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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

GONZALO ROJAS, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, vs. PREFERRED FOOD SERVICE, INC., an unknown business entity; LOS ANGELES POULTRY CO., INC., a California corporation; DROR DAHAN, an individual; DAVID DAHAN, an individual; LILY DAHAN, an individual; ILANA DAHAN, an individual; BAR DAHAN, an individual; and DOES 1 through 100, inclusive; Defendants.	Case No. 21STCV08225 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: May 7, 2025 Time: 9:00 a.m. Judge: Hon. Elihu M. Berle Dept.: 6

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I. INTRODUCTION

Plaintiff GONZALO ROJAS (hereinafter "Plaintiff") seeks final approval of the Class Action and PAGA Settlement Agreement ("Agreement")[1], which if approved, would provide valuable monetary relief for 360 Settlement Class Members employed by either Preferred Food Service, Inc. or Los Angeles Poultry Co., Inc. (hereinafter the "Entity Defendants") during the Class Period.

In an order dated January 13, 2025, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Elizabeth Parker-Fawley ("EPF Dec."), ¶ 4. On February 6, 2025, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Bryn Bridley ("Atticus Dec."), ¶ 6. ***As of the filing of this motion, the Class has greeted news of the Settlement with unanimous approval as, at the time of the filing of this motion, <u>all</u> 360 Class Members chose to participate in the Settlement.***[2] There are zero opt-outs and zero objections to the Settlement. Atticus Dec., ¶¶ 6, 10. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. EPF Dec., ¶ 7.

An objective evaluation of the proposed settlement of $1,200,000.00 ("Total Settlement Amount") confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Lynn Frank, Esq., a wage and hour class action mediator. After deducting any Court-approved Attorneys' Fees and Costs, Enhancement Award, Settlement Administration Costs, and the PAGA Penalty Amount, including the payment to the Labor & Workforce Development Agency ("LWDA"), the Net Settlement Amount shall be distributed to the Settlement Class Members based on the number of Workweeks they were employed by the Entity Defendants during the Class Release Period. EPF Dec., ¶ 7.

This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately $530,000.00. This will result in an average gross Individual Class Payment of $1,472.22. Aggrieved

[1] The Agreement is attached as Ex "1" to the Declaration of Elizabeth Parker-Fawley ("EPF Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the EPF Dec. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

[2] As of the filing date of this Motion, 27 Notices were returned as undeliverable and of those 27, 18 were re-mailed to other addresses located for these individuals. Atticus Dec. at ¶ 7.

Employees will receive an estimated average gross payment of $264.55. Atticus Dec. at ¶¶ 12-14.

The relief offered by the Settlement is immediate and is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (see infra). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain litigation. EPF Dec., ¶ 8.

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

II. OVERVIEW OF THE LITIGATION

Defendants produce and distribute poultry items. Defendants operate in California, including in Los Angeles County where Plaintiff worked. Plaintiff worked for Defendants in California from approximately January 2015 to approximately July 2020 as a non-exempt employee, paid on an hourly basis. Plaintiff alleges that he was denied, inter alia, legally compliant meal and rest periods, minimum wages, and overtime compensation. During his employment, Plaintiff was subject to Defendants' written policies and procedures contained in, among other documents, the "Employee Handbook." EPF Dec., ¶ 10.

Generally, Plaintiff claims that Defendants failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to furnish accurate itemized wage statements, and failed to pay all wages timely during employment and upon separation. Defendants deny liability for each of Plaintiff's claims. Further, Defendants asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, and that it timely paid all wages due upon separation of employment. EPF Dec., ¶ 11.

On March 1, 2021, Plaintiff filed a class action complaint in the Los Angeles County Superior Court, Case No. 21STCV08225 ("Action"). The Action alleged ten causes of action against the Entity Defendants 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) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation 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*. EPF Dec., ¶ 12.

