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8 Counsel for Plaintiff INGRID BOLANOS

9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 INGRID BOLANOS, on behalf of all others
12 similarly aggrieved,

13 Plaintiff,

14 vs. LYNEER STAFFING SOLUTIONS,
15 LLC, a Delaware limited liability company,
16 and DOES 1 through 50, inclusive,

17 Defendants.

CASE NO. 23STCV21860

Assigned for all Purposes to:
Hon. Holly J. Fujie
Department 56

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

Date: December 8, 2023
Time: 8:30 a.m.
Dept.: 56

Reservation ID No.: 217919705366

1 **I. INTRODUCTION**

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

11 **II. BACKGROUND**

12 Lyneer is a national staffing agency headquartered in New Jersey with over 100 locations,
13 including at least 13 in California. Lyneer provides permanent, temporary and temp-to-perm
14 placement services for a number of job competencies including accounting & finance,
15 administrative & clerical, hospitality, IT, legal, light industrial, and medical. Plaintiff Bolanos
16 worked for Lyneer for about 8 months, from July 2021 until February 2022. For her entire tenure
17 Lyneer staffed Ms. Bolanos at Santa Fe Warehouse (“SFW”), which is a local third party logistics
18 provider with facilities in City of Commerce and Moreno Valley. Ms. Bolanos worked at the
19 Commerce facility, and her basic job duties entailed carrying/sorting packages for big box
20 retailers such as Ross, Marshalls, TJ Maxx, etc. Her regular schedule was 6-2:30, although she
21 regularly worked overtime and often over 10 hours per shift. She started at \$14/hr and was getting
22 \$15/hr at the time her employment terminated. While employed with Lyneer, Plaintiff alleges she
23 was subjected to a number of wage and hour violations. [Declaration of J. Kirk Donnelly
24 (“Donnelly Decl.”), ¶¶ 4-6.]

25 On or about April 5, 2022, Plaintiff submitted appropriate notice¹ to the Labor &
26 Workforce Development Agency (“LWDA”) regarding the alleged Labor Code violations at issue

27
28 ¹ Plaintiff’s April 5, 2022 PAGA notice letter and proof of submission are attached to the Donnelly Declaration as Exhibit 4.

1 in this matter. After receiving Plaintiff's PAGA notice, Lyneer reached out to Plaintiff through
2 counsel, and the Parties agreed to explore early resolution of the dispute. They entered into a
3 statute of limitations tolling agreement to allow them time to discuss a pre-litigation resolution,
4 and agreed to informally exchange information to permit both sides to evaluate Plaintiff's
5 allegations. Thereafter, upon discussing the merits of the case and engaging in several meet and
6 confer sessions, the Parties agreed to mediation. The Parties further agreed to exchange additional
7 documents and information before the mediation. Through this informal discovery, Defendant
8 provided Plaintiff with information including, inter alia, Plaintiff's personnel file, the number of
9 potential Aggrieved Employees, the number of aggregate pay periods, pay stubs and time records
10 for a sampling of the Aggrieved Employees, and relevant policy documents regarding
11 Defendant's time keeping and reporting policies and meal and rest break policies, among other
12 pertinent materials. [Donnelly Decl., ¶ 7.]

13 On August 17, 2023, the Parties mediated the case with Louis Marlin, Esq., a respected
14 professional neutral with extensive class action/wage and hour experience. Before and during the
15 mediation, Plaintiff and her counsel analyzed, researched, and investigated the potential issues,
16 including matters related to the calculation of damages, trial, and appellate issues and risks.
17 During mediation, the Parties vigorously debated the likelihood of Plaintiff's ability to proceed on
18 a 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 day of negotiations, the Parties reached agreement and
21 subsequently formalized their tentative settlement in the Settlement Agreement now before the
22 Court for approval. [Donnelly Decl., ¶ 8.] A fully executed, true and correct copy of the PAGA
23 Settlement Agreement ("Settlement Agreement") is attached to the Donnelly Declaration as
24 Exhibit 1.

25 In order to effectuate the settlement and secure the required court approval, Plaintiff filed
26 her PAGA-only complaint on September 8, 2023, seeking civil penalties for the following alleged
27 wage and hour violations: (a) failure to pay all wages due, including minimum and overtime
28 wages; (b) failure to provide meal and rest periods; (c) failure to provide complete and accurate

1 wage statements; and (d) failure to pay wages due on separation of employment. Plaintiff filed
2 the matter on behalf of Aggrieved Employees defined to include all individuals directly employed
3 by Lyneer as non-exempt employees and who were staffed at Santa Fe Warehouse, during the
4 relevant PAGA time frame of April 5, 2022 to May 31, 2023. [Donnelly Decl., ¶ 9.]

