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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

KEVIN WYATT and KIMBERLEE
CALIFANO, individuals, and on behalf of all
persons similarly situated,

Plaintiffs,

v.

BH-SD OPCO, LLC, dba ALVARADO
PARKWAY INSTITUTE BEHAVIORAL
HEALTH SYSTEMS, a Delaware Limited
Liability Company; and DOES 1-50,
Inclusive,

Defendants.

Case No. 37-2021-00021168-CU-OE-CTL

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

Date: January 17, 2025
Time: 9:30 a.m.

Judge: Hon. Gregory W. Pollack
Dept.: C-71

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I. INTRODUCTION

Plaintiff KEVIN WYATT (“Plaintiff Wyatt”) and Plaintiff KIMBERLEE CALIFANO (“Plaintiff Califano”) (hereinafter “Plaintiffs”) seek final approval of the Stipulation for Class and PAGA Action Settlement and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for 1,316 Participating Class Members employed by BH-SD OPCO, LLC dba Alvarado Parkway Institute Behavioral Health Systems (“Defendant”) during the Class Period. Plaintiffs and Class Counsel also seek approval of the Class Counsel Fees Payment in the amount of \$233,333.33 (one-third of the Gross Settlement Amount) and up to \$32,500.00 for the Class Counsel Expenses Payment (hereinafter collectively, “Class Counsel Fees and Expenses”).²

An objective evaluation of the proposed settlement of \$700,000.00 (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, guided by the wisdom and experience of Tripper Ortman, Esq., an experienced mediator. JCL Dec., ¶ 11. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately \$351,166.67, an average Individual Class Payment of **\$266.44**, high payment of **\$1,023.99**, and a low payment of **\$0.44**. Aggrieved Employees will receive an estimated average Individual PAGA Payment of **\$13.59**, a high payment of **\$36.20**, and a low payment of **\$0.06**. Declaration of Kathrine Rovertoni (“Apex Dec.”), ¶¶ 14-17.

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*). As discussed below, the proposed Settlement satisfies all criteria for final settlement approval under California law and falls well within the range of reasonableness. JCL Dec., ¶¶ 12-13.

II. OVERVIEW OF THE LITIGATION

Defendant is a behavioral health system that operates outpatient psychiatric, and substance use disorder services throughout California, including San Diego County, where Plaintiffs worked. JCL

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 Currently Class Counsel’s actually incurred litigation expenses are \$26,899.19 Class Counsel will provide an updated total at the time of hearing on this motion.

Dec., ¶ 13. Plaintiff Wyatt was employed by Defendant from September of 2015 through July of 2020 as a Housekeeper. Declaration of Kevin Wyatt (“Wyatt Dec.”) at ¶ 3. Plaintiff Califano has been employed by Defendant since 2005 as a Staffing Coordinator and Purchasing Agent in the Nursing Department. Declaration of Kimberlee Califano (“Califano Dec.”) at ¶ 3. At all times during their employment, Plaintiffs earned hourly wages and were entitled to legally compliant meal and rest periods, and minimum, regular and overtime wages for all hours worked. Califano Dec., ¶ 3; Wyatt Dec., ¶ 3. Throughout their employment, Plaintiffs were subject to Defendant’s policies and procedures. JCL Dec., ¶ 14.

Generally, Plaintiffs claim that Defendant failed to provide compliant meal and rest periods, failed to pay for all time worked, failed to pay overtime and meal period premiums at the correct regular rate of pay, failed to furnish accurate itemized wage statements, failed to reimburse for mandatory business expenses, and failed to pay all wages upon separation. Defendant denies liability for each of Plaintiffs’ claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs’ claims, including but not limited to, compliant wage statements, compliant reimbursement practices, and timely payment of all wages due upon separation of employment. JCL Dec., ¶ 15.

On May 12, 2021, Plaintiff Wyatt served Defendant and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). On April 29, 2024, Plaintiff Wyatt served Defendant and the LWDA with an Amended PAGA Notice. Plaintiff Wyatt’s PAGA Notices 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 his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 16.

On May 12, 2021, Plaintiff Wyatt filed a class action complaint in the San Diego County Superior Court, Case No. 37-2021-00021168-CU-OE-CTL (the “Action”) alleging various causes of action for violations of the California Labor Code. JCL Dec., ¶ 17.