On July 8, 2021, Plaintiff separately filed a PAGA-only action in the Los Angeles County Superior Court, Case No. 21STCV25148 (the "PAGA Action"). The PAGA Action alleged a single cause of action for civil penalties pursuant to the Private Attorneys General Act of 2004. The PAGA Action seeks civil penalties pursuant to the same alleged violation and same factual theories as outlined in the Class Action. EPF Dec., ¶ 13.

On July 22, 2023, the Parties participated in a full day mediation with wage and hour and PAGA mediator Lynn Frank, Esq. The Parties were unable to reach an agreement, and Defendants then noticed the Deposition of Gonzalo Rojas on August 3, 2023. On August 4, 2023, Plaintiff propounded multiple sets of written discovery requests on Defendants Preferred Food Service, Inc. and Los Angeles Poultry Co., Inc. including Form Interrogatories—General (Set One), Special Interrogatories (Sets One and Two), Requests for Production of Documents (Set One) and Request for Admission (Set One)). On August 23, 2024, Plaintiff served Special Interrogatories (Set Three) and Requests for Production of Documents (Set Two) on both Entity Defendants. On September 6, 2023, both Entity Defendants provided responses to Plaintiff's Form Interrogatories—General (Set One), Special Interrogatories (Sets One and Two), Requests for Production of Documents (Set One) and Request for Admission (Set One). On September 13, 2023, Plaintiff served Demands for Site Inspection to each Entity Defendant. On September 26, 2023, Defendants provided responses to Plaintiff's Special Interrogatories (Set Three) and Requests for Production of Documents (Set Two). EPF Dec., ¶ 14.

On August 18, 2023, both Entity Defendants propounded multiple sets of written discovery requests on Plaintiff (including Form Interrogatories—General (Set One), Form Interrogatories—Employment Law (Set One) and Request for Production of Documents (Set One)) in both the Class and PAGA Actions. On September 19, 2023, Plaintiff responded to both Entity Defendants' discovery requests in both Actions. EPF Dec., ¶ 15.

On August 7, 2023, Plaintiff noticed the deposition of both Entity Defendants person(s) most knowledgeable along with accompanying requests for production of documents, and, on September 6, 2023, both Entity Defendants served their Objections to the notice of deposition. EPF Dec., ¶ 16. On October 11, 2023, after further negotiations through the mediator, both sides agreed to an updated mediator's proposal which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement. On October 10, 2024, the Parties filed a Joint Stipulation for Leave to File a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code section 2698, Et Seq. ("First Amended Complaint"). EPF Dec. ¶ 17. This complaint names the Entity Defendants, along with Dror Dahan, David Dahan, Lily Dahan, Ilana Dahan, and Bar Dahan (collectively, with the Entity Defendants, referred to as "Defendants").

On January 13, 2025, this Court granted preliminary approval of the Settlement. EPF Dec., ¶ 4. On February 6, 2025, the Administrator mailed Notice Packets to all 360 Settlement Class Members. Atticus Dec., ¶ 6. The mailing of the Notice Packets triggered a sixty (60) 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 has thus far been outstanding – as of the filing of this motion, 100% of the Class Members are participating in the Settlement. Atticus Dec., ¶ 10.

III. <u>THE SETTLEMENT BEFORE THE COURT</u>

The Court preliminarily approved an initial Gross Settlement Amount of One Million Two Hundred Thousand Dollars and Zero Cents ($1,200,000.00) based on a total of an estimated 42,403 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Class Payments; (2) to satisfy Individual PAGA Payments; (3) to satisfy the LWDA Payment; (4) to satisfy Attorneys' Fees and Litigation Costs; (5) to satisfy the Class

Representative Payment; and (6) to satisfy the Administration Expenses Payment incurred in this action. Agreement at §§ 3.2.1- 3.2.5.

