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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

11 BENNY MURRAY II, as an individual on
behalf of himself and on behalf of all others
12 similarly situated,
Plaintiff,

13 v.

14 ALCLEAR, LLC, a Delaware limited
liability company; and DOES 1-100,
15 inclusive,
16 Defendants.

Case No.: 23STCV10429

Assigned for All Purposes to:
Hon. Wendy Chang
Dept. 36

MEMORANDUM OF POINTS &
AUTHORITIES IN SUPPORT OF MOTION
FOR APPROVAL OF SETTLEMENT UNDER
PRIVATE ATTORNEY'S GENERAL ACT

Date: October 24, 2024
Time: 8:30 a.m.
Dept.: 36

Reservation ID: 155358310591

1 **I. INTRODUCTION**

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

10 **II. BACKGROUND**

11 Defendant Alclear, LLC provides services to expedite security screening processes in airports
12 and stadiums throughout California. Plaintiff has worked for Defendant as a non-exempt
13 “Ambassador” and “Senior Ambassador” since approximately September 2021 to the present at the
14 Los Angeles International Airport. [Declaration of Chad Saunders (“Saunders Decl.”), ¶ 4.]

15 After notice to the Labor & Workforce Development Agency (“LWDA”) and Defendant, and
16 exhausting administrative remedies, Plaintiff filed his PAGA-only complaint on May 9, 2023,
17 alleging Labor Code violations including failure to pay all wages owed, including overtime wages,
18 failure to provide meal and rest breaks, wage statement violations, failure to provide business expense
19 reimbursements for cell phones, failure to pay all wages owed at termination, sick pay violations, and
20 suitable seating violations. Plaintiff filed his complaint on behalf of all non-exempt current and former
21 employees employed by Defendant in California during the relevant time frame. Alclear has at all times
22 denied Plaintiff’s allegations and maintained it properly calculated and paid all wages due, that its
23 meal and rest break and payroll policies and procedures comply with California law, and that it
24 provided the class members with required meal and rest breaks. [Saunders Decl., ¶ 5; Exh. 3.]

25 After Plaintiff filed his complaint, upon discussing the merits of the case and engaging in
26 several meet and confer sessions regarding prospective law and motion and discovery issues, the
27 Parties agreed to an early mediation. The Parties further agreed to a protocol for exchanging
28 additional documents and information before the mediation. Through this informal discovery,

1 Defendant provided Plaintiff with information including, inter alia, the number of potential
2 Aggrieved Employees, the number of aggregate pay periods, sample pay stubs and time records for
3 about 10% of the allegedly Aggrieved Employees, employee handbooks and manuals, and other
4 policy documents regarding Defendant's time keeping and reporting policies. Plaintiff then reviewed
5 and analyzed this information with the assistance of consulting experts from Berger Consulting Group
6 to, inter alia, determine potential violation rates for meal and rest breaks, construct a damages, model,
7 etc. [Saunders Decl., ¶ 6.]

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

19 **III. SUMMARY OF SETTLEMENT TERMS**

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

21 Under the settlement, Defendant will pay a non-reversionary settlement amount of \$900,000
22 (the "Gross Settlement Amount" or "GSA"). The GSA is inclusive of payments to the LWDA and
23 Aggrieved Employees, costs of settlement administration (\$8,995), a service award to Plaintiff
24 Murray, and reasonable attorney's fees and costs.¹ After payment of these amounts from the GSA,
25 Plaintiff presently estimates about \$573,662.24 will remain (the "Net Settlement Amount" or
26 "NSA"). Seventy-five percent of the NSA (about \$430,246.68) will go to the LWDA, and the
27

28 ¹ Plaintiff's counsel requests fees of 1/3 of the GSA, or \$300,000 and costs in the amount of \$16,342.76, while Plaintiff requests a service award of \$1,000.00.

1 remaining 25% (about \$143,415.56) will be distributed to the Aggrieved Employees in proportion to
2 the total number of Pay Periods each individual worked during the PAGA Period, with an average
3 award currently estimated at about \$93 per Aggrieved Employee. [Saunders Decl., ¶ 8.]

