-VTA

Assigned for All Purposes to:
Hon. Mark Borrell
Dept. 40

**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 Sepideh
Ardestani, Jose Ventura, and Michael Moore;
[Proposed] Order]

Date: February 22, 2024
Time: 8:30 a.m.
Dept.: 40

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1 **I. INTRODUCTION**

2 Plaintiff Jose Ventura (“Plaintiff”) hereby seeks Court approval of a proposed settlement of
3 claims brought under the Private Attorneys General Act (“PAGA”) against defendant Limoneira
4 Company (“Limoneira”) and Defendant United Staffing Associates, LLC (“USA”) (collectively,
5 “Defendants”). Consistent with PAGA, the proposed settlement releases claims under PAGA only
6 and has no impact on the individual claims of any allegedly aggrieved employee. Since the
7 settlement resolves nothing more than claims under PAGA, it requires only a one-step review and
8 approval process by the Court, and for the reasons discussed below, the proposed settlement is fair,
9 reasonable, adequate, and advances the purposes underlying PAGA. Plaintiff respectfully requests
10 the Court approve the Settlement in its entirety.

11 **II. BACKGROUND**

12 Defendant Limoneira is an agribusiness and real estate development company based in Santa
13 Paula, California. Limoneira’s operations mainly consist of production, sales and marketing of citrus
14 and avocados. According to its website, Limoneira is one of the largest lemon producers in the world
15 and one of the oldest citrus growing organizations in California and has been in business since 1893.
16 Defendant USA is a temporary staffing agency that offers staffing solutions to a variety of businesses
17 of all sizes and industries in California. Plaintiff Ventura worked for Defendants as a non-exempt
18 forklift driver from January 2021 through February 16, 2022. His duties included moving and
19 organizing crates holding citrus fruit in the shipping department. He was paid \$17 an hour and worked
20 5-6 shifts per week from 7:00 a.m. to 5:00 p.m. [Declaration of Sepideh Ardestani (“Ardestani
21 Decl.”), ¶ 4.]

22 Plaintiff contends Defendants violated the Labor Code in several ways during the relevant
23 time period. First, he contends Defendant failed to pay Plaintiff and the Aggrieved Employees for
24 all hours worked including pre-shift and post-shift duties, and further failed to pay for overtime at
25 the correct rate. He also alleges Defendants failed to provide Plaintiff and the Aggrieved Employees
26 with required meal and rest periods, as reflected in Defendants’ time and pay records, and by
27 restricting how employees could use their time during breaks such that employees were not fully
28 relieved from employer control. He also contends Defendant failed to reimburse Plaintiff and the

1 Aggrieved Employees for all business expenses including the cost of personal cell phones used for
2 work purposes. [Ardestani Decl., ¶ 5.]

3 Based on these allegations, and after appropriate notice to the Labor & Workforce
4 Development Agency (“LWDA”),¹ on February 23, 2023, Plaintiff commenced this Action by
5 filing a Complaint alleging a single cause of action under PAGA against Defendants for failure to
6 pay all minimum wages, overtime wages, premium wages for missed and denied meal and rest
7 periods, failure to reimburse business expenses, failure to provide accurately itemized wage
8 statements, and failure to timely pay all wages upon separation of employment, on behalf of all
9 individuals employed by Limoneira as non-exempt employee in California during the PAGA
10 Period, and all individuals employed by USA and staffed at Limoneira during the PAGA Period.
11 [Ardestani Decl., ¶ 6.]

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

23 After Plaintiff filed his complaint, Defendants noted he had signed an arbitration agreement;
24 however, the Parties elected to pursue mediation rather than litigating a motion to compel
25 arbitration. The Parties further agreed to a protocol for exchanging documents and information
26 before the mediation. Through this informal discovery, Defendant provided Plaintiffs with
27 information including, inter alia, the number of potential alleged aggrieved employees, the number

28 ¹ Plaintiff’s December 6, 2022 PAGA notice letter is attached as Exhibit 3 to the Ardestani Declaration.

1 of aggregate pay periods, sample pay stubs and time records for around 50% of the alleged
2 aggrieved employees, employee handbooks and manuals, and relevant policy documents on
3 Defendant's time keeping and reporting policies, etc. Plaintiff then had this information reviewed
4 by Berger Consulting Group to assist with determining potential violation rates, preparing a
5 damages model, etc. [Ardestani Decl., ¶ 8.]

