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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

VERONICA A. MARAVILLA, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

v.

VENUS ET FLEUR LLC, a New Jersey Limited
Liability Company; and DOES 1-50, Inclusive,

Defendants.

Case No.: 22STCV05864

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

Date: April 22, 2024

Time: 10:00 a.m.

Judge: Hon. Lawrence P. Riff

Dept.: 7

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I. INTRODUCTION

Plaintiff VERONICA A. MARAVILLA (hereinafter “Plaintiff”) seeks final approval of the Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for 101 Settlement Class Members employed by Defendant Venus Et Fleur LLC (hereinafter “Defendant”) during the period from February 16, 2018, to August 29, 2023 (“Class Period”).

In an order dated December 22, 2023, this Court preliminarily approved the Agreement and preliminarily certified the Class.² Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4-5. On January 12, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Christina Fowler (“ILYM Dec.”), ¶ 7. ***The Class greeted news of the Settlement with 100% approval.***³ There are zero opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶ 11-13. The unanimous approval rate by the Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 9.

An objective evaluation of the proposed settlement of Two Hundred, Ten Thousand Dollars and Zero Cents (\$210,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class Members is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Steven Rottman, Esq. After deducting any Court-approved PAGA Payment, Class Representative Payment, Attorneys’ Fees and Litigation Costs, and the Administration Expenses Payment, the Net Settlement Amount shall be distributed to Settlement Class Members based on the number of Workweeks they worked while employed by Defendant during the Class Period. JCL Dec., ¶ 9.

This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately \$88,450.00. This will result in an average Individual Class Payment of **\$875.74**, a high

¹ The Agreement is attached as Ex “1” 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.

² On January 3, 2024, the Parties sought to amend the Order granting preliminary approval of the settlement to revise the notice method. Specifically, the Parties removed language regarding emailing the Notice to Class Members. The Amended Order was signed by the Court on January 5, 2024.

³ Five (5) Notices were deemed undeliverable. ILYM Dec. at ¶ 10.

1 payment of **\$6,752.52**, and low payment of **\$26.69**. JCL Dec., ¶ 10; ILYM Dec. at ¶ 16.

2 The relief offered by the Settlement is immediate and is particularly impressive when viewed
3 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).
4 Indeed, by settling now rather than proceeding to trial, the Class will not have to wait (possibly years)
5 for relief, nor will they have to bear the risks associated with prolonged and uncertain litigation. JCL
6 Dec., ¶ 11.

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

11 **II. OVERVIEW OF THE LITIGATION**

12 Defendant operates a luxury floral arrangement company throughout California, including in
13 Los Angeles County, where Plaintiff worked. Plaintiff was employed by Defendant from November of
14 2020 to May of 2021 as a non-exempt employee. Plaintiff alleges that she was denied legally compliant
15 meal and rest periods, and minimum wages and overtime compensation at all times during her
16 employment. Throughout her employment, Plaintiff was subject to Defendant's written policies and
17 procedures contained in, among other documents, the "Venus ET Fleur LLC Employee Handbook."
18 JCL Dec., ¶ 13; Declaration of Veronica Maravilla ("Maravilla Dec.") at ¶ 3-4.

19 Generally, Plaintiff claims that Defendant failed to provide compliant meal and rest periods,
20 failed to pay for all time worked, including time spent undergoing covid-19 screenings, failed to pay
21 overtime and meal period premiums at the correct regular rate of pay, failed to furnish accurate itemized
22 wage statements, failed to reimburse for mandatory business expenses, and failed to pay all wages upon
23 separation. Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it
24 fully complied with all applicable employment laws and raised several other significant defenses to
25 Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies,
26 compliant wage statements, compliant reimbursement practices, and it timely paid all wages due upon
27 separation of employment. JCL Dec., ¶ 14.

28 On December 13, 2021, Plaintiff served Defendant and the Labor and Workforce Development

Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 15.

On February 16, 2022, Plaintiff filed a class and representative action complaint in the Los Angeles County Superior Court, Case No. 22STCV05864 (“Action”). The Action alleged nine causes of action against Defendant for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et. seq.*; (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code §226; (7) Failure to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; (8) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code § 2802; (9) Violations of PAGA. JCL Dec., ¶ 16.

Plaintiff commenced written discovery in December of 2022. Prior to answering Plaintiff’s written discovery, the Parties agreed to mediate the Action. The Parties also agreed to stay formal discovery and agreed to informally produce data and documents to prepare for mediation. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 17.

On June 29, 2023, the Parties participated in a full day mediation with highly regarded wage and hour and PAGA mediator Steven Rottman, Esq. The mediation concluded with a settlement after both sides agreed to a Mediator’s proposal which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 18.