4 **B. PAYMENT AND THE NOTICE**

5 The Parties propose using Apex Class Action, LLC as the Settlement Administrator. Apex
6 has extensive experience administering PAGA settlements, and has agreed to cap its fees at \$8,995.
7 [Declaration of Sean Hartranft, ¶¶ 2-7; Exhs. A-B.] Alclear will fund the settlement within 35 days
8 of the Effective date and, within 14 days of receipt of the GSA, Apex will mail a Notice and settlement
9 check to all Aggrieved Employees via regular First-Class U.S. Mail, using the most current, known
10 mailing addresses identified in Alclear's records. Aggrieved Employees need not submit claim forms
11 and will automatically receive a Notice and settlement check. Settlement checks will be negotiable
12 for 180 days, after which time any unclaimed residual funds will be forwarded to the California State
13 Controller's Unclaimed Property Fund. [Saunders Decl., ¶ 9.]

14 **C. THE RELEASE**

15 The California Supreme Court has explained that a judgment in "a representative action
16 brought by an aggrieved employee under the Labor Code Private Attorneys General Act of 2004 ...
17 is binding not only on the named employee plaintiff but also on government agencies and any
18 aggrieved employee not a party to the proceeding." Arias v. Superior Court (2009) 46 Cal.4th 969,
19 985-86. Accordingly, the release in the Settlement Agreement narrowly releases only civil penalty
20 claims brought under PAGA. Under Arias, the order the Parties request the Court enter is intended to
21 be "binding not only on the named employee plaintiff but also on government agencies and any
22 aggrieved employee not a party to the proceeding." The Settlement Agreement protects the rights of
23 the Aggrieved Employees to bring their own individual claims should they wish. For these reasons,
24 the Parties contend the release narrowly applies only to the PAGA claims alleged, and the Settlement
25 Agreement specifically provides the Release is inapplicable to any claims other than those brought
26 under PAGA. [Saunders Decl., ¶ 10.]

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

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

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

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

22 First, Plaintiff alleged Defendant failed to pay all minimum and overtime wages by (1) for
23 employees paid only by commission, failing to pay those employees for their non-productive time or
24 for their rest periods as required by Labor Code section 226.2, and (2) by failing to pay for sick time
25 hours at employee’s “regular rate of pay.” Ferra v. Loew’s Hollywood Hotel, LLC (2021) 11 Cal.5th
26 858. [Saunders Decl., ¶ 11.]

27 Next, Plaintiff and Aggrieved Employees did not receive legally compliant thirty (30) minute
28 meal periods, and Plaintiff alleged numerous “de facto” violations where Aggrieved Employees were

1 consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods. Plaintiff also
2 alleged meal periods were cut short, interrupted, or worked through completely due to the need to
3 attend to customers, complete membership enrollments, monitor security lines, provide coverage at
4 the various airline gates, or respond to work-related communications, among other duties. Per
5 Plaintiff's experts, review of Defendant's records suggested around 31.6% of shifts contained at least
6 meal period violation, representing 16,945 of the eligible pay periods. Plaintiff further alleges he and
7 the Aggrieved Employees did not receive compliant rest periods for the same reasons, and that Alclear
8 required employees to monitor their phones at all times and, as a result, employees were not entirely
9 free from employer control while on a rest period. [Saunders Decl., ¶ 12.]

10 Plaintiff next alleges Alclear failed to reimburse necessary business expenses for use of
11 personal cell phones, as supervisors would contact Plaintiff and other employees on their personal
12 phones regarding, inter alia, scheduling, informing them when to take a meal/rest break, etc. during
13 a shift. Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal. App. 4th 1137. Lastly, Plaintiff also
14 brings claims derivative of the foregoing claims, including a derivative wage statement claim based
15 on the failure to pay all wages due, and failure to pay all wages due and owing upon separation of
16 employment under Labor Code §§ 201-203. [Saunders Decl., ¶ 13.]

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

18 For mediation, Alclear indicated it employed approximately 1,537 non-exempt employees in
19 California during the applicable PAGA period, and these individuals worked approximately 24,343
20 pay periods during that time. Based on the data and information provided, Plaintiff estimated
21 Defendant's maximum PAGA exposure at approximately \$9,247,500. [Saunders Decl., ¶¶ 15-16.]

