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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF SAN DIEGO**

15 JACQUELINE BALTAZAR an individual,
16 on behalf of herself, and on behalf of all
persons similarly situated,

17 Plaintiffs,

18 vs.

19 WESTGATE HOTEL COMPANY, a
20 Corporation; SINCLAIR SERVICES
COMPANY, a Corporation; GRAND
21 AMERICAN HOTELS & RESORTS, INC.;
and DOES 1 through 30, Inclusive;

22 Defendants.

Case No. 37-2020-00001502

**MEMORANDUM IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: August 27, 2021

Time: 1:30 p.m.

Judge: Hon. Timothy Taylor

Dept.: 72

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1 **I. INTRODUCTION**

2 Plaintiff JACQUELINE BALTAZAR (hereinafter “Plaintiff”) seeks final approval of the
3 Stipulation of Settlement of Class Action Claims and Release of Claims (“Agreement”)¹, which if
4 approved, would provide valuable monetary relief for 631 Settlement Class and 318 Aggrieved
5 Employees employed WESTGATE HOTEL COMPANY (“WHC”), SINCLAIR SERVICES
6 COMPANY (“SSC”) and GRAND AMERICA HOTELS & RESORTS, INC. (“GAHR”) (WHC, SSC,
7 and GAHR collectively “Defendants”) (RSIHPI, RSIPCS, PCS and AWC collectively “Defendants”)
8 during the Settlement Class Period².

9 In orders dated April 2, 2021, and July 28, 2021, this Court preliminarily approved Settlement
10 Agreement and preliminarily certified the settlement class. (JCL Dec., ¶¶ 4-5.) On May 13, 2021, the
11 Settlement Administrator delivered notice of the proposed settlement to the Settlement Class.
12 (Declaration of Lluvia Islas (“ILYM Dec.”), ¶¶ 4-11.)

13 ***The Settlement Class greeted news of the Settlement with overwhelming approval as 100% of***
14 ***the Settlement Class choose to participate in the Settlement.*** There are zero opt-outs and zero objections
15 to the Settlement. (ILYM Dec., ¶¶ 1-14.) The unanimous approval by the Settlement Class evidences
16 the clear fairness and reasonableness of the Settlement. (JCL Dec., ¶ 7.)

17 An objective evaluation of the proposed settlement of \$740,000 (“Total Settlement Amount”)
18 confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. The
19 Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced
20 counsel, guided by the wisdom and experience of prominent mediator, and former San Diego Superior
21 Court Judge (Ret.) Hon. Steven Denton. After deducting any Court-approved attorneys’ fees and costs,
22 class representative incentive payments, administration costs, and payments to the Labor & Workforce
23 Development Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class
24 based on the number of Workweeks they worked while employed by Defendants during the relevant
25 time period. (JCL Dec., ¶ 7.)

26
27 ¹ The Agreement and Amendment Number 1 to the Settlement Agreement are attached as Ex “A” to the Declaration of
28 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 Capitalized terms are defined in the Settlement Agreement.

1 This Settlement provides substantial recovery for Defendants’ alleged wage and hour violations.
2 Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of
3 \$437,833.34. This will result in an average Individual Settlement Payment of **\$685.95** and high
4 payment of **\$2,535.29**. (ILYM Dec., ¶ 15; JCL Dec., ¶ 8.)

5 Additionally, if approved \$20,000.00 of the Total Settlement Amount will be allocated to
6 Plaintiff’s claims arising out of the Private Attorney General Act (“PAGA Settlement”). This will
7 result in a \$15,000 payment to the Labor and Workforce Development Agency (“LWDA”) (“LWDA
8 Payment”) to continue enforcing labor laws throughout California and providing education to
9 employers and employees about their rights and responsibilities under the Labor Code. The remaining
10 \$5,000 will be allocated to the Aggrieved Employees. (JCL Dec., ¶ 9.)

