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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

VINCENT LESLIE, an individual, on behalf of
himself and on behalf of all others similarly
situated,

Plaintiff,

vs.

P.F.C. ENTERPRISES, INC. dba ALLEN
PROPERTIES, a California Corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No. CIVSB2207363

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: May 9, 2024
Time: 8:30 a.m.

Judge: Hon. Jessica Morgan
Department: S-26

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1 **I. INTRODUCTION**

2 Plaintiff VINCENT LESLIE (hereinafter “Plaintiff”) seeks final approval of the Stipulation of
3 Settlement of Class and PAGA Action and Release of Claims (“Agreement”)¹, which if approved, would
4 provide valuable monetary relief for 318 Settlement Class Members employed by defendant P.F.C.
5 ENTERPRISES, INC. dba ALLEN PROPERTIES (“Defendant”) during the Class Period. Plaintiff and
6 Class Counsel also seek approval of the Class Counsel award in the amount of **\$276,666.67** comprised
7 of \$256,666.67 for attorneys’ fees (one-third of the Gross Settlement Amount) and up to \$20,000.00 for
8 reimbursement of actually incurred litigation expenses².

9 An objective evaluation of the proposed settlement of \$770,000.00 (“Gross Settlement Amount”)
10 confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. The
11 Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced
12 counsel, guided by the wisdom and experience of Jill R. Sperber, Esq., an experienced wage and hour
13 class and PAGA action mediator. JCL Dec., ¶ 10. Plaintiff estimates that the Settlement, if approved,
14 would result in a Net Settlement Amount of approximately **\$434,833.33**, an average Individual
15 Settlement Payment of **\$1,367.40** and high payment of **\$3,259.70**. Declaration of Madely Nava (“Apex
16 Dec.”), ¶ 15; JCL Dec., ¶ 11.

17 The relief offered by the Settlement is immediate and is particularly impressive when viewed
18 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*). As
19 discussed below, the proposed Settlement satisfies all criteria for final settlement approval under
20 California law and falls well within the range of reasonableness. JCL Dec., ¶ 12-13.

21 **II. OVERVIEW OF THE LITIGATION**

22 Defendant is a real estate, rental, and leasing company, managing a number of residential
23 properties in California, including in San Bernardino, where Plaintiff worked. This action asserts claims
24 on behalf of all of Defendant’s current and former non-exempt employees employed in California

25
26 ¹ The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to
the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized
terms used herein have the same meaning as those defined by the Agreement.

27 ² Currently Class Counsel’s actually incurred litigation expenses are \$12,036.61. Class Counsel will provide an updated
28 total at the time of hearing on this motion.

1 during the Class Period. Plaintiff worked for Defendant as a non-exempt employee during the Class
2 Period. JCL Dec., ¶ 14.

3 Among other claims, Plaintiff claims that Defendant failed to maintain accurate time records,
4 pay for all hours worked, provide compliant meal and rest periods, issued non-compliant wage
5 statements, and failed to pay all wages when due. Defendant forcefully denies liability for each of
6 Plaintiff's claims. JCL Dec., ¶ 15.

7 On January 20, 2022, Plaintiff served Defendant and the Labor and Workforce Development
8 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). On April 1, 2022, Plaintiff filed
9 this class and representative action complaint ("Class Action") alleging ten causes of action for various
10 violations of the labor code, including violations of the Private Attorneys General Act at Labor Code
11 §§ 2698, *et seq.* JCL Dec., ¶¶ 16-17.

12 The Parties agreed to collectively mediate the Class Action. To prepare for mediation, the Parties
13 agreed to informally produce documents and data points subject to the mediation privilege, including
14 but not limited to, employee handbooks, the Class Members' time data, certain payroll data points, and
15 the Class Members' wage statements. As discussed *infra*, Plaintiff's counsel retained the forensic
16 consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data. JCL
17 Dec., ¶ 18.

