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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

ALEXIS TOPETE-HERNANDEZ, 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, v. THE PEGGS COMPANY, INC., a California corporation; and does 1 through 100, inclusive, Defendants.	Case No. CVRI2400968 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: September 25, 2025 Time: 8:30 a.m. Judge: Hon. Harold W. Hopp Dept.: 1

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I. INTRODUCTION

Plaintiff Alexis Topete-Hernandez, (hereinafter "Plaintiff") seeks final approval of the Class Action and PAGA Settlement Agreement ("Agreement")[1], which if approved, would provide valuable monetary relief for 279 Settlement Class Members employed by defendant The Peggs Company, Inc. (hereinafter "Defendant") during the Class Period.

In an order dated May 28, 2025, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean Claude Lapuyade ("JCL Dec."), ¶ 4. On June 16, 2025, the Court-approved Class Notice was mailed to all 280 Class Members via U.S. First Class Mail. Declaration of Stacey Shim ("Apex Dec."), ¶ 7. ***The Class greeted news of the Settlement with high approval as, at the time of the filing of this motion, <u>279</u> 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., ¶¶ 11-12. The high approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement.

An objective evaluation of the proposed settlement of Seven Hundred Ninety-Five Thousand Dollars Zero Cents ($795,000.00) ("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 Michael D. Young, Esq., an experienced mediator of wage and hour class actions. After deducting any Court-approved Class Counsel Award, Class Representative Service Award, Settlement Administration Expenses, and the PAGA Payment, 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. JCL Dec., ¶ 7.

This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately **$357,350**. Apex Dec., ¶ 15. This will result in an average Individual Class Payment of **$1,280.82**, a high payment

[1] The Agreement is attached as Ex "1" to the Declaration of Jean Claude Lapuyade ("JCL Dec.") at ¶ 2. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 2. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

[2] Seven (7) Notices were deemed undeliverable. Apex Dec. at ¶ 10.

of $$4,321.69 and a low payment of $0.63. Apex Dec., ¶ 16. Aggrieved Employees will receive an estimated average Individual PAGA Payment of $$122.86, a high payment of $233.55, and a low payment of $4.67. Apex Dec ¶ 18.

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

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

II. OVERVIEW OF THE LITIGATION

Defendant designs and manufactures shopping carts, merchandising displays, and retail equipment in Riverside County, where Plaintiff worked. Plaintiff worked for Defendant in California from approximately July 2021, to approximately October 2021. During his employment, Plaintiff claims that he was denied legally compliant meal and rest periods, as well as wages, including overtime compensation. Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures. Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures. Declaration of Alexis Topete-Hernandez at ¶¶ 1-4.

Generally, Plaintiff claims that Defendant failed to provide compliant meal and rest periods, failed to pay for all time worked, failed to reimburse necessary business expenses, and failed to furnish accurate, itemized wage statements. Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, asserting that it maintained facially compliant meal and rest period policies, paid its employees for all hours worked, and properly reimbursed all necessary business expenses. Declaration of Ryan Slinger, Esq. ("RS Dec."), ¶ 2.

On December 18, 2023, Plaintiff provided written notice to Defendant and the Labor and

Workforce Development Agency ("LWDA") of the specific provisions of the California Labor Code that Defendant violated ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq. ("PAGA"). RS Dec., ¶ 3.

On February 22, 2024, Plaintiff filed a Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, et seq. in the Riverside County Superior Court, Case No. CVRI2400968 ("Action"). The Action alleged eleven causes of action against Defendant for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); (9) Violation of California Labor Code § 2800 and 2802 (Unreimbursed Business Expenses); (10) Violation of California Business & Professions Code §§ 17200, et seq; and (11) Violation of the Private Attorneys General Action (Cal. Lab. Code § 2698, et seq.). RS Dec., ¶ 4.

On September 30, 2024, the Parties participated in a full day mediation with Michael D. Young, Esq., a mediator of wage and hour class and PAGA actions. The mediation concluded with a settlement after both sides agreed to a Mediator's proposal, which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. RS Dec., ¶ 5.