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

24 In response to Plaintiff's unpaid wage claims for alleged failure to pay wages, Alclear took
25 the position that its time keeping and payroll policies are legally compliant, that it accurately tracked
26 and paid for all hours worked at the correct hourly rates, including paying for so-called non-
27 productive time. Alclear emphasized employees were required by company policy to accurately track
28 their time and that it paid the Aggrieved Employees for all hours worked consistent with those

1 policies. Thus, per Alclear, even a commissioned employee was not paid for non-productive time, or
2 if sick pay was paid at the incorrect rate, it was intermittent and against company policy and would
3 not serve as the basis for any appreciable civil penalties. [Saunders Decl., ¶ 17.]

4 For the meal and rest break claims, Alclear offered multiple defenses. First, it emphasized its
5 written meal and rest break policy generally was compliant, that it authorized and permitted all
6 necessary breaks, and that employees received full uninterrupted lunch periods free from employer
7 control. Defendant also asserted that even to the extent any late or short meal periods occurred, it was
8 in violation of company policy and aberrational, and would require significant individual inquiries to
9 determine the reasons underlying any such alleged violations and whether it was by employee choice
10 or some other reason. [Saunders Decl., ¶ 18.]

11 As with meal breaks, Defendant argued the applicable rest break policies complied with
12 California law, and that it authorized and permitted employees to take all required breaks.
13 Defendant further contended that, in light of the fact that it is not required to maintain a record of
14 rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking
15 rest periods would be purely anecdotal and individual issues would predominate on liability. This
16 arguably would once again make a trial unmanageable since the number of instances an employee
17 missed a rest break would have to be tested on a case by case basis to determine compliance.
18 [Saunders Decl., ¶ 19.]

19 For the expense reimbursement claim, Alclear countered there typically would be no need
20 for employees to communicate via phone or text while performing their job duties at the airport.
21 Per Defendant, to the extent Plaintiff or other Aggrieved Employees used their individual phones
22 for work purposes, it was done purely for personal convenience and was neither required nor
23 necessary in order to perform their job duties. Thus, per Defendant, no reimbursement was
24 required. [Saunders Decl., ¶ 20.]

25 Plaintiff also alleged derivative violations of Labor Code § 226 (wage statement violations)
26 and §§ 201-203 (waiting time penalties). The derivative wage statement claims (based on the
27 unpaid wage and meal/rest claims). The waiting time penalties claim, also is entirely derivative and
28 will rise or fall along with the primary claims, in addition to being subject to “good faith” and other

1 defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-
2 04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though the
3 class prevailed on the merits on the underlying claim for failing to pay living wages). Accordingly,
4 Plaintiff had to discount the value of this claim significantly in light of these multiple potential
5 defenses. Defendant also contended a substantial discount should be applied to the civil penalties
6 for these derivative (i.e., “stacked”) violations, as it would be unfair to penalize Defendant multiple
7 times for the same violation. [Saunders Decl., ¶ 21.]

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

19 Thus, Defendant raised various and multi-layered defenses to each of Plaintiff’s claims,
20 anyone of which, if successful, could have decimated Plaintiff’s case. And Defendant vowed to
21 raise all these defenses at trial. Accordingly, Plaintiff faced risky issues going forward with this
22 litigation, and it could have taken years to realize any recovery in this action along with the
23 possibility of post-trial appeals. In addition to its merits defenses and arguing trial would be
24 unmanageable, Defendant also intended to raise additional defenses on damages, including the
25 proper measure of civil penalties and the appropriate discount to place on any assessment of such
26 penalties. [Saunders Decl., ¶ 23.]

27 Although Plaintiff and his counsel believe they could have prevailed, there was no such
28 guarantee. When the risks of overcoming Defendant’s demurrer, a motion to compel arbitration, a

1 manageability defense, prevailing at trial on the merits on all claims, and securing 100% of the
2 theoretical civil penalties for every single pay period at issue all are factored into the equation, the
3 settlement value is reasonable and supported. Of course, to recover anywhere near the maximum
4 penalties Plaintiff would have to shoot the moon and win both liability and maximum penalties on
5 all claims, which outcome, for the reasons discussed, is unlikely. Given Defendant's various
6 procedural and merits defenses, as well as the substantial penalty reductions ordered in the cases
7 above – which occurred after trial – the proposed settlement is eminently reasonable. [Saunders
8 Decl., ¶ 24.]

