

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

ANA RAYOS, individually, and on behalf of other
members of the general public similarly situated,

Plaintiff,

v.

RESTAURANT LEADERSHIP GROUP, LLC,
an unknown business entity and DOES 1 through
100, inclusive,

Defendants.

Case No. CVRI2000689

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

Date: February 19, 2025

Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp

Dept.: 1

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I. INTRODUCTION

Plaintiff Ana Rayos (hereinafter “Plaintiff”) seeks final approval of the First Amended Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for 3,119 Settlement Class Members employed by Restaurant Leadership Group, LLC (hereinafter “Defendant”) during the Class Period.

In an order dated October 30, 2024, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Vartan Madoyan (“LFJ Dec.”), ¶ 4. On December 6, 2024, the Court-approved Class Notice was mailed to all 3,120 Class Members via U.S. First Class Mail. Declaration of Katherine Rovertoni (“Apex Dec.”), ¶ 7. ***The Class greeted news of the Settlement with high approval as, at the time of the filing of this motion, 3,119 Class Members chose to participate in the Settlement.***² As of the filing of this motion, there is one opt-out and zero objections to the Settlement. Apex Dec., ¶¶ 11-13. The high approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. LFJ Dec., ¶ 8.

An objective evaluation of the proposed settlement of Two Million Dollars and Zero Cents (\$2,000,000.00) (“Gross 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 Paul Grossman, Esq., an experienced mediator of wage and hour class actions. After deducting any Court-approved Class Counsel Fees and Litigation Expenses Payment, Class Representative Service Payment, Administration Expenses Payment, and the PAGA Penalties, the Net Settlement Amount shall be distributed to the Settlement Class Members based on the number of Workweeks they worked while employed by Defendant during the Class Period. LFJ Dec., ¶ 8.

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 **\$829,000.00**. Apex Dec., ¶ 15. This will result in an average Individual Class Payment of **\$265.79**, a

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

² Three (3) Notices were deemed undeliverable. Apex Dec. at ¶ 10.

1 high payment of **\$2,359.01**, and a low payment of **\$6.28**. Apex Dec., ¶ 16. Aggrieved Employees will
2 receive an estimated average Individual PAGA Payment of **\$46.89**, a high payment of **\$249.21**, and a
3 low payment of **\$2.49**. Apex Dec ¶ 18.

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

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

13 **II. OVERVIEW OF THE LITIGATION**

14 Defendant operates restaurants in Riverside County, where Plaintiff worked. Plaintiff worked
15 for Defendant in California from November 2013 to January 2021. During her employment, Plaintiff
16 claims that she was denied legally compliant meal and rest periods, and minimum wages and overtime
17 compensation. Throughout her employment, Plaintiff was subject to Defendant's written policies and
18 procedures. LFJ Dec., ¶ 11; Declaration of Ana Rayos ("Rayos Dec.") ¶ 3.

19 Generally, Plaintiff claims that Defendant failed to provide compliant meal and rest periods,
20 failed to pay for all time worked, failed to reimburse necessary business expenses, and failed to furnish
21 accurate, itemized wage statements. Defendant denies liability for each of Plaintiff's claims. Further,
22 Defendant asserts that it fully complied with all applicable employment laws and raised several other
23 significant defenses to Plaintiff's claims, including but not limited to, asserting that they maintained
24 facially compliant meal and rest period policies, paid their employees for all hours worked, and properly
25 reimbursed all necessary business expenses. LFJ Dec., ¶ 12.

26 On May 21, 2021, Plaintiff served Defendant and the Labor and Workforce Development
27 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth
28 the facts and theories supporting Defendant's alleged violations of various provisions of the California

1 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to
2 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
3 2698 *et seq* (“PAGA”). LFJ Dec., ¶ 13.

4 On December 28, 2020, Plaintiff filed a class action complaint in the Riverside County Superior
5 Court, Case No. CVRI2000689 (“Class Action”). The Action alleged ten causes of action against
6 Defendant for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2)
7 Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation
8 of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor
9 Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code
10 §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages
11 Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-
12 Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep
13 Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed
14 Business Expenses); (10) Violation of California Business & Professions Code §§ 17200, *et seq.* LFJ
15 Dec., ¶ 14.

16 On July 27, 2021, Plaintiff filed a separate Complaint in Riverside County Superior Court, Case
17 No. CVRI2103478 for enforcement under the Private Attorneys General Act, California Labor Code §
18 2698, *et seq.* (“PAGA Action”). On January 20, 2022, the Class Action and PAGA Action were
19 consolidated. LFJ Dec., ¶ 15.

