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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

Wafa Mwanes, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

ABOUT FOOD INC. dba RELANDS RANCH
MARKET, an unknown business entity; and
DOES 1 through 50, Inclusive,

Defendants.

Case No. CIVDS2018742

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

Date: February 13, 2024

Time: 1:30 p.m.

Judge: Hon. Joseph T. Ortiz

Dept.: S-17

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I. INTRODUCTION

Plaintiff WAFA MWANES (hereinafter “Plaintiff”) seeks final approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for 548 Settlement Class Members employed by ABOUT FOOD, INC. dba REDLANDS RANCH MARKET (hereinafter “Defendant”) during the period beginning September 16, 2016, to April 29, 2023 (“Class Period”).

In an order dated August 21, 2023, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On September 11, 2023, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Madely Nava (“Apex Dec.”), ¶ 7. *The Class greeted news of the Settlement with unanimous approval.*² There are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

An objective evaluation of the proposed settlement of Five Hundred Eighty Thousand Dollars and Zero Cents (\$580,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class Members is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Steven Serratore, Esq. After deducting any Court-approved Attorneys’ Fees and Attorneys’ Expenses, Service Award, PAGA Payment, and Claims Administration Costs, the Net Settlement Amount shall be distributed to each Settlement Class Member based on the number of Workweeks they worked while employed by Defendant during the Class Period. JCL Dec., ¶ 8.

This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$327,166.67**. This will result in an average Individual Settlement Payment of **\$597.02**, a high payment of **\$4,861.47**, and low payment of **\$14.08**. JCL Dec., ¶ 9; Apex Dec. at ¶ 15.

¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

² Twenty-Nine (29) Notices were deemed undeliverable. Apex Dec. at ¶¶ 10.

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

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

10 **II. OVERVIEW OF THE LITIGATION**

11 Defendant operates international grocery stores throughout California, including Redlands,
12 California, where Plaintiff worked. This action asserts claims on behalf of all current and former non-
13 exempt employees who worked for Defendant during the Class Period. Plaintiff worked for Defendant
14 as a non-exempt employee in California from May 2020 to October 2020. At all times during her
15 employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest
16 periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment,
17 Plaintiff was subject to Defendant's written policies and procedures contained in, among other
18 documents, the "Employee Handbook." JCL Dec., ¶ 12; Declaration of Wafa Mwanes ("WM Dec.")
19 at ¶¶ 2-5.

20 Generally, Plaintiff claims that Defendant failed to furnish accurate itemized wage statements,
21 failed to provide compliant meal and rest periods, failed to pay for all time worked, and failed to pay
22 all wages upon separation. Defendant forcefully denies liability for each of Plaintiff's claims. Further,
23 Defendant asserts that it fully complied with all applicable employment laws and raised several other
24 significant defenses to Plaintiff's claims, including but not limited to, asserting that it issued compliant
25 wage statements, maintained facially compliant meal and rest period policies, paid for all hours worked,
26 and timely paid all wages due upon separation of employment. JCL Dec., ¶ 13.

27 On September 16, 2020, Plaintiff filed a class action complaint in the San Bernardino Superior
28 Court, Case Number CIVDS2018742 ("Action"). The Action alleged ten causes of action against

Defendant for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code §§ 226.7 (Unpaid Rest Period Premiums); (4) Violations of California Labor Code §§ 1194, 1197, 1197.1 (Unpaid Minimum Wages); (5) Violations of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code § 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions Code §§ 17200, *et seq.* JCL Dec., ¶ 14.

On November 2, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq.* (“PAGA”). JCL Dec., ¶ 15.

On January 11, 2021, Plaintiff filed a separate representative action complaint in the San Bernardino County Superior Court case number CIVSB2102442 (“the PAGA Action”) alleging a single cause of action for violations of PAGA. On November 16, 2021, the Court granted Defendant’s Motion to Consolidate the Action and the PAGA Action. JCL Dec., ¶ 16.

The Parties agreed relatively early to mediate the Action. 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, employee handbooks, the Class Members’ time data, and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 17.