On February 4, 2022, Plaintiff Califano filed a class action complaint in San Diego County Superior Court, Case No. 37-2022-00004654-CU-OE-CTL alleging the same causes of action as those

1 alleged by Plaintiff Wyatt, but excluding a cause of action for Failure to Pay Wages Due and Payable
2 Twice Monthly (“*Califano* Action”). In November of 2022, Plaintiffs’ cases were consolidated by the
3 Court, with Plaintiff Wyatt’s case being the lead case. JCL Dec., ¶¶ 18-19.

4 On October 20, 2023, Plaintiffs filed a First Amended Complaint (“Operative Complaint”) in
5 the instant action, alleging an additional cause of action for violations of the PAGA. JCL Dec., ¶ 20.

6 After engaging in written discovery, the Parties agreed to mediate this action. To prepare for
7 mediation, the Parties agreed to informally exchange documents and data points subject to the
8 mediation privilege, including but not limited to, the Class Members’ time data and certain payroll data
9 points. As discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Baker Tilly US, LLP
10 (“Baker Tilly”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 21.

11 On April 14, 2023, the Parties participated in an all-day private mediation presided over by
12 Tripper Ortman, Esq. (the “Mediator”), an experienced mediator of wage and hour class and PAGA
13 actions. At the mediation, the Parties were unable to reach a settlement. The Parties continued settlement
14 negotiations, and at the recommendation of the Mediator, enlisted Hon. Mitchel Goldberg (Ret.) to
15 review Defendant’s financials and assess its ability to pay a monetary settlement. With the assistance of
16 the Mediator and Judge Goldberg’s evaluations, the Parties ultimately reached the settlement which was
17 subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties
18 drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL
19 Dec., ¶ 22.

20 On August 16, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶¶ 5,
21 23. Shortly thereafter, on September 20, 2024, the Settlement Administrator mailed Notice Packets to
22 all 1,318 Settlement Class members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a
23 forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or
24 objections to the Settlement. Agreement, ¶ I(HH). The response from the Class to the Settlement was
25 outstanding – 99.84% of the Class Members are participating in the Settlement. Apex Dec., ¶ 13.

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1 **III. THE SETTLEMENT BEFORE THE COURT**

2 The Court preliminarily approved a Gross Settlement Amount of \$700,000.00. The Gross
3 Settlement Amount is all-in with no reversion to Defendant. Agreement, ¶ I(P). The Net Settlement
4 Amount shall be used for the payment of all Individual Class Payments to satisfy all Released Class
5 Claims. The Settlement Administrator will calculate Individual Class Payments by: (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
8 Workweeks. Agreement, ¶ III(A)(1)(e). The Settlement Administrator estimates the average Individual
9 Class Payment is **\$266.44**, the highest Individual Class Payment is **\$1,023.99**, and the lowest Individual
10 Class Payment is **\$0.44**. Apex Dec., ¶ 15.

11 In exchange for valuable consideration, as of the funding of the Gross Settlement Amount, the
12 Settlement Class Members will release the Released Parties from the Released Class Claims for the
13 Class Period. Agreement, ¶ V(A).

14 Apex Class Action LLC was appointed as the Settlement Administrator for the class. The
15 Settlement Administration Cost is \$13,000.00. Apex Dec., ¶ 14. These expenses shall be paid from the
16 Gross Settlement Amount. Agreement, ¶ III(A)(1)(c).

17 Subject to Court approval, Class Counsel shall seek an award of Class Counsel Fees and Expenses
18 equal to one-third of the Gross Settlement Amount estimated to be at least \$233,333.33 and up to
19 \$32,500.00. Agreement, ¶ III(A)(1)(b).

20 Subject to Court approval, the Agreement provides for Class Representative Payments in the
21 amount of \$10,000.00 for each Plaintiff in consideration of their time, risk, and efforts as the Class
22 Representatives on behalf of the Settlement Class. Agreement, ¶¶ I(M), III(A)(1)(a).

23 As set forth in the Agreement, \$50,000.00 of the Gross Settlement Amount has been allocated for
24 civil penalties under the PAGA ("PAGA Penalties"). Seventy-Five percent of the PAGA Payment
25 (\$37,500.00) will be paid to the California Labor Workforce and Development Agency ("LWDA
26 Payment"). The Settlement Administrator shall distribute the remaining 25% of the PAGA Payment
27 (\$12,500.00) to the Aggrieved Employees ("Individual PAGA Payments"). Agreement, ¶ I(HH);
28 III(A)(1)(d).

1 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
2 and should be granted final approval. Given the complexities of this case, the defenses asserted, and the
3 uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed
4 settlement is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 24-25.

