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8 Attorneys for ARTURO SALAS GARCIA

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11
12 ARTURO SALAS GARCIA, on behalf of
the State of California, and others similarly
13 situated and aggrieved,

14 Plaintiff,

15 vs.

16 STAY GREEN INC., a California
corporation; and DOES 1-100, inclusive,
17 Defendants.
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Case No.: 23STCV17296

Assigned for All Purposes to:
Hon. Gregory Keosian
Dept. 61

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

Date: April 30, 2024
Time: 8:30 a.m.
Dept.: 61

Reservation No.: 566136987541

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1 **I. INTRODUCTION**

2 Plaintiff Arturo Salas Garcia hereby seek Court approval of a proposed settlement of
3 claims brought under the Private Attorneys General Act (“PAGA”) against defendant Stay Green,
4 Inc. (“Stay Green” or “Defendant”). Consistent with PAGA, the proposed settlement releases
5 claims under PAGA only and has no impact on the individual claims of any aggrieved employee
6 other than Plaintiff Garcia. Since the settlement resolves nothing more than claims under PAGA,
7 it requires only a one-step review and approval process by the Court, and for the reasons discussed
8 below, Plaintiff respectfully requests the Court approve the Settlement in its entirety.

9 **II. BACKGROUND**

10 Defendant provides commercial landscaping services throughout California. While its
11 corporate headquarters are located in Santa Clarita, it operates 11 other locations throughout
12 California. Plaintiff worked for Defendant as a non-exempt gardener/landscaper from May 15,
13 2018 until sustaining an injury at work around December 2022. Plaintiff’s duties included
14 monitoring the health of plants and treescapes, watering and feeding plants, trimming trees/shrubs,
15 mowing, and clearing walkways of debris. He was paid \$16.25 an hour. [Declaration of Sepideh
16 Ardestani (“Ardestani Decl.”), ¶ 4.]

17 On July 24, 2023, and after exhausting his administrative remedies with the LWDA,¹
18 Plaintiff filed a representative complaint seeking penalties pursuant to PAGA for Defendant’s
19 failure to pay all minimum wages, overtime wages, premium wages, failure to issue accurately
20 itemized wage statements, failure to reimburse business expenses, and failure to pay all wages due
21 on separation of employment. Plaintiff filed his PAGA claims on behalf of Aggrieved Employees
22 defined to include all current and former non-exempt employees that worked either directly or via
23 a staffing agency for Defendant at any location in California during the PAGA Period [Ardestani
24 Decl., ¶ 5.]

25 Stay Green has at all times denied Plaintiff’s allegations and maintained it properly
26 calculated and paid all wages due, and reimbursed all necessary expenses. Additionally, Stay
27

28 ¹ On May 19, 2023, Plaintiff filed his notice of claims under PAGA with the Labor & Workforce
Development Agency (“LWDA”). [Ardestani Decl., ¶ 2; Exh. 3.]

1 Green emphasized Plaintiff and other employees signed arbitration agreements and contends the
2 case should be sent to arbitration following the U.S. Supreme Court’s decision in Viking River
3 Cruises v. Moriana (2022) 142 S.Ct. 1906. [Ardestani Decl., ¶ 6.]

4 After Plaintiff filled his complaint, and after meeting and conferring, the parties stipulated
5 to arbitrate Plaintiff’s individual PAGA claim and stay the non-individual PAGA claim until March 1,
6 2024, and further agreed to attempt early mediation. They also agreed on a protocol to informally
7 exchange information and documents need to engage in meaningful settlement negotiations. Through
8 this informal discovery, Defendant provided Plaintiff with information including, inter alia, the
9 number of potential Aggrieved Employees, the number of aggregate pay periods, sample pay stubs
10 and time records for a sampling of the allegedly Aggrieved Employees, employee handbooks and
11 manuals, and other policy documents regarding Defendant’s time keeping and reporting policies.
12 [Ardestani Decl., ¶ 7.]

