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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

BRITTANI POWELL, MELANIE
MCCONNAUGHY, and ROSCOE SIMPSON
individuals, on behalf of themselves, and on
behalf of all persons similarly situated,

Plaintiffs,

v.

CORE COMMUNITY ORGANIZED RELIEF
EFFORT, A CALIFORNIA NONPROFIT
CORPORATION AND DOES 1 THROUGH 50,
INCLUSIVE;

Defendants.

Case No.: CGC-21-596527

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

Date: March 6, 2024

Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer, Jr.
Dept.: 302

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5	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992) §11.41, pp. 11-91	
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1 I. INTRODUCTION

2 Plaintiffs BRITANNI POWELL, MELANIE MCCONNAUGHY, and ROSCOE SIMPSON
3 (hereinafter “Plaintiffs”) seeks final approval of the Class Action and PAGA Settlement Agreement
4 (“Agreement”)¹, which if approved, would provide valuable monetary relief for 2,023 Participating
5 Class Members employed by Defendant Core Community Organized Relief Effort (hereinafter
6 “Defendant”) during the period from November 8, 2017, to January 10, 2023 (“Class Period”).

7 In an order dated September 5, 2023, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On October
9 4, 2023, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.²
10 Declaration of Madely Nava (“Apex Dec.”), ¶ 7. *The Class greeted news of the Settlement with 99.95%*
11 *approval*.³ There is one opt-out and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The high
12 participation rate by the Class evidences the clear fairness and reasonableness of the Settlement. JCL
13 Dec., ¶ 8.

14 An objective evaluation of the proposed settlement of Two Million, Thirty Thousand Dollars
15 and Zero Cents (\$2,030,000.00) (“Total Settlement Amount”) confirms that the relief negotiated on
16 behalf of the Participating Class Members is fair, reasonable, and valuable. The Settlement is a product
17 of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided
18 over by Tripper Ortman, Esq. After deducting any Court-approved PAGA Settlement Amount,
19 Enhancement Payment, Attorneys’ Fees and Costs, and the Settlement Administration Expenses, the
20 Net Settlement Amount shall be distributed to Participating Class Members based on the number of
21 Workweeks they worked while employed by Defendant during the Class Period. JCL Dec., ¶ 8.

22 This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations.
23 Plaintiffs estimates that the Settlement, if approved, would result in a Net Settlement Amount of
24 approximately \$1,167,833.34. This will result in an average Individual Settlement Payment of **\$577.56**,

25 ¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the
26 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 On October 17, 2023, an individual contacted the Administrator to request their class notice. Upon discovering that their
28 name was not included in the Class Data, the Administrator forwarded their details to the Defense Counsel. On January 2,
2024, Defense Counsel confirmed that this individual should indeed be included in the class. As a result, the class size
increased from 2,023 to 2,024. Apex Dec., ¶ 13.

³ Twenty-four (24) Notices were deemed undeliverable. Apex Dec. at ¶¶ 10.

1 a high payment of **\$4,875.53**, and low payment of **\$18.03**. JCL Dec., ¶ 9; Apex 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., ¶ 10.

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., ¶ 11.

11 **II. OVERVIEW OF THE LITIGATION**

12 Defendant provides crisis responses services throughout California, including in San Francisco,
13 where Plaintiffs worked. JCL Dec., ¶ 12. Plaintiff Powell was employed by Defendant from January
14 of 2021 to approximately May 26, 2021 as a non-exempt employee. Declaration of Brittany Powell at
15 ¶ 4. Plaintiff McConnaughy was employed by Defendant from April of 2020 to January 2, 2021 as a
16 non-exempt employee. Declaration of Melanie McConnaughy at ¶ 4. Plaintiff Simpson was employed
17 by Defendant from November of 2021 to April of 2022 as a non-exempt employee. Plaintiffs allege
18 that they were denied legally compliant meal and rest periods, and minimum wages and overtime
19 compensation at all times during their employment. Throughout their employment, Plaintiffs were
20 subject to Defendant's written policies and procedures contained in, among other documents, the
21 "Employee Handbook." JCL Dec., ¶ 12.

22 Generally, Plaintiffs claim that Defendant failed to pay for all time worked, including reporting
23 time pay and split shift premiums, failed to provide compliant meal and rest periods, failed to reimburse
24 for mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay
25 all wages upon separation. Defendant denies liability for each of Plaintiffs' claims. Further, Defendant
26 asserts that it fully complied with all applicable employment laws and raised several other significant
27 defenses to Plaintiffs' claims, including but not limited to, facially compliant meal and rest period
28 policies, compliant wage statements, compliant reimbursement practices, and it timely paid all wages

1 due upon separation of employment. JCL Dec., ¶ 13.