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

17 **III. SUMMARY OF SETTLEMENT TERMS**

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

19 Under the settlement, Defendants will pay a non-reversionary settlement amount of
20 \$200,000 (the "Gross Settlement Amount" or "GSA"), which is inclusive of payments to the
21 LWDA and Aggrieved Employees, costs of settlement administration, a modest service award to
22 Plaintiff, and reasonable attorney's fees and costs.² After payment of settlement administration
23 costs, service award and reasonable attorney's fees and costs from the GSA, Plaintiffs presently
24 estimate about \$102,778.13 will remain (the "Net Settlement Amount" or "NSA"). 75% of the NSA
25 (about \$77,083.60) will go to the LWDA, and the remaining 25% (about \$25,694.53) will be
26 distributed to the Aggrieved Employees in proportion to the total number of Eligible Pay Periods

27 ² As discussed below, Plaintiffs' Counsel seeks a fee equal to one-third (\$66,666.66) of the GSA, and reimbursement
28 of actual litigation costs of \$16,055.21. Plaintiff requests a service award in the amount of \$7,500.00.

1 each individual worked during the PAGA Period. The average award currently is estimated at about
2 \$36. [Ardestani Decl., ¶ 10.]

3 **B. Payment and Notice**

4 The Parties propose using Phoenix Settlement Administrators as the Settlement
5 Administrator. Phoenix has extensive experience administering PAGA settlements, and has agreed
6 to cap its fees at \$7,000.00. Within 14 calendar days of the Settlement's Effective Date, Defendant
7 will fund the settlement. Within 14 days thereafter, Phoenix will mail a Notice and settlement check
8 to all PAGA Members via regular First-Class U.S. Mail, using the most current, known mailing
9 addresses identified in Defendants' records. Recipients need not submit claim forms and will
10 automatically receive a Notice and settlement check. Settlement checks will be negotiable for 180
11 days, after which time any unclaimed residual funds will be forwarded to the State Controller's
12 Unclaimed Property Fund. [Ardestani Decl., ¶ 11; Exh. 2; Declaration of Michael Moore, ¶¶ 2-19;
13 Exhs. A-B.]

14 **C. The Release**

15 The release in the Settlement Agreement narrowly releases only civil penalty claims brought
16 under PAGA, as asserted in Plaintiff's PAGA notice to the LWDA and the operative Complaint.
17 The Settlement Agreement protects the rights of the alleged aggrieved employees to bring their
18 own individual claims should they wish. For these reasons, the Parties contend the release narrowly
19 applies only to the PAGA claims alleged or that could have been alleged, based on the factual and
20 legal allegations pled in the operative Complaint. [Ardestani Decl., ¶ 12.]

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

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

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

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

14 Plaintiff alleges claims for civil penalties for unpaid wages, meal/rest break violations, and
15 failure to reimburse expenses, as well as derivative wage statement and waiting time penalty claims.
16 First, Plaintiff contends Defendant failed to pay Plaintiffs and other allegedly aggrieved employees
17 for all hours worked because employees worked “off the clock” without compensation. For
18 example, he contends he and other employees had to perform a safety check at the start of each
19 shift before clocking in, and he further had to stay after clocking out at the scheduled end of his
20 shift and continue to work. He further alleges Defendants incorrectly calculated Aggrieved
21 Employees’ regular rate of pay when compensating them with overtime wages, sick pay wages and
22 meal period premium wages by failing to include bonuses earned into their regular rate of pay. Alvarado
23 v. Dart Container Corp. of Cal. (2018) 4 Cal.5th 542 549 (holding that bonuses should be factored into
24 the employee’s regular rate of pay so the regular rate reflects all forms of regular compensation that the
25 employee earned). [Ardestani Decl., ¶ 13.]

26 Plaintiff also contends Defendant failed to maintain proper meal and rest break policies and
27 that he and other Aggrieved Employees did not receive all required breaks on a fully compliant
28 basis. For example, Plaintiff’s experts’ review of the time and pay records provided suggests at

1 least a 15% unique violation rate for meal periods that were missed, untimely, or cut short. Plaintiff
2 also claims Defendants restricted how employees could use break time by, inter alia, prohibiting
3 employees from napping or “malingering” while in break. As such, breaks were non-compliant
4 since California law mandates that employees be relieved from all employer control while on break
5 and be allowed to use that time as they see fit. Plaintiff further alleges that during the PAGA period,
6 Defendant failed to provide Plaintiff and the alleged aggrieved employees with rest periods for the
7 same reasons, and he and other employees were not free to use their break time as they wished.
8 [Ardestani Decl., ¶ 14.]