18 On May 1, 2023, the Parties participated in a full day mediation presided over by Jill R. Sperber,
19 Esq. The mediation concluded without a settlement. However, Mediator Sperber arrived at and issued
20 her mediator's proposal after hearing arguments, reviewing evidence, and evaluating the Parties'
21 respective claims and defenses. Once the Parties agreed to the Mediator's proposal, they negotiated and
22 signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted
23 and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec.,
24 ¶ 19. On January 4, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4.
25 Shortly, thereafter, the Settlement Administrator mailed Notice Packets to all 320 Settlement Class
26 members. Apex Dec., ¶¶ 4-7. The mailing of the Notice Packets triggered a forty-five (45) day
27 Response Deadline for the Settlement Class to submit requests for exclusion or objections to the
28

Settlement. Agreement, ¶ I(LL). As of the filing of this motion, 99.38% of the Class Members will be included in the Settlement Class and will receive an Individual Settlement Payment, with only two (2) requests for exclusion. Apex Dec., ¶¶ 13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved a Gross Settlement Amount of \$770,000.00. The Gross Settlement Amount is all-in with no reversion to Defendant. Agreement, ¶ III(A)(1). The Net Settlement Amount shall be used for the payment of all Individual Settlement Payments to satisfy all Released Claims. The Settlement Administrator will calculate Individual Settlement Payments by adding up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment. Agreement, ¶ III(M)(1). The Settlement Administrator estimates the average Individual Settlement Payment is **\$1,367.40** and the highest Individual Settlement Payment is **\$3,259.70**. Apex Dec., ¶ 15.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, Plaintiff and the Settlement Class Members will release the Released Parties from the Released Class Claims for the Class Period. As of the funding of the Gross Settlement Amount, Plaintiff, the PAGA Employees, the LWDA, and the State of California will release the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement, ¶¶ III(B)-(C).

Apex Class Actions was appointed as the Settlement Administrator for the class. The Settlement Administration Costs are **\$8,500.00**. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ III(M)(12).

Subject to Court approval, Class Counsel shall seek Class Counsel award in the amount of \$276,666.67 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be at least \$256,666.667 and up to \$20,000.00 for actually incurred litigation expenses. Agreement, ¶ III(M)(10).

Subject to Court approval, the Agreement provides for a Class Representative Service Award in

1 the amount of \$10,000.00 for Plaintiff in consideration of his time, risk, and efforts as the Class
2 Representative on behalf of the Settlement Class and a broad release of Civil Code section 1542.
3 Settlement Agreement, ¶ III(M)(9).

4 As set forth in the Agreement, \$40,000.00 of the Gross Settlement Amount has been allocated for
5 civil penalties under the PAGA (“PAGA Payment”). Seventy-Five percent of the PAGA Payment will
6 be paid to the California Labor Workforce and Development Agency (“LWDA Payment”). The
7 Settlement Administrator shall distribute the remaining 25% of the PAGA Settlement to the PAGA
8 Employees (“PAGA Employee Payment”). Agreement, ¶ III(M)(11).

9 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
10 and should be granted final approval. Given the complexities of this case, the defenses asserted, the
11 uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed
12 settlement is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 20-21.

13 **IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
14 **OF CLASS ACTION SETTLEMENTS**

15 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
16 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
17 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
18 *v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000).

19 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
20 action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) citing
21 *Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). The
22 court must decide whether the proposed settlement falls within the range of reasonable settlements,
23 taking into account that settlements are compromises between the parties reflecting subjective,
24 unquantifiable judgments concerning the risks and possible outcomes of litigation. See also *Wershba v.*
25 *Apple Computer*, 91 Cal.App.4th 224, 246 (2001) In *Wershba*, appellants argued that the settlement was
26 too low given the “clear” liability, however, the Court rejected this argument and held that “the merits
27 of the underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba*,

1 *supra*, at 246; *see also* 7-Eleven, *supra*, at 1150. In these cases, Courts have repeatedly emphasized that
2 there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91
3 Cal.App.4th at 245. The presumption of fairness exists where: (1) investigation and discovery are
4 sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm's-
5 length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
6 small. *Dunk*, 48 Cal. App. 4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed.
7 1992) §11.41, pp. 11-91. Here, all of these factors support a presumption of fairness.