11 The relief offered by the Settlement is immediate and is particularly impressive when viewed
12 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).
13 Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
14 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
15 litigation. (JCL Dec., ¶ 10.)

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

20 **II. OVERVIEW OF THE LITIGATION**

21 Defendants own, operate and manage “The Westgate Hotel®” a 223-room, luxury hotel located
22 in Downtown, San Diego. Defendants employed Plaintiff as an hourly, non-exempt employee at the
23 Westgate Hotel in San Diego in the Food and Beverage Department between September 3, 2014 and
24 April 22, 2016 and again between December 20, 2018 and December 2, 2019. As a non-exempt
25 employee working in the Food and Beverage department, Plaintiff regularly worked shifts at the pool
26 bar, delivering room service, at banquets, in the Plaza Bar and in the Westgate Room restaurant. At all
27 times during her employment, Plaintiff earned an hourly wage plus gratuities, and was entitled to legally
28 complaint meal and rest periods, and minimum, regular and overtime wages for all hours worked.

Throughout her employment, Plaintiff was subject to Defendants’ written policies and procedures contained in, among other documents, the “Team Member Handbook – The Westgate Hotel.” (JCL Dec., ¶ 12.)

Generally, Plaintiff claims that Defendants failed to pay her for all hours worked, failed to provide complaint meal and rest periods, failed to reimburse mandatory business expenses and improperly pooled gratuities. Defendants forcefully deny liability for each of Plaintiff’s claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff’s claims, including but not limited to, facially complaint meal and rest period polices, written policies making the use of personal cell phones optional, and never required any member of the Settlement Class to don or doff a uniform while off-the-clock. (JCL Dec., ¶ 13.)

On January 17, 2020, Plaintiff served Defendants 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 Defendants’ alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). (JCL Dec., ¶ 14.)

On January 27, 2020, Plaintiff filed a class action complaint in the San Diego Superior Court for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of California Labor Code sections 510 *et seq.*; (4) failure to pay gratuities in violation of California Labor Code section 351; (5) failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512; (6) failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512; (7) failure to reimburse employees for required business expenses in violation of California Labor Code sections 2802; (8) failure to provide accurate itemized wage statements in violation of California Labor Code section 226; and (9) failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203. (JCL Dec., ¶ 15.)

Subsequently, on May 28, 2020, Plaintiff filed the operative First Amended Complaint alleging

1 a tenth cause of action for violations of the California Labor Code Private Attorney General Act
2 (“PAGA”). Thereafter, Defendants answered the First Amended Complaint. (JCL Dec., ¶ 16.)

3 Plaintiff commenced written discovery in May 2020. Shortly after answering Plaintiff’s written
4 discovery, the Parties agreed to mediate this action. In anticipation of mediation, the Parties stipulated
5 to stay formal discovery. To prepare for mediation, the Parties agreed to informally produce certain
6 documents and data points subject to the mediation privilege, including but not limited to, a sample of
7 the Class Members’ time and payroll data. As discussed *infra*, Plaintiff’s counsel retained the Berger
8 Consulting Group, to analyze Defendants’ time and payroll data. (JCL Dec., ¶ 17.)

9 On December 9, 2020 the Parties participated in a full day mediation with (Ret.) Hon. Steven
10 Denton. After arms-length negotiations and bargaining, the parties reached an agreement to settle and
11 signed a Memorandum of Understanding. After reaching an agreement in principle, the parties drafted
12 and negotiated a long-form settlement agreement, which is the subject of the instant motion. (JCL
13 Dec., ¶ 18.)

14 On April 2, 2021, this Court granted preliminary approval of the Settlement. (JCL Dec., ¶¶ 4-
15 5.) Shortly, thereafter, the Claims Administrator mailed Notice Packets to all 631 Settlement Class
16 members. (ILYM Dec., ¶¶ 3-11.) The mailing of the Notice Packets triggered a forty-five (45) day
17 Response Deadline for the Settlement Class to submit requests for exclusion or objections to the
18 Settlement. The response from the Settlement Class to the Settlement was outstanding – 100%
19 Settlement Class members are participating in the Settlement. (ILYM Dec., ¶¶ 12-14.)

