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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF RIVERSIDE**

MICHAEL NASH, an individual, on behalf of  
himself and on behalf of all persons similarly  
situated,

Plaintiff,

v.

K. HOVNANIAN COMPANIES, LLC, a  
California Limited Liability Company, and DOES  
1-50, Inclusive,

Defendants.

Case No. RIC2003319

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

Date: January 17, 2024

Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp

Dept.: 1

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1 I. INTRODUCTION

2 Plaintiff MICHAEL NASH (hereinafter “Plaintiff”) seeks final approval of the Stipulation of  
3 Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)<sup>1</sup>, which if  
4 approved, would provide valuable monetary relief for approximately 157 Class Members employed by  
5 K. Hovnanian Companies, LLC (hereinafter “Defendant”) during the Class Period.

6 In an order dated June 27, 2024, this Court preliminarily approved the Agreement and  
7 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On  
8 September 16, 2024, the Court-approved Class Notice was mailed to all 157 Class Members via U.S.  
9 First Class Mail. Declaration of Madely Nava (“Apex Dec.”), ¶ 7. *The Class greeted news of the*  
10 *Settlement with unanimous approval as, at the time of the filing of this motion, 100% of the Class*  
11 *Members chose to participate in the Settlement.*<sup>2</sup> As of the filing of this motion, there are zero opt-  
12 outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The unanimous approval by the  
13 Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

14 An objective evaluation of the proposed settlement of Two Hundred Sixty-Five Thousand  
15 Dollars and Zero Cents (\$265,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated  
16 on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of  
17 informed, adversarial, and non-collusive negotiations between experienced counsel. After deducting  
18 any Court-approved Class Counsel Award, Class Representative Service Award, Settlement  
19 Administration Costs, and the PAGA Payment, the Net Settlement Amount shall be distributed to the  
20 Settlement Class Members based on the number of Workweeks they worked while employed by  
21 Defendant during the Class Period. JCL Dec., ¶ 8.

22 This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates  
23 that the Settlement, if approved, would result in a Net Settlement Amount of approximately  
24 **\$119,866.67**. Apex Dec., ¶ 14. This will result in an average Individual Settlement Payment of \$763.48,  
25 a high payment of \$2,751.62, and a low payment of \$6.04. Apex Dec., ¶ 15. Aggrieved Employees will  
26

27 <sup>1</sup> The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the  
28 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.

<sup>2</sup> One (1) Notice was deemed undeliverable. Apex Dec. at ¶ 10.

1 receive an estimated average gross Aggrieved Employee Payment of \$31.25, a high payment of \$ 92.50,  
2 and a low payment of \$0.70. Apex Dec ¶ 17.

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

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

## 12 II. OVERVIEW OF THE LITIGATION

13 Defendant designs, constructs and sells residential. Plaintiff worked for Defendant as a non-  
14 exempt employee in California from September 2018 to January 2020. During his employment, Plaintiff  
15 earned an hourly wage and was entitled to legally compliant meal and/or rest periods, and minimum, regular  
16 and overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendant's  
17 written policies and procedures. JCL Dec., ¶ 11; Declaration of Michael Nash ("Nash Dec.") ¶ 3.

18 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide  
19 compliant meal and rest periods, failed to reimburse employees for required expenses, failed to furnish  
20 accurate itemized wage statements, and failed to pay all wages when due. Defendant forcefully denies  
21 liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable  
22 employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited  
23 to, compliant meal and rest period practices, compliant wage statements, and timely payment of all wages.  
24 JCL Dec., ¶ 12.

25 On June 4, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency  
26 ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and  
27 theories supporting Defendant's alleged violations of various provisions of the California Labor Code and  
28 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., ¶ 13.

On August 18, 2020, Plaintiff filed a class action lawsuit in the Riverside Superior Court, Case Number RIC2003319 (“Action”). The Action alleged eight causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200 et seq.; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §§ 226; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203. JCL Dec., ¶ 14.

On November 6, 2020, Plaintiff filed a separate action with a single cause of action for Violation of the Private Attorneys General Act [Labor Code sections 2698 et seq.]. On May 17, 2021, this Court consolidated Plaintiff’s class action and PAGA action for all purposes, with the class action being the lead case. The consolidated cases now comprise this Action. JCL Dec., ¶ 15.