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

7 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
8 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
9 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
10 *v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000).

11 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
12 action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) *citing*
13 *Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). The
14 court must decide whether the proposed settlement falls within the range of reasonable settlements,
15 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
16 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*
17 *Computer*, 91 Cal.App.4th 224, 246 (2001). In *Wershba*, appellants argued that the settlement was too
18 low given the “clear” liability, however, the Court rejected this argument and held that “the merits of
19 the underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba*,
20 *supra*, at 246; *see also 7-Eleven, supra*, at 1150. In these cases, Courts have repeatedly emphasized that
21 there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91
22 Cal.App.4th at 245. The presumption of fairness exists where: (1) investigation and discovery are
23 sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm’s-
24 length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
25 small. *Dunk*, 48 Cal. App. 4th at 1801, *citing Newberg & Conte, Newberg on Class Actions*, (3d ed.
26 1992) §11.41, pp. 11-91. Here, all of these factors support a presumption of fairness.

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

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

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

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

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

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

26 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
27 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
28 assessed the value of the class claims using data and documents provided by Defendant through formal

1 and informal discovery. Class Counsel obtained time, payroll, and policy records for the Class
2 Members, aggregate workweek and pay period data, and copies of applicable employment policies
3 containing, *inter alia*, compensation, timekeeping, and meal and rest period policies. Class Counsel
4 retained Baker Tilly to analyze Defendant's time and payroll data to formulate damage models
5 estimating Defendant's liability exposure. Class Counsel's investigation, research, experience, and
6 damage model informed and guided the mediated negotiations that resulted in this settlement. JCL
7 Dec., ¶ 26-32.

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

9 The Settlement is the product of a mediation session with an experienced mediator and
10 subsequent negotiations over the terms of the Settlement. The negotiations were adversarial, conducted
11 at arms-length and tempered by the efforts of both sides to serve the interests of their clients. JCL Dec.,
12 ¶ 33-35.

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

14 Class Counsel in this matter has extensive class action experience in multiple fields and has
15 represented tens-of-thousands of persons in class actions. Class Counsel's experience is summarized
16 in their concurrently filed declarations. Class Counsel has concluded the settlement is fair, adequate,
17 and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 10, 36-42; Declaration of Shani O.
18 Zakay ("Zakay Dec.") ¶ 4.

19 **D. The Settlement Class Responded Positively to the Settlement**

20 The reaction of the Settlement Class unequivocally supports approval of the Settlement. To date,
21 only two of the 1,318 members of the Settlement Class opted-out of the Settlement. Moreover, there
22 are zero objections. Stated differently, 99.84% of the Settlement Class chose to participate in the
23 Settlement. JCL Dec., ¶ 11; Apex Dec., ¶¶ 11-13.

24 The high approval by the Settlement Class strongly supports a finding that the Settlement is fair,
25 reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d
26 164, 175 (S.D.N.Y. 2000) Consequently, Class Counsel respectfully request the Court to follow the
27 high approval of the Settlement Class and grant final approval of the Settlement.

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

2 Although Plaintiffs and Class Counsel believe that this case has merit, they recognized the
3 potential risks both sides would face if litigation of this action continued. JCL Dec., ¶¶ 43-44. As the
4 federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties
5 similar to those in this litigation:

6 ***“In light of the above-referenced uncertainty in the law, the risk, expense,***
7 ***complexity, and likely duration of further litigation likewise favors the***
8 ***settlement.*** Regardless of how this Court might have ruled on the merits of
9 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.”

10 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
11 certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176
12 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court’s denial of class
13 certification because employees’ declarations attesting to having taken meal and rest breaks
14 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*
15 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification
16 of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
17 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
18 period claims based on the predominance of individual issues). JCL Dec., ¶ 45.

19 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of
20 Defendant’s liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*
21 *Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a
22 wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088
23 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized
24 questions of fact not susceptible to class treatment.”). JCL Dec., ¶ 46.

25 Finally, even if a class is certified and Defendant is found liable for the class claims alleged,
26 post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs and
27 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*
28 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded

1 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and
2 directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber*
3 *Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification
4 action). JCL Dec., ¶ 47.

5 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
6 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
7 factor favoring settlement. JCL Dec., ¶ 48.

8 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
9 recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat or
10 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
11 drastically affect the value of Plaintiffs' claims and, in fact, already has. JCL Dec., ¶ 49.