20 **III. THE SETTLEMENT BEFORE THE COURT**

21 The Court preliminarily approved a Total Settlement Amount of \$740,000 based on a total of
22 approximately 38,984 Workweeks worked by the Settlement Class during the Class Period. The Total
23 Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class
24 Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA
25 Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action. (JCL Dec., ¶
26 19.) The Total Settlement Amount is all-in with no reversion to Defendant. (Settlement Agreement at
27 §(III)(A)(1).) The remainder, the Net Settlement Amount, shall be used for the payment of all Individual
28 Settlement Payments to satisfy all Released Claims and Released PAGA Claims. (Settlement

Agreement, §III(M)(1).)

Defendants will fund the Settlement by transferring the Total Settlement Amount into a Qualified Settlement Fund within 10 calendar days of the Effective Date. (Settlement Agreement, §I(M).)

The Settlement Administrator shall disburse the Individual Settlement Shares to the Settlement Class no later than 10 days after Defendants fund the Total Settlement Amount. (Settlement Agreement, §III(M)(1)(e).) The Settlement Administrator will calculate Individual Settlement Payments by adding up the total number of Workweeks for the Settlement Class. The Settlement Administrator will then divide the respective Workweeks for each member of the Settlement Class by the total Workweeks for the entire Settlement Class, resulting in a Payment Ratio for each Settlement Class member. Each Settlement Class Member's payment ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement Payment. (Settlement Agreement, §III(M)(1).) The Claims Administrator estimates the average Individual Settlement Payment is \$685.95 and the highest Individual Settlement Payment is \$2,535.29. (ILYM Dec., ¶ 15.)

In exchange for the valuable consideration, as of the funding of the Total Settlement Amount, the Settlement Class will release the Defendants from the Released Claims that accrued during the Class Period. (Settlement Agreement, §III(B).)

ILYM, Inc. was appointed as the Claims Administrator for the class. Claims Administration Expenses include those expenses of effectuating and administering the Settlement, i.e., the costs incurred to the Claims Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Settlement Shares, and the fees of the Claims Administrator approved for reimbursement by the court. The Claims Administration expenses are \$13,000. (ILYM Dec., ¶ 16.) These expenses shall be paid from the Total Settlement Amount. (Settlement Agreement, §III(M)(5).)

Subject to Court approval, Class Counsel shall seek a Class Counsel Award in the amount of \$261,666.66 comprised of attorneys' fees equal to one-third of the Total Settlement Amount estimated to be at least \$246,666.66 and up to \$15,000 for actually incurred litigation expenses. (Agreement, §III(M)(3).)

Subject to Court approval, the Agreement provides for a Class Representative Service Award in the amount of \$7,500, in consideration for her time, risk and effort as the Class Representative on behalf

of the Settlement Class and, more importantly, a broad release of Civil Code section 1542. (Settlement Agreement, §III(M)(2).)

As set forth in the Agreement, \$20,000 of the Total Settlement Amount has been allocated for civil penalties under the PAGA (“PAGA Settlement”). Seventy-Five percent of the PAGA Settlement will be paid to the California Labor Workforce and Development Agency (“PAGA Payment”). The Settlement Administrator shall distribute the remaining 25% of the PAGA Settlement to the Aggrieved Employees (“Aggrieved Employee Payment”). (Settlement Agreement, §III(M)(4).)

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 unanimously positive response to the Settlement from Settlement Class. Moreover, there are no objections to the Settlement. (ILYM Dec., ¶¶ 12-14.) The unanimous approval by the Settlement Class strongly supports granting final approval of the Settlement Agreement. (JCL Dec., ¶ 7.)

