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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

MICHAEL GONZALES and NICOLE BURTON, individuals, on behalf of themselves, and on behalf of all persons similarly situated, Plaintiffs, v. MECHANICS BANK, a California Corporation; RABOBANK, a Corporation; and DOES 1-50, Inclusive, Defendants.	Case No. C22-02261 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: December 2, 2026 Time: 9:00 a.m. Judge: Hon. Benjamin Reyes II Dept.: 16

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TABLE OF CONTENTS

I. INTRODUCTION ……1

II. OVERVIEW OF THE LITIGATION ……2

III. THE SETTLEMENT BEFORE THE COURT ……4

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

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE ……7

A. Class Counsel Conducted a Thorough Investigation ……8

B. The Parties Settled at Mediation. ……9

C. Class Counsel is Experienced in Similar Litigation. ……9

D. The Gross Settlement Amount is Fair and Reasonable ……9

E. The Strength of Plaintiff's Case and Risks of Continued Litigation ……12

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

VII. CONCLUSION ……16

/ / /

TABLE OF AUTHORITIES

CASES

7-Eleven Owners for Fair Franchising v. Southland Corp.
(2000) 85 Cal.App.4th 1135, 1150-51……..……..……6, 7
Ali v. U.S.A. Cab Ltd.
(2009) 176 Cal.App.4th 1333, 1341……..13
Barcia v. Contain-A-Way, Inc.
2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009)……...14
Brown v. Fed Express Corp.
(C.D. Cal. 2008) 249 F.R.D. 580, 587-88…….....13
Browning v. Yahoo!, Inc.
2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007)……14
Campbell v. Best Buy Stores, L.P.,
(C.D. Cal. 2013) 2013 WL 5302217 at *11-13…….....13
Contreras v. United Food Group, LLC
Case No. BC389253 (L.A. County Super. Ct.)…….…….....12
Doty v. Costco Wholesale Corp.
Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007)……..……12
Dunk v. Ford Motor Co.
(1996) 48 Cal.App.4th 1794, 1801…….…….....7-8
Duran v. U.S. Bank National Association
(2014) 59 Cal.4th 1, 31…..…….13
Fukuchi v. Pizza Hut
Case No. BC302589 (LA. County Super. Ct.)…….....12
Glass v. UBS Fin. Servs.
2007 WL221862……...……....12
Gomez v. Amadeus Salon, Inc.
Case No. BC392297 (L.A. Super. Ct.)……...……...12
Hanlon v. Chrysler Corp.
(9th Cir. 1998) 150 F.3d 1011, 1026…..……...……14
Hopson v. Hanesbrands Inc.
No. CV-08-0844 EDL, 2009 WL 928133, at *1, 9, 19-20 (N.D. Cal. Apr. 3, 2009)….……14-15
Huens v. Tatum
(1997) 52 Cal.App.4th 259, 265…….....6
In re Mego Fin. Corp. Sec. Litig.
213 F.3d 454…….....11
In re Newbridge Networks Sec. Litig.
(D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2……11
Jack v. Hartford Fire Ins. Co.
No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011)……..…15
Kullar v. Foot Locker Retail, Inc.
(2008) 168 Cal.App.4th 116, 128-29..…….……8, 10
Leverage v. Traeger Pellet Grills, LLC
(N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7…….....11
Lim v. Victoria's Secret Stores, Inc.
Case No. 04CC00213 (Orange County Super. Ct.)…….……..12

Louie v. Kaiser Foundation Health Plan, Inc.
2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008)……..……..14
Magadia v. Wal-Mart Associates, Inc.
(9th Cir. 2021) 999 F.3d 668……..……..……....13
Malibu Outrigger Bd. Of Governors v. Superior Court
(1980) 103 Cal.App.3d 573, 578-579…….....7
McKenzie v. Fed. Express Corp.
No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)…….……15
Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles
(2010) 186 Cal.App.4th 399, 408……..……..8
O'Conner v. Uber Technologies, Inc.
(9th Cir. 2018) 904 F.3d 1087, 1133……..…….…….……13
Officers for Justice v. Civil Serv. Comm'n
(9th Cir. 1982) 688 F. 2d 615, 625…….7-8
Palencia v. 99 Cents Only Stores
No. 34-2010-00079619…….12
Rebney v. Wells Fargo Bank
(1990) 220 Cal.App.3d 1117, 1138…….....8
Ressler v. Federated Department Stores, Inc.
Case No. BC335018 (L.A. County Super. Ct.)……...……...12
Sorenson v. PetSmart, Inc.
Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.)……..……...12
Stovall-Gusman v. W.W. Granger, Inc.
2015 U.S. Dist. LEXIS 78671, at *12……..…….11
Tech-Bilt, Inc. v. Woodward-Clyde & Associates
38 Cal.3d 488, 499-500 (1985)……...……..……10
Tien v. Tenet Healthcare Corp.
(2012) 209 Cal.App.4th 1077, 1088……...……..13
Viceral v. Mistras Grp., Inc.
(N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7……11
Wershba v. Apple Computer
(2001) 91 Cal.App.4th 224, 245-46, 250, 2246……..……..…….7, 10