5 Lyneer has at all times denied Plaintiff's allegations and maintained its timekeeping and
6 payroll policies accurately tracked and paid for all hours worked by its employees, that its meal
7 and rest break and payroll policies and procedures comply with California law, and that it
8 provided the Aggrieved Employees with required meal and rest breaks on a fully compliant basis.
9 Additionally, Lyneer strongly contends the case cannot be maintained as a representative action
10 as, to the extent Aggrieved Employees lost pay due to time rounding, or missed meal and/or rest
11 breaks, it was against company policy, was intermittent and infrequent and evidence of such
12 violations would be purely anecdotal, and therefore individualized issues predominate, which
13 would render a trial under PAGA unmanageable. [Donnelly Decl., ¶ 10.]

14 **III. SUMMARY OF SETTLEMENT TERMS**

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

16 Under the settlement, Defendant will pay a non-reversionary settlement amount of
17 \$172,500 (the "Gross Settlement Amount" or "GSA"). The GSA is inclusive of payments to the
18 LWDA and Aggrieved Employees, costs of settlement administration (estimated at no more than
19 \$75,000), and reasonable attorney's fees and costs.² After payment of settlement administration
20 costs, and reasonable attorney's fees and costs from the GSA, Plaintiff presently estimates about
21 \$95,500 will remain (the "Net Settlement Amount" or "NSA"). 75% of the NSA (about \$73,125)
22 will go to the LWDA, and the remaining 25% (about \$24,375) will be distributed to the
23 Aggrieved Employees in proportion to the total number of Pay Periods each individual worked
24 during the PAGA Period of April 5, 2021 to May 31, 2023, with an average award currently
25 estimated at about \$72 per individual. [Donnelly Decl., ¶ 11.]

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28 ² Plaintiff's counsel is requesting 1/3 of the GSA (\$57,500.00) in fees and costs of \$10,164.11. Plaintiff entered into a
separate individual settlement agreement with Lyneer and accordingly there is no request for a service award.

1 **B. PAYMENT AND THE NOTICE**

2 The Parties propose using Apex Class Action as the Settlement Administrator. Apex has
3 extensive experience administering PAGA settlements, and has agreed to cap its fees at \$6,500.
4 [Declaration of Sean Hartranft, ¶¶ 2-7; Exhs. A-B.] Lyneer will fund the GSA within 31 days of
5 approval, and within 10 calendar days of funding Apex will mail a Notice and settlement check to
6 all Aggrieved Employees via regular First-Class U.S. Mail, using the most current, known
7 mailing addresses identified in Lyneer’s records. Aggrieved Employees need not submit claim
8 forms and will automatically receive a Notice and settlement check. Settlement checks will be
9 negotiable for 120 days, after which time any unclaimed residual funds will be forwarded to the
10 California State Controller’s Unclaimed Property Fund. [Donnelly Decl., ¶ 12; Exh. 3.]

11 **C. THE RELEASE**

12 The California Supreme Court has explained that a judgment in “a representative action
13 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004
14 ... is binding not only on the named employee plaintiff but also on government agencies and any
15 aggrieved employee not a party to the proceeding.” Arias v. Superior Court (2009) 46 Cal.4th
16 969, 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil
17 penalty claims brought under PAGA. Under Arias, the order the Parties request the Court enter is
18 intended to be “binding not only on the named employee plaintiff but also on government
19 agencies and any aggrieved employee not a party to the proceeding.” The Settlement Agreement
20 protects the rights of the Aggrieved Employees to bring their own individual claims should they
21 wish. For these reasons, the Parties contend the release narrowly applies only to the PAGA claims
22 alleged, and the Settlement Agreement specifically provides the Release is inapplicable to any
23 claims other than those brought under PAGA. [Donnelly Decl., ¶ 13.]

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

26 PAGA requires the Court to “review and approve any settlement of any civil action filed
27 pursuant to this part.” Labor Code § 2699(l)(2). Recently, the appellate court in Moniz v. Adecco
28 USA, Inc. (2021) 72 Cal.App.5th 56, defined the standard for courts to apply when reviewing

1 settlements under PAGA. The court held a trial court must ensure that the settlement is “fair,
2 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
3 deter future ones, and to maximize enforcement of state labor laws.” Id. at 77.