9 On the expense reimbursement claims, Plaintiff alleges Defendant failed to reimburse
10 Plaintiff and the Aggrieved Employees for expenses such as cell phone expenses Cochran v.
11 Schwan’s Home Services, Inc. (2014) 228 Cal.App.4th 1137, 1144. “[T]o be in compliance with section
12 2802, the employer must pay some reasonable percentage of the employee’s cell phone bill.” Per
13 Plaintiff, he and other Aggrieved Employees were regularly required to use their personal cell
14 phones to send and receive calls and texts with supervisors regarding work issues and received no
15 reimbursement therefor. [Ardestani Decl., ¶ 15]

16 Lastly, Plaintiff also brings derivative claims for inaccurate wage statements and failure to
17 pay all wages due and owing upon separation of employment under Labor Code §§ 201-203.
18 [Ardestani Decl., ¶ 16.]

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

20 For mediation, Defendant indicated there are approximately 715 individuals³ who fit within
21 Plaintiff’s definition of alleged aggrieved employees in California during the relevant PAGA
22 period, and these individuals worked approximately 22,000 pay periods. Based on the data and
23 information provided by Defendant, and with their expert’s assistance and analysis, Plaintiff
24 estimated Defendant’s theoretical maximum PAGA exposure at about \$3.65 million. Plaintiff,
25 however, substantially discounted that number to account for Defendant’s procedural and merits
26 defenses, of which there are many. [Ardestani Decl., ¶¶ 17-18.]

27 /////

28 ³ Including about 188 employed directly by Limoneira and about 527 employed by USA and staffed at Limoneira.

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

3 In response to Plaintiff's wage claims Defendant argued its time keeping policies are legally
4 compliant, that it accurately tracked all hours worked and paid the allegedly aggrieved employees
5 for all hours worked at the correct rates consistent with its compliant payroll policies. It further
6 argued that "off the clock" work by employees was strictly prohibited. Thus, per Defendants, if
7 any such off the clock work occurred it was against company policy and done without the
8 employer's knowledge. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083
9 (employer must have actual or constructive knowledge of the off the clock work). For this reason,
10 any resolution of this claim on a representative basis would be unmanageable per Defendant
11 because it necessarily would entail numerous individualized inquiries. [Ardestani Decl., ¶ 19.]

12 For the meal and rest break claims, Defendants offered multiple defenses. First, Defendants
13 emphasized their written meal and rest break policies generally was compliant, that they authorized
14 and permitted all necessary breaks, and that alleged aggrieved employees received full 30 minute
15 lunch periods as reflected in the time records. Defendant also argued that even to the extent
16 missed/non-compliant breaks occurred, it was in violation of company policy and would require
17 significant individual inquiries to determine the reasons underlying any such alleged violations and
18 whether it was by employee choice or some other reason. Thus, per Defendant, any trial would be
19 unmanageable on a representative basis because of these individualized issues. Defendants also
20 noted they paid thousands of dollars in meal period premiums for documented violations, which
21 would severely undercut any arguments that the Court should award anything more than token
22 penalties. [Ardestani Decl., ¶ 20.]

23 As with meal breaks, Defendants argued the applicable rest break policies complied with
24 California law and authorized and permitted employees to take all required breaks. Defendants
25 further contended that, in light of the fact that recording rest periods is not required, any evidence
26 of failure to authorize rest periods and/or discouragement from taking rest periods would be purely
27 anecdotal and individual issues would predominate on liability. Defendants also contended that
28 they are only liable if Plaintiff can prove, on a shift-by-shift basis, that each alleged aggrieved

1 employee actually did not receive a fully-compliant rest break. This arguably would once again
2 make a trial unmanageable since the instances an employee missed a rest break would have to be
3 tested on a case by case basis to determine compliance. [Ardestani Decl., ¶ 21.]

4 For the expense reimbursement claims, Defendants argued there would be no conceivable
5 need for Plaintiff or other employees to use their phones while on duty and, accordingly, to the
6 extent they used their own phones it was strictly for personal convenience rather than business
7 necessity. As such, any such expenses are not reimbursable. [Ardestani Decl., ¶ 22.]

8 On the wage statement and waiting time claims, Defendants emphasized that, to the extent
9 they are derivative they will rise or fall along with the primary claims, in addition to being subject
10 to “good faith” and other defenses available to Defendants. Accordingly, Plaintiff had to discount
11 the value of these claims significantly in light of these multiple potential defenses. Defendants also
12 contended a substantial discount should be applied to the civil penalties for these derivative (i.e.,
13 “stacked”) violations, as it would be unfair to penalize Defendants multiple times for the same
14 violation. [Ardestani Decl., ¶ 23.]

