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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CLAUDIA NUNEZ PORCAYO, individually
and on behalf of all persons similarly situated,

Plaintiff,

vs.

THE WHOLE CHILD – MENTAL HEALTH &
HOUSING SERVICES, a California
Corporation; and Does 1 through 50, Inclusive,

Defendants.

Case No. 21STCV25160

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

Date: January 9, 2023

Time: 9:00 a.m.

Judge: Maren E. Nelson

Dept.: 17

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7	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992)	
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1 I. INTRODUCTION

2 Plaintiff CLAUDIA NUNEZ PORCAYO (hereinafter “Plaintiff”) seeks final approval of the
3 Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹,
4 which if approved, would provide valuable monetary relief for 218 Settlement Class Members employed
5 by Defendant THE WHOLE CHILD – MENTAL HEALTH & HOUSING SERVICES (hereinafter
6 “Defendant”) during the Class Period.

7 In an order dated October 18, 2022², this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On November
9 2, 2022, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
10 Declaration of Nicole Bench (“ILYM Dec.”), ¶ 7. *The Class greeted news of the Settlement with*
11 *unanimous approval as, at the time of the filing of this motion, all 218 Class Members chose to*
12 *participate in the Settlement.*³ There are zero opt-outs and zero objections to the Settlement. ILYM
13 Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences the clear fairness and
14 reasonableness of the Settlement. JCL Dec., ¶ 7.

15 An objective evaluation of the proposed settlement of Two Hundred Six Thousand One Hundred
16 Fifteen Dollars and Zero Cents (\$206,115.00) (“Gross Settlement Amount”) confirms that the relief
17 negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a
18 product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and
19 presided over by Jeffrey Krivis, Esq., a respected wage and hour class action mediator. After deducting
20 any Court-approved attorneys’ fees and costs, class representative incentive payments, administration
21 costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement
22 fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while
23 employed by Defendant during the Class Period. JCL Dec., ¶ 11.

24 This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates

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 This Court initially granted Preliminary Approval on September 12, 2022. The order granting Preliminary Approval was
subsequently amended on October 18, 2022.

28 ³ As of the filing date of this Motion, 2 Notices were deemed undeliverable. ILYM Dec. at ¶¶ 10.

1 that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$94,479.00**.
2 This will result in an average Individual Settlement Payment of **\$433.39**, a high payment of **\$1,466.41**,
3 and a low payment of **\$6.15**. Aggrieved Employees will receive an estimated average gross payment
4 of **\$11.47** and a high payment of **\$19.79**. JCL Dec., ¶ 12; ILYM Dec. at ¶ 14.

5 The relief offered by the Settlement is immediate and is particularly impressive when viewed
6 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).
7 Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
8 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
9 litigation. JCL Dec., ¶ 13.

10 As discussed below, the proposed Settlement satisfies all criteria for final settlement approval
11 under California law and falls well within the range of reasonableness. Accordingly, the Class
12 Representative and Class Counsel respectfully request this Court grant final approval of the Agreement
13 and entry of the proposed Final Approval Order and Judgment. JCL Dec., ¶ 14.

14 **II. OVERVIEW OF THE LITIGATION**

15 Defendant provides mental health, family housing, parent enrichment, and nutrition education
16 services to families and children of vulnerable communities, including at the Los Angeles County
17 location where Plaintiff worked. This action asserts claims on behalf of Defendant's non-exempt
18 employees who are or previously were employed in California. Plaintiff worked for Defendant as a
19 non-exempt employee in California between October of 2020 and February of 2021. At all times during
20 her employment, Plaintiff earned an hourly wage and was entitled incentive compensation, and to
21 legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours
22 worked. Throughout her employment, Plaintiff was subject to Defendant's written policies and
23 procedures and unwritten policies and practices. JCL Dec., ¶ 15; Declaration of Claudia Nunez Porcayo
24 ("Porcayo Dec."), ¶¶ 2-4.

25 Generally, Plaintiff claims that Defendant failed to pay overtime at the correct regular rate of
26 pay, failed to provide compliant meal and rest periods, failed to furnish accurate itemized wage
27 statements, and failed to reimburse for required business expenses. Defendant forcefully denies liability
28

1 for each of Plaintiff’s claims. Further, Defendant asserts that it fully complied with all applicable
2 employment laws and raised several other significant defenses to Plaintiff’s claims, including but not
3 limited to, facially compliant meal and rest period policies, compliant wage statements, and reimbursed
4 for all required business expenses. JCL Dec., ¶ 16.

5 On April 30, 2021, Plaintiff served Defendant and the Labor and Workforce Development
6 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
7 the facts and theories supporting Defendant’s alleged violations of various provisions of the California
8 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to
9 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
10 2698 et seq (“PAGA”). JCL Dec., ¶ 17.