8 **V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

9 The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford*
10 *Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also* *Officers for Justice v. Civil Service Com'n*, 688
11 F. 2d 615, 625 (9th Cir. 1982). The purpose of the requirement is "the protection of those class members,
12 including the named plaintiffs, whose rights may not have been given due regard by the negotiating
13 parties." *Dunk, supra*, at 1801.

14 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*
15 *Fargo Bank*, 220 Cal.App.3d 1117, 1138 (1990). "The well-recognized factors that the trial court should
16 consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of
17 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of
18 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
19 completed and the stage of the proceedings, the experience and views of counsel, the presence of a
20 governmental participant, and the reaction of the class members to the proposed settlement.' [Citations.]"
21 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008); *see also* *Munoz v. BCI Coca-Cola*
22 *Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 408 (2010).

23 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
24 Due regard should be given to what is otherwise a private consensual agreement between the parties.
25 *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement
26 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
27 settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* "Ultimately, the

[trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.' [Citation omitted.]" *Id.*

These factors are analyzed seriatim below and all support final approval of the class action settlement before this Court.

A. Class Counsel Conducted a Thorough Investigation.

As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel assessed the value of the class claims using data and documents provided by Defendant in informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the number of Class Members, workweeks, and average rate of pay in order to assess damages before mediation. Class Counsel retained Berger Consulting Group to analyze Defendant's time and payroll data to formulate damage models estimating Defendant's liability exposure. Class Counsel's investigation, research, experience, and damage models informed and guided the mediated negotiations that resulted in this settlement. JCL Dec., ¶ 22-29.

B. The Parties Settled Shortly After Mediation.

The Settlement is the product of a mediation session with a respected mediator and negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. JCL Dec., ¶ 30.

C. Class Counsel is Experienced in Similar Litigation.

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Class Counsel's experience is summarized in their concurrently filed declarations. Class Counsel has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 31-37; Declaration of Zakay ¶ 3.

D. The Settlement Class Responded Positively to the Settlement.

The reaction of the Settlement Class unequivocally supports approval of the Settlement. To date,

1 only two of the 320 members of the Settlement Class opted-out of the Settlement.³ Moreover, there are
2 zero objections. Stated differently, 99.38% of the Settlement Class has chosen to participate in the
3 Settlement. JCL Dec., ¶¶ 10, 38; Apex Dec., ¶¶ 11-13.

4 The near unanimous approval by the Settlement Class strongly supports a finding that the
5 Settlement is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation*,
6 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) Consequently, Class Counsel respectfully request the Court
7 to follow the unanimous approval of the Settlement Class and grant final approval of the Settlement.

8 E. **The Risk, Expense, Complexity and Duration of Further Litigation Favor**
9 **Settlement.**

10 Although Plaintiff and Class Counsel believe that their case has merit, they recognized the
11 potential risks both sides would face if litigation of this action continued. As the federal court in *Glass*
12 *v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
13 litigation:

14 ***“In light of the above-referenced uncertainty in the law, the risk, expense,***
15 ***complexity, and likely duration of further litigation likewise favors the***
16 ***settlement.*** Regardless of how this Court might have ruled on the merits of
17 the legal issues, the losing party likely would have appealed, and the parties
18 would have faced the expense and uncertainty of litigating an appeal. The
19 expense and possible duration of the litigation should be considered in
20 evaluating the reasonableness of [a] settlement.”

21 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
22 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
23 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
24 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
25 trial court to enter judgement in favor of the employer. Consequently, the uncertainty of obtaining
26 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶¶
27 39.

28 ³ Defendant objected to identifying the names of the two Class Members that opted out settlement in both the [Proposed]
Order Granting Final Approval and the [Proposed] Judgment. The Parties agreed to take direction from the Court on this
issue.

1 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes
2 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
3 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
4 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶¶ 40-41.

5 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*, 2009
6 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009), granted approval of an overtime class action
7 settlement and explained:

8 **Plaintiffs may have a strong case, but the risks inherent in continued**
9 **litigation are great.** Defendants strongly deny liability for Plaintiffs'
10 principal claim that full-time Service Associates were misclassified as
11 exempt. In addition to the uncertainties raised by Defendants at the
12 preliminary stage regarding Plaintiffs' chance of success in this case,
13 Defendants notes that the question of an employer's duty to provide rest and
14 meal periods is an open one, signaling even less certainty for
15 Plaintiffs.....[T]he **Total Settlement amount and the Class Members'**
16 **expected net recovery, after fees and other costs are deducted, appear**
17 **to be a reasonable compromise, in light of the risks of litigation.**

18 As recognized in a federal decision approving settlement of an overtime wage class action:

19 **The potential complexity and possible duration of trial also weigh in**
20 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
21 of proving damages, recognize the uncertainty of outcome, and believe
22 defendant would appeal in the event of adverse judgment. A post-judgment
23 appeal would require many years to resolve and delay payment to class
24 members. Plaintiffs believe the benefits of a guaranteed recovery today
25 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the
26 Court agrees, the actual recovery confers substantial benefits on the class
27 that outweigh the potential recovery through full adjudication.

28 *Barcia v. Contain-A-Way, Inc.*, 2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009);

1 In sum, while other cases have approved class certification in wage and hour claims, class
2 certification in this action would have been hotly disputed and was by no means a foregone conclusion.
3 Where both sides face significant uncertainty, as here, the attendant risks favor settlement. *Hanlon v.*
4 *Chrysler Corp.*, 150 F. 3d 1011, 1026 (9th Cir. 1998).)

5 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendant through
6 possible appeals which could take another three years. In arriving at their informed belief that the
7 present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk

1 inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent
2 problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-
3 trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would
4 have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and Class
5 Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the
6 Class. Based upon their evaluation, Class Representative and Class Counsel have determined that the
7 Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate,
8 and should be granted final approval. JCL Dec., ¶ 42.

9 **F. The Gross Settlement Amount is Fair and Reasonable.**

10 The Gross Settlement Amount of \$770,000.00 in this case is fair and well within the range of
11 recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement
12 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the
13 various potential impediments to recovery. Class Counsel developed varied economic damages models
14 measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation.
15 The various models were informed by Class Counsel's investigation, including the analysis of a
16 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
17 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on
18 behalf of the Settlement Class. The Gross Settlement Amount represents approximately 39.23% of
19 Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL
20 Dec., ¶ 43.

21 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
22 Court for the Northern District of California granted final approval in a wage and hour misclassification
23 action and found that the Total Settlement representing 10% of the estimated trial award was within the
24 "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459
25 (9th Cir. 2000), the Ninth Circuit approved a settlement representing "roughly one-sixth of the potential
26 recovery." Given the amount of the settlement here as compared to potential value of the claims,
27 particularly the strength of Plaintiff's action, the settlement is clearly fair and reasonable.

1 The settlement provides significant relief to the Settlement Class Members. The average
2 settlement payment is approximately **\$1,367.40**, and the highest is approximately **\$3,259.70**. Apex Dec.,
3 ¶ 15. This average net recovery is greater than many wage and hour class action settlements approved
4 by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-
5 00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v.*
6 *Pizza Hut*, Case No. BC302589 (LA. County Super. Ct.) (average net recovery of approximately \$120);
7 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net
8 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018
9 (L.A. County Super. Ct.) (average net recovery of approximately \$90).

10 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
11 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
12 experienced counsel, the settlement is entitled to final approval. JCL Dec., ¶ 44.

13 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**
14 **ARE REASONABLE**

15 Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of
16 the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*,
17 No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
18 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
19 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim
20 settlements in the range of zero to two percent of the total settlement).