After Plaintiff commenced written discovery, the Parties agreed to mediate this action on March 24, 2022, with respected wage and hour mediator Steven Mehta, Esq. To prepare for mediation, the Parties agreed to informally exchange additional documents and data points subject to the mediation privilege, including but not limited to, the Class Members’ time data and certain payroll data points. JCL Dec., ¶ 16. The Parties were unable to reach a settlement at mediation, however, the Parties subsequently continued settlement negotiations until a settlement was ultimately reached. Thus, the Parties agreed upon the Gross Settlement Amount of \$265,000.00. JCL Dec., ¶ 17. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 18.

On June 27, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On September 16, 2024, the Settlement Administrator mailed Notice Packets to all 157 members of the Class via U.S. First Class Mail. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-

five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement was outstanding – 100% of the Class Members are participating in the Settlement. Apex Dec., ¶ 13.

### III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Two Hundred Sixty-Five Thousand Dollars and Zero Cents (\$265,000.00) based on a total of an estimated 17,400 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 19.

Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified Settlement Fund within sixty (60) calendar days after the Effective Date. Agreement, ¶ I(P); III(A)(3). The Settlement Administrator shall mail the Individual Settlement Payments and Aggrieved Employee Payments to the Settlement Class Members and/or Aggrieved Employee last known mailing address no later than fifteen (15) calendar days after Defendant fund the Gross Settlement Amount. Agreement, ¶ III(M)(7). The Settlement Administrator calculated Class Members' Individual Settlement Payments by adding up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. III(M)(1). The average estimated Individual Settlement Payments was \$763.48. Apex Dec ¶ 15.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, Plaintiff and the Settlement Class Members will release the Released Parties from the Released Class Claims for the Class Period. Agreement at ¶¶ I(DD); III(B). The Plaintiff and the State of California will release the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement at ¶¶ I(EE); III(C).

Apex Class Action LLC is the Court-approved Settlement Administrator for this action. Settlement Administration Costs include those expenses of effectuating and administering the

Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Settlement Payments, and the fees of the Settlement Administrator (“Settlement Administration Costs”) approved for reimbursement by the court. The Settlement Administration Expenses are \$6,800. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ III(M)(12).

Subject to Court approval, Class Counsel shall seek a Class Counsel Award in the amount of \$113,333.33 comprised of attorneys’ fees of \$88,333.33 (one-third of the Gross Settlement Amount) and up to \$25,000 for actually incurred litigation expenses. Class Counsel’s award for attorney’s fees will be divided between Class Counsel (35% to JCL Law Firm, APC, 35% to Zakay Law Group, APLC, and 30% to Blumenthal Nordrehaug Bhowmik De Blouw LLP). Agreement, ¶ I(F); JCL Dec., ¶ 20. The Agreement also provides for a Class Representative Service Award in the amount of \$10,000 for Plaintiff, in consideration of his time, risk, and efforts as the Class Representative on behalf of the Settlement Class. Agreement, ¶ III(M)(9).

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 Settlement Class, the absence of any objections to the Settlement and the average Individual Settlement Payment of \$763.48. Apex Dec., ¶¶ 12;15, JCL Dec., ¶ 21.

#### **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,

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

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

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

#### 19 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

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

25 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*  
26 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial court should  
27 consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of  
28 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. Due regard should be given to what is otherwise a private consensual agreement between the parties. *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.' [Citation omitted.]" *Id.*

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

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

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

**B. 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

1 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in  
2 similar wage and hour class actions throughout the State of California. As such, courts throughout  
3 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class  
4 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement  
5 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 23-29; Declaration  
6 of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3; Declaration of Nicholas J. De Blouw at ¶¶ 1 - 5.

7 **C. The Settlement Class Responded Positively to the Settlement.**

8 The reaction of the Settlement Class unequivocally supports approval of the Settlement.  
9 Significantly, after dissemination of the notice to the Settlement Class, which provided each class  
10 member with the terms of the Settlement, including the specific estimated Individual Settlement  
11 Payments. As of the filing of this motion, none of the 157 members of the Settlement Class opted-out  
12 of the Settlement. Moreover, there are no objections. Stated differently, 100% of the Settlement Class  
13 chose to participate in the Settlement. Apex Dec., ¶ 13; JCL Dec., ¶ 8.