11 On July 8, 2021, Plaintiff filed a class action complaint in the Los Angeles Superior Court, Case
12 Number 21STCV25160 (the “Action”). The Action alleged ten causes of action against Defendant for:
13 (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure
14 to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay
15 Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal
16 Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods
17 in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage
18 Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Reimburse Employees for Required
19 Business Expenses in Violation of Cal. Lab. Code § 2802; (8) Failure to Provide Wages When Due in
20 Violation of Cal. Lab. Code §§ 201, 202 and 203; (9) Unpaid Sick Pay in Violation of Cal. Lab. Code
21 § 246; (“Class Claims”) and (10) Violations of the Private Attorney General Act at Lab. Code §§ 2698
22 *et seq.* (“PAGA Claims”). JCL Dec., ¶ 18.

23 After the Action was commenced, the Parties agreed to mediate the Action. To prepare for
24 mediation, the Parties agreed to informally produce documents and data points subject to the mediation
25 privilege, including but not limited to, a 25% sample of the Class Members’ time data and certain
26 payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger
27 Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 19.

1 On March 15, 2022 the Parties participated in a full day mediation with highly regarded wage
2 and hour mediator Jeffrey Krivis, Esq. After arms-length negotiations and bargaining, the Parties
3 reached an agreement to settle and signed a Memorandum of Understanding. After reaching an
4 agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is
5 the subject of the instant motion. JCL Dec., ¶ 20.

6 On September 12, 2022, this Court granted preliminary approval of the Settlement. The order
7 granting preliminary approval was subsequently amended on October 18, 2022. JCL Dec., ¶ 7. On
8 November 2, 2022, the Settlement Administrator mailed Notice Packets to all 218 Settlement Class
9 Members. ILYM Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response
10 Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The
11 response from the Settlement Class to the Settlement was outstanding – 100% of the Class Members
12 are participating in the Settlement. ILYM Dec., ¶¶ 13.

13 **III. THE SETTLEMENT BEFORE THE COURT**

14 The Court preliminarily approved an initial Gross Settlement Amount of One Hundred Ninety-
15 Five Thousand Dollars and Zero Cents (\$195,000.00) based on a total of an estimated 13,211
16 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used:
17 (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Award; (3)
18 to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement
19 Administration Costs incurred in this action. JCL Dec., ¶ 21.

20 After this Court granted Preliminary Approval of the Agreement on September 12, 2022,
21 Defendant produced the Class Data to the Settlement Administrator. Upon production of the Class Data
22 to the Settlement Administrator, it was discovered that the actual number of Class Members increased
23 from 195 to 218 Class Members and the actual number of Workweeks worked by Class Members during
24 the Class Period increased to 15,360. The increased number of Class Members and Workweeks
25 triggered an escalator provision in the Settlement Agreement, thereby increasing the Gross Settlement
26 Amount by \$11,115.00 dollars. The new Gross Settlement Amount in this matter is **\$206,115.00**. JCL
27 Dec., ¶ 22.

1 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
2 Settlement Fund within fifteen (15) calendar days after the Effective Date. Agreement, ¶ I(N). The
3 Settlement Administrator shall disburse the Individual Settlement Payments and Aggrieved Employee
4 Payments to the Settlement Class Members and/or Aggrieved Employees no later than fifteen (15)
5 calendar days after Defendant funds the Gross Settlement Amount. Agreement, ¶ III(M)(7). The
6 Settlement Administrator will calculate Individual Settlement Payments by adding up the total number
7 of Workweeks for all Class Members. The Settlement Administrator will then divide the respective
8 Workweeks for each member of the Settlement Class by the total Workweeks for the entire Settlement
9 Class, resulting in a Payment Ratio for each Class Member. Each Settlement Class Member's Payment
10 Ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement
11 Payment. Agreement, ¶ III(M)(1). The estimated average Individual Settlement Payment is
12 approximately **\$433.39**. JCL Dec., ¶ 12; ILYM Dec., ¶ 14.

13 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
14 the Settlement Class Members will release the Defendant from the Released Class Claims that accrued
15 during the Class Period. The Aggrieved Employees, the LWDA, and the State of California will release
16 the Defendant from the Released PAGA Claims for the PAGA Period. Agreement at ¶¶ III(B), III(C).

17 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Settlement
18 Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the
19 costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
20 administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
21 Administrator approved for reimbursement by the court. The Settlement Administrator expenses are
22 \$8,000.00. ILYM Dec., ¶ 15. These expenses shall be paid from the Gross Settlement Amount.
23 Agreement, ¶ III(M)(12).