21 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of
22 \$40,000.00 which is 5.2% of the Gross Settlement Amount. This amount falls well within the range
23 of approved PAGA Payments. Seventy-Five percent (75%) of the PAGA Settlement (\$30,000.00) will
24 be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be
25 distributed to the PAGA Employees, which is within the range of PAGA penalties approved by courts
26 and should be approved. JCL Dec., ¶ 45.

27 Further, on December 8, 2023, Class Counsel gave the LWDA notice of this Settlement and
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1 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with
2 the LWDA. On April 16, 2024, Plaintiff gave the LWDA notice of this motion seeking final approval
3 of this settlement. JCL Dec., ¶¶ 5-6, 46. By not registering an objection with either Class Counsel or
4 the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

5 **VII. CLASS COUNSEL’S REQUEST FOR FEES AND COSTS**

6 As part of the settlement, the parties agreed to a Class Counsel award comprised of \$256,666.67
7 for attorneys’ fees (one-third of the Gross Settlement Amount) and up to \$20,000.00 for
8 reimbursement of actually incurred litigation expenses. The requested attorneys’ fee portion of the
9 Class Counsel award equal to one-third of the Gross Settlement Amount is fair compensation and,
10 respectfully, should be approved. Class Counsel undertook complex, risky, and time-consuming wage
11 and hour litigation on a contingent basis. The attorneys’ fee portion of the requested Class Counsel
12 award is within the historically recognized range attorneys’ fees awarded in common fund class action
13 settlements – between 25% and 50% – and is supported by Class Counsel’s lodestar cross-check with
14 a reasonable 1.49 multiplier. That is well-below the 2.13 multiplier approved by the Supreme Court
15 in *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, with additional work to be
16 performed, and within the recognized multiplier range of between 2 and 4⁴. Thus, the reasonableness
17 of the requested Class Counsel award is confirmed by reference to the lodestar with a reasonable
18 multiplier with significant additional work still to be performed. JCL Dec., ¶¶ 47-54.

19 **A. Common Fund**

20 Courts have long recognized that when class counsel’s efforts result in the creation of a common
21 fund that benefits plaintiffs and unnamed class members, class counsel have an equitable right to be
22 compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)
23 (“recogniz[ing] consistently that a litigant or a lawyer who recovers a common fund...is entitled to a
24 reasonable attorney’s fee from the fund as a whole”); *Laffitte*, 1 Cal. 5th at 488-89 (common fund
25

26 ⁴ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with 2 multiplier); *Wershba v. Apple Computer*, 91 Cal.
27 App. 4th 224, 255 (2001) (“multipliers can range from 2 to 4 or even higher.”); *In re Sutter Health Uninsured Pricing*
28 *Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as “fair and reasonable”); *Chavez v. Netflix, Inc.*, 162
Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 as well within the approved range of 2 to 4).

1 doctrine “long recognized” under California law). The common fund doctrine rests on the
2 understanding that attorneys should normally be paid by their clients and that, unless attorneys’ fees
3 are paid out of the common fund, those who benefit from the fund will be “unjustly enriched.” *Boeing*,
4 444 U.S. at 478.

5 As noted above, in *Laffitte*, the California Supreme Court upheld the trial court’s award of
6 33.33% of the settlement amount of \$19 million with a 2.13 multiplier and affirmed that “empirical
7 studies show the percentage method with a lodestar cross-check is the most prevalent form of fee
8 method in practice.” *Laffitte*, 1 Cal. 5th at 496-97. In fact, courts have historically awarded between
9 25% and 50% of the common fund as attorneys’ fees class action settlements. *In re Warner*
10 *Communications*, 618 F.Supp. 735, 749-50 (S.D.N.Y 1985).