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

23 In sum, when the risks of litigation, the burdens of proof necessary to establish liability, the
24 probability of appeal of a favorable judgment, the Court's substantial discretion to reduce any
25 penalty award all are accounted for, it is clear a settlement amount of \$900,000 for the PAGA
26 claims is within the ballpark of reasonableness, and approval is appropriate. Jennings v. Open Door
27 Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *7 (approving settlement
28

1 with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the
2 LWDA, and the LWDA has not objected to the settlement").

3 **V. SUBMISSION TO THE LWDA**

4 Plaintiff timely served the LWDA with the Settlement Agreement and this Motion, and
5 notified the LWDA of this approval hearing. [Saunders Decl., ¶ 25; Exh. 4.] Accordingly, the
6 LWDA will be able to weigh in as necessary and, importantly, many courts find it persuasive of
7 approval if the LWDA ultimately declines to offer any comment or objection to a proposed PAGA
8 settlement. Echavez v. Abercrombie & Fitch Co., Inc. (C.D. Cal. Mar. 23, 2017) 2017 WL
9 3669607, at *3 (court inferred the LWDA's non-response as "tantamount to its consent to the
10 proposed settlement terms, namely the proposed PAGA penalty amount."); Jennings, 2018 WL
11 4773057, at *9 ("Plaintiffs submitted the settlement agreement to the LWDA, and the LWDA has
12 not objected to the settlement."); Jordan, 2018 U.S. Dist. LEXIS at *7 ("Additionally, the Court
13 finds it persuasive that the LWDA was permitted to file a response to the proposed settlement and
14 no comment or objection has been received.").

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

16 For their efforts and the contingent risk undertaken in obtaining a common fund settlement
17 that benefits the LWDA and Aggrieved Employees, 1/3 of the gross settlement, or \$300,000, is
18 allocated to Plaintiff's counsel for reasonable attorney's fees, plus actual litigation costs. These fees
19 are warranted under the law and within the range of fees commonly awarded in similar cases.

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

23 PAGA provides a Plaintiff is entitled to recover reasonable attorney's fees, expenses, and
24 costs under Labor Code § 2699(g)(1): "Any employee who prevails in any action shall be entitled to
25 an award of reasonable attorney's fees and costs," As discussed below, reasonable attorney's
26 fees and costs are typically awarded under the common fund doctrine in a *qui tam* such as this one,
27 where, as here, the litigation creates a common fund of money in a specific amount for the benefit of
28 others.

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

14 Through the successful efforts of Plaintiff and his attorneys here, a common fund was created
15 in the amount of \$900,000 for the benefit of the Aggrieved Employees and the State. Thus, these
16 beneficiaries should bear their share of the costs and attorney’s fees out of the overall \$80,000 amount
17 in civil penalties under the common fund theory. Boeing Co. v. Van Gemert (1980) 444 U.S. 472,
18 478-482; Six (6) Mexican Workers v. Arizona Citrus Growers (9th Cir. 1990) 904 F.2d 1301, 1311.

19 Not long ago, the California Supreme Court upheld the use of the common fund theory of
20 recovery for attorney’s fees in Laffitte v. Robert Half Int’l Inc. (2016) 1 Cal.5th 480, 506. In Laffitte,
21 the Supreme Court upheld an award of attorney’s fees of one-third of the \$19 million gross settlement
22 (e.g., awarded \$6.33 million in fees) under the common fund theory of recovery. Lafitte is consistent
23 with prior decisions recognizing “when a number of persons are entitled in common to a specific
24 fund, and an action brought by ... plaintiffs for the benefit of all results in the creation or preservation
25 of that fund, such ... plaintiffs may be awarded attorneys’ fees out of the fund.” Serrano v. Priest
26 (1977) 20 Cal.3d 25, 34; Boeing, 444 U.S. at 478 (“[A] lawyer who recovers a common fund ... is
27 entitled to reasonable attorneys’ fees from the fund as a whole”]; Lealao v. Beneficial California, Inc.