Further supporting final approval, the average Individual Settlement Payment of \$685.95 equals or exceeds settlement payments in similar wage and hour class actions. This result is particularly favorable considering that liability and certification were far from certain. Given the complexities of this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and adequate, and should be granted final approval. (JCL Dec., ¶ 8.)

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*, 52 Cal. App. 4th 259, 265 (1997).) 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.*, 85 Cal. App. 4th 1135, 1151 (2000) (“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.*, 48 Cal. App. 4th 1794, 1801 (1996) citing *Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980).) The

1 court must decide whether the proposed settlement falls within the range of reasonable settlements,
2 taking into account that settlements are compromises between the parties reflecting subjective,
3 unquantifiable judgments concerning the risks and possible outcomes of litigation. (See also *Wershba*
4 *v. Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed settlement is not to be judged
5 against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed
6 at trial.”).) In *Wershba*, appellants argued that the settlement was too low given the “clear” liability,
7 however, the Court rejected this argument and held that “the merits of the underlying class claims are
8 not a basis for upsetting the settlement of a class action.” (*Wershba, supra*, at 246; *see also 7-Eleven,*
9 *supra*, at 1150.)

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

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

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

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

27 The trial court has broad discretion to determine whether the settlement is fair. (*Rebney v. Wells*
28 *Fargo Bank*, 220 Cal. App. 3d 1117, 1138 (1990).) “The well-recognized factors that the trial court

1 should consider in evaluating the reasonableness of a class action settlement agreement include 'the
2 strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk
3 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
4 completed and the stage of the proceedings, the experience and views of counsel, the presence of a
5 governmental participant, and the reaction of the class members to the proposed settlement.' [Citations.]"

6 (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008); see also *Munoz v. BCI Coca-*
7 *Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 408 (2010).)

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

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

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

18 In October 2019, Class Counsel began its pre-filing investigation into Plaintiff's complaints.
19 Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the
20 interview process, Plaintiff produced nearly 100 pages of documents related to her employment for
21 Defendants, including portions of Defendants' handbooks, compensation policies and time and payroll
22 records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints
23 justified further inquiry. (JCL Dec., ¶ 22.)

24 Next, in November 2019 Class Counsel requested Plaintiff's employee file from Defendants. In
25 response, Defendants produced hundreds of pages of documents, including but not limited, a copies of
26 Plaintiff's hiring documents, payroll and time records, performance reviews and separation documents.
27 Class Counsel reviewed and analyzed the documents and determined the documents substantiated
28 Plaintiff's claim that Defendants withheld mandatory service charges from its service employees and

1 required their non-exempt employees to don and doff their uniforms while off the clock. Shortly
2 thereafter, Class Counsel summarized the known factual and legal issues in the PAGA Notice addressed
3 to the LWDA. Several weeks later, Class Counsel filed this class action in the State Court Class Action.
4 (JCL Dec., ¶ 23.).

5 Additionally, during the meetings with Class Counsel, Plaintiff provided the names and contact
6 information for several members of the Settlement Class. After filing this action, Class Counsel
7 interviewed those members of the Settlement Class to further investigate Plaintiff's allegations and
8 those made on behalf of the Settlement Class. (JCL Dec., ¶ 24.)

9 After filing the First Amended Complaint, Plaintiff propounded written discovery. Prior to
10 answering Plaintiff's written discovery, the Parties agreed to mediate the action. To prepare for
11 mediation, Class Counsel requested a number of documents and data points to further evaluate
12 Plaintiff's claims and Defendants' liability exposure to the Settlement Class. In response to Class
13 Counsel's request, Defendants produced the time and payroll records for approximately 10% of the
14 Settlement Class, aggregate workweek and pay period data for 100% of the Settlement Class, and
15 copies of applicable handbooks containing, *inter alia*, compensation, timekeeping and, meal and rest
16 period policies. Additionally, Defendants produced the standard form catering contract and data
17 detailing the total amount of catering service charges collected and disbursed the Settlement Class
18 during the Class Period. In total, Defendants produced approximately 3,200 pages containing nearly
19 one-half million unique cells of time and payroll data for Class Counsel to analyze. (JCL Dec., ¶ 25.)

