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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

AMANDA POWELL, 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.

BRIARPATCH COOPERATIVE OF
NEVADA, INC., a California corporation;
BRIARPATCH FOOD CO-OP, an unknown
business entity; NEVADA COUNTY BRIARP,
an unknown business entity; and DOES 1
through 100, inclusive,

Defendants.

Case No. CU0001207

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

Date: December 19, 2025

Time: 10:00 a.m.

Judge: S. Robert Tice-Raskin

Dept.: 6

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1 I. INTRODUCTION

2 Plaintiff AMANDA POWELL (hereinafter "Plaintiff") seeks final approval of the Stipulation
3 of Class Action and PAGA Settlement and Release of Claims ("Agreement")¹, which if approved,
4 would provide valuable monetary relief for 711 Settlement Class Members who were employed by
5 Defendants BRIARPATCH COOPERATIVE OF NEVADA, INC., BRIARPATCH FOOD CO-
6 OP, and NEVADA COUNTY BRIARP (collectively, "Defendants") during the Class Period.

7 In an order dated June 20, 2025, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade ("JCL Dec."), ¶ 4. On July
9 11, 2025, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class
10 Mail. Declaration of Madely Nava ("Apex Dec."), ¶7

11 *The Class greeted news of the Settlement with unanimous approval as 100% of Class*
12 *Members have chosen to participate in the Settlement.*² Apex Dec., ¶ 14. There were zero opt-
13 outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The **100%** approval rate by the
14 Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 10.

15 The Agreement provides for a non-reversionary Maximum Settlement Fund of Nine
16 Hundred Eighty-Two Thousand Five Hundred Dollars and Zero Cents (\$982,500.00). An objective
17 evaluation of the proposed settlement confirms that the relief negotiated on behalf of the Settlement
18 Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and
19 non-collusive negotiations between experienced counsel that were presided over by Brandon
20 McKelvey, Esq., a highly regarded mediator with extensive experience in wage and hour class and
21 PAGA actions. After deducting any Court-approved Class Representative Enhancement, Class
22 Counsel Fees and Costs, the PAGA Payment, and Settlement Administration Costs, the Net
23 Settlement Amount of approximately \$545,010.00 shall be distributed to the Settlement Class
24 Members based on the number of Compensable Workweeks they worked while employed by
25 Defendants during the Class Period. JCL Dec., ¶ 10. The average Individual Settlement Payment
26

27 ¹ A true and correct copy of the Agreement is attached as Exhibit 1 to the Declaration of Jean-Claude Lapuyade filed
28 concurrently herewith. 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, 21 Notice Packets were deemed undeliverable.

1 to Settlement Class Members is estimated at approximately \$766.54, with the highest payment
2 estimated at approximately \$3,008.58. Apex Dec., ¶16. The average PAGA Individual Payment is
3 estimated at approximately \$33.16, with the highest payment estimated at approximately \$62.28.
4 Apex Dec., ¶18.

5 The relief offered by the Settlement is immediate and is particularly impressive when viewed
6 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).
7 Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
8 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and
9 uncertain litigation. JCL Dec., ¶ 12.

10 As discussed below, the proposed Settlement satisfies all criteria for final settlement approval
11 under California law and falls well within the range of reasonableness. Accordingly, the Class
12 Representative and Class Counsel respectfully request this Court grant final approval of the
13 Agreement and entry of the proposed Final Approval Order and Judgment. JCL Dec., ¶ 13.

14 **II. OVERVIEW OF THE LITIGATION**

15 Defendants own and operate grocery stores in California, including in Nevada County, where
16 Plaintiff worked. This action asserts claims on behalf of all individuals who are or were employed
17 by Defendants as non-exempt employees in the State of California during the Class Period. Plaintiff
18 was employed by Defendants as a non-exempt employee, from approximately August of 2021 to
19 January of 2023. At all times during her employment, Plaintiff earned an hourly wage and was
20 entitled to legally compliant meal and rest periods, and minimum, regular and overtime wages for
21 all hours worked. Throughout her employment, Plaintiff was subject to Defendants' policies and
22 procedures. JCL Dec., ¶ 14; Declaration of Amanda Powell (“AP Dec.”) at ¶ 1-5.