13 The Parties then mediated the case in February 2024 with Daniel Turner, Esq., a respected
14 mediator with extensive class action/wage and hour experience. Before and during the mediation,
15 Plaintiff and his counsel analyzed, researched, and investigated the potential issues, including
16 matters related to the calculation of damages, trial, and appellate issues and risks. During
17 mediation, the Parties vigorously debated the likelihood of Plaintiff’s ability to proceed on a
18 representative basis as to the PAGA claims, the legal grounds for Plaintiff’s claims and
19 Defendant’s defenses, and the parties’ data analyses and conclusions based on data provided by
20 Defendant. After a contentious full day of negotiations, the Parties reached agreement on all major
21 issues and subsequently formalized their tentative settlement in the Settlement Agreement now
22 before the Court for approval. [Ardestani Decl., ¶ 8.] A fully executed, true and correct copy of the
23 Parties’ PAGA Settlement Agreement (“Settlement Agreement”) is attached to the Ardestani
24 Declaration as Exhibit 1.

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1 **III. SUMMARY OF SETTLEMENT TERMS**

2 **A. SETTLEMENT TERMS AND DISTRIBUTION OF PAGA PENALTIES**

3 Under the settlement, Defendant will pay a non-reversionary settlement amount of \$150,000
4 (the “Gross Settlement Amount” or “GSA”). The GSA is inclusive of payments to the LWDA and
5 Aggrieved Employees, costs of settlement administration, a service award to Plaintiff Garcia, and
6 reasonable attorney’s fees and costs.² After payment of settlement administration costs, Plaintiff’s
7 service award, and reasonable attorney’s fees and costs from the GSA, Plaintiff presently estimates
8 \$75,881.77 shall form the Net Settlement Amount (“NSA”), of which 75 percent (approximately
9 \$56,911.33) will go to the LWDA, and the remaining 25 percent (approximately \$18,970.44) will be
10 distributed to the Aggrieved Employees pro rata in proportion to the total number of Pay Periods
11 each individual worked during the PAGA Period, with an average award currently estimated at about
12 \$88 per Aggrieved Employee. [Ardestani Decl., ¶ 9.]

13 **B. PAYMENT AND THE NOTICE**

14 The Parties propose using Atticus Administration, LLC as the Settlement Administrator.
15 Atticus has extensive experience administering PAGA settlements, and has agreed to cap its fees at
16 \$3,500. [Declaration of Chris Longley, ¶¶ 2-12; Exhs. 1-2.] Stay Green will fund the GSA within
17 14 days of the Effective Date, and within 14 days of receipt of the GSA Atticus will mail a Notice
18 and settlement check to all Aggrieved Employees via regular First-Class U.S. Mail, using the most
19 current, known mailing addresses identified in Stay Green’s records. Aggrieved Employees need
20 not submit claim forms and will automatically receive a Notice and settlement check. Settlement
21 checks will be negotiable for 180 days, after which time any unclaimed residual funds will be
22 forwarded to the California State Controller’s Unclaimed Property Fund. [Ardestani Decl., ¶ 10.]

23 **C. THE RELEASE**

24 The California Supreme Court has explained that a judgment in “a representative action
25 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ...
26 is binding not only on the named employee plaintiff but also on government agencies and any
27

28 ² Plaintiff’s counsel requests fees of 35% of the GSA, or \$52,500.00 and costs in the amount of \$10,618.23, while Plaintiff requests a service award of \$7,500.00.

1 aggrieved employee not a party to the proceeding.” Arias v. Superior Court (2009) 46 Cal.4th 969,
2 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty
3 claims brought under PAGA. Under Arias, the order the Parties request the Court enter is intended
4 to be “binding not only on the named employee plaintiff but also on government agencies and any
5 aggrieved employee not a party to the proceeding.” The Settlement Agreement protects the rights
6 of the Aggrieved Employees to bring their own individual claims should they wish. For these
7 reasons, the Parties contend the release narrowly applies only to the PAGA claims alleged, and the
8 Settlement Agreement specifically provides the Release is inapplicable to any claims other than
9 those brought under PAGA. [Ardestani Decl., ¶ 11.]