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

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

18 Plaintiff primarily contends Defendant failed to pay all wages due because it rounded
19 employee time punches off to the nearest quarter-hour, which resulted in the Aggrieved
20 Employees losing a few minutes of compensable hours worked on many shifts. She further
21 alleges Lyneer failed to provide Aggrieved Employees with compliant meal periods and that even
22 if they even received a meal period, the breaks frequently were late, interrupted, and/or or lasted
23 less than 30 minutes. Plaintiff similarly contends Defendant failed to provide Plaintiff and the
24 Aggrieved Employees with compliant rest periods for essentially the same reasons. Plaintiff also
25 brings claims derivative of the foregoing claims, including a derivative wage statement claim
26 based on the failure to pay all wages due, and failure to pay all wages due and owing upon
27 separation of employment under Labor Code §§ 201-203. [Donnelly Decl., ¶ 14.]

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

2 For mediation, Lyneer indicated it employed approximately 337 non-exempt employees in
3 California during the relevant time frame who worked at least one shift at Santa Fe Warehouse,
4 and these individuals worked approximately 5,261 pay periods at Santa Fe Warehouse during that
5 time. Based on the data provided by Defendant, Plaintiff estimated Defendant's maximum PAGA
6 exposure at approximately \$1.6 million including approximately \$263,000 on the unpaid
7 wage/time rounding claims, about \$263,000 on the meal period claims, \$526,100 on the rest
8 period claims, \$526,100 on the wage statement claims, and about \$30,000 in civil penalties for
9 failing to timely pay wages on separation of employment. [Donnelly Decl., ¶¶ 14-16.]

10 **C. THE SETTLEMENT MEETS THE KULLAR FACTORS, INCLUDING**
11 **THE STRENGTH OF PLAINTIFF'S CASE, THE DISCOVERY**
12 **PERFORMED, AND AMOUNT OFFERED IN SETTLEMENT**

13 In response to Plaintiff's unpaid wage/rounding claim, Lyneer argued its time keeping and
14 rounding policy is entirely neutral in effect and did not deprive class members of compensable
15 hours worked over time and, accordingly, does not violate California law. See's Candy Shops,
16 Inc. v. Super. Ct. (2012) 210 Cal. App. 4th 889, 901. Beyond that, Lyneer noted it ceased
17 rounding time punches in and around June 2022, shortly after receiving Plaintiff's PAGA notice
18 letter, and accordingly any potential violations were cut off as of that date. [Donnelly Decl., ¶ 17.]

19 On the meal break claims, Lyneer offered multiple defenses. First, it emphasized it
20 authorized and permitted all necessary breaks, and that employees received full uninterrupted
21 lunch periods. Defendant further argued that even to the extent meal or rest breaks were missed or
22 arguably non-complaint, it was in violation of company policy and aberrational, and would
23 require significant individual inquiries to determine the reasons underlying any such alleged
24 violations and whether it was by employee choice or some other reason. Thus, per Defendant,
25 any trial on this issue would be unmanageable because of these individualized issues. [Donnelly
26 Decl., ¶ 18.]

27 As with meal breaks, Defendant argued the applicable rest break policies complied with
28 California law, and that it authorized and permitted employees to take all required breaks.

1 Defendant further contended that, in light of the fact that it is not required to maintain a record of
2 rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking
3 rest periods would be purely anecdotal and individual issues would predominate on liability. This
4 arguably would once again make a trial unmanageable since the number of instances an employee
5 missed a rest break would have to be tested on a case by case basis to determine compliance.

6 [Donnelly Decl., ¶ 19.]

7 Plaintiff also alleged derivative violations of Labor Code § 226 (wage statement
8 violations) and §§ 201-203 (waiting time penalties). Both claims, since they are entirely
9 derivative, will rise or fall along with the primary claims, in addition to being subject to “good
10 faith” and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163
11 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor
12 Code § 203 even though the class prevailed on the merits on the underlying claim for failing to
13 pay living wages). Accordingly, Plaintiff had to discount the value of these claims significantly
14 in light of these multiple potential defenses. Defendant also contended a substantial discount
15 should be applied to the civil penalties for these derivative (i.e., “stacked”) violations, as it would
16 be unfair to penalize Defendant multiple times for the same violation. [Donnelly Decl., ¶ 20.]

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

28 Thus, Defendant raised various and multi-layered defenses to each of Plaintiff’s claims,

1 anyone of which, if successful, could have derailed Plaintiff's case. And Defendant vowed to
2 raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with
3 litigation, and it could have taken years to realize any recovery in this action along with the
4 possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be
5 unmanageable, Defendant also intended to raise additional defenses on damages, including the
6 proper measure of civil penalties and the appropriate discount to place on any assessment of such
7 penalties. [Donnelly Decl., ¶ 22.]