23 Generally, Plaintiff alleges that Defendants failed to include non-discretionary compensation
24 into the regular rate of pay for purposes of calculating overtime, meal period premiums, and sick
25 pay compensation, failed to provide legally compliant meal and rest periods, failed to pay for all
26 hours worked, and failed to reimburse for necessary business expenses. Defendants forcefully deny
27 liability for each of Plaintiff's claims. Further, Defendants assert that they fully complied with all
28 applicable employment laws and raised several other significant defenses to Plaintiff's claims,

1 including but not limited to, asserting that they paid employees for all hours worked, maintained
2 facially compliant meal and rest period policies, issued compliant wage statements, and timely paid
3 all wages when due. JCL Dec., ¶ 15.

4 On December 1, 2023, Plaintiff served Defendants and the Labor and Workforce
5 Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA
6 Notice set forth the facts and theories supporting Defendants' alleged violations of various
7 provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC")
8 Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys
9 General Act, California Labor Code Sections 2698 *et seq.* ("PAGA"). JCL Dec., ¶ 16.

10 On February 5, 2024, Plaintiff filed a putative class and PAGA representative action
11 Complaint in the Nevada County Superior Court, Case No. CU0001207. The claims for relief
12 Plaintiff asserted on behalf of herself and the putative class and aggrieved employee group are: (1)
13 Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California
14 Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor
15 Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194,
16 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and
17 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not
18 Timely Paid During Employment); (7) Violation of California Labor Code 226(a) (Non-compliant
19 Wage Statements); (8) Violation of California Labor Code 1174(d) (Failure to Keep Requisite
20 Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed
21 Business Expenses); (10) Violation of California Business & Professions Code §§ 17200 *et seq.*;
22 and (11) Violation of California Labor Code § 2698 *et seq.* (California Labor Code Private
23 Attorneys General Act of 2004). JCL Dec., ¶ 17.

24 Defendants filed an answer to the Complaint on March 25, 2024, asserting general and
25 affirmative defenses. JCL Dec., ¶ 18.

26 The Parties agreed relatively early to mediate the Action. In preparation for mediation, the
27 Parties engaged in informal discovery including Defendants' policies and practices regarding the
28 alleged violations, and time and pay data for a sample of Class Members. Class Counsel also

1 retained Berger Consulting Group ("BCG") to evaluate the Class Members' payroll and time data
2 and to assist in the development of various damage models. On November 11, 2024, the Parties
3 participated in a full day mediation under the guidance of an experienced wage and hour neutral,
4 Brandon McKelvey. Unable to resolve the case at the November 11, 2024, mediation, the Parties
5 exchanged further information and returned to mediation on December 2, 2024. On December 3,
6 2024, after arms-length negotiations and bargaining, the Parties reached an agreement to settle and
7 signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties
8 drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.
9 JCL Dec., ¶ 19.

10 On June 20, 2025, the Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4.
11 The Class Notice was mailed to all Class Members on July 11, 2025. Apex Dec., ¶7. As of the
12 August 25, 2025, deadline for submitting requests for exclusion or objections, the Settlement
13 Administrator received zero opt-outs and zero objections. Apex Dec., ¶¶11-12. The Settlement
14 Class thus consists of 711 participating Class Members, representing 100% of the total Settlement
15 Class Members. Apex Dec., ¶14.

16 **III. THE SETTLEMENT BEFORE THE COURT**

17 The Court preliminarily approved a Maximum Settlement Fund of Nine Hundred Eighty-
18 Two Thousand Five Hundred Dollars and Zero Cents (\$982,500.00) based on Defendants' initial
19 estimate that the Settlement Class would be comprised of approximately 675 individuals who
20 would have worked approximately 37,882 workweeks during the Data Period. After the Court
21 granted preliminary approval, Defendants confirmed the actual number of Class Members and
22 Compensable Workweeks and determined that analysis of the complete data set showed the
23 number of Compensable Workweeks during the Data Period was 45,707, which exceeded 110%
24 (41,671) of the initial approximation. Per the Agreement, Defendants elected to truncate the Class
25 Period as of June 30, 2024, rather than increase the Maximum Settlement Fund. JCL Dec., ¶ 20;
26 Apex Dec., ¶15. This resulted in a final Settlement Class of 711 Settlement Class Members who
27 worked a total of 41,665 Compensable Workweeks during the Class Period. Apex Dec., ¶15.