20 Class Counsel then retained the statisticians and economists at Berger Consulting Group
21 ("BCG"), to evaluate the Settlement Class members' payroll and time data. BCG provides data analysis
22 and damage modeling consulting services specializing in wage and hour class actions. BCG's team of
23 financial and data analysts are credentialed and experienced experts in their fields and have provided
24 their expertise on thousands of cases. Stated differently, the BCG is uniquely qualified to analyze
25 Defendants' time and payroll data. (JCL Dec., ¶ 26.)

26 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
27 models. Among other things, BCG determined the approximate number of work shift, work weeks,
28 pay periods, average rate of pay, average length of shift and average number of hours worked per week

1 and pay period during the Class Period. BCG also estimated the number of missed, late or truncated
2 meal and rest periods, the amount of paid missed meal period premiums paid during the Class Period,
3 and the amount of off-the-clock work performed by the Settlement Class during the Class Period. (JCL
4 Dec., ¶ 27.)

5 In advance of mediation, Class Counsel created several damage models predicated on BCG
6 analysis. Class Counsel's models calculated Defendants' potential liability exposure while accounting
7 for the uncertainties of continued litigation. These damage models informed and guided Class Counsel
8 during the mediated settlement discussions. (JCL Dec., ¶ 28.)

9 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
10 Plaintiff's suitability as a putative class representative through interviews, background investigations,
11 and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
12 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
13 of employer; (4) analyzing the Settlement Class' time and payroll records; (5) analyzing Defendants'
14 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
15 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'
16 liability for purposes of settlement; (8) drafting the mediation brief and (9) participating in the
17 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
18 claims being settled, as well as the impediments to recovery, such as to make an independent
19 assessment of the reasonableness of the terms to which the parties have agreed. (JCL Dec., ¶ 29).

20 As detailed at length in Plaintiff's Motion for Preliminary Approval, this investigation informed
21 Class Counsel's varied economic damages models measuring Defendants' liability exposure. Class
22 Counsel's damage models accounted for the strength and weaknesses of the Parties' respective claims
23 and defenses while also considering the uncertainties of continued litigation. The various models were
24 informed by Class Counsel's investigation, including the analysis of a significant sample of time and
25 payroll data. Class Counsel projected Defendants' liability exposure for the Settlement Class ranged
26 between \$2.5 million ("Conservative Model") and \$8.3 million ("Aggressive Model") if successful at
27 trial. This range reflects the uncertainty regarding several of Plaintiff's claims, together with the
28 uncertainty surrounding derivative liability for inaccurate wage statements and waiting time penalties

1 resulting from meal and rest period violations. (JCL Dec., ¶ 30.)

2 Given the extent of Plaintiff's pre-mediation discovery, and the depth of the corresponding
3 analysis, Class Counsel possessed sufficient information for an intelligent evaluation of the case for
4 settlement purposes. Prior to the initiation of settlement discussions, Class Counsel reviewed and
5 outlined the case based upon the provided information and determined the conditions of settlement
6 which would be fair and reasonable to the Settlement Class with the assistance of an expert. Class
7 Counsel's thorough investigation into the legal and factual basis of this class action, and diligent
8 evaluation into the Settlement Class members' claims, informed Class Counsel's mediation brief and
9 presentation at mediation. (JCL Dec., ¶ 31.)

10 Furthermore, Class Counsel previously negotiated settlements involving similar issues and
11 analogous defenses. Based on the foregoing data and their own independent investigation, evaluation
12 and experience, Class Counsel believes that the settlement with Defendants on the terms set forth in
13 the Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class
14 considering all known facts and circumstances, including the risk of significant delay, defenses asserted
15 by Defendant, and numerous potential appellate issues. (JCL Dec., ¶ 32.)