2 On September 2, 2021, Plaintiff Powell served Defendant and the Labor and Workforce
3 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff Powell’s
4 PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations of various
5 provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”)
6 Wage Order and of their intent to pursue claims under California Labor Code Private Attorneys General
7 Act, Cal. Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 14.

8 On November 8, 2021, Plaintiff Powell filed a class action complaint in the San Francisco
9 County Superior Court, Case No. CGC-21-596527 (“Action”). The Action alleged nine causes of action
10 against Defendant for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et. seq.*;
11 (2) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*, (3) Failure to Pay
12 Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (4) Failure to Provide Required
13 Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5)
14 Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the
15 Applicable IWC Wage Order; (6) Failure to Reimburse for Required Expenses in violation of Cal. Lab.
16 Code § 2802; (7) Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code
17 §226; (8) Failure to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; (9)
18 Violation of the PAGA. JCL Dec., ¶ 15.

19 On July 22, 2022, Plaintiff Simpson served Defendant and the LWDA with a PAGA Notice. On
20 January 9, 2023, Plaintiff Simpson filed a representative action complaint in the Los Angeles Superior
21 Court, Case No. 23STCV00412 (“*Simpson Action*”). The Simpson Action alleged a single cause of
22 action for violation of PAGA. JCL Dec., ¶ 16.

23 The Parties agreed relatively early to mediate this action. To prepare for mediation, the Parties
24 agreed to informally produce additional documents and data points subject to the mediation privilege,
25 including but not limited to, the Class Members’ time data and certain payroll data points. As discussed
26 *infra*, Plaintiffs’ counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to
27 analyze Defendant’s time and payroll data. JCL Dec., ¶ 17.

28 On October 11, 2022, the Parties participated in a full day mediation with highly regarded wage

1 and hour and PAGA mediator Tripper Ortman, Esq. The mediation concluded with a settlement after
2 both sides agreed to a Mediator's proposal which was subsequently memorialized in the form of a
3 Memorandum of Understanding. After the Parties reached a settlement in the *Powell* Action, the Parties
4 subsequently renegotiated the terms of the settlement for purposes of reaching a global settlement in
5 both the *Powell* Action and the *Simpson* Action. Thereafter, the Parties drafted and negotiated a long-
6 form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 18.

7 On June 21, 2023, Plaintiffs filed a First Amended Complaint in the Action for the purpose of
8 adding Plaintiff McConnaughey and Plaintiff Simpson to the Action and to add allegations for
9 Defendant's failure to provide personnel files, failure to provide reporting time pay, and failure to
10 compensate for split shifts. JCL Dec., ¶ 19.

11 On September 5, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶
12 4. On October 4, 2023, the Administrator mailed Notice Packets to all 2,024 Class Members. Apex
13 Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the
14 Class to submit requests for exclusion or objections to the Settlement. The response from the Class to
15 the Settlement was outstanding – 99.95% of the Class Members are participating in the Settlement.
16 Apex Dec., ¶ 14.

17 **III. THE SETTLEMENT BEFORE THE COURT**

18 The Court preliminarily approved an initial Total Settlement Amount of Two Million, Thirty
19 Thousand Dollars and Zero Cents (\$2,030,000.00) based on a total of an estimated 64,629 Workweeks
20 worked by the Class during the Class Period. The Total Settlement Amount shall be used to satisfy: (1)
21 the Individual Settlement Payments; (2) the Enhancement Payments; (3) the Attorneys' Fees and Costs;
22 (4) the PAGA Settlement Amount; and (5) the Settlement Administration Expenses incurred in this
23 action.

24 Defendant will fund the Settlement by transferring the Total Settlement Amount into a Qualified
25 Settlement Fund within thirty (30) days after the Effective Date. Agreement, ¶ 4.3. The Administrator
26 shall mail checks for all of the Individual Settlement Payments to the Participating Class Member no
27 later than fourteen (14) days after Defendant fund the Total Settlement Amount. Agreement, ¶ 4.4. The
28 Administrator will calculate Individual Settlement Payments by dividing the Net Settlement Amount by

the total number of Workweeks worked by all Participating Class Members during the Class Period and multiplying the result by each Participating Class Member's Workweeks. Agreement, ¶ 3.2.4. The estimated average Individual Settlement Payment is approximately **\$577.56**. Apex Dec., ¶ 16.