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

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

18 In so holding, Moniz noted many federal district courts had imported class action settlement
19 approval principles when evaluating PAGA settlements, demanding that PAGA settlements be “fair,
20 reasonable, and adequate,” and weighing factors such as “the strength of the plaintiff’s case, the
21 risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the
22 settlement amount[.]” Id. at 75-76 (collecting cases). Observing that “PAGA’s purpose” is to
23 “protect the public interest”—especially the allegedly Aggrieved Employees—the Court agreed
24 with this district court authority, concluding that much the same principles that ensure fairness in
25 class action settlements serve the public interest in the PAGA context. Essentially, these factors are
26 more or less identical to those California courts use to evaluate class action settlements per Kullar
27 v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116 and, accordingly, Plaintiff submits they
28

1 should inform the Court’s analysis as well. For the reasons below, the proposed settlement is fair,
2 reasonable and adequate, advances the purposes underlying PAGA, and should be approved.

3 **A. NATURE OF THE ALLEGED VIOLATIONS**

4 First, Plaintiff alleged Defendant failed to pay all minimum and overtime wages as Plaintiff
5 and other employees were required to arrive early for their shifts to be ready to leave on time in their
6 company vehicles, and frequently arrived back at the company yard late due to traffic or other
7 circumstances. Per Plaintiff, employees were not paid for this “off the clock” time worked
8 before/after their scheduled shift. Next, Plaintiff contends Defendant failed to provide Aggrieved
9 Employees with compliant meal periods and utilized a policy that failed to comply with California
10 law. Plaintiff alleges he and other employees did not receive compliant meal periods as meal periods
11 frequently were late, interrupted, and/or or lasted less than 30 minutes, and that his review of the
12 time records provided suggests around 40% of meal periods were non-compliant. Plaintiff contends
13 further that company policy prohibited them from leaving the job site while on break and therefore
14 breaks were not free from employer control. Plaintiff similarly contends Defendant failed to provide
15 Plaintiff and the Aggrieved Employees with compliant rest periods for essentially the same reasons.
16 [Ardestani Decl., ¶ 12.]

17 Plaintiff next alleges Stay Green failed to reimburse necessary expenses incurred to maintain
18 employee work uniforms. Lastly, Plaintiff also brings claims derivative of the foregoing claims,
19 including a derivative wage statement claim based on the failure to pay all wages due, and failure
20 to pay all wages due and owing upon separation of employment under Labor Code §§ 201-203.
21 [Ardestani Decl., ¶ 13.]

22 **B. NUMBER OF ALLEGED VIOLATIONS AND POTENTIAL PENALTIES**

23 For mediation, Stay Green indicated it employed approximately 215 non-exempt employees
24 in California during the applicable PAGA period, and these individuals worked approximately 3,579
25 pay periods during that time. Based on the data and information provided by Defendant, Plaintiff
26 estimated Defendant’s maximum PAGA exposure at approximately \$1,789,000 assuming a 100%
27 violation rate on all claims. [Ardestani Decl., ¶¶ 14-15.]
28

1 C. **THE SETTLEMENT MEETS THE KULLAR/MONIZ FACTORS,**
2 **INCLUDING THE STRENGTH OF PLAINTIFF’S CASE, THE DISCOVERY**
3 **PERFORMED, AND AMOUNT OFFERED IN SETTLEMENT**

4 In response to Plaintiff’s unpaid wage claims for alleged “off the clock work,” Stay Green
5 took the position that its time keeping policies are legally compliant, that it accurately tracked all
6 hours worked, that employees were required by company policy to accurately track the exact shift
7 start/end times, and that it paid the Aggrieved Employees for all hours worked consistent with those
8 policies. Defendant further emphasized to the extent any off the clock work may have happened,
9 such as employees arriving early and staring work, it was intermittent, against company policy, and
10 done without company authorization or knowledge. White v. Starbucks Corp., 497 F.Supp.2d 1080,
11 1083 (N.D. Cal. 2007) (employer must have actual or constructive knowledge of off the clock work
12 for liability to attach). [Ardestani Decl., ¶ 16.]