8 Although Plaintiff and her counsel believes they could have prevailed, there was no such
9 guarantee. When the risks of overcoming a manageability defense, prevailing at trial on the merits
10 on all claims, securing the maximum theoretical civil penalties, and appellate risks all are factored
11 into the equation, the settlement value is reasonable and supported. Of course, to recover
12 anywhere near the maximum penalties Plaintiff would have to shoot the moon and win both
13 liability and maximum penalties on all claims, which outcome, for the reasons discussed, is
14 unlikely. Given Defendant's various procedural and merits defenses, as well as the substantial
15 penalty reductions ordered in the cases above – which occurred after trial – the proposed
16 settlement is reasonable. [Donnelly Decl., ¶ 23.]

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

2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims).

In sum, when the risks of litigation, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, the Court's substantial discretion to reduce any penalty award all are accounted for, it is clear a settlement amount of \$172,500 for the PAGA claims is within the ballpark of reasonableness, furthers the purposes underlying PAGA, and approval is appropriate.

V. SUBMISSION TO THE LWDA

Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and notified the LWDA of this approval hearing. [Donnelly Decl., ¶ 24; Exh. 6.] Accordingly, the LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings, 2018 WL 4773057, at *9 ("Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement."); Jordan, 2018 U.S. Dist. LEXIS at *7 ("Additionally, the Court finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and no comment or objection has been received.").

VI. THE REQUESTED FEES AND COSTS ARE FAIR AND REASONABLE

For their efforts and the contingent risk undertaken in obtaining a common fund settlement that benefits the LWDA and Aggrieved Employees, 1/3 of the gross settlement, or \$57,500.00, is allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs which amount to \$10,164.11. These fees and costs are warranted under the law and within the range of fees commonly awarded in similar cases.

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

PAGA provides a Plaintiff is entitled to recover reasonable attorney's fees, expenses, and

1 costs under Labor Code § 2699(g)(l): “Any employee who prevails in any action shall be entitled
2 to an award of reasonable attorney’s fees and costs,” As discussed below, reasonable
3 attorney’s fees and costs are typically awarded under the common fund doctrine in a *qui tam* such
4 as this one, where, as here, the litigation creates a common fund of money in a specific amount
5 for the benefit of others.

6 “A *qui tam* action is one brought under a statute that allows a private person to sue as a
7 private attorney general to recover damages or penalties, all or part of which will be paid to the
8 government.” People ex rel. Stratham v. Acacia Research Corp. (2012) 210 Cal.App.4th 487,
9 491- 492. As our Supreme Court recently affirmed, a PAGA action is a *qui tam* action because
10 the statute allows the employee plaintiff, acting as the proxy of the State’s labor law enforcement
11 agency, to sue his or her employer for Labor Code violations and recover civil penalties that
12 otherwise could only be assessed and collected by the LWDA. Kim v. Reins Int’l California, Inc.
13 (2020) 9 Cal.5th 73; Iskanian, 59 Ca1.4th at 380-82 (“[a] PAGA representative action is therefore
14 a type of *qui tam* action”). Indeed, the majority of the civil penalties recovered in a PAGA action
15 are paid to the State, with a smaller portion paid to the Aggrieved Employees (e.g. 75% paid to
16 the state; 25% paid to the Aggrieved Employees). Lab. Code § 2699(i). As here, where a
17 common fund is created in a *qui tam* action by the successful litigation of a plaintiff and his
18 attorneys, the plaintiff’s attorneys are entitled to recover their fees from the common fund. Bank
19 of America v. Cory (1985) 164 Cal.App.3d 66, 89-91.

20 Through the successful efforts of Plaintiff and her attorneys here, a common fund was
21 created in the amount of \$172,500 for the benefit of the Aggrieved Employees and the State.
22 Thus, these beneficiaries should bear their share of the costs and attorney’s fees out of the overall
23 \$172,500 in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444
24 U.S. 472, 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d
25 1301, 1311.