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

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

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

26 **The potential complexity and possible duration of trial also weigh in**
27 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
28 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);

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

5 Class Representatives and Class Counsel believe that the Settlement confers substantial
6 monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class
7 Representatives and Class Counsel have determined that the Settlement set forth in the Agreement is
8 in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval.
9 JCL Dec., ¶ 50.

10 **F. The Gross Settlement Amount is Fair and Reasonable.**

11 The Gross Settlement Amount of \$700,000.00 in this case is fair and well within the range of
12 recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement
13 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the
14 various potential impediments to recovery. Class Counsel developed varied economic damage models
15 measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation.
16 The various models were informed by Class Counsel's investigation, including the analysis of a
17 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
18 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on
19 behalf of the Settlement Class. The Gross Settlement Amount represents between approximately 7.74%
20 of Defendant's maximum liability and approximately 33.06% of Defendant's *class-wide* liability
21 exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 51.

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

1 The settlement provides significant relief to the Settlement Class Members. The average
2 settlement payment is approximately **\$266.44**, the highest is approximately **\$1,023.99**, and the lowest
3 is approximately **\$0.44**. Apex Dec., ¶ 15. This average net recovery is greater than many wage and
4 hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99*
5 *Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of
6 approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (LA. County Super. Ct.) (average net
7 recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
8 County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department*
9 *Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately
10 \$90).

11 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
12 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
13 experienced counsel, the settlement is entitled to final approval. JCL Dec., ¶ 52.

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

16 Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of
17 the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*,
18 No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
19 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
20 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
21 in the range of zero to two percent of the total settlement).

22 Here, Plaintiffs and Defendant negotiated a good faith PAGA Penalties in the amount of
23 \$50,000.00 which is 7.14% of the Gross Settlement Amount. This amount falls well within the range
24 of approved PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment (\$37,500.00) will be
25 paid to the LWDA ("LWDA PAGA Payment") with the remaining twenty-five percent (25%) of the
26 PAGA Penalties (\$12,500.00) to be distributed to the Aggrieved Employees ("Individual PAGA
27 Payment"), which is within the range of PAGA Penalties approved by courts and should be approved.
28 JCL Dec., ¶ 53.

Further, on July 3, 2024, and on December 20, 2024, Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with the LWDA, and final approval. JCL Dec., ¶¶ 6-7, 54. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Penalties.

VII. CLASS COUNSEL’S REQUEST FOR FEES AND EXPENSES PAYMENT

As part of the settlement, the parties agreed to a Class Counsel Fees and Expenses Payment of \$233,333.33 (one-third of the Gross Settlement Amount) and up to \$32,500.00. The requested attorneys’ fees equal to one-third of the Gross Settlement Amount is fair compensation and, respectfully, should be approved. Class Counsel undertook complex, risky, and time-consuming wage and hour litigation on a contingent basis. Further, the Class Counsel Fees Payment is within the historically recognized range attorneys’ fees awarded in common fund class action settlements – between 25% and 50% – and is supported by Class Counsel’s lodestar cross-check with a reasonable 1.65 multiplier. That is below the 2.13 multiplier approved by the Supreme Court in *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, with additional work to be performed, and within the recognized multiplier range of between 2 and 4³. Thus, the reasonableness of the requested Class Counsel Fees and Expenses Payment are confirmed by reference to the lodestar with a reasonable multiplier with significant additional work still to be performed. JCL Dec., ¶¶ 55-63.

A. Common Fund

Courts have long recognized that when class counsel’s efforts result in the creation of a common fund that benefits plaintiffs and unnamed class members, class counsel have an equitable right to be compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (“recogniz[ing] consistently that a litigant or a lawyer who recovers a common fund...is entitled to a reasonable attorney’s fee from the fund as a whole”); *Laffitte*, 1 Cal. 5th at 488-89 (common fund doctrine “long recognized” under California law). The common fund doctrine rests on the understanding that attorneys should normally be paid by their clients and that, unless attorneys’ fees

³ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with 2 multiplier); *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 255 (2001) (“multipliers can range from 2 to 4 or even higher.”); *In re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as “fair and reasonable”); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 as well within the approved range of 2 to 4).

1 are paid out of the common fund, those who benefit from the fund will be “unjustly enriched.” *Boeing*,
2 444 U.S. at 478.