On December 22, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4-5. On January 12, 2024, the Administrator mailed Notice Packets to all 101 Class Members. ILYM

Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Class to submit requests for exclusion or objections to the Settlement. The response from the Class to the Settlement was outstanding – 100% of the Class Members are participating in the Settlement. ILYM Dec., ¶ 14.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Two Hundred Ten Thousand Dollars and Zero Cents (\$210,000.00) based on a total of an estimated 4,359 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used to satisfy: (1) the Individual Class Payments; (2) the Class Representative Payment; (3) the Attorneys' Fees and Litigation Costs; (4) the PAGA Payment; and (5) the Administration Expenses Payment incurred in this action. JCL Dec., ¶ 19.

Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified Settlement Fund within fourteen (14) days after the Effective Date. Agreement, ¶ 4.3. The Administrator shall mail checks for all of the Individual Class Payments to the Settlement Class Member no later than fourteen (14) days after Defendant fund the Gross Settlement Amount. Agreement, ¶ 4.4. The Administrator will calculate Individual Class Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and multiplying the result by each Settlement Class Member's Workweeks. Agreement, ¶ 3.2.4. The estimated average Individual Class Payment is approximately **\$875.74**. ILYM Dec., ¶ 16.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, the Settlement Class Member will release the Released Parties from the Released Class Claims as defined in the Agreement. Agreement, ¶ 5.2.

ILYM Group, Inc. was appointed as the Administrator for the Class. The Administration Expenses Payment include those expenses of effectuating and administering the Settlement, i.e., the costs incurred to the Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Class Payments, and the fees of the Administrator approved for reimbursement by the court. The Administrator expenses are \$6,550.00. ILYM Dec., ¶ 15. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ 3.2.3.

1 Subject to Court approval, Class Counsel shall seek a payment of Attorneys' Fees and Litigation
2 Costs in the amount of \$95,000.00, comprised of attorneys' fees equal to one-third of the Gross
3 Settlement Amount estimated to be at least \$70,000.00 and up to \$25,000.00 for actually incurred
4 litigation expenses. Agreement, ¶ 3.2.2. Class Counsel is to split the fees 50% to JCL Law Firm, APC,
5 and 50% to Zakay Law Group, APLC. Agreement, ¶ 1.5. The Agreement also provides for a Class
6 Representative Payment in the amount of \$10,000 to Plaintiff, in consideration of her time, risk, and
7 efforts as the Class Representative on behalf of the Class and a general release. Agreement, ¶ 3.2.1.

8 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
9 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
10 the Class, the absence of any objections to the Settlement and the average Individual Class Payment of
11 **\$875.74**. ILYM Dec., ¶¶ 16; JCL Dec., ¶ 20.

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

14 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
15 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
16 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
17 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the
18 preferred means of dispute resolution. This is especially true in complex class action litigation").

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.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
21 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court
22 must decide whether the proposed settlement falls within the range of reasonable settlements,
23 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
24 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*
25 *Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to be judged against a
26 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.").
27 In *Wershba*, appellants argued that the settlement was too low given the "clear" liability, however, the
28 Court rejected this argument and held that "the merits of the underlying class claims are not a basis for

upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

In these cases, Courts have repeatedly emphasized that there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not substitute their judgment for that of the parties who negotiated the settlement. *Id.* At 246. The presumption of fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm’s-length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here, all of these factors support a presumption of fairness.

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

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

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

The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.

1 Due regard should be given to what is otherwise a private consensual agreement between the parties.
2 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement
3 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
4 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* “Ultimately, the
5 [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
6 approximations and rough justice.' [Citation omitted.]” *Id.*

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

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

10 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
11 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
12 assessed the value of the class claims using data and documents provided by Defendant through
13 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
14 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
15 Class Counsel retained BCG to analyze Defendant’s time and payroll data to formulate damage models
16 estimating Defendant’s liability exposure. Class Counsel’s investigation, research, experience, and
17 damage models informed and guided the mediated negotiations that resulted in this settlement.
18 Accordingly, Class Counsel fully understood the strengths and weaknesses of the class claims before
19 the parties reached a settlement. JCL Dec., ¶ 21-27.

20 **B. The Parties Settled Following Mediation.**

21 On June 29, 2023, the Parties conducted a full day mediation with Steven Rottman, Esq., an
22 experienced wage and hour mediator. Mediator Rottman helped to manage the Parties’ expectations
23 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
24 progress with Mediator Rottman’s assistance. Namely, the Parties exchanged information regarding
25 their respective claims and defenses, including their respective evaluations of the damages. After more
26 than eight hours of arm’s length and adversarial negotiations, the mediation concluded a settlement.
27 The amount of the service awards was not negotiated until after the parties agreed to the Gross
28 Settlement Amount and many other terms. JCL Dec., ¶ 28. No action would likely have been taken

1 by Class Members individually, and no compensation would have been recovered for them, but for
2 Plaintiff's service on behalf of the Class.