20 Plaintiff commenced written discovery in October 2021. Before responding to discovery, the
21 Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally
22 exchange additional documents and data points subject to the mediation privilege, including but not
23 limited to, the Class Members’ time data and certain payroll data points. LFJ Dec., ¶ 16.

24 On December 4, 2023, the Parties participated in a full day mediation with Paul Grossman, Esq.,
25 a mediator of wage and hour class and PAGA actions. The mediation concluded with a settlement after
26 both sides agreed to a Mediator’s proposal, which was subsequently memorialized in the form of a
27 Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement
28 agreement, which is the subject of the instant motion. LFJ Dec., ¶ 17.

1 On October 30, 2024, this Court granted preliminary approval of the Settlement. LFJ Dec., ¶ 5.
2 On December 6, 2024, the Administrator mailed Notice Packets to all 3,120 members of the Class via
3 U.S. First Class Mail. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45)
4 day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the
5 Settlement. The response from the Settlement Class to the Settlement was outstanding – 99.97% of the
6 Class Members are participating in the Settlement. Apex Dec., ¶ 14.

7 **III. THE SETTLEMENT BEFORE THE COURT**

8 The Court preliminarily approved a Gross Settlement Amount of Two Million Dollars and Zero
9 Cents (\$2,000,000.00) based on a total of an estimated 54,594 Pay Periods worked by the Class between
10 December 28, 2016, and October 31, 2023. The Gross Settlement Amount shall be used: (1) to satisfy
11 Individual Class Payments; (2) to satisfy the Class Representative Service Payment; (3) to satisfy the
12 Class Counsel Fees and Litigation Expenses Payment; (4) to satisfy the PAGA Penalties; and (5) to
13 satisfy the Administration Expenses Payment incurred in this action. LFJ Dec., ¶ 18.

14 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
15 Settlement Fund in three installments as follows: one-third of the Gross Settlement Amount
16 (\$666,666.66) shall be transmitted to the Administrator within thirty (30) calendar days after the
17 Effective Date. Defendant shall transmit an additional one-third of the Gross Settlement Amount
18 (\$666,666.66) no later than March 31, 2025. Finally, Defendant shall transmit the remaining one-third
19 of the Gross Settlement Amount (\$666,666.66) no later than March 31, 2026. Agreement at § 4.2. The
20 Administrator shall mail the Individual Class Payments and Individual PAGA Payments to the
21 Settlement Class Members and/or Aggrieved Employee last known mailing address within fourteen (14)
22 calendar days after Defendant funds the Gross Settlement Amount in an amount sufficient to cover the
23 Individual Class Payments. Agreement at § 4.3. Each Settlement Class Member's final Individual Class
24 Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of
25 Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number
26 of Workweeks worked by each individual Participating Class Member. Individual Class Payments for
27 members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed
28 to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata

1 basis. Agreement at § 3.2.4. The average estimated Individual Class Payment is \$265.79. Apex Dec ¶
2 16.

3 In exchange for valuable consideration, as of the funding of the Gross Settlement Amount,
4 Plaintiff and the Settlement Class Members will release the Released Parties from the Released Class
5 Claims for the Class Period. Agreement at §§ 1.32, 5.2. The Plaintiff and the State of California will
6 release the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement at §§
7 1.33, 5.3.

8 Apex Class Action LLC is the Court-approved Administrator for this action. Administration
9 Expenses Payment includes those expenses of effectuating and administering the Settlement, i.e., the
10 costs incurred to the Administrator, the costs of giving notice to the Class, the costs of administering
11 and disbursing the Individual Class Payments, and the Administration Expenses Payment approved for
12 reimbursement by the court. The Administration Expenses Payment is \$21,000. Apex Dec, ¶ 19. These
13 expenses shall be paid from the Gross Settlement Amount. Agreement, § 1.3.

14 Subject to Court approval, Class Counsel seeks a Class Counsel Fees and Litigation Expenses
15 Payment in the amount of \$730,000.00, comprised of attorneys' fees of \$700,000.00 (35% of the Gross
16 Settlement Amount) and up to \$30,000.00 for actually incurred litigation expenses. Class Counsel's
17 award for attorney's fees will be divided between Class Counsel as follows: 85% to Lawyers for Justice,
18 PC, 7.5% to JCL Law Firm, APC and 7.5% to Zakay Law Group, APLC. Agreement, § 1.7. The
19 Agreement also provides for a Class Representative Service Payment in the amount of \$20,000 for
20 Plaintiff, in consideration of her time, risk, and efforts as the Class Representative on behalf of the
21 Settlement Class. Agreement at § 3.2.1.