1 (2000) 82 Cal.App.4th 19, 26 (“[f]ee spreading occurs when a settlement or adjudication results in
2 the establishment of a separate or so-called common fund for the benefit of the class”).

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

10 Awarding attorney’s fees of one-third of gross common fund amount is favored by California
11 courts when a fund established for the common benefit of others is involved, such as here.
12 Accordingly, awarding fees on this basis out of the \$900,000 GSA, for a total of \$300,000, is
13 reasonable and appropriate. [Saunders Decl., ¶¶ 26-52.]

14 **B. A LODESTAR CROSS-CHECK CONFIRMS THE REASONABLENESS OF**
15 **THE FEE AWARD**

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

26 Here, Crosner Legal’s lodestar is approximately \$190,135, based on 248.5 attorney hours
27 spent litigating the case. [Saunders Decl., ¶¶ 30-52; Exh. 5.] On a lodestar basis, the fee request of
28 \$205,382.49 results in a multiplier of 1.58, which is a modest enhancement entirely in line

1 with California law. [Sanders Decl., ¶¶ 51-52.] Indeed, California courts routinely approve
2 multipliers in the in the 2-4 range to compensate for the time and risk of class
3 action/representative cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming
4 attorneys' fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255
5 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988)
6 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34.) Counsel submits that the requested
7 1.58 multiplier effectively operates to show that the percentage fee request is reasonable
8 considering the challenges presented in this contingency fee matter, and appropriately
9 compensates counsel for the contingent risk assumed and delay in payment during the
10 approximately two years counsel has been representing Plaintiff. Thus, the multiplier results in
11 a fee constituting a fair return on the contingency.

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

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

23 While the Settlement Agreement authorizes litigation costs not to exceed \$20,000, Plaintiff's
24 Counsel's actual costs presently are \$16,342.76. [Saunders Decl., ¶¶ 53-54.] This includes filing fees,
25 service of process, expert fees, mediation costs, and postage, while waiving photocopying costs and
26 legal research charges. These costs are reasonable and uncontested, and should be approved.

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1 **VII. THE PROPOSED SERVICE AWARD FOR PLAINTIFF IS FAIR AND**
2 **REASONABLE**

3 Pursuant to the Settlement Agreement, Plaintiff seeks an incentive award of \$1,000. This
4 request is reasonable given the much broader release that Plaintiff is agreeing to, as well as Plaintiff's
5 efforts in this case and the risks he undertook on behalf of the Aggrieved Employees. Additionally,
6 by contacting and retaining counsel to pursue these claims, Plaintiff made this settlement possible for
7 the other Aggrieved Employees and the LWDA, while shouldering the risk of being liable for
8 Defendant's litigation costs if he were unsuccessful. Plaintiff also exposed himself to unwanted
9 notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the
10 benefit of other employees, placing Plaintiff at risk of discrimination by future prospective employers.
11 Among taking many other actions assisting in the successful litigation of this case, Plaintiff provided
12 substantial factual information to Plaintiff's Counsel, participated in numerous phone calls and
13 meetings with counsel to discuss the case, and general kept up to speed and informed on the case's
14 progress. The incentive payment to Plaintiff is appropriate and justified as part of the Settlement.
15 [Saunders Decl., ¶ 55; Declaration of Benny Murray, II, ¶¶ 2-9.]

16 Accordingly, Plaintiff submits the amount sought is well within the range of
17 reasonableness for such awards in other wage and hour actions. Staton v. Boeing (9th Cir.
18 2003) 327 F.3d 938, 977 (collecting cases awarding service and incentive payments ranging from
19 \$2,000 to \$25,000).

20 **VIII. CONCLUSION**

21 For the foregoing reasons, Plaintiff requests the Court approve the proposed settlement under
22 PAGA, approve the requested award of reasonable attorney's fees and costs, approve the requested
23 service award to Plaintiff in the amount of \$1,000, approve Apex Administration, LLC as the
24 settlement administrator and approve its fees in the amount of \$8,995, approve the proposed
25 distributions to the LWDA and Aggrieved Employees, and enter judgment.

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27 Dated: August 30, 2024

CROSNER LEGAL, PC

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