28 If the Court grants this motion for final approval, the Maximum Settlement Fund shall be

1 used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative
2 Enhancement; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Payment; and (5)
3 to satisfy the Settlement Administration Costs incurred in this action. Agreement at ¶55(i).

4 Defendants will fund the Settlement by transferring the Maximum Settlement Fund into a
5 Qualified Settlement Fund to be established by the Settlement Administrator in two separate
6 installments. Defendants will deposit Five Hundred Sixty-Seven Thousand Five Hundred and Ten
7 Dollars and Zero Cents (\$567,510.00) into the Qualified Settlement Fund within thirty (30)
8 calendar days after the Effective Date. Defendants will deposit the remaining amount of Four
9 Hundred Fourteen Thousand Nine Hundred Ninety Dollars and Zero Cents (\$414,990.00) into the
10 Qualified Settlement Fund within one hundred eighty (180) calendar days following the Effective
11 Date. Agreement at ¶55. The Settlement Administrator shall mail the Individual Settlement
12 Payments to the Settlement Class Members no later than fifteen (15) calendar days after
13 Defendants send the first installment of the Maximum Settlement Fund amount to Settlement
14 Administrator. Agreement at ¶55(d). The Settlement Administrator will calculate Individual
15 Settlement Payments by dividing the Net Settlement Amount by the total Compensable
16 Workweeks for all Settlement Class Members during the Class Period and multiplying the result
17 by each Settlement Class Member's Compensable Workweeks. Agreement at ¶55(b). The
18 estimated average Individual Settlement Payment is approximately \$766.54. Apex Dec., ¶ 16.

19 In exchange for the valuable consideration, as of the Effective Date and funding in full
20 by Defendants of the Maximum Settlement Fund, the Settlement Class Members will release the
21 Released Parties from the Class Released Claims as defined in the Agreement. Agreement at ¶ 8.
22 The Class Released Claims include all claims alleged in the Action and as defined in the
23 Agreement, including but not limited to violations of California Labor Code sections 201, 202,
24 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1194, 1197, 1197.1, 2802, 2804, and Business
25 and Professions Code section 17200, *et seq.*, and with respect to the statutory penalties claimed in
26 the Action, any source of obligation as a basis for claiming such penalties during the Class Period.
27 Agreement at ¶ 8.

28 ///

1 Similarly, upon the Effective Date and funding in full by Defendants of the Maximum
2 Settlement Fund, the Labor Workforce Development Agency ("LWDA"), State of California, and
3 Plaintiff as representative of and proxy for the LWDA, are deemed to release the Released Parties
4 from the PAGA Released Claims. Agreement at ¶ 28. The PAGA Released Claims include all
5 claims for civil penalties under the Labor Code pursuant to the Private Attorneys General Act that
6 were alleged in the PAGA Letter, the operative complaint in the Action, and/or claims for PAGA
7 penalties which reasonably could have been alleged based on the same set of operative facts pled
8 therein during the PAGA Period as described in the Agreement. Agreement at ¶ 28.

9 Apex Class Action, LLC was appointed as the Settlement Administrator for the Class. The
10 Settlement Administration Costs include those expenses of effectuating and administering the
11 Settlement, i.e., the costs incurred to the Administrator, the costs of giving notice to the Class, the
12 costs of administering and disbursing the Individual Settlement Payments, and the fees of the
13 Administrator approved for reimbursement by the court. The Administrator expenses are
14 **\$9,990.00**. Apex Dec., ¶19. These expenses shall be paid from the Maximum Settlement Fund.
15 Agreement at ¶55(h).