22 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
23 and should be granted final approval. This is evidenced by the high approval of the Settlement by the
24 Settlement Class, the absence of any objections to the Settlement and the average Individual Class
25 Payment of **\$265.79**. Apex Dec., ¶ 16, 15, LFJ Dec., ¶ 19.

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

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

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

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

27 The essential evaluation is whether, given the risks of litigation and the range of probable results,
28 the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. Here, the facts and

1 circumstances compel the conclusion that the proposed settlement satisfies that standard.

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

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

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

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

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

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

27 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
28 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel

1 assessed the value of the class claims using data and documents provided by Defendant through
2 informal discovery. Class Counsel obtained time and payroll records for the Class Members, aggregate
3 workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class
4 Members, average hourly rate for the Class Members, average shift length for Class Members, number
5 of current Class Members, number of former Class Members who were employed during the Class
6 Period, and copies of applicable handbooks, policies, and agreements. Class Counsel analyzed
7 Defendant's time and payroll data to formulate damage models estimating Defendant's liability
8 exposure. Class Counsel's investigation, research, experience, and damage models informed and
9 guided the mediated negotiations that resulted in this settlement. Accordingly, Class Counsel fully
10 understood the strengths and weaknesses of the class claims before the parties reached a settlement.
11 LFJ Dec., ¶¶ 20-25.

12 **B. The Parties Settled At Mediation.**

13 On December 4, 2023, the Parties conducted a full day of mediation with Paul Grossman, Esq.,
14 an experienced wage and hour mediator. Mediator Grossman helped manage the Parties' expectations
15 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
16 progress with Mediator Grossman's assistance. Namely, the Parties exchanged information regarding
17 their respective claims and defenses, including their respective evaluation of the damages. After more
18 than eight hours of arm's length and adversarial negotiations, the mediation concluded with a settlement
19 after the Parties agreed to a Mediator's proposal. The amount of the service award was not negotiated
20 until after the parties agreed to the Gross Settlement Amount and many other terms. LFJ Dec., ¶ 26.

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

22 Class Counsel in this matter has extensive class action experience in multiple fields and has
23 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
24 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
25 similar wage and hour class actions throughout the State of California. As such, courts throughout
26 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
27 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
28 is fair, adequate, and reasonable and in the best interests of the Class. LFJ Dec., ¶¶ 38-44, Declaration

of Jean-Claude Lapuyade (“JCL Dec.”) ¶¶ 4-8; Declaration of Shani Zakay (“Zakay Dec.”) ¶ 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. As of the filing of this motion, only one of the 3,120 members of the Settlement Class opted-out of the Settlement. Moreover, there are zero objections. Stated differently, 99.97% of the Settlement Class chose to participate in the Settlement. Apex Dec., ¶ 14; LFJ Dec., ¶ 8.

The high 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.”); *Stoetznner v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d 115, 118-119 (29 objections out of 281 member class “strongly favors settlement”); *Laskey v. Int’l Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed settlement should be considered when determining fairness of settlement.). Consequently, Class Counsel respectfully requests the Court to follow the high approval of the Settlement Class and grant final approval of the Settlement.

E. The Gross Settlement Amount is Fair and Reasonable.

The Gross Settlement Amount of Two Million Dollars and Zero Cents (\$2,000,000.00) 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 Settlement Class and need not necessarily obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250. While the Gross Settlement Amount of Two Million Dollars and Zero Cents (\$2,000,000.00) represents

1 a discount on Defendant's potential exposure if Plaintiff established liability on all claims and was
2 awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1)
3 the formidable defenses raised by Defendant presented a risk that could award significantly less in
4 damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may require many more
5 years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class. LFJ
6 Dec., ¶ 27.

7 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
8 reasonable considering the nature and magnitude of the claims being settled and the various potential
9 impediments to recovery. Class Counsel developed varied economic damages models measuring
10 Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various
11 models were informed by Class Counsel's investigation, including the analysis of time and payroll data.
12 As detailed in greater depth during the preliminary approval process, Class Counsel projected a range
13 of Defendant's liability exposure for the claims asserted on behalf of the Settlement Class. The Gross
14 Settlement Amount represents between 24.45% and 85.91% of Defendant's *class-wide* liability
15 exposure as estimated by Class Counsel at the time of mediation. LFJ Dec., ¶ 28.

16 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
17 for the Northern District of California granted final approval in a wage and hour misclassification action
18 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
19 the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
20 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing "roughly one-sixth of the
21 potential recovery." Given the amount of the settlement here as compared to potential value of the
22 claims, particularly the strength of Plaintiff's action, the settlement is clearly fair and reasonable.³

23 The calculation methodology used to compensate the Settlement Class for the alleged damages

24 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
25 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
26 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
27 *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); see also
28 *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.").