On February 28, 2023, the Parties participated in a full day mediation with mediator Steven Serratore, Esq. After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant

1 motion. JCL Dec., ¶ 18.

2 On August 21, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4.
3 On September 11, 2023, the Claims Administrator mailed Notice Packets to all 548 Class Members.
4 Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline
5 for the Class to submit requests for exclusion or objections to the Settlement. The response from the
6 Class to the Settlement was outstanding – 100% of the Class Members are participating in the
7 Settlement. Apex Dec., ¶ 13.

8 **III. THE SETTLEMENT BEFORE THE COURT**

9 The Court preliminarily approved an initial Gross Settlement Amount of Five Hundred, Eighty
10 Thousand Dollars and Zero Cents (\$580,000.00) based on a total of an approximately 22,000
11 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used
12 to satisfy: (1) the sum of the Claims Administration Costs; (2) Attorneys' Fees and Attorneys' Expenses;
13 (3) Service Award; (4) the sum of all Individual Settlement Payments; and (5) the PAGA Payment. JCL
14 Dec., ¶ 19.

15 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
16 Settlement Fund within five (5) business days of the Court's entry of the order granting final approval
17 of this Settlement. Agreement at § I(O). The Claims Administrator shall disburse the Individual
18 Settlement Payments to the Settlement Class Members no later than fifteen (15) days after Defendant
19 funds the Gross Settlement Amount. Agreement, § III(M)(7). The Claims Administrator will calculate
20 the Individual Settlement Payments by dividing the Net Settlement Amount by the total number of
21 Workweeks worked by all Settlement Class Members during the Class Period and multiplying the result
22 by each Settlement Class Member's Workweeks. Agreement at § III(M)(1). The estimated average
23 Individual Settlement Payment is approximately **\$597.02** Apex Dec., ¶ 15.

24 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
25 the Settlement Class Members will release the Released Parties from the Released Class Claims.
26 Agreement, § III(B).

27 Apex Class Action LLC was appointed as the Claims Administrator for the Class. The Claims
28 Administration Costs 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 Payments, and the fees of the Claims Administrator approved for reimbursement by the Court. The Claims Administration Costs are \$9,500. 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 payment for Attorneys' Fees and Attorneys' Expenses in the amount of \$213,333.33, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be at least \$193,333.33 and up to \$20,000 for actually incurred litigation expenses. Agreement, § III(M)(10). Plaintiff's counsel is to split the fees 35% to Lawyers for Justice, PC, 32.5% to JCL Law Firm, APC, and 32.5% to Zakay Law Group, APLC. Agreement, § I(D). The Agreement also provides for a Service Award in the amount of \$10,000 for Plaintiff, in consideration of her time, risk, and efforts as the Class Representative on behalf of the Class and a general release. 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 \$597.02. Apex Dec., ¶¶ 15, 17; 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,

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, 2246 (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 records for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements containing, *inter alia*, compensation, timekeeping, and meal and rest period policies 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, Class Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 21-26.

B. The Parties Settled at Mediation.

On February 28, 2023, the Parties conducted a full day of mediation with Steven Serratore, Esq., a mediator of wage and hour class and representative actions. Mediator Serratore helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Serratore's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. The mediation concluded with a settlement, the complete and final terms of which are now set forth in the Agreement. Class Counsel submit that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 27.

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 claims. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout 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., ¶¶ 28-34; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3; Declaration of Edwin Aiwasian ("Aiwasian Dec."), ¶¶ 15-17.

D. The Class Responded Positively to the Settlement.

The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Class, which provided each Class Member with the terms of the Settlement, including the specific estimated Individual Settlement Payments. To date, none of the 548 Class Members opted out of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Class chose to participate in the Settlement. JCL Dec., ¶ 8; Apex Dec., ¶¶ 12-13.

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* (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*

1 *Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed
2 settlement should be considered when determining fairness of settlement.). Consequently, Class
3 Counsel respectfully requests the Court to follow the unanimous approval of the Settlement Class and
4 grant final approval of the Settlement.