16 Subject to Court approval, Class Counsel shall seek an award of attorneys' fees and costs in
17 the amount of \$367,500.00, comprised of attorneys' fees equal to one-third of the Maximum
18 Settlement Fund estimated to be \$327,500.00 and costs up to \$40,000.00 for actually incurred
19 litigation expenses. Class Counsel is to split the fees 35% to Lawyers *for* Justice, PC, 32.5% to the
20 JCL Law Firm, APC, and 32.5% to the Zakay Law Group, APLC. JCL Dec., ¶ 21. The Agreement
21 also provides for Class Representative Enhancement in the amount of \$10,000.00 paid to Plaintiff
22 in consideration of her time, risk, and efforts as the Class Representative on behalf of the Settlement
23 Class. Agreement, ¶ 55(f) .

24 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the
25 class and should be granted final approval. This is evidenced by the high approval of the Settlement
26 by the Settlement Class and absence of any objections to the Settlement and the average Individual
27 Settlement Payment of **766.54**. Apex Dec., ¶ 16; JCL Dec., ¶ 22.

28 ///

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

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

9 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
10 action requires court approval.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
11 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The
12 court must decide whether the proposed settlement falls within the range of reasonable settlements,
13 considering that settlements are compromises between the parties reflecting subjective,
14 unquantifiable judgments concerning the risks and possible outcomes of litigation. *See also*
15 *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 246 (The proposed settlement is not to be
16 judged against a hypothetical or speculative measure of what might have been achieved had
17 plaintiffs prevailed at trial.”). In *Wershba*, appellants argued that the settlement was too low given
18 the “clear” liability, however, the Court rejected this argument and held that “the merits of the
19 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.

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

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

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

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

11 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v.*
12 *Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial
13 court should consider in evaluating the reasonableness of a class action settlement agreement
14 include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
15 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
16 the extent of discovery completed and the stage of the proceedings, the experience and views of
17 counsel, the presence of a governmental participant, and the reaction of the class members to the
18 proposed settlement.’ [Citations.]” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
19 128; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
20 408.

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

28 These factors are analyzed seriatim below and all support final approval of the class action

1 settlement before this Court.

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

3 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated
4 the proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class
5 Counsel assessed the value of the claims using data and documents provided by Defendants through
6 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data
7 regarding the number of Class Members, workweeks, and average rate of pay to assess damages
8 before mediation. Class Counsel retained BCG to analyze Defendants' time and payroll data to
9 formulate damage models estimating Defendants' liability exposure. Class Counsel's investigation,
10 research, experience, and damage models informed and guided the mediated negotiations that
11 resulted in this settlement. Accordingly, Class Counsel fully understood the strengths and
12 weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 23-30.

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

14 On November 11, 2024, and again on December 2, 2024, the Parties conducted full days of
15 mediation with Brandon McKelvey, Esq., a respected mediator of wage and hour class and
16 representative actions. Brandon McKelvey helped manage the Parties' expectations and provided a
17 useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress
18 with the mediator's assistance. Namely, the Parties exchanged information regarding their
19 respective claims and defenses, including their respective evaluations of the damages. Although the
20 first mediation was unsuccessful, the second mediation concluded with a settlement, the complete
21 and final terms of which are now set forth in the Agreement. JCL Dec., ¶ 31; Declaration of Brian
22 J. St. John ("BJSJ Dec.").

23 The Parties' negotiations were at all times at arm's length, adversarial, and non-collusive.
24 After two days of mediated negotiations conducted by an experienced and respected neutral, the
25 mediation concluded with a settlement. Class Counsel submits that the Settlement constitutes a
26 fair, adequate, and reasonable compromise of the claims at issue. No action would likely have been
27 taken by Class Members individually, and no compensation would have been recovered for them,
28 but for Plaintiff's service on behalf of the Class. JCL Dec., ¶¶32.

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

2 Class Counsel in this matter has extensive class action experience in multiple fields and has
3 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar
4 wage and hour class actions involving similar claims. Class Counsel has been approved as class
5 counsel in similar wage and hour class actions throughout the State of California. As such, courts
6 throughout California have deemed Class Counsel experienced and knowledgeable in this area of
7 law. Class Counsel has participated in every aspect of the settlement discussions and has concluded
8 the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶
9 33-39; Declaration of Shani O. Zakay (“SOZ Dec.”), ¶¶ 1-3; BJSJ Dec., ¶¶ 13-18.