26 Not long ago, the California Supreme Court upheld the use of the common fund theory of
27 recovery for attorney’s fees in Laffitte v. Robert Half Int’l Inc. (2016) 1 Ca1.5th 480, 506. In
28 Laffitte, the Supreme Court upheld an award of attorney’s fees of one-third of the \$19 million

1 gross settlement (*e.g.*, awarded \$6.33 million in fees) under the common fund theory of recovery.
2 Lafitte is consistent with prior decisions recognizing “when a number of persons are entitled in
3 common to a specific fund, and an action brought by ... plaintiffs for the benefit of all results in
4 the creation or preservation of that fund, such ... plaintiffs may be awarded attorneys’ fees out of
5 the fund.” Serrano v. Priest (1977) 20 Ca1.3d 25, 34; Boeing, 444 U.S. at 478 (“[A] lawyer who
6 recovers a common fund ... is entitled to reasonable attorneys’ fees from the fund as a whole”);
7 Lealao v. Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 26 (“[f]ee spreading occurs when
8 a settlement or adjudication results in the establishment of a separate or so-called common fund
9 for the benefit of the class”).

10 Accordingly, the common fund doctrine allows a court to award attorney’s fees based on a
11 percentage of the total fund created when the fund consists of a “certain or easily calculable sum
12 of money,” and California law has long applied the percentage of the recovery method for
13 awarding attorney’s fees where a common fund is established. Serrano, 20 Ca1.3d at 34; Bell v.
14 Farmers Ins. Exch. (2004) 115 Cal.App.4th 715, 726; Dunk v. Ford Motor Co. (1996) 48
15 Cal.App.4th 1794, 1809; Sanders v. City of Los Angeles (1970) 3 Ca1.3d 252, 261-63 (affirming
16 award of attorney’s fee based on percentage of recovery).

17 Awarding attorney’s fees of one-third of gross common fund amount is favored by
18 California courts when a fund established for the common benefit of others is involved, such as
19 here. Accordingly, awarding fees on this basis out of the \$172,500 GSA, for a total of \$57,500, is
20 reasonable and appropriate. [Donnelly Decl., ¶¶ 25-38.]

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

23 Despite the recognized limitations of the so-called lodestar method, some California and
24 federal courts acknowledge the utility of a lodestar “cross-check” when assessing a proposed
25 percentage-based fee award. Lealao, 82 Cal.App.4th at 46-47. Under the “lodestar multiplier”
26 method of cross-checking proposed fee awards, the court first ascertains counsel’s total “lodestar”
27 amount by multiplying the number of hours reasonably expended by each attorney’s reasonable
28 hourly rate, and then enhances or reduces this lodestar figure by a “multiplier” to account for a

1 range of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree
2 of success achieved. PLCM Group, Inc. v. Drexler (2000) 22 Ca1.4th 1084, 1095-96; Lealao, 82
3 Cal.App.4th at 43 (court has discretion to use a multiplier to ensure that the “fee awarded is
4 within the range of fees freely negotiated in the legal marketplace in comparable litigation”).

5 Here, Plaintiff’s counsel’s lodestar is approximately \$43,510.00, based on 57.7
6 attorney/paralegal hours spent litigating the case. [Donnelly Decl., ¶¶ 28-37; Exh. 7.] On a
7 lodestar basis, the fee request of \$57,500 results in a multiplier of 1.32, which is a modest
8 enhancement entirely in line with California law. [Donnelly Decl., ¶¶ 37-38.] Indeed,
9 California courts routinely approve multipliers in the in the 2-4 range to compensate for the
10 time and risk of class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66
11 (affirming attorneys' fee award including an upward multiplier of 2.5); Wershba, 91
12 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or even higher.”); City of Oakland
13 Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class
14 Counsel submits that the requested 1.32 multiplier effectively operates to show that the
15 percentage fee request is reasonable considering the challenges presented in this contingency
16 fee matter, and appropriately compensates Class Counsel for the contingent risk assumed and
17 delay in payment during the 18 plus months counsel has been representing Plaintiff. Thus,
18 the multiplier results in a fee constituting a fair return on the contingency.

19 **C. The Requested Costs Are Fair And Reasonable**

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

1 client.” Harris v. Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

2 While the Settlement Agreement authorizes litigation costs not to exceed \$11,000
3 Plaintiff’s Counsel’s actual costs presently are \$10,164.11. [Donnelly Decl., ¶¶ 39-40.] This
4 includes filing fees, mediation costs, and postage, while waiving photocopying costs and legal
5 research charges. These costs are reasonable and uncontested, and should be approved.

6 **VIII. CONCLUSION**

7 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement
8 under PAGA, approve the requested award of reasonable attorney’s fees and costs, approve Apex
9 Class Action as the settlement administrator and approve is fees in the amount of \$5,995.00,
10 approve the proposed distributions to the LWDA and Aggrieved Employees, and enter judgment.

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12
13 Dated: November 13, 2023

LAW OFFICES OF J. KIRK DONNELLY, APC

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16 J. Kirk Donnelly
17 Attorneys for Plaintiff Ingrid Bolanos
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