24 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
25 \$83,705.00 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
26 to be at least \$68,705.00 and up to \$15,000 for actually incurred litigation expenses. Plaintiff's counsel
27 is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC.

1 Agreement, ¶ I(E). The Agreement also provides for a Class Representative Service Award in the
2 amount of \$10,000 for Plaintiff, in consideration of her time, risk, and efforts as the Class Representative
3 on behalf of the Settlement Class and a general release. Agreement, ¶¶ I(I); III(D); III(M)(9).

4 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
5 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
6 the Settlement Class, the absence of any objections to the Settlement and the average Individual
7 Settlement Payment of \$433.39. ILYM Dec., ¶¶ 11-14; JCL Dec., ¶ 23.

8 **IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
9 **OF CLASS ACTION SETTLEMENTS**

10 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
11 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
12 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
13 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the
14 preferred means of dispute resolution. This is especially true in complex class action litigation”).

15 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
16 action requires court approval.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
17 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court
18 must decide whether the proposed settlement falls within the range of reasonable settlements,
19 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
20 judgments concerning the risks and possible outcomes of litigation. *See also Wershba v. Apple*
21 *Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to be judged against a
22 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”).
23 In *Wershba*, appellants argued that the settlement was too low given the “clear” liability, however, the
24 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for
25 upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

26 In these cases, Courts have repeatedly emphasized that there is a strong initial presumption that
27 the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not substitute
28

1 their judgment for that of the parties who negotiated the settlement. *Id.* At 246. The presumption of
2 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act
3 intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is experienced
4 in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1801, citing
5 Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here, all of these factors
6 support a presumption of fairness.

7 The essential evaluation is whether, given the risks of litigation and the range of probable results,
8 the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. Here, the facts and
9 circumstances compel the conclusion that the proposed settlement satisfies that standard.

10 V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

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

25 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
26 Due regard should be given to what is otherwise a private consensual agreement between the parties.
27 *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement
28

1 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
2 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* “Ultimately, the
3 [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
4 approximations and rough justice.' [Citation omitted.]” *Id.*

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

7 **A. Class Counsel Conducted a Thorough Investigation.**

8 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
9 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
10 assessed the value of the class claims using data and documents provided by Defendant through
11 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
12 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
13 Class Counsel retained Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll
14 data to formulate damage models estimating Defendant’s liability exposure. Class Counsel’s
15 investigation, research, experience, and damage models informed and guided the mediated negotiations
16 that resulted in this settlement. Accordingly, Plaintiff’s Counsel fully understood the strengths and
17 weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 24-30.

18 **B. The Parties Settled At Mediation.**

19 On March 15, 2022, the Parties conducted a full-day mediation with Jeffrey Krivis, Esq., a highly
20 regarded mediator of wage and hour class actions. Mediator Krivis helped to manage the Parties’
21 expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties
22 made substantial progress with Mediator Krivis’s assistance. Namely, the Parties exchanged
23 information regarding their respective claims and defenses, including their respective evaluations of
24 the damages. After more than eight hours of arm’s length and adversarial negotiations, the mediation
25 concluded with a settlement. The amount of the service awards was not negotiated until after the parties
26 agreed to the Gross Settlement Amount and many other terms. No action would likely have been taken
27 by Class Members individually, and no compensation would have been recovered for them, but for
28

1 Plaintiff's service on behalf of the Class. JCL Dec., ¶ 31.

2 **C. Class Counsel is Experienced in Similar Litigation.**

3 Class Counsel in this matter has extensive class action experience in multiple fields and has
4 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
5 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
6 similar wage and hour class actions throughout the State of California. As such, courts throughout the
7 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
8 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
9 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 32-38; Declaration
10 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

11 **D. The Settlement Class Responded Positively to the Settlement.**

12 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
13 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
14 member with the terms of the Settlement, including the specific estimated Individual Settlement
15 Payments. As of the filing of this motion, none of the 218 members of the Settlement Class opted-out
16 of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement
17 Class chose to participate in the Settlement. JCL Dec., ¶ 11; ILYM Dec., ¶¶ 12-13.

18 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement
19 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y.
20 2000)80 F.Supp.2d 164, 175 ("If only a small number of objections are received, that fact can be viewed
21 as indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d
22 115, 118-119 (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
23 *Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed
24 settlement should be considered when determining fairness of settlement.). Consequently, Class
25 Counsel respectfully request the Court to follow the unanimous approval of the Settlement Class and
26 grant final approval of the Settlement.

27 ///

1 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
2 for the Northern District of California granted final approval in a wage and hour misclassification action
3 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
4 the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
5 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
6 potential recovery.” Given the amount of the settlement here as compared to potential value of the
7 claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable⁴.