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

11 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
12 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
13 member with the terms of the Settlement, including the specific estimated Individual Settlement
14 Payments, zero of the 711 members of the Class opted out of the Settlement. Moreover, there are
15 zero objections. Stated differently, **100%** of the Class have chosen to participate in the Settlement.
16 Apex Dec., ¶¶11-12, 14.

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

26 **E. The Settlement Amount is Fair and Reasonable.**

27 The Maximum Settlement Fund of \$982,500.00 in this case is fair and well within the range
28 of recognized reasonableness. The *Kullar* court acknowledged that “as the court does when it

1 approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must
2 at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” *Kullar*,
3 *supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

4 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
5 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
6 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
7 Cal.App.4th at 250. While the Maximum Settlement Fund of \$982,500.00 represents a discount on
8 Defendants’ potential exposure if Plaintiff established liability on all claims and were awarded the
9 full amount of the estimated damages at trial, this compromise is reasonable because (1) the
10 formidable defenses raised by Defendants presented a risk that the trier of fact could award
11 significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery
12 may require many more years of litigation, resulting in added fees and costs without any guarantee
13 of recovery for the Class. JCL Dec., ¶ 40.

14 As detailed at the time of preliminary approval, the Maximum Settlement Fund is fair and
15 reasonable considering the nature and magnitude of the claims being settled and the various
16 potential impediments to recovery. Class Counsel developed varied economic damages models
17 measuring Defendants’ liability exposure while accounting for the uncertainties of continued
18 litigation. The various models were informed by Class Counsel’s investigation, including the
19 analysis of a significant sample of time and payroll data. As detailed in greater depth during the
20 preliminary approval process, Class Counsel projected Defendants’ liability exposure for class
21 claims (excluding PAGA penalties) to be approximately \$2,947,484.95 if successful at trial. The
22 Maximum Settlement Fund represents approximately 33.33% of Defendants’ class-wide liability
23 exposure as estimated by Class Counsel. JCL Dec., ¶ 41.

24 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
25 Court for the Northern District of California granted final approval in a wage and hour
26 misclassification action and found that the Maximum Settlement Fund representing 10% of the
27 estimated trial award was within the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego*
28 *Fin. Corp. Sec. Litig.)* (9th Cir. 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement

1 representing “roughly one-sixth of the potential recovery.” Given the amount of the settlement here
2 as compared to potential value of the claims, particularly the strength of Plaintiff’s action, the
3 settlement is clearly fair and reasonable.³

4 The calculation methodology used to compensate the Settlement Class Members for the
5 alleged damages was negotiated at the time of the Settlement. More importantly, the methodology
6 is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks
7 each Settlement Class Member worked for Defendants during the Class Period. The number of
8 Workweeks for the Settlement Class Members is established through Defendants' data and
9 documented compensation records. The Settlement Administrator is responsible for calculating the
10 Individual Settlement Payments by multiplying the Payment Ratio for each Settlement Class
11 Member by the Net Settlement Amount. The Settlement Administrator will calculate the Payment
12 Ratio by dividing the total number of Compensable Workweeks for each Settlement Class Member
13 by the total number of Compensable Workweeks for all Settlement Class Members during the Class
14 Period. This process establishes an objectively fair and reasonable procedure to compensate the
15 Settlement Class. Agreement at ¶55(b).

16 The Settlement also provides significant relief to the Settlement Class Members. After
17 deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Payment,
18 and the Class Representative Enhancement, the Net Settlement Amount is currently estimated to be
19 **\$545,010.00**. Apex Dec., ¶15. The estimated average Individual Settlement Payment is
20 approximately **\$766.54**. Apex Dec., ¶16. This average net recovery is on par with many wage and
21 hour class action settlements approved by California state and federal courts. JCL Dec., ¶ 42.
22 Additionally, Defendants must separately fund its share of any employer side payroll taxes.
23 Agreement, ¶ 44.