16 **B. The Parties Settled at Mediation.**

17 On December 9, 2020, the Parties agreed to conduct a full day of mediation with (Ret.) Steven
18 Denton, Esq., a highly regarded mediator and former San Diego County Superior Court Judge. Hon.
19 Denton helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues
20 and risks to both sides. The Parties made substantial progress with Judge Denton's assistance. Namely,
21 the parties exchanged information regarding their respective claims and defense, including their
22 respective evaluation of the damages. After nearly eight hours arm's length and adversarial
23 negotiations, the mediation nearly concluded without a settlement. However, at the conclusion of the
24 mediation, Judge Denton issued a proposal for settlement that the Parties accepted. The complete and
25 final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that
26 the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. (JCL
27 Dec., ¶ 33.)

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

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar meal and rest period violations. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California, including in the Superior Court for the County of San Diego. As such, courts throughout the California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate and reasonable and in the best interests of the Class. (JCL Dec., ¶¶ 34-41.)

D. The Settlement Class Responded Positively to the Settlement.

The reaction of the Settlement Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Settlement Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Settlement Payments. To date, *none* of the Settlement Class opted-out or objected to the Settlement. Stated differently, **100%** of the Settlement Class chose to participate in the Settlement. (JCL Dec., ¶ 7; ILYM Dec., ¶¶ 12-14.)

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

E. The Strength of Plaintiff's Case

"Compromise is inherent and necessary in the settlement process. Thus, even if the relief afforded by the proposed settlement is narrower than it would be if the suit were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a

voluntary settlement in which each side gives ground in the interest of avoiding litigation.” (*Wershba*, 91 Cal.App.4th at 250.) The Court must also satisfy itself, “that the consideration being received for the release of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (*Kullar*, 168 Cal.App.4th at 129.) The *Kullar* court further 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.” (*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 Settlement Class 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 \$740,000 represents a discount on Defendants’ potential exposure if Plaintiff established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because: (1) Defendants own and operate a hotel that was closed for nearly six months during the global COVID-19 pandemic, which resulted in a dramatic loss of revenue; (2) the formidable defenses raised by Defendants presented a risk that could award significantly less in damages than Plaintiff’s estimate; and (3) 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., ¶ 42.)

After deduction of the Class Counsel Award, the Settlement Administration Costs Cost, the Class Representative Service Award, and the PAGA Settlement, the Net Settlement Amount is currently estimated to be \$437,833.34. (ILYM Dec., ¶15.) Additionally, Defendants must separately fund its share of any employer side payroll taxes. (Settlement Agreement, §III(A)(1).) The average individual settlement payment is estimated to be \$685.95 with the estimated highest gross payment being \$2,535.29. (ILYM Dec., ¶ 15.)

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, Defendants could defense the action or, at least, drastically undercut Plaintiff’s claims. (JCL Dec., ¶ 43.)

1 **F. The Risk, Expense, Complexity and Duration of Further Litigation Favor**
2 **Settlement.**

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

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

14 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
15 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
16 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
17 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
18 trial court to enter judgement in favor of the employer. (*See also O’Conner v. Uber Technologies, Inc.*
19 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
20 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
21 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
22 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
23 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
24 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
25 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
26 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
27 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
28 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., ¶ 44.)

Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes that Defendants have 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. Recently, the California Court of Appeal, Second District, held that meal and rest period violations do not entitle employees to pursue the derivative waiting time and itemized wage statement penalties. (*Naranjo v. Spectrum Security Services, Inc.*, 40 Cal.App.5th 444 (2019) (*review granted*).) The *Naranjo* decision gutted Plaintiff's claims for Labor Code Section 226 penalties and Labor Code Section 203 waiting time penalties predicated on rest period violations. (JCL Dec., ¶ 45.)

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 gross 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 considering the strength of Plaintiff's case, legal uncertainties at the time of settlement - particularly

those which go to fundamental legal issues - favor approval.”)