Defendants will fund the Total Settlement Amount in three installments payments of $400,000 per payment. The first installment payment shall be paid within 60 days after Final Approval. Addendum to the Agreement at § 4.2. The Second Installment Payment and the employer's share of payroll taxes shall be made twelve (12) months after the first installment payment. Each Class Member's Individual Settlement Share shall be distributed by the Settlement Administrator within fourteen (14) days after Defendants fund the Second Installment Payment. Additionally, all Individual PAGA Payments to PAGA Members, the Enhancement Award to Plaintiff and the LWDA Payment shall be distributed by the Settlement Administrator within fourteen (14) days after Defendants fund the Second Installment Payment. Addendum to the Agreement at § 4.2.2. The Third and final Installment Payment shall be made 12 months after the Second Installment Payment. The Attorney's Fees and Costs and the Settlement Administration Costs shall be distributed by the Settlement Administrator within 14 days after Defendants fund the third installment payment. Addendum to the Agreement at § 4.2.3.

The Administrator will calculate Individual Class Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and multiplying the result by each Participating Class Member's Workweeks. Agreement, § 3.2.5. The estimated average Individual Class Payment is approximately $1,472.22. Atticus Dec., ¶ 13.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, the Participating Class Members will release the Defendants and the Released Parties from the Released Class Claims that accrued during the Class Period. The Aggrieved Employees, the LWDA, and the State of California will release the Defendants and the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement at §§ 5.2, 5.3.

Atticus Administration LLC was appointed as the Administrator for the Class. The Administration Expenses Payment includes those expenses of effectuating and administering the Settlement, i.e., the costs incurred to the Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Class Payments, and the fees of the Administrator approved for reimbursement by the court. The Administrator's expenses are estimated to be $10,000.00. Atticus Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount. Agreement, § 3.2.3.

Subject to Court approval, Class Counsel shall seek payment for Attorneys' Fees and Litigation Costs in the amount of up to $445,000.00, comprised of Attorneys' Fees equal to 35% of the Gross Settlement Amount estimated to be $420,000 and up to $25,000 for actually incurred litigation expenses. Plaintiff's counsel is to split the fees as follows: 85% to Lawyers for Justice, PC, 7.5% to the JCL Law Firm, APC, and 7.5% the Zakay Law Group, APLC. Plaintiff has consented to the fee sharing in writing. EPF Dec. ¶ 18. The Agreement also provides for a Class Representative Payment in the amount of $15,000 for Plaintiff, in consideration of his time, risk, and efforts as the Class Representative on behalf of the Settlement Class and a general release. Agreement, §§ 1.12; 3.2.1.

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by the Settlement Class, the absence of any objections to the Settlement and the average Individual Class Payment of $1,472.22. Atticus Dec., ¶¶ 10-13; EPF Dec., ¶ 7.

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

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

"[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court must decide whether the proposed settlement falls within the range of reasonable settlements, considering that settlements are compromises between the parties reflecting subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See also Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 246 (The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial."). In *Wershba*, appellants argued that the settlement was too low given the "clear" liability, however, the Court rejected this argument and held that "the merits of the underlying class claims are not a basis for upsetting the settlement of a class action." *Wershba*, *supra*, at 246; *see also 7-Eleven*, *supra*, at 1150.

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

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

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

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

The list of factors is not exhaustive and should be tailored to each case. *Dunk*, *supra*, at 1801. 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. <u>Class Counsel Conducted a Thorough Investigation.</u>

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 Defendants through formal and 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 worked with a third-party data expert to analyze Defendants' time and payroll data to formulate damage models estimating Defendants' 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. EPF Dec., ¶ 19.

B. <u>The Parties Settled Following Acceptance of A Mediator's Proposal</u>

The mediator 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 the mediator's assistance.

Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. Though the Parties' initial mediation did not result in a settlement, the Parties held further mediated negotiations while pursuing formal discovery. Through these subsequent negotiations, the Parties agreed to an updated mediator's proposal. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. EPF Dec., ¶ 20.