15 Defendants also emphasized PAGA gives the Court wide latitude to reduce the amount of
16 civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise would
17 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code §
18 2699(e)(2). This is particularly true here where the claims essentially are premised on “de facto”
19 violations, and given Defendants paid break premiums where appropriate, and that could prove
20 difficult to establish on a representative basis, and in light of many cases that have imposed
21 substantial discounts on PAGA penalties awarded after trial. In Fleming v. Covidien (C.D. Cal.
22 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court reduced the potential
23 penalties by over 82% after a bench trial. More recently, in Carrington v. Starbucks Corp. (2018)
24 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of just \$5 per pay period,
25 a 90% reduction, which decision was upheld on appeal. In re Taco Bell Wage and Hour Actions
26 (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).
27 Additionally, no information came to light suggesting that any violations were knowing and willful
28 by Defendant. For these reasons, Plaintiff believes there is a high likelihood the Court would find

1 imposition of significantly more in penalties would be “unjust, arbitrary, or confiscatory.”
2 [Ardestani Decl., ¶ 24.]

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

11 Although Plaintiff and his counsel believe they could have prevailed, there was no such
12 guarantee. When the risks of overcoming a manageability defense and prevailing at trial on the
13 merits are factored into the equation, the settlement value is reasonable and supported. Indeed, to
14 recover maximum penalties Plaintiff would have to shoot the moon and win on liability as to all
15 claims and convince the Court to award full penalties, which outcome is highly unlikely. Given
16 Defendants’ procedural and merits defenses, as well as the substantial penalty reductions ordered
17 in the cases above – which occurred after trial – the proposed settlement is eminently reasonable.
18 [Ardestani Decl., ¶ 26.]

19 Importantly, the mere fact that a settlement does not provide the same recovery as might
20 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
21 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed
22 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
23 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
24 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven
25 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
26 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
27 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane
28 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is

1 fundamentally fair . . . is different from the question whether the settlement is perfect in the
2 estimation of the reviewing court"); White v. Experian Information Solutions, Inc. (C.D. Cal.
3 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable
4 even though it represented 99% discount off the maximum value of the claims).

5 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
6 the probability of appeal of a favorable judgment, and the Court's substantial discretion to reduce
7 any penalty award all are accounted for, it is clear a settlement amount of \$200,000 for the PAGA
8 claim is within the ballpark of reasonableness, and approval is appropriate.

9 **V. SUBMISSION TO THE LWD**

10 Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and
11 notified the LWDA of this approval hearing. [Ardestani Decl., ¶ 27; Exh. 3.] Accordingly, the
12 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
13 approval if the LWDA ultimately declines to offer any comment or objection to a proposed
14 PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017
15 WL 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the
16 proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings, 2018 WL
17 4773057, at *9; Jordan v NCI Grp., Inc. (C.D. Cal. Jan. 5, 2018) 2018 U.S. Dist. LEXIS 25297, at
18 *7 ("Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to
19 the proposed settlement and no comment or objection has been received.").

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

21 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
22 that benefits the LWDA and aggrieved employees, one-third of the gross settlement, or \$66,666.66,
23 is allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs. These
24 fees are warranted under the law and within the range of fees commonly awarded in similar cases.

25 **A. Plaintiffs' Counsel Are Entitled to Recover Attorney's Fees Under the**
26 **Common Fund Doctrine**

27 PAGA provides a plaintiff is entitled to recover reasonable attorney's fees, expenses, and
28 costs under Labor Code § 2699(g)(1): "Any employee who prevails in any action shall be entitled

1 to an award of reasonable attorney's fees and costs," Reasonable attorney's fees and costs are
2 typically awarded under the common fund doctrine in a *qui tam* such as this one, where, as here,
3 the litigation creates a common fund of money in a specific amount for the benefit of others.

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

18 Through the efforts of Plaintiff and his attorneys here, a common fund was created in the
19 amount of \$200,000 for the benefit of the allegedly aggrieved employees and the State. Thus, these
20 beneficiaries should bear their share of the costs and attorney's fees out of the overall recovery
21 under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472, 478-482; Six (6)
22 Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

23 Not long ago, the California Supreme Court upheld the use of the common fund theory of
24 recovery for attorney's fees in Laffitte v. Robert Half Int'l Inc. (2016) 1 Cal.5th 480, 506. There,
25 the Court upheld an award of attorney's fees of one-third of the \$19 million gross settlement (e.g.,
26 awarded \$6.33 million in fees) under the common fund theory of recovery. Lafitte is consistent
27 with prior decisions recognizing "when a number of persons are entitled in common to a specific
28 fund, and an action brought by ... plaintiffs for the benefit of all results in the creation or

1 preservation of that fund, such ... plaintiffs may be awarded attorneys' fees out of the fund." Serrano
2 v. Priest (1977) 20 Cal.3d 25, 34; Boeing, 444 U.S. at 478 ("[A] lawyer who recovers a common
3 fund ... is entitled to reasonable attorneys' fees from the fund as a whole"; Lealao v. Beneficial
4 California, Inc. (2000) 82 Cal.App.4th 19, 26 ("[f]ee spreading occurs when a settlement or
5 adjudication results in the establishment of a separate or so-called common fund for the benefit of
6 the class").