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

The potential complexity and possible duration of trial also weigh in favor of granting final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the uncertainty of outcome, and believe defendant would appeal in the event of adverse judgment. A post-judgment appeal would require many years to resolve and delay payment to class 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.

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

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

As demonstrated by the decisions in *Magadia*, *supra*, 999 F.3d 668 and *O’Conner v. Uber Technologies*, 82 F. Supp. 3d 1133 (N.D. Cal. 2018) and *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendants could support a large adverse judgement (a serious question for a hospitality company dealing with a global pandemic), Defendants would undoubtedly post a bond and appeal. A post-judgment appeal by Defendants would have required many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh an uncertain result three or more years in the future. (JCL Dec., ¶ 46.)

Class Representative and Class Counsel recognize the expense and length of a trial against Defendants through possible appeals which could take another three years. In arriving at their informed

1 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
2 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
3 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
4 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
5 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
6 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
7 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
8 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
9 Class, is fair, reasonable and adequate, and should be granted final approval. (JCL Dec., ¶ 47.)

10 **G. The Total Settlement Amount is Fair and Reasonable.**

11 The Total Settlement Amount of \$740,000 in this case is fair and well within the range of
12 recognized reasonableness. As detailed at the time of preliminary approval, the Total Settlement Amount
13 is fair and reasonable considering the nature and magnitude of the claims being settled and the various
14 potential impediments to recovery. Class Counsel developed varied economic damages models
15 measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation.
16 The various models were informed by Class Counsel's investigation, including the analysis of a
17 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
18 process, Class Counsel projected a range of Defendants' liability exposure for the claims asserted on
19 behalf of the Settlement Class. The Total Settlement Amount represents approximately between 8% and
20 30% of the full **verdict** value. (JCL Dec., ¶ 48.)

21 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
22 Court for the Northern District of California granted final approval in a wage and hour misclassification
23 action and found that the gross settlement representing 10% of the estimated trial award was within the
24 "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F. 3d 454,
25 459 (9th Cir. 2000), the 9th Circuit approved a settlement representing "roughly one-sixth of the potential
26 recovery." Given the amount of the settlement here as compared to potential value of the claims,
27
28

particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable³.

The calculation methodology used to compensate Class Representative and the Settlement Class 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 Defendants during the Class Period. The number of Workweeks for the Settlement Class is established through Defendants’ data and documented compensation records. The Settlement Administrator is responsible for calculating the Individual Settlement Payments by multiplying the Payment Ratio for each member of the Settlement Class by the Net Settlement Amount. The Settlement Administrator will calculate the payment ratio by dividing the total number of Workweeks for each Settlement Class member by the total number of Workweeks for entire Settlement Class. This process establishes an objectively fair and reasonable procedure to compensate the Settlement Class. (Settlement Agreement, §III(M)(1).)

The settlement also provides significant relief to the Settlement Class. The average settlement payment is approximately \$685.95, and the highest is approximately \$2,535.29. (ILYM Dec., ¶ 15.) 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 (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

³ 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.”).

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).)

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., ¶ 49.).

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 Defendants negotiated a good faith PAGA Settlement in the amount of \$20,000.00 which is 2% of the Total Settlement Amount. This amount falls well within the range of approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$7,500) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) to be distributed to the PAGA Group Members, which is within the range of PAGA penalties approved by courts and should be approved. (JCL Dec., ¶ 50.)

Further, on March 3, 2021, Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement with the LWDA. On August 2, 2021, Plaintiff gave the LWDA notice of Plaintiff's motion seeking final approval of this settlement. (JCL Dec., ¶¶ 6.) By not registering an objection with either Class Counsel or the Court, the LWDA has accepted

and approved of the proposed PAGA Settlement.

VII. CONCLUSION

Plaintiff 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 request entry of the Final Approval Order and Judgment submitted herewith.

Dated: August 5, 2021

JCL LAW FIRM, APC

By: 
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