24
25 ³ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7
26 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or
27 approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-
28 00784) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of
the estimated total liability); see also *In re Newbridge Networks Sec. Litig.* (D.D.C. Oct. 23, 1998) 1998 WL 765724,
at *2 (“Courts have not identified a precise numerical range within which a settlement must fall in order to be deemed
reasonable; but an agreement that secures roughly six to twelve percent of a potential trial recovery, while preventing
further expenditures and delays and eliminating the risk that no recovery at all will be won, seems to be within the
targeted range of reasonableness.”).

Clearly the goal of this litigation – to obtain redress for the class – has been met by this Settlement. Given the amount of the Settlement, the risks of litigation, and the arm’s length negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval. JCL Dec., ¶ 43.

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

Although Class Counsel believes strongly in Plaintiff’s claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendants could defend the action or, at least, drastically undercut Plaintiff’s claims. JCL Dec., ¶ 44. 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’Connor 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 of 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*

1 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
2 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform
3 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
4 certification of driver meal and rest period claims based on the predominance of individual issues).
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
7 risk factor favoring settlement. JCL Dec., ¶ 45.

8 Although Plaintiff is confident about the strength of their claims, Plaintiff nevertheless
9 recognizes that Defendants have factual and legal defenses that, if successful, would potentially
10 defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour
11 litigation can drastically affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶
12 46.

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

16 **Plaintiffs may have a strong case, but the risks inherent in**
17 **continued litigation are great.** Defendants strongly deny liability for
18 Plaintiffs' principal claim that full-time Service Associates were
19 misclassified as exempt. In addition to the uncertainties raised by
20 Defendants at the preliminary stage regarding Plaintiffs' chance of
21 success in this case, Defendants note that the question of an employer's
22 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.

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

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

27 **The potential complexity and possible duration of trial also weigh**
28 **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'Connor 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 undoubtedly have the resources to 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. JCL Dec., ¶ 47.

The Class Representative 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. The Class Representative and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class.

///

1 Further, prior to and during the mediation and settlement discussions, the Parties exchanged
2 information and engaged in a detailed discussion regarding their evaluation of the case and various
3 aspects of the matter, including but not limited to, the risks and delays of further litigation, as well
4 as evidence of Defendants' financial condition and ability to pay. The Parties only reached a
5 Settlement after Mediator Brandon McKelvey, Esq., on two separate dates, heard arguments,
6 reviewed evidence, evaluated the Parties' respective claims and defenses, and accounted for
7 Defendants' finances. Based upon their evaluation, the Class Representative and Class Counsel
8 have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is
9 fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 48.

10 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**
11 **ARE REASONABLE**

12 Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no
13 indication that this amount was the result of self-interest at the expense of class members," such
14 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
15 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve amounts for PAGA
16 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
17 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942,
18 at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express*
19 *Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)
20 (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of
21 the total settlement).

22 Here, Plaintiff and Defendants negotiated a good faith PAGA Payment in the amount of
23 \$50,000.00 which is approximately 5.1% of the Maximum Settlement Fund. This amount falls well
24 within the range of approved PAGA payments. Seventy-five percent (75%) of the PAGA Payment
25 (\$37,500.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent
26 (25%) of the PAGA Payment (\$12,500.00) to be distributed to the PAGA Covered Employees
27 ("Aggrieved Employee Payment"), which is within the range of PAGA Payment approved by courts
28 and should be approved. JCL Dec., ¶ 49.

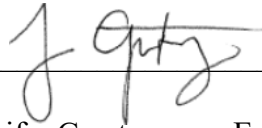
1 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
2 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
3 with the LWDA. JCL Dec., ¶¶ 3-4, 50. By not registering an objection with either Class Counsel
4 or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

5 **VII. CONCLUSION**

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

9
10 DATED: November 21, 2025

ZAKAY LAW GROUP, APLC

11 By: _____
12 

13 Jennifer Gerstenzang, Esq.
14 Attorney for Plaintiff
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