On May 28, 2025, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 3. On June 16, 2025, the Administrator mailed Notice Packets to all 280 members of the Class via U.S. First Class Mail. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement was outstanding – 99.6% of the Class Members are participating in the Settlement. Apex Dec., ¶ 14.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved a Gross Settlement Amount of Seven Hundred Ninety-Five Thousand Dollars and Zero Cents ($795,000.00) based on an estimated total of 26,000 Workweeks worked by the Class between February 22, 2020 and November 1, 2024. The Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Payment; and (5) to satisfy the Settlement Administration Expenses incurred in this action. JCL Dec., ¶ 10. Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified Settlement Fund within thirty (30) calendar days after the Effective Date. Agreement at § I(O); III(A)(3); III(M). The Administrator shall mail the Individual Class Payments and Individual PAGA Payments to the Settlement Class Members and/or Aggrieved Employee last known mailing address within fifteen (15) calendar days after the Funding Date. Agreement at § III(M)(7). Each Settlement Class Member's final Individual Settlement Payment will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Settlement Class Member. Individual Class Payments for members of the Settlement Class who submit valid and timely requests for exclusion will be redistributed to Settlement Class Members who do not submit valid and timely requests for exclusion on a pro rata basis. Agreement at § III(M)(1). The average estimated Individual Class Payment is $1,280.82. Apex Dec ¶ 16.

In exchange for valuable consideration, as of the funding of the Gross Settlement Amount, Plaintiff and the Settlement Class Members will release the Released Parties from the Released Class Claims for the Class Period. Agreement at §§ III(B). The Plaintiff, the LWDA, and the State of California will release the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement at § III(C).

Apex Class Action LLC is the Court-approved Administrator for this action. Administration Expenses Payment includes those expenses of effectuating and administering the Settlement, i.e., the costs incurred to the Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Class Payments, and the Administration Expenses Payment approved for reimbursement by the court. The Administration Expenses Payment is $6,900. Apex Dec, ¶ 19. These expenses shall be paid from the Gross Settlement Amount. Agreement, § III(M)(12).

Subject to Court approval, Class Counsel seeks a Class Counsel Award in the amount of up to $308,250.00, comprised of attorneys' fees of $278,250.00 (35% of the Gross Settlement Amount) and up to $30,000.00 for actually incurred litigation expenses. Class Counsel's award for attorney's fees will be divided between Class Counsel as follows: 85% to Lawyers for Justice, PC, 7.5% to JCL Law Firm, APC and 7.5% to Zakay Law Group, APLC. Agreement, § I(F). The Agreement also provides for a Class Representative Service Award in the amount of $7,500 for Plaintiff, in consideration of his time, risk, and efforts as the Class Representative on behalf of the Settlement Class. Agreement at § III(M)(9).

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the high approval of the Settlement by the Settlement Class, the absence of any objections to the Settlement and the average Individual Class Payment of **$1,280.82**. Apex Dec., ¶¶ 12; 16.

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

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

"[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court must decide whether the proposed settlement falls within the range of reasonable settlements, considering that settlements are compromises between the parties reflecting subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See also Wershba v. Apple*

Computer (2001) 91 Cal.App.4th 224, 246 (The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial."). In *Wershba*, appellants argued that the settlement was too low given the "clear" liability, however, the Court rejected this argument and held that "the merits of the underlying class claims are not a basis for upsetting the settlement of a class action." *Wershba*, *supra*, at 246; *see also 7-Eleven*, *supra*, at 1150.

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

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

V. <u>THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE</u>

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

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

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

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

A. <u>Class Counsel Conducted A Thorough Investigation.</u>

As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel assessed the value of the class claims using data and documents provided by Defendant through informal discovery. Class Counsel obtained time and payroll records for the Class Members, and estimated the amount in unpaid wages, including unpaid overtime wages, and estimated number of meal and rest break violations and resulting damages therefrom during the Class Period. Class Counsel analyzed Defendant's time and payroll data to formulate damage models estimating Defendant's liability exposure. Class Counsel's investigation, research, experience, and damage models informed and guided the mediated negotiations that resulted in this settlement. Accordingly, Class Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. RS Dec., ¶ 6.