3 As noted above, in *Laffitte*, the California Supreme Court upheld the trial court’s award of
4 33.33% of the settlement amount of \$19 million dollars with a 2.13 multiplier and affirmed that
5 “empirical studies show the percentage method with a lodestar cross-check is the most prevalent form
6 of fee method in practice.” *Laffitte*, 1 Cal. 5th at 496-97. In fact, courts have historically awarded
7 between 25% and 50% of the common fund as attorneys’ fees class action settlements. *In re Warner*
8 *Communications*, 618 F.Supp. 735, 749-50 (S.D.N.Y 1985).

9 Here, the fairest way to calculate a reasonable fee when contingency-fee litigation has produced
10 a fixed settlement amount for the Settlement Class Members is by awarding Class Counsel a percentage
11 of the total settlement sum. *See, e.g., In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 942
12 (9th Cir. 2011). More importantly, a fee award under the common fund method here would achieve the
13 two underlying goals of the common fund doctrine by: (1) equitably requiring the beneficiaries of the
14 common fund to pay their pro rata share of fees incurred in creating the fund; and (2) providing an
15 incentive to attract competent counsel to handle wage and hour class actions, which California courts
16 recognize as a fundamental tool to ensure the effective enforcement of the Labor Code and minimum
17 labor standards. *See, e.g., Gentry v. Super. Ct.*, 42 Cal. 4th 443, 455-56 (2007) (overruled on other
18 grounds by *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014) (emphasizing the
19 indispensable value of private enforcement of California’s wage-and-hour laws through class actions).

20 The Agreement provides for payment of the Class Counsel Fees and Expenses Payment from the
21 common fund. Accordingly, it is well within the Court’s discretion to award fees to Class Counsel
22 under the common fund doctrine. Class Counsel requests Class Counsel Fees in the amount of
23 \$233,333.33 (one-third of the Gross Settlement Amount). Class Counsel’s request is consistent with
24 many fee awards in similar wage and hour class actions. Moreover, the requested attorneys’ fees are
25 in the middle of historically recognized range of attorneys’ fees awarded in common fund settlements.
26 JCL Dec., ¶ 64.

27 The Class Counsel Fees Payment request should be awarded based upon the Gross Settlement
28 Amount in accordance with *Laffitte*, i.e., percentage of the fund with a lodestar cross check. As further

1 explained below, the reasonableness of the requested fees of \$233,333.33 is further supported by the
2 lodestar cross-check. JCL Dec., ¶ 65.

3 **B. Class Counsels' Lodestar Supports the Requested Attorneys' Fees**

4 Class Counsel's lodestar to date is \$141,106.50 *exclusive of costs*, with significant work
5 remaining. JCL Dec., ¶¶ 55-63. Thus, Class Counsel's fee request is equal to Class Counsel's lodestar
6 with a 1.65 multiplier – below the 2.13 multiplier approved in *Laffitte* – is well within the recognized
7 multiplier range between 2 and 4. See *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202
8 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of
9 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal.
10 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

11 Because the Settlement in this case is a pure common fund case, and the percentage of the fund
12 is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award based
13 upon the percentage of the common fund. Moreover, Class Counsel's lodestar supports the requested
14 Class Counsel Fees Payment with a multiplier well within the recognized range reasonableness, and in
15 fact, below what the California Supreme Court approved in *Laffitte*. JCL Dec., ¶ 68.

16 Although no rigid formula applies, an analysis of each of the following “basic factors” that
17 California courts typically consider further supports the reasonableness of a fee request: (1) the result
18 class counsel obtained; (2) the time and labor required of the attorneys; (3) the contingent nature of the
19 case and the delay in payment to class counsel; (4) the extent to which the nature of the litigation
20 precluded other employment by class counsel; (5) the experience, reputation, and ability of the attorneys
21 who performed the services, the skill they displayed in the litigation, and the novelty, complexity and
22 difficulty of the case; and (6) the informed consent of the clients to the fee agreement. *Serrano v. Priest*,
23 20 Cal. 3d 25, 49 (1977); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1810 n.2. Those factors support
24 Class Counsel's request and are addressed in more detail in Counsel's declarations submitted
25 concurrently herewith. In short: (1) Considering the issues presented in the case, the Gross Settlement
26 Amount of \$700,000.00 is an excellent result for the Settlement Class, (2) Collectively, Class Counsel
27 worked hard on this case and, expended approximately 253.9 hours in the prosecution of this litigation
28 in the forty-two months since it was filed for a total lodestar of \$141,106.50, (3) Class Counsel