13 For the meal and rest break claims, Stay Green offered multiple defenses. First, it
14 emphasized its written meal and rest break policy generally was compliant, that it authorized and
15 permitted all necessary breaks, and that employees received full uninterrupted lunch periods free
16 from employer control. Defendant also asserted that even to the extent any late or short meal periods
17 occurred, it again was in violation of company policy and aberrational, and would require significant
18 individual inquiries to determine the reasons underlying any such alleged violations and whether it
19 was by employee choice or some other reason. As with meal breaks, Defendant argued the
20 applicable rest break policies complied with California law, and that it authorized and permitted
21 employees to take all required breaks. Defendant further contended that, in light of the fact that it is
22 not required to maintain a record of rest periods, any evidence of failure to authorize rest periods
23 and/or discouragement from taking rest periods would be purely anecdotal and individual issues
24 would predominate on liability. [Ardestani Decl., ¶ 17.]

25 For the expense reimbursement claim, Stay Green countered it provided employees with
26 sufficient work clothing and there would be no conceivable extra or unusual costs associated with
27 laundering work t-shirts, work pants, etc. Thus, per Defendant, no reimbursement was required.
28 [Ardestani Decl., ¶ 18.]

1 Plaintiff also alleged derivative violations of Labor Code § 226 (wage statement
2 violations) and §§ 201-203 (waiting time penalties). The derivative wage statement claims (based
3 on the unpaid wage and meal/rest claims). The waiting time penalties claim, also is entirely
4 derivative and will rise or fall along with the primary claims, in addition to being subject to “good
5 faith” and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163
6 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor
7 Code § 203 even though the class prevailed on the merits on the underlying claim for failing to
8 pay living wages). Accordingly, Plaintiff had to discount the value of this claim significantly in
9 light of these multiple potential defenses. Defendant also contended a substantial discount should
10 be applied to the civil penalties for these derivative (i.e., “stacked”) violations, as it would be
11 unfair to penalize Defendant multiple times for the same violation. [Ardestani Decl., ¶ 19.]

12 Defendant also emphasized PAGA gives the Court wide latitude to reduce the amount of
13 civil penalties “based on the facts and circumstances of a particular case” if “to do otherwise
14 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code §
15 2699(h). Several state and federal courts in California have applied significant reductions to
16 PAGA civil penalties even after plaintiff prevailed on the merits. In Fleming v. Covidien (C.D.
17 Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9, for instance, the district court reduced the
18 potential penalties by over 82% after a bench trial. More recently, in Carrington v. Starbucks
19 Corp. (2018) 30 Cal.App.5th 504, after a bench trial, the trial court awarded penalties of just \$5
20 per pay period, a 90% reduction, which decision was upheld on appeal. In re Taco Bell Wage and
21 Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after
22 trial). [Ardestani Decl., ¶ 20.]

23 Defendant also emphasized the potential applicability of the U.S. Supreme Court’s recent
24 decision in Viking River Cruises v Mariana (2022) 142 S.Ct. 1906. In particular, Stay Green
25 argued the arbitration agreement signed by Plaintiff contains the necessary elements outlined by
26 Viking River Cruises to compel arbitration, namely: (1) it provides for the arbitration of wage and hour
27 claims, like Plaintiff’s pending claims in the PAGA lawsuit, (2) it does not allow for an employee to
28 bring a class or representative claim in arbitration, and (3) it contains a “severability” clause stating

1 that if any terms of the Agreement are unenforceable, the remainder of the Agreement is still valid.
2 Thus, per Stay Green, Plaintiff’s “individual” PAGA claim must be compelled to arbitration and the
3 “representative” PAGA claims dismissed or stayed. [Ardestani Decl., ¶ 21.]