11 Here, the fairest way to calculate a reasonable fee when contingency-fee litigation has produced
12 a fixed settlement amount for the Settlement Class Members is by awarding Settlement Class Counsel
13 a percentage of the total settlement sum. *See, e.g., In re Bluetooth Headset Products Liab. Litig.*, 654
14 F.3d 935, 942 (9th Cir. 2011). More importantly, a fee award under the common fund method here
15 would achieve the two underlying goals of the common fund doctrine by: (1) equitably requiring the
16 beneficiaries of the common fund to pay their pro rata share of fees incurred in creating the fund; and
17 (2) providing an incentive to attract competent counsel to handle wage and hour class actions, which
18 California courts recognize as a fundamental tool to ensure the effective enforcement of the Labor
19 Code and minimum labor standards. *See, e.g., Gentry v. Super. Ct.*, 42 Cal. 4th 443, 455-56 (2007)
20 (overruled on other grounds by *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348
21 (2014) (emphasizing the indispensable value of private enforcement of California’s wage-and-hour
22 laws through class actions).

23 The Agreement provides for payment of the Class Counsel award from the common fund.
24 Accordingly, it is well within the Court’s discretion to award fees to Class Counsel under the common
25 fund doctrine. Class Counsel requests attorneys’ fees in the amount of \$256,666.67 representing **one-**
26 **third** of the Gross Settlement Amount. Class Counsel’s request is consistent with many fee awards in
27 similar wage and hour class actions. Moreover, the requested attorneys’ fee award is in the middle of
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historically recognized range of attorneys' fees awarded in common fund settlements. JCL Dec., ¶¶ 57-58.

The attorneys' fee portion of the Class Counsel award request should be awarded based upon the Gross Settlement Amount in accordance with *Laffitte*, i.e., percentage of the fund with a lodestar cross check. As further explained below, the reasonableness of the requested \$256,666.67 attorneys' fee award is further supported by the lodestar cross-check.

B. Class Counsels' Lodestar Supports the Requested Attorneys' Fees

Class Counsel's lodestar to date is \$171,864.50 *exclusive of costs*, with significant work remaining. JCL Dec., ¶¶ 47-51. Thus, Class Counsel's fee request is equal to Class Counsel's lodestar with a 1.49 multiplier – below the 2.13 multiplier approved in *Laffitte* – is well within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

Because the Settlement in this case is a pure common fund case, and the percentage of the fund is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award based upon the percentage of the common fund. Moreover, Class Counsel's lodestar supports the requested attorneys' fees with a multiplier well within the recognized range reasonableness, and in fact, below what the California Supreme Court approved in *Laffitte*. JCL Dec., ¶ 60.

Although no rigid formula applies, an analysis of each of the following "basic factors" that California courts typically consider further supports the reasonableness of a fee request: (1) the result class counsel obtained; (2) the time and labor required of the attorneys; (3) the contingent nature of the case and the delay in payment to class counsel; (4) the extent to which the nature of the litigation precluded other employment by class counsel; (5) the experience, reputation, and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity and difficulty of the case; and (6) the informed consent of the clients to the fee agreement.

1 *Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1810 n.2.
2 Those factors support Class Counsel's request and are addressed in more detail in Counsel's
3 declarations submitted concurrently herewith. In short: **(1)** Considering the issues presented in the
4 case, the Gross Settlement Amount of \$770,000.00, is an excellent result for the Settlement Class, **(2)**
5 Collectively, Class Counsel worked hard on this case and, expended approximately 339.08 hours in
6 the prosecution of this litigation in the over 2 years since it was filed for a total lodestar of \$171,864.50,
7 **(3)** Class Counsel undertook this litigation on a contingent-fee basis, assuming a significant risk that
8 the litigation would yield no recovery after many years of work, **(4)** Class Counsel negotiated a one-
9 third contingency fee arrangement, which is a reasonable arrangement to obtain competent counsel in
10 the marketplace for representation in wage and hour class actions of this nature, and it is only equitable
11 that Settlement Class who share in the excellent results achieved by this Settlement bear their pro rata
12 share of the attorney's fees award to Class Counsel, **(5)** Class Counsel possesses significant experience
13 litigating complex wage and hour class actions and the way this Settlement was achieved is
14 demonstrative of the highly efficient way this litigation was managed and resolved (See Class
15 Counsel's declarations for a detailed outline of their skills and experience), and **(6)** Settlement Class
16 Counsel's hourly rates are set forth in the concurrently filed declarations of Jean-Claude Lapuyade,
17 Esq. and Shani Zakay, Esq. and are well within the range of rates billed by comparable attorneys in
18 this market and reasonably compare with rates approved by other trial courts in wage and hour class
19 action litigation. JCL Dec., ¶¶ 47-75.