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

Apex Class Action LLC was appointed as the Administrator for the Class. The Settlement Administration Expenses 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 Settlement Payments, and the fees of the Administrator approved for reimbursement by the court. The Administrator expenses are \$23,000. Apex Dec., ¶ 15. These expenses shall be paid from the Total Settlement Amount. Agreement, ¶ 3.2.3.

Subject to Court approval, Class Counsel shall seek a payment of Attorneys' Fees and Costs in the amount of \$701,666.66, comprised of attorneys' fees equal to one-third of the Total Settlement Amount estimated to be at least \$676,666.66 and up to \$25,000 for actually incurred litigation expenses. Agreement, ¶ 3.2.2. Class Counsel is to split the fees 47.5% to JCL Law Firm, APC, 47.5% to Zakay Law Group, APLC, and 5% to Haig B. Kazandjian Lawyers, APC. Agreement, ¶ 1.4. The Agreement also provides for three Enhancement Payments in the amount of \$37,500 with \$12,500 allocated to each Plaintiff, in consideration of their time, risk, and efforts as the Class Representatives on behalf of the Class and a general release. Agreement, ¶ 3.2.1.

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by the Class, the absence of any objections to the Settlement and the average Individual Settlement Payment of **\$577.56**. Apex Dec., ¶¶ 16; JCL Dec., ¶ 20.

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

Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly

appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran. v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

1 Cir. 1982) 688 F. 2d 615, 625. The purpose of the requirement is "the protection of those class members,
2 including the named plaintiffs, whose rights may not have been given due regard by the negotiating
3 parties." *Dunk, supra*, at 1801.

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

13 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
14 Due regard should be given to what is otherwise a private consensual agreement between the parties.
15 *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement
16 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
17 settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* "Ultimately, the
18 [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
19 approximations and rough justice.' [Citation omitted.]" *Id.*

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

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

23 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
24 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
25 assessed the value of the class claims using data and documents provided by Defendant through
26 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
27 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
28 Class Counsel retained BCG to analyze Defendant's time and payroll data to formulate damage models

1 estimating Defendant's liability exposure. Class Counsel's investigation, research, experience, and
2 damage models informed and guided the mediated negotiations that resulted in this settlement.
3 Accordingly, Class Counsel fully understood the strengths and weaknesses of the class claims before
4 the parties reached a settlement. JCL Dec., ¶ 21-27.

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

6 On April 18, 2023, the Parties conducted a full day mediation with Tripper Ortman, Esq., an
7 experienced wage and hour mediator. Mediator Ortman helped to manage the Parties' expectations
8 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
9 progress with Mediator Ortman's assistance. Namely, the Parties exchanged information regarding
10 their respective claims and defenses, including their respective evaluations of the damages. After more
11 than eight hours of arm's length and adversarial negotiations, the mediation concluded a settlement.
12 The amount of the service awards was not negotiated until after the parties agreed to the Total
13 Settlement Amount and many other terms. No action would likely have been taken by Class Members
14 individually, and no compensation would have been recovered for them, but for Plaintiffs' service on
15 behalf of the Class. JCL Dec., ¶ 28

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

17 Class Counsel in this matter has extensive class action experience in multiple fields and has
18 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
19 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
20 similar wage and hour class actions throughout the State of California. As such, courts throughout
21 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
22 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
23 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 29-35; Declaration
24 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3, Declaration of Haig B. Kazandjian, ¶ 18.

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

26 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
27 dissemination of the notice to the Class, which provided each Class Member with the terms of the
28 Settlement, including the specific estimated Individual Settlement Payments. To date, only one of the

2,024 Class Members opted out of the Settlement. Moreover, there are zero objections. Stated differently, 99.95% of the Class chose to participate in the Settlement. Apex Dec., ¶¶ 11-14.

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

E. The Total Settlement Amount is Fair and Reasonable.

The Total Settlement Amount of Two Million, Thirty Thousand Dollars and Zero Cents (\$2,030,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar* court acknowledged that "as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).)

Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement provides a sizeable recovery to the Participating Class Member and need not necessarily obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250. While the Total Settlement Amount of Two Million, Thirty Thousand Dollars and Zero Cents (\$2,030,000.00) represents a discount on Defendant's potential exposure if Plaintiffs established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award significantly less in damages than Plaintiffs' estimate and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 36.