4 Thus, Defendant raised various and multi-layered defenses to each of Plaintiff’s claims,
5 anyone of which, if successful, could have decimated Plaintiff’s case. And Defendant vowed to
6 raise all these defenses at trial, even assuming Plaintiff overcame Viking River Cruises.
7 Accordingly, Plaintiff faced risky issues going forward with this litigation, and it could have taken
8 years to realize any recovery in this action along with the possibility of post-trial appeals. In
9 additional to its merits defenses and arguing trial would be unmanageable, Defendant also
10 intended to raise additional defenses on damages, including the proper measure of civil penalties
11 and the appropriate discount to place on any assessment of such penalties, especially considering
12 Defendant just settled another PAGA claim. [Ardestani Decl., ¶ 22.]

13 Although Plaintiff and his counsel believe they could have prevailed, there was no such
14 guarantee. When the risks of overcoming Defendant’s demurrer, a motion to compel arbitration,
15 prevailing at trial on the merits on all claims, and securing 100% of the theoretical civil penalties
16 all are factored into the equation, the settlement value is reasonable and supported. Of course, to
17 recover anywhere near the maximum penalties Plaintiff would have to shoot the moon and win
18 both liability and maximum penalties on all claims, which outcome, for the reasons discussed, is
19 unlikely. Given Defendant’s various procedural and merits defenses, as well as the substantial
20 penalty reductions ordered in the cases above – which occurred after trial – the proposed
21 settlement is eminently reasonable. [Ardestani Decl., ¶ 23.]

22 Importantly, the mere fact that a settlement does not provide the same recovery as might be
23 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
24 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed
25 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
26 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
27 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven
28 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that

1 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
2 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane
3 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is
4 fundamentally fair . . . is different from the question whether the settlement is perfect in the
5 estimation of the reviewing court”); White v. Experian Information Solutions, Inc. (C.D. Cal.
6 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
7 though it represented 99% discount off the maximum value of the claims).

8 In sum, when the risks of litigation, the burdens of proof necessary to establish liability,
9 the probability of appeal of a favorable judgment, the Court’s substantial discretion to reduce any
10 penalty award all are accounted for, it is clear a settlement amount of \$150,000.00 for the PAGA
11 claims is within the ballpark of reasonableness, and approval is appropriate. Jennings v. Open
12 Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *7 (approving
13 settlement with PAGA penalties of 0.6% where “[p]laintiffs [have] submitted the settlement
14 agreement to the LWDA, and the LWDA has not objected to the settlement”).

15 **V. SUBMISSION TO THE LWDA**

16 Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and
17 notified the LWDA of this approval hearing. [Ardestani Decl., ¶ 24; Exh. 5.] Accordingly, the
18 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
19 approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA
20 settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL
21 3669607, at *3 (court inferred the LWDA’s non-response as “tantamount to its consent to the
22 proposed settlement terms, namely the proposed PAGA penalty amount.”); Jennings, 2018 WL
23 4773057, at *9 (“Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has
24 not objected to the settlement.”); Jordan, 2018 U.S. Dist. LEXIS at *7 (“Additionally, the Court
25 finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and
26 no comment or objection has been received.”).

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

2 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
3 that benefits the LWDA and Aggrieved Employees, 35% of the gross settlement, or \$52,500.00, is
4 allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs. These fees
5 are warranted under the law and within the range of fees commonly awarded in similar cases.

6 **A. PLAINTIFF'S COUNSEL ARE ENTITLED TO RECOVER ATTORNEY'S**
7 **FEES UNDER THE COMMON FUND DOCTRINE IN THIS QUI TAM**
8 **ACTION**

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

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

1 Through the successful efforts of Plaintiff and his attorneys here, a common fund was created
2 in the amount of \$150,000 for the benefit of the Aggrieved Employees and the State. Thus, these
3 beneficiaries should bear their share of the costs and attorney's fees out of the overall \$150,000
4 amount in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444
5 U.S. 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d
6 1301, 1311.