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

4 Class Counsel in this matter has extensive class action experience in multiple fields and has
5 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
6 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
7 similar wage and hour class actions throughout the State of California. As such, courts throughout
8 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
9 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
10 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 29-35; Declaration
11 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

13 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
14 dissemination of the notice to the Class, which provided each Class Member with the terms of the
15 Settlement, including the specific estimated Individual Class Payments. To date, none of the 101 Class
16 Members opted out of the Settlement. Moreover, there are zero objections. Stated differently, 100%
17 of the Class chose to participate in the Settlement. JCL Dec., ¶ 10; ILYM Dec., ¶¶ 11-14.

18 The unanimous approval rate by the Class strongly supports a finding that the Settlement is fair,
19 reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y. 2000) 80
20 F.Supp.2d 164, 175 ("If only a small number of objections are received, that fact can be viewed as
21 indicative of the adequacy of the settlement."); *Stoetzner 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 requests the Court to follow the unanimous participation rate of the Class and
26 grant final approval of the Settlement.

27 **E. The Gross Settlement Amount is Fair and Reasonable.**

28 The Gross Settlement Amount of Two Hundred Ten Thousand Dollars and Zero Cents

1 (\$210,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
2 court acknowledged that “as the court does when it approves a settlement as in good faith under Code
3 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
4 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
5 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

6 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
7 provides a sizeable recovery to the Settlement Class Member and need not necessarily obtain 100 percent
8 of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at
9 250. While the Gross Settlement Amount of Two Hundred Ten Thousand Dollars and Zero Cents
10 (\$210,000.00) represents a discount on Defendant’s potential exposure if Plaintiff established liability
11 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
12 reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award
13 significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may
14 require many more years of litigation, resulting in added fees and costs without any guarantee of
15 recovery for the Class. JCL Dec., ¶ 36.

16 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
17 reasonable considering the nature and magnitude of the claims being settled and the various potential
18 impediments to recovery. Class Counsel developed varied economic damages models measuring
19 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
20 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
21 of time and payroll data. Detailed in greater depth during the preliminary approval process, Class
22 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the
23 Class. The Gross Settlement Amount represents between 23.80% and 60.2% of Defendant’s *class-wide*
24 liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 37.

25 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
26 Court for the Northern District of California granted final approval in a wage and hour misclassification
27 action and found that the Total Settlement Amount representing 10% of the estimated trial award was
28 within the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir.

2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the potential recovery.” Given the amount of the settlement here as compared to potential value of the claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable.⁴

The calculation methodology used to compensate the Settlement Class Members for the alleged damages was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks each Settlement Class Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement Class Member is established through Defendant’s data and documented compensation records. The Administrator is responsible for calculating the Individual Class Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and multiplying the result by each Settlement Class Member’s Workweeks. Agreement, ¶ 3.2.4. This process establishes an objectively fair and reasonable procedure to compensate the Class. JCL Dec., ¶ 38.

The settlement also provides significant relief to the Settlement Class Members. After deductions for the Attorneys’ Fees and Litigation Costs, Administration Expenses Payment, the PAGA Payment, and the Class Representative Payment, the Net Settlement Amount is currently estimated to be \$88,450.00. ILYM Dec., ¶ 15. The average settlement payment is approximately \$875.74, and the highest is approximately \$6,752.52. ILYM Dec., ¶ 16. This average net recovery is 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 (LA. 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*

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 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); *see also 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.”).

1 *Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of
2 approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May
3 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-
4 02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret*
5 *Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately
6 \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery
7 of approximately \$20). Additionally, Defendant must separately fund its share of any employer side
8 payroll taxes. Agreement, ¶ 3.1.

9 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
10 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
11 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
12 JCL Dec., ¶ 39.

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

14 Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore
15 the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or,
16 at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 40. As the federal court in *Glass v. UBS*
17 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
18 litigation:

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

26 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
27 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
28 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.*

(9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also* *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 41.

Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 42.

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

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

See also Browning v. Yahoo!, Inc., 2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) (“In

1 considering the strength of Plaintiffs' case, legal uncertainties at the time of settlement - particularly
2 those which go to fundamental legal issues - favor approval.”).

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

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

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

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

16 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
17 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
18 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
19 that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a
20 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
21 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
22 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
23 an uncertain result three or more years in the future. JCL Dec., ¶ 43.

24 Class Representative and Class Counsel recognize the expense and length of a trial against
25 Defendant through possible appeals which could take another three years. In arriving at their informed
26 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
27 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognizes
28 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.

Moreover, post-trial motions and appeals would have been inevitable. Costs would have increased, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 44.

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

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

Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of \$10,000 which is 3.8% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA Payment (\$7,500) will be paid to the LWDA (“LWDA PAGA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$2,500) to be distributed to the Aggrieved Employees (“Individual PAGA Payments”), which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 45.

Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the LWDA. JCL Dec., ¶¶ 6-7, 46. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

1 **VII. 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.
5

6 Dated: March 27, 2024

JCL LAW FIRM, APC

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8 By: 
9 Jean-Claude Lapuyade, Esq.
Attorneys for Plaintiff
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