8 The calculation methodology used to compensate the Settlement Class for the alleged damages
9 was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
10 impartial. The calculation methodology is based on the number of Workweeks each Settlement Class
11 Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement
12 Class Members is established through Defendant’s data and documented compensation records. The
13 Settlement Administrator is responsible for calculating the Individual Settlement Payments by
14 multiplying the Payment Ratio for each Settlement Class Member by the Net Settlement Amount. The
15 Settlement Administrator will calculate the payment ratio by dividing the total number of Workweeks
16 for each Settlement Class Member by the total number of Workweeks for all Settlement Class Members.
17 This process establishes an objectively fair and reasonable procedure to compensate the Settlement
18 Class. Agreement, ¶ III(L)(1).

19 The settlement also provides significant relief to the Settlement Class Members. After deductions
20 for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement, and the Class
21 Representative Service Award, the Net Settlement Amount is currently estimated to be \$94,479.00.
22 ILYM Dec., ¶14. The average settlement payment is approximately \$433.39, the highest is
23 approximately \$1,466.41, and the lowest payment is approximately \$6.15. ILYM Dec., ¶ 14. This

24 ⁴ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving
25 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
26 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
27 *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); see also
28 *In re Newbridge Networks Sec. Litig.* (D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2 (“Courts have not identified a precise
numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures roughly
six to twelve percent of a potential trial recovery, while preventing further expenditures and delays and eliminating the risk
that no recovery at all will be won, seems to be within the targeted range of reasonableness.”).

average net recovery in on par with many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, ¶ I(O).

Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval. JCL Dec., ¶ 41.

F. The Strength of Plaintiff's Case and Risks of Continued Litigation

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 42. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

1 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
2 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
3 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
4 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
5 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
6 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
7 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
8 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
9 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
10 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
11 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
12 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
13 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
14 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
15 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
16 certification of driver meal and rest period claims based on the predominance of individual issues).
17 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
18 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
19 settlement. JCL Dec., ¶ 43.

20 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
21 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
22 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
23 affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 44.

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

27 **Plaintiffs may have a strong case, but the risks inherent in continued**
28 **litigation are great.** Defendants strongly deny liability for Plaintiffs’

1 principal claim that full-time Service Associates were misclassified as
2 exempt. In addition to the uncertainties raised by Defendants at the
3 preliminary stage regarding Plaintiffs' chance of success in this case,
4 Defendants notes that the question of an employer's duty to provide rest and
5 meal periods is an open one, signaling even less certainty for
6 Plaintiffs.....[T]he **Total Settlement amount and the Class Members'**
7 **expected net recovery, after fees and other costs are deducted, appear**
8 **to be a reasonable compromise, in light of the risks of litigation.**

9 *See also Browning v. Yahoo!, Inc.*, 2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) (“In
10 considering the strength of Plaintiffs’ case, legal uncertainties at the time of settlement - particularly
11 those which go to fundamental legal issues - favor approval.”).

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

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

22 *Barcia v. Contain-A-Way, Inc.*, 2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009); see also *Louie v.*
23 *Kaiser Foundation Health Plan, Inc.*, 2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).

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

28 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
Technologies (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a
bond and appeal. A post-judgment appeal by Defendant would have required many more years to
resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case

1 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
2 an uncertain result three or more years in the future. JCL Dec., ¶ 45.

3 The Class Representative and Class Counsel recognize the expense and length of a trial against
4 Defendant through possible appeals which could take another three years. In arriving at their informed
5 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
6 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
7 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
8 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
9 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
10 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
11 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
12 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
13 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 46.

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

16 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
17 indication that this amount was the result of self-interest at the expense of class members,” such
18 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
19 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
20 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
21 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at
22 *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*,
23 No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging
24 that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

25 Here, Plaintiff and Defendant negotiated a good faith PAGA Settlement in the amount of
26 \$10,000 which is 5.1% of the Gross Settlement Amount. As illustrated above, this amount falls well
27 within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement
28

1 (\$7,500) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%)
2 to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved
3 by courts and should be approved. JCL Dec., ¶ 47.

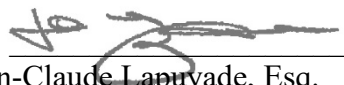
4 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
5 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
6 with the LWDA. JCL Dec., ¶¶ 5-6, 48. By not registering an objection with either Class Counsel or
7 the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

8 **VII. CONCLUSION**

9 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
10 established in California law and should therefore be finally approved as fair, reasonable, and adequate
11 and requests entry of the Final Approval Order and Judgment submitted herewith.

12
13 Dated: December 13, 2022

JCL LAW FIRM, APC

14
15 By: 
16 Jean-Claude Lapuyade, Esq.
Attorneys for Plaintiff