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

6 The Gross Settlement Amount of Five Hundred Eighty Thousand Dollars and Zero Cents
7 (\$580,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
8 court acknowledged that “as the court does when it approves a settlement as in good faith under Code
9 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
10 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
11 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

12 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
13 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
14 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
15 Cal.App.4th at 250. While the Gross Settlement Amount of Five Hundred Eighty Thousand Dollars and
16 Zero Cents (\$580,000.00) represents a discount on Defendant’s potential exposure if Plaintiff
17 established liability on all claims and was awarded the full amount of the estimated damages at trial, this
18 compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that
19 could award significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial
20 recovery may require many more years of litigation, resulting in added fees and costs without any
21 guarantee of recovery for the Settlement Class. JCL Dec., ¶ 35.

22 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
23 reasonable considering the nature and magnitude of the claims being settled and the various potential
24 impediments to recovery. Class Counsel developed varied economic damages models measuring
25 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
26 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
27 of time and payroll data. Detailed in greater depth during the preliminary approval process, Class
28 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the

Class. The Gross Settlement Amount represents approximately between 12.2% (“Aggressive Model”) and 24.39% (“Conservative Model”) of Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 36.

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

The calculation methodology used to compensate the Settlement Class Members for the alleged damages was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks each Settlement Class Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement Class Members is established through Defendant’s data and documented compensation records. The Claims Administrator is responsible for calculating the Individual Settlement Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and multiplying the result by each Settlement Class Member’s Workweeks. Agreement, § III(M)(2). This process establishes an objectively fair and reasonable procedure to compensate the Settlement Class. JCL Dec., ¶ 37.

The Settlement also provides significant relief to the Settlement Class Members. After deductions for any Court-approved Attorneys’ Fees and Attorneys’ Expenses, Service Award, PAGA Payment, and Claims Administration Costs, the Net Settlement Amount is currently estimated to be \$327,166.67.

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.”).

Apex Dec., ¶ 14. The average Individual Settlement Payment is approximately \$597.02, and the highest is approximately \$4,861.47. 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 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, § III(M).

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., ¶ 38.

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

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 39. 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

1 would have faced the expense and uncertainty of litigating an appeal. The
2 expense and possible duration of the litigation should be considered in
evaluating the reasonableness of [a] settlement.

3 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
4 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
5 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
6 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
7 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
8 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
9 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
10 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
11 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
12 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
13 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
14 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
15 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
16 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
17 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
18 certification of driver meal and rest period claims based on the predominance of individual issues).
19 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
20 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
21 settlement. JCL Dec., ¶ 40.

22 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
23 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
24 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
25 affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 41.

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

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

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

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

11 **The potential complexity and possible duration of trial also weigh in**
12 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
13 of proving damages, recognize the uncertainty of outcome, and believe
14 defendant would appeal in the event of adverse judgment. A post-judgment
15 appeal would require many years to resolve and delay payment to class
16 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.

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

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

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

1 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
2 an uncertain result three or more years in the future. JCL Dec., ¶ 42.

3 Class Representative and Class Counsel recognize the expense and length of a trial against
4 Defendant through possible appeals which could take another three years. In arriving at their informed
5 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
6 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
7 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
8 Moreover, post-trial motions and appeals would have been inevitable. Costs would have increased, and
9 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
10 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
11 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
12 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
13 Settlement Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶
14 43.

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

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

26 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of \$20,000
27 which is 3.44% of the Gross Settlement Amount. As illustrated above, this amount falls well within
28 the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA Payment

1 (\$15,000.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent
2 (25%) of the PAGA Payment (\$5,000.00) to be distributed to the PAGA Class Members (“PAGA
3 Class Member Payment”), which is within the range of PAGA payments approved by courts and
4 should be approved. JCL Dec., ¶ 44.

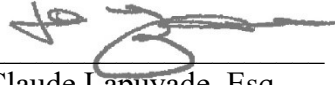
5 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
6 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
7 with the LWDA. JCL Dec., ¶¶ 5-6, 45. By not registering an objection with either Class Counsel or
8 the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

9 **VII. CONCLUSION**

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

13
14 Dated: January 19, 2024

JCL LAW FIRM, APC

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16 By: 
17 Jean-Claude Lapuyade, Esq.
18 Attorneys for Plaintiff
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