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

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

26 Awarding attorney's fees of 35% of gross common fund amount is well-within the range
27 courts award when a fund established for the common benefit of others is involved, such as here.
28 In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50

1 (concluding that percentage fees in common fund cases range from 20 to 50 percent);
2 Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is
3 the upper limit on a reasonable fee award from a common fund in order to assure that the fees
4 do not consume a disproportionate part of the recovery obtained for the class, although
5 somewhat larger percentages are not unprecedented.").

6 Accordingly, awarding fees on this basis out of the \$150,000 GSA, for a total of \$52,500.00,
7 is reasonable and appropriate. [Ardestani Decl., ¶¶ 25-43.]

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

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

20 Here, Crosner Legal's lodestar is approximately \$71,080.00, based on 96.1 attorney hours
21 spent litigating the case. [Ardestani Decl., ¶¶ 28-42; Exh. 6.] This results in a base lodestar that is
22 higher than the fees requested on a percentage of the recovery basis and, accordingly, there is no
23 request for a multiplier. It also is important to note this fact serves to highlight the reasonableness
24 of the fees sought on a percentage-of-the-recovery basis, as it shows the requested fees are actually
25 lower than the market rate for the services rendered if those services are valued via traditional hourly
26 billing and further supports an award of 35% of the GSA for fees.

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1 **C. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

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

12 While the Settlement Agreement authorizes litigation costs not to exceed \$8,000, Plaintiff's
13 Counsel's actual costs presently are \$10,618.23. [Ardestani Decl., ¶¶ 44-45.] This includes filing
14 fees, service of process, mediation costs, and postage, while waiving photocopying costs and legal
15 research charges. These costs are reasonable and uncontested, and should be approved.

16 **VII. THE PROPOSED SERVICE AWARD FOR PLAINTIFF IS FAIR AND**
17 **REASONABLE**

18 Pursuant to the Settlement Agreement, Plaintiff seeks an incentive award of \$7,500. This
19 request is reasonable given the much broader release that Plaintiff is agreeing to, as well as
20 Plaintiff's efforts in this case and the risks he undertook on behalf of the Aggrieved Employees.
21 Additionally, by contacting and retaining counsel to pursue these claims, Plaintiff made this
22 settlement possible for the other Aggrieved Employees and the LWDA, while shouldering the risk
23 of being liable for Defendant's litigation costs if he were unsuccessful. Plaintiff also exposed himself
24 to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google
25 search) for the benefit of other employees, placing Plaintiff at risk of discrimination by future
26 prospective employers. Among taking many other actions assisting in the successful litigation of
27 this case, Plaintiff provided substantial factual information to Plaintiff's Counsel, participated in
28 numerous phone calls and meetings with counsel to discuss the case, and general kept up to speed

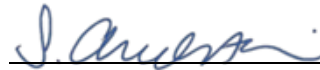
1 and informed on the case's progress. The incentive payment to Plaintiff is appropriate and justified
2 as part of the Settlement. [Ardestani Decl., ¶ 46; Declaration of Arturo Salas Garcia, ¶¶ 2-9.]
3 Accordingly, Plaintiff submits the amount sought is well within the range of reasonableness for
4 such awards in other wage and hour actions. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977
5 (collecting cases awarding service and incentive payments ranging from \$2,000 to \$25,000).

6 **VIII. CONCLUSION**

7 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement under
8 PAGA, approve the requested award of reasonable attorney's fees and costs, approve the requested
9 service award to Plaintiff in the amount of \$7,500, approve Atticus Administration, LLC as the
10 settlement administrator and approve its fees in the amount of \$10,618.23, approve the proposed
11 distributions to the LWDA and Aggrieved Employees, and enter judgment.

12
13 Dated: April 8, 2024

CROSNER LEGAL, P.C.

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15 

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