B. <u>The Parties Settled At Mediation</u>.

On September 30, 2024, the Parties conducted a full day of mediation with Michael D. Young, Esq., an experienced wage and hour mediator. Mediator Young helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with the mediator's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement after both sides agreed to a Mediator's proposal, which was subsequently memorialized in the form of a Memorandum of Understanding. RS Dec., ¶ 5.

C. Class Counsel is Experienced in Similar Litigation.

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar claims. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. RS Dec., ¶¶ 26-30, JCL Dec., ¶¶ 15-21; Declaration of Shani Zakay, ¶ 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 Settlement Payments, only one of the 280 members of the Settlement Class opted-out of the Settlement. Moreover, there are ***zero*** objections. Stated differently, **99.6%** of the Settlement Class chose to participate in the Settlement. Apex Dec., ¶ 14.

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

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

The Gross Settlement Amount of Seven Hundred Ninety-Five Thousand Dollars and Zero Cents ($795,000.00) 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 Seven Hundred Ninety-Five Thousand Dollars and Zero Cents ($795,000.00) represents a discount on Defendant's potential exposure if Plaintiff established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 12.

As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of time and payroll data. The calculation methodology used to compensate the Settlement Class for the alleged damages was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks each Settlement Class Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement Class Members is established through Defendant's data and documented compensation records. The

Administrator is responsible for calculating the Individual Class Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and then multiplying the result by each Participating Class Member's Workweeks worked during the Class Period. Agreement, § III(M)(1). This process establishes an objectively fair and reasonable procedure to compensate the Settlement Class.

The settlement also provides significant relief to the Settlement Class Members. After deductions for the Class Counsel Award, Settlement Administration Expenses, the PAGA Payment, and the Class Representative Service Award, the Net Settlement Amount is currently estimated to be $357,350.00. Apex Dec., ¶ 15. This will result in an average Individual Class Payment of **$1,280.82**, a high payment of $4,321.69, and a low payment of $0.63. Apex Dec., ¶ 16. This average net recovery is on par with many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores,* No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately $80); *Fukuchi v. Pizza Hut,* Case No. BC302589 (LA. County Super. Ct.) (average net recovery of approximately $120); *Contreras v. United Food Group, LLC,* Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Ressler v. Federated Department Stores, Inc.,* Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.,* Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately $65); *Sorenson v. PetSmart, Inc.,* Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately $60); *Lim v. Victoria's Secret Stores, Inc.,* Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately $35); and *Gomez v. Amadeus Salon, Inc.,* Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately $20). Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, §§ 1.9, 3.1.

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

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

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. 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 *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy Stores, L.P.* (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues).

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendant's liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage and hour class action. *See also 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.").

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

Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement.

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

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

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

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

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

> **The potential complexity and possible duration of trial also weigh in favor of granting final approval**. Plaintiffs acknowledge the difficulties of proving damages, recognize the uncertainty of outcome, and believe defendant would appeal in the event of adverse judgment. A post-judgment appeal would require many years to resolve and delay payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today outweigh an uncertain future result. Accordingly, plaintiffs argue, and the

> Court agrees, the actual recovery confers substantial benefits on the class that outweigh the potential recovery through full adjudication.

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

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

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. Plaintiff fully expects that Defendant would appeal any favorable judgment. 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 three or more years in the future.

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. JCL Dec., ¶ 13.

VI. <u>THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE</u>

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 Payment in the amount of $115,000 which is 14.4% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range of approved PAGA payments. Seventy-five percent (75%) of the PAGA Payment ($86,250.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment ($28,750.00) to be distributed to the Aggrieved Employees ("Individual PAGA Payments"), which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 14.

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. JCL Dec., ¶¶ 4-5. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

VII. CONCLUSION

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

Dated: August 28, 2025

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