14 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement  
15 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y.  
16 2000) 80 F.Supp.2d 164, 175 (“If only a small number of objections are received, that fact can be  
17 viewed as indicative of the adequacy of the settlement.”); *Stoetznner v. U.S. Steel Corp.* (3d. Cir. 1990)  
18 897 F.2d 115, 118-119 (29 objections out of 281 member class “strongly favors settlement”); *Laskey*  
19 *v. Int’l Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the  
20 proposed settlement should be considered when determining fairness of settlement.). Consequently,  
21 Class Counsel respectfully requests the Court to follow the unanimous approval of the Settlement Class  
22 and grant final approval of the Settlement.

23 **D. The Gross Settlement Amount is Fair and Reasonable.**

24 The Gross Settlement Amount of Two Hundred Sixty-Five Thousand Dollars and Zero Cents  
25 (\$265,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*  
26 court acknowledged that “as the court does when it approves a settlement as in good faith under Code  
27 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within  
28 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*

1 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

2 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement  
3 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the  
4 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.  
5 While the Gross Settlement Amount of Two Hundred Sixty-Five Thousand Dollars and Zero Cents  
6 (\$265,000.00) represents a discount on Defendant’s potential exposure if Plaintiff established liability  
7 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is  
8 reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award  
9 significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may  
10 require many more years of litigation, resulting in added fees and costs without any guarantee of  
11 recovery for the Class. JCL Dec., ¶ 30.

12 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and  
13 reasonable considering the nature and magnitude of the claims being settled and the various potential  
14 impediments to recovery. Class Counsel developed varied economic damages models measuring  
15 Defendant’ liability exposure while accounting for the uncertainties of continued litigation. The various  
16 models were informed by Class Counsel’s investigation, including the analysis of a significant sample  
17 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class  
18 Counsel projected a range of Defendant’ liability exposure for the claims asserted on behalf of the  
19 Settlement Class. The Gross Settlement Amount represents approximately 40% of Defendant’s *class-*  
20 *wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 31.

21 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at \* 4, the District Court  
22 for the Northern District of California granted final approval in a wage and hour misclassification action  
23 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within  
24 the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)  
25 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the  
26 potential recovery.” Given the amount of the settlement here as compared to potential value of the  
27  
28

claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable.<sup>3</sup>

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

The settlement also provides significant relief to the Settlement Class Members. After deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Payment, and the Class Representative Service Award, the Net Settlement Amount is currently estimated to be \$119,866.67. Apex Dec., ¶ 14. This will result in an average Individual Settlement Payment of \$763.48, with a high payment of \$2,751.62, and a low payment of \$6.04. Apex 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 (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.

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<sup>3</sup> 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.”).

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, ¶ III(A)(4).

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., ¶ 32.

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

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 33. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, 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.4<sup>th</sup> 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.4<sup>th</sup> 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., ¶ 34.

Although Plaintiff is confident about the strength of his 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., ¶ 35.

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.** Defendant strongly deny liability for Plaintiffs’ principal claim that full-time Service Associates were misclassified as exempt. In addition to the uncertainties raised by Defendant at the preliminary stage regarding Plaintiffs’ chance of success in this case, Defendant 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 Plaintiffs’ case, legal uncertainties at the time of settlement - particularly

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

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

3 **The potential complexity and possible duration of trial also weigh in**  
4 **favor of granting final approval.** Plaintiffs acknowledge the difficulties  
5 of proving damages, recognize the uncertainty of outcome, and believe  
6 defendant would appeal in the event of adverse judgment. A post-judgment  
7 appeal would require many years to resolve and delay payment to class  
8 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.

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

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

15 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*  
16 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59  
17 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. The benefits of a  
18 guaranteed recovery today outweigh an uncertain result three or more years in the future. JCL Dec., ¶  
19 36.

20 The Class Representative and Class Counsel recognize the expense and length of a trial against  
21 Defendant through possible appeals, which could take another three years. In arriving at their informed  
22 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome  
23 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognizes  
24 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.  
25 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and  
26 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.  
27 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and  
28 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., ¶ 37.

**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 \$15,000 which is 5.66% 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 (\$11,250) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$3,750) to be distributed to the Aggrieved Employees (“Aggrieved Employee Payment”) which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 38.

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., ¶¶ 5-6, 39. 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: December 23, 2024

**JCL LAW FIRM, APC**

7 By:   
8 Jean-Claude Lapuyade  
9 Attorney for Plaintiff  
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