C. Class Counsel is Experienced in Similar Litigation.

21. 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 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. EPF Dec., ¶¶ 21-27; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3; Declaration of Jean Claude Lapuyade ("JCL Dec."), ¶¶ 1-3

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 Class Payments, none of the 360 members of the Settlement Class have opted-out of the Settlement. Moreover, there are ***zero*** objections. Stated differently, **100%** of the Settlement Class chose to participate in the Settlement. EPF Dec., ¶ 7; Atticus Dec., ¶ 10.

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."); *Stoetzner v. U.S. Steel Corp.* (3d. Cir. 1990)

897 F.2d 115, 118-119 (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed settlement should be considered when determining fairness of settlement.). Consequently, Class Counsel respectfully request the Court to follow the unanimous approval of the Settlement Class and grant final approval of the Settlement.

E. <u>The Gross Settlement Amount is Fair and Reasonable.</u>

The Gross Settlement Amount of One Million Two Hundred Thousand Dollars and Zero Cents ($1,200,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar* court acknowledged that "as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." *Kullar*, *supra,* at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).)

Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement provides a sizeable recovery to the Participating Class Member and need not necessarily obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. Wershba, 91 Cal.App.4th at 250. While the Total Settlement Amount of $1,200,000.00 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) the formidable defenses raised by Defendants presented a risk that could award significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class. EPF Dec., ¶ 28.

As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data.

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 Defendants during the Class Period. The number of Workweeks for the Settlement Class Members is established through Defendant's data and documented compensation records. The Administrator is responsible for calculating the Individual Class Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and multiplying the result by each Participating Class Member's Workweeks. This process establishes an objectively fair and reasonable procedure to compensate the Settlement Class. Agreement, § 3.2.5.

The settlement also provides significant relief to the Settlement Class Members. After deductions for the amounts approved by the Court for the Class Representative Payment, Attorneys' Fees and Litigation Costs, PAGA Payment, and the Administration Expenses Payment, the Net Settlement Amount is currently estimated to be $530,000.00. Atticus Dec., ¶12. The average settlement payment is approximately $1,472.22. Atticus Dec., ¶ 13. This average net recovery in on par with many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores,* No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately $80); *Fukuchi v. Pizza Hut,* Case No. BC302589 (LA. County Super. Ct.) (average net recovery of approximately $120); *Contreras v. United Food Group, LLC,* Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Ressler v. Federated Department Stores, Inc.,* Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.,* Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately $65); *Sorenson v. PetSmart, Inc.,* Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately $60); *Lim v. Victoria's Secret Stores, Inc.,* Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately $35); and *Gomez v. Amadeus Salon, Inc.,* Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately $20). Additionally, Defendants must separately fund its share of any employer side payroll taxes. Agreement, § 3.1.

Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval. EPF Dec., ¶ 29.

F. <u>The Strength of Plaintiff's Case and Risks of Continued Litigation</u>

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 defend the action or, at least, drastically undercut Plaintiff's claims. EPF Dec., ¶ 30. 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.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following

Brinker and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. EPF Dec., ¶ 31.

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. EPF Dec., ¶ 32.

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

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

See also Browning v. Yahoo!, Inc., 2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiffs' 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.* (9th Cir. 1998) 150 F.3d 1011, 1026.)

33. As demonstrated by the decisions in Magadia, supra, 999 F.3d 668, O'Conner v. Uber Technologies (N.D. Cal. 2018) 82 F.Supp.3d 1133 and Duran v. U.S. Bank National Assn. (2014) 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendants faced a large adverse judgement, Defendants would 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. EPF Dec., ¶ 33.

Plaintiff 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 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Plaintiff 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. EPF Dec., ¶ 34.

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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 Payment in the amount of $200,000 which is 16.6% 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 ($150,000.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be distributed to the Aggrieved Employees ("Individual PAGA Payment"), which is within the range of PAGA penalties approved by courts and should be approved.

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. EPF Dec., ¶¶ 5-6. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

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 requests entry of the Final Approval Order and Judgment submitted herewith.

Dated: March 7, 2025

JCL LAW FIRM, APC

By: ______________________
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