1 As detailed at the time of preliminary approval, the Total Settlement Amount is fair and
2 reasonable considering the nature and magnitude of the claims being settled and the various potential
3 impediments to recovery. Class Counsel developed varied economic damages models measuring
4 Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various
5 models were informed by Class Counsel's investigation, including the analysis of a significant sample
6 of time and payroll data. Detailed in greater depth during the preliminary approval process, Class
7 Counsel projected a range of Defendant's liability exposure for the claims asserted on behalf of the
8 Class. The Total Settlement Amount represents between 11.51% and 48.89% of Defendant's *class-wide*
9 liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 37.

10 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
11 Court for the Northern District of California granted final approval in a wage and hour misclassification
12 action and found that the Total Settlement Amount representing 10% of the estimated trial award was
13 within the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir.
14 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing "roughly one-sixth of the
15 potential recovery." Given the amount of the settlement here as compared to potential value of the
16 claims, particularly the strength of Plaintiffs' action, the settlement is clearly fair and reasonable.⁴

17 The calculation methodology used to compensate the Participating Class Member for the alleged
18 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
19 objective, and impartial. The calculation methodology is based on the number of Workweeks each
20 Participating Class Member worked for Defendant during the Class Period. The number of Workweeks
21 for the Participating Class Member is established through Defendant's data and documented
22 compensation records. The Administrator is responsible for calculating the Individual Settlement
23 Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all
24

25 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
26 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
27 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
28 *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.").

Participating Class Members during the Class Period and multiplying the result by each Participating 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 Participating Class Members. After deductions for the Attorneys' Fees and Costs, Settlement Administration Expenses, the PAGA Settlement Amount, and the Enhancement Payments, the Net Settlement Amount is currently estimated to be \$1,167,833.34. Apex Dec., ¶ 15. The average settlement payment is approximately \$577.56, and the highest is approximately \$4,875.53. Apex 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 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, ¶ 3.1.

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., ¶ 39.

F. The Strength of Plaintiffs' Case and Risks of Continued Litigation

Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or,

1 at least, drastically undercut Plaintiffs' claims. JCL Dec., ¶ 40. As the federal court in *Glass v. UBS*
2 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
3 litigation:

4 ***In light of the above-referenced uncertainty in the law, the risk, expense,***
5 ***complexity, and likely duration of further litigation likewise favors the***
6 ***settlement.*** Regardless of how this Court might have ruled on the merits of
7 the legal issues, the losing party likely would have appealed, and the parties
8 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.

9 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
10 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
11 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
12 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
13 trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.*
14 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
15 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
16 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
17 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
18 individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176
19 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to
20 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
21 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
22 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
23 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
24 certification of driver meal and rest period claims based on the predominance of individual issues).
25 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
26 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
27 settlement. JCL Dec., ¶ 41.

28 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless

1 recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat or
2 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
3 drastically affect the value of Plaintiffs' claims and, in fact, already has. JCL Dec., ¶ 42.

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

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

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

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

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

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

31 In sum, while other cases have approved class certification in wage and hour claims, class
32 certification in this action would have been hotly disputed and was by no means a foregone conclusion.
33 Where both sides face significant uncertainty, as here, the attendant risks favor settlement. *Hanlon v.*

1 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.)

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

10 Class Representatives and Class Counsel recognize the expense and length of a trial against
11 Defendant through possible appeals which could take another three years. In arriving at their informed
12 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
13 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognizes
14 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
15 Moreover, post-trial motions and appeals would have been inevitable. Costs would have increased, and
16 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
17 Class Representatives and Class Counsel believe that the Settlement confers substantial monetary and
18 non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives and Class
19 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
20 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 44.

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

23 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
24 indication that this amount was the result of self-interest at the expense of class members,” such
25 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
26 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
27 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
28 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, Plaintiffs and Defendant negotiated a good faith PAGA Settlement Amount in the amount of \$100,000 which is 4.9% of the Total Settlement Amount. As illustrated above, this amount falls well within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA Settlement Amount (\$75,000) will be paid to the LWDA ("LWDA PAGA Payment") with the remaining twenty-five percent (25%) of the PAGA Settlement Amount (\$25,000) 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.

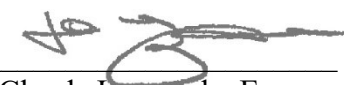
Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the LWDA. JCL Dec., ¶¶ 4-5, 46. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Settlement Amount.

VII. CONCLUSION

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

Dated: February 9, 2024

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