1 undertook this litigation on a contingent-fee basis, assuming a significant risk that the litigation would
2 yield no recovery after many years of work, (4) Class Counsel negotiated a one-third contingency fee
3 arrangement, which is a reasonable arrangement to obtain competent counsel in the marketplace for
4 representation in wage and hour class actions of this nature, and it is only equitable that Settlement
5 Class who share in the excellent results achieved by this Settlement bear their pro rata share of the
6 attorney's fees award to Class Counsel, (5) Class Counsel possesses significant experience litigating
7 complex wage and hour class actions and the way this Settlement was achieved is demonstrative of the
8 highly efficient way this litigation was managed and resolved (*See* Class Counsel's declarations for a
9 detailed outline of their skills and experience), and (6) Class Counsel's hourly rates are set forth in the
10 concurrently filed declarations of Jean-Claude Lapuyade, Esq., and Shani Zakay, Esq. are well within
11 the range of rates billed by comparable attorneys in this market and reasonably compare with rates
12 approved by other trial courts in wage and hour class action litigation. JCL Dec., ¶¶ 69-83; Zakay Dec.,
13 ¶ 5-7.

14 **C. Class Counsel's Expenses**

15 Moreover, common fund fee and expense awards include counsel's incurred expenses because
16 those who benefit from their effort should share in the cost. *See Rider v. City of San Diego*, 11 Cal.
17 App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is
18 whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See*
19 *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

20 As of the date of this filing, Class Counsel has incurred a total of \$26,899.19 litigating this action.
21 All of Class Counsel's out-of-pocket expenses are the types of expenses normally charged to paying
22 clients including the following: filing fees; copying; postage; mediation fees; and expert costs, which
23 were all incurred during, and were necessary for the successful prosecution of, the litigation and,
24 therefore, should be reimbursed. JCL Dec. ¶¶ 8; 84-86; Zakay Dec., ¶¶ 7-8.

25 **D. Class Representative Payments Are Reasonable and Should be Approved**

26 Courts routinely approve service awards to compensate named plaintiffs for the services they
27 provide and the risks they incur during the class litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th
28 715, 726 (2004) The factors courts use in determining the amount of service awards include: (1) a

1 comparison between the service awards and the range of monetary recovery available to the class; (2)
2 time and effort put into the litigation; (3) whether the litigation will further the public policy underlying
3 the statutory scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, 175
4 Cal.App.4th 785, 804-805 (2009).

5 Regarding the amount of the requested award, courts frequently approve awards of \$7,500.00 or
6 more. *See In re Cellphone*, 186 Cal.App.4th 1380. The amount of the requested Class Representative
7 Payments to Plaintiffs for \$10,000.00 each is reasonable by reference to the amounts that California
8 courts (both federal and state) have repeatedly awarded in similar class action settlements. Further, the
9 unanimous consent by the Class Members favors the Court's approval of the requested Class
10 Representative Payments. Equally important, the time, effort, and services provided to the Settlement
11 Class justifies the requested Class Representative Payments. The Class Representatives performed
12 their duties to the Settlement Class admirably. Plaintiffs' work is summarized in his declaration filed
13 concurrently herewith. Plaintiffs assumed the serious risk of liability for Defendant's costs and
14 potentially fees if the case was unsuccessful. Nevertheless, Plaintiffs knowingly and voluntarily
15 undertook the risk to vindicate the rights of the Settlement Class. Wyatt Dec. ¶ 1-12; Califano Dec. ¶
16 1-12; JCL Dec., ¶ 87-91.

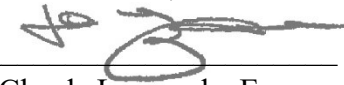
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1 **VIII. CONCLUSION**

2 Plaintiffs respectfully submit 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. Further, based on the
5 foregoing, Class Counsel respectfully requests approval of the Class Counsel Fees Payment and Class
6 Counsel Expenses Payment, comprised of (1) \$233,333.33 as compensation for Class Counsel Fees
7 Payment (one-third of the Gross Settlement Amount of \$700,000.00) and (2) Class Counsel Expenses
8 Payment of \$32,500.00 as supported by Class Counsel's billing records. Class Counsel and the Class
9 Representatives also respectfully request approval of the requested Class Representative Payments in
10 the amount of \$10,000.00 to each Plaintiff.

11
12 Dated: December 20, 2024

JCL LAW FIRM, APC

13 By: 
14 Jean-Claude Lapuyade, Esq.
15 Attorneys for Plaintiffs
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