1 was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
2 impartial. The calculation methodology is based on the number of Workweeks each Settlement Class
3 Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement
4 Class Members is established through Defendant's data and documented compensation records. The
5 Administrator is responsible for calculating the Individual Class Payments (a) dividing the Net
6 Settlement Amount by the total number of Workweeks worked by all Participating Class Members
7 during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.
8 This process establishes an objectively fair and reasonable procedure to compensate the Settlement
9 Class. Agreement, § 3.2.4.

10 The settlement also provides significant relief to the Settlement Class Members. After deductions
11 for the Class Counsel Fees and Litigation Expenses Payment, Administration Expenses Payment, the
12 PAGA Penalties, and the Class Representative Service Payment, the Net Settlement Amount is currently
13 estimated to be \$829,000.00. Apex Dec., ¶ 15. This will result in an average Individual Class Payment
14 of **\$265.79**, with a high payment of **\$2,359.01**, and a low payment of **\$6.28**. Apex Dec., ¶ 16. This
15 average net recovery is on par with many wage and hour class action settlements approved by California
16 state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento
17 County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No.
18 BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United*
19 *Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of
20 approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County
21 Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No.
22 CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65);
23 *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of
24 approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super.
25 Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No.
26 BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must
27 separately fund its share of any employer side payroll taxes. Agreement, §§ 1.9, 3.1.

28 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.

1 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
2 experienced counsel, the settlement is fair and reasonable and is therefore entitled to final approval. LFJ
3 Dec., ¶ 29.

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

5 Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore
6 the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or,
7 at least, drastically undercut Plaintiff's claims. LFJ Dec., ¶ 30. As the federal court in *Glass v. UBS*
8 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
9 litigation:

10 ***In light of the above-referenced uncertainty in the law, the risk, expense,***
11 ***complexity, and likely duration of further litigation likewise favors the***
12 ***settlement.*** Regardless of how this Court might have ruled on the merits of
13 the legal issues, the losing party likely would have appealed, and the parties
14 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.

15 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
16 certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176
17 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class
18 certification because employees' declarations attesting to having taken meal and rest breaks
19 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*
20 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification
21 of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
22 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
23 period claims based on the predominance of individual issues). LFJ Dec., ¶ 31.

24 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of
25 Defendant's liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*
26 *Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a
27 wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077,
28 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly

1 individualized questions of fact not susceptible to class treatment. LFJ Dec., ¶ 32.

2 Finally, even if a class is certified and Defendant is found liable for the class claims alleged,
3 post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and
4 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*
5 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded
6 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and
7 directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber*
8 *Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification
9 action). LFJ Dec., ¶ 33.

10 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
11 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
12 factor favoring settlement. LFJ Dec., ¶ 34.

13 Although Plaintiff is confident about the strength of Plaintiff's claims, Plaintiff nevertheless
14 recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or
15 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
16 drastically affect the value of Plaintiff's claims and, in fact, already has. LFJ Dec., ¶ 35.

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

20 **Plaintiffs may have a strong case, but the risks inherent in continued**
21 **litigation are great.** Defendant strongly deny liability for Plaintiffs'
22 principal claim that full-time Service Associates were misclassified as
23 exempt. In addition to the uncertainties raised by Defendant at the
24 preliminary stage regarding Plaintiffs' chance of success in this case,
25 Defendant notes that the question of an employer's duty to provide rest and
26 meal periods is an open one, signaling even less certainty for
27 Plaintiffs.....[T]he **Gross Settlement Amount and the Class Members'**
28 **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.)

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 Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a bond and appeal. A post-judgment appeal by Defendant 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 for three or more years in the future. LFJ Dec., ¶ 36.

The Class Representative and Class Counsel recognize the expense and length of a trial against Defendant 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 recognizes 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. Class Representative and Class Counsel believe that the Settlement confers substantial monetary and 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. LFJ 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 Penalties in the amount of \$400,000.00 which is approximately 20% 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 Penalties (\$300,000.00) will be paid to the LWDA (“LWDA PAGA Payment”) with the remaining twenty-five percent (25%) of the PAGA Penalties (\$100,000.00) 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. LFJ Dec., ¶ 45.

Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the LWDA. LFJ Dec., ¶¶ 6-7, 46. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Penalties.

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: January 23, 2025

JCL LAW FIRM, APC

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8 By: 
9 Jean-Claude Lapuyade, Esq.
Attorneys for Plaintiff
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