20 **C. Class Counsel's Costs**

21 Moreover, Common fund fee and expense awards include counsel's incurred expenses because
22 those who benefit from their effort should share in the cost. *See Rider v. City of San Diego*, 11 Cal.
23 App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is
24 whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See*
25 *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

26 As of the date of this filing, Class Counsel has incurred a total of \$12,036.61 litigating this
27 action. All of Class Counsel's out-of-pocket expenses are the types of expenses normally charged to
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1 paying clients including the following: filing fees; copying; telephone; postage; factual and legal
2 research charges; mediation fees; expert costs and travel expenses, which were all incurred during,
3 and were necessary for the successful prosecution of, the litigation and, therefore, should be
4 reimbursed. JCL Dec. ¶¶ 7, 76-78; Zakay Dec., ¶¶ 7-8.

5 **D. Plaintiff's Service Award Is Reasonable and Should be Approved**

6 Courts routinely approve service awards to compensate named plaintiffs for the services they
7 provide and the risks they incur during the class litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th
8 715, 726 (2004) The factors courts use in determining the amount of service awards include: (1) a
9 comparison between the service awards and the range of monetary recovery available to the class; (2)
10 time and effort put into the litigation; (3) whether the litigation will further the public policy underlying
11 the statutory scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, 175
12 Cal.App.4th 785, 804-805 (2009).

13 As a preliminary matter, Plaintiff granted Defendant a broad and general release of all claims
14 arising from his employment. In exchange, the Class Representative Service Award is, in part,
15 intended to compensate Plaintiff for executing this general release. This release is far broader than the
16 release that binds the remainder of the Settlement Class. JCL Dec., ¶¶ 79.

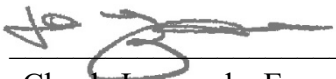
17 Regarding the amount of the requested award, courts frequently approve awards of \$10,000.00
18 or more. *See In re Cellphone*, 186 Cal.App.4th 1380. The amount of the requested Class
19 Representative Service Award to Plaintiff for \$10,000.00 is reasonable by reference to the amounts
20 that California courts (both federal and state) have repeatedly awarded in similar class action
21 settlements. Further, the unanimous consent by the Class Members favors the Court's approval of the
22 requested Class Representative Service Award. Equally important, the time effort and services
23 provided to the Settlement Class justifies the requested Service Award. The Class Representative
24 performed his duties to the Settlement Class admirably. Plaintiff's work is summarized in his
25 declaration filed concurrently herewith. Plaintiff assumed the serious risk of liability for Defendant's
26 costs and potentially fees if the case was unsuccessful. Nevertheless, Plaintiff knowingly and
27 voluntarily undertook the risk to vindicate the rights of the Settlement Class. JCL Dec., ¶ 80-83.

1 **VIII. CONCLUSION**

2 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
3 established in California law and should therefore be finally approved as fair, reasonable, and adequate
4 and requests entry of the Final Approval Order and Judgment submitted herewith. Further, based on the
5 foregoing, Class Counsel respectfully requests approval of the Class Counsel award in the amount of
6 \$276,666.667, comprised of (1) \$256,666.67 as compensation for attorneys' fees (one-third of the Gross
7 Settlement Amount of \$770,000.00) and (2) litigation expenses up to \$20,000.00 as supported by Class
8 Counsel's billing records. Class Counsel and the Class Representative also respectfully request approval
9 of the requested Class Representative Service Award in the amount of \$10,000.00 to Plaintiff.
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11 Dated: April 16, 2024

JCL LAW FIRM, APC

12 By: 
13 Jean-Claude Lapuyade, Esq.
14 Attorneys for Plaintiff
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