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

14 Awarding attorney's fees of one-third of gross common fund amount is favored by
15 California courts when a fund established for the common benefit of others is involved, such as
16 here. Accordingly, awarding fees on this basis out of the \$200,000 GSA, for a total of \$66,666.66,
17 is reasonable and appropriate. [Ardestani Decl., ¶¶ 28-44.]

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

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

1 Here, Crosner Legal's lodestar is approximately \$100,370, based on 138.0 attorney hours
2 spent litigating the case. [Ardestani Decl., ¶¶ 32-43; Exh. 4.] On a lodestar basis, the fee request
3 of \$66,666.66 results in an amount that is less than the unadorned lodestar, and accordingly
4 there is no request for a multiplier. Plaintiff's counsel submits this effectively operates to
5 show the percentage fee request is reasonable considering the requested fees are less than the
6 value of the services rendered when valued via traditional hourly billing. [Ardestani Decl., ¶¶
7 28-44.]

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

9 Plaintiff's counsel requests reimbursement of actual out-of-pocket expenses incurred to
10 prosecute this action. These expenses were incidental and necessary to the effective representation
11 of the employees, and Plaintiff's counsel is permitted to recover their litigation costs and expenses
12 under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35 (common
13 fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San Diego
14 (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund "[o]f necessity,
15 and for precisely the same reasons discussed above with respect to the recovery of attorneys' fees
16 by ... [Plaintiffs'] attorneys"). Furthermore, Plaintiff's Counsel is entitled to recover "those out-of-
17 pocket expenses that would normally be charged to a fee-paying client." Harris v. Marhoefer (9th
18 Cir. 1994) 24 F.3d 16, 19.

19 Plaintiff's Counsel's actual costs presently are \$16,055.21. This includes filing fees, service
20 of process, mediation costs, CourtCall charges, postage, and expert consultant fees, while waiving
21 photocopying costs and legal research charges. These costs are reasonable and uncontested, and
22 were necessary to the successful prosecution of the action. The costs should be approved in full.
23 [Ardestani Decl., ¶¶ 45-46.]

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

25 Under the Settlement Agreement, Plaintiff seeks an incentive awards of \$7,500. This
26 request is reasonable given his efforts in this case and the risks he undertook on behalf of the
27 Aggrieved Employees and State. Torchia v. W.W. Grainger, Inc. (E.D. Cal. 2014) 304 F.R.D.
28 256 (approving \$7,500 incentive award); Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977

1 (collecting cases awarding class representatives service and incentive payments ranging from
2 \$2,000 to \$25,000).

3 Additionally, by contacting and retaining counsel to pursue these claims, Plaintiff made
4 this settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the
5 risk of being liable for Defendants' litigation costs. Plaintiff also exposed herself to unwanted
6 notoriety related to filing a public lawsuit (discoverable even through a simple google search) for
7 the benefit of other employees, placing him at risk of discrimination by future prospective
8 employers. Among taking many other actions assisting in the successful litigation of this case,
9 Plaintiff provided substantial factual information to my office, attended numerous meetings with
10 his counsel to discuss the case, and generally participated in all phases of the litigation.
11 Accordingly, the requested enhancement payments to Plaintiff is appropriate and justified as part
12 of the Settlement for his service and risks undertaken. [Ardestani Decl., ¶ 47; Declaration of Jose
13 Ventura, ¶¶ 2-9.]

14 **VIII. CONCLUSION**

15 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
16 under PAGA, approve the requested award of reasonable attorney's fees and costs, approve
17 Phoenix Settlement Administrators as the settlement administrator and approve its fees in the
18 amount of \$7,000, approve Plaintiff's enhancement award in the amount of \$7,500, approve the
19 proposed distributions to the LWDA and Aggrieved Employees, and enter its Order of final
20 approval and judgment thereon.

21
22 Dated: January 17, 2024

CROSNER LEGAL, P.C.

23
24 

25 Jamie K. Serb
26 Sepideh Ardestani
27 Zachary Crosner
28 Attorneys for Plaintiff Jose Ventura