RULES, CODES, AND STATUTES

Cal. Bus. & Prof. Code §§ 17200, et seq.……..…2-3
Cal. Code of Civ. Proc. § 877.6……..…10
Cal. Lab. Code §§ 201…….....3
Cal. Lab. Code §§ 202…….....3
Cal. Lab. Code §§ 203…….....3
Cal. Lab. Code §§ 226(a)…...…….....3
Cal. Lab. Code §§ 226.7…...……..…….....3
Cal. Lab. Code §§ 510…….....3
Cal. Lab. Code §§ 512(a)…….....3
Cal. Lab. Code §§ 1194……..…….....3
Cal. Lab. Code §§ 1197 et seq…….....3
Cal. Lab. Code §§ 2802……..…….....3
Cal. Lab. Code §§ 2698 et seq.……...…….....4

SECONDARY SOURCES

Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91……..7

I. INTRODUCTION

Plaintiffs MICHAEL GONZALES and NICOLE BURTON ("Plaintiffs") seek final approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (the "Agreement"), which if approved, would provide valuable monetary relief for 2,205 Settlement Class Members employed by Defendant Mechanics Bank ("Defendant") and/or Rabobank during the Class Period.

In an order dated August 4, 2026, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Shani O. Zakay ("SOZ Dec."), ¶ 4. On September 1, 2026, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Tarus Dancy ("Apex Dec."), ¶ 7. The deadline for submitting a request for exclusion or a written objection was October 16, 2026. Zero Class Members objected to the Settlement. Three Class Members requested exclusion from the Settlement. Accordingly, 99.8% of the Class will be participating in the Settlement. Apex Dec., ¶¶ 11-15.

An objective evaluation of the proposed settlement of Three Million Fifty Thousand Dollars and Zero Cents ($3,050,000.00) ("Gross Settlement Amount") confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by mediator Brandon McKelvey, Esq., a respected wage and hour class action mediator. After deducting any Court-approved Attorneys' Fees, Attorneys' Expenses, Service Awards, PAGA Payment, and Settlement Administration Costs, the Net Settlement Amount will be distributed to Settlement Class Members based on the number of Workweeks each worked during the Class Period. SOZ Dec., ¶ 8.

This Settlement provides substantial recovery to Class Members. The Administrator has estimated the Net Settlement Amount to be approximately $1,801,233.33. This will result in an average gross Individual Class Payment of $832.75, and a high payment of $2,493.77. Apex Dec. at ¶¶ 16-17.

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).* Indeed, by settling now rather than proceeding to trial, the Class will not have to wait (possibly years)

for relief, nor will they have to bear the risks associated with prolonged and uncertain litigation. SOZ Dec., ¶ 9.

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 Representatives and Class Counsel respectfully request this Court grant final approval of the Agreement and entry of the proposed Final Approval Order and Judgment.

II. OVERVIEW OF THE LITIGATION

Defendant operates full-service community banking financial institutions in California, including in Contra Costa County, where Plaintiffs were employed. This action asserts claims on behalf of all non-exempt employees who are or previously were employed by Defendant and/or Rabobank, N.A. in California at any time during the Class Period. Plaintiff Gonzales was employed by Defendant as a non-exempt employee in California from October of 2017 to May of 2021, most recently as a Universal Banker. Plaintiff Burton was employed by Defendant as a non-exempt employee in California from October of 2022 to December of 2024. Plaintiffs were paid on an hourly basis. In addition to their base hourly rates, Plaintiffs were entitled to, among other things, overtime pay and meal and rest periods. Throughout their employment, Plaintiffs were subject to Defendant's written policies and general employment practices. SOZ Dec., ¶ 10; Declaration of Michael Gonzales at ¶ 3; Declaration of Nicole Burton at ¶¶ 3-5.

Generally, Plaintiffs claim that Defendant failed to pay for all time worked, failed to properly calculate the regular rate of pay, failed to provide compliant meal and rest periods, failed to furnish accurate itemized wage statements, failed to reimburse for business expenses, and failed to pay all wages upon separation. Defendant denies liability for each of Plaintiffs' claims. Further, Defendant asserts that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims. SOZ Dec., ¶ 11.

On October 20, 2022, Plaintiff Gonzales filed the class action at bar in the Contra Costa County Superior Court, Case No. C22-02261 (the "*Gonzales* Class Action"). The *Gonzales* Class Action alleged eight causes of action against Defendant for: (1) Unfair Competition in violation of Business and

Professions Code sections 17200 et seq.; (2) failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of California Labor Code sections 510 et seq.; (4) failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (5) failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (6) failure to reimburse employees for necessary business expenses in violation of California Labor Code section 2802; (7) failure to provide wages when due in violation of California Labor Code sections 201, 202 and 203; and (8) failure to provide accurate itemized statements in violation of California Labor Code section 226. SOZ Dec., ¶ 12.

Plaintiff Gonzales and Defendant agreed to mediation, and the Parties further agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to a statistically reliable 22% sampling of the Class Members' time data and certain payroll data points. As discussed infra, Plaintiff Gonzales counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. SOZ Dec., ¶ #. On July 11, 2023, Plaintiff Gonzales and Defendant participated in mediation presided over by Steven Serratore, Esq., an experienced mediator of wage and hour class and PAGA actions. The Parties did not come to a settlement agreement at that time. SOZ Dec., ¶ 13.

On March 7, 2024, Plaintiff Burton filed a separate Class Action complaint in the Contra Costa Superior Court, Case No. C24-00609 ("Burton Class Action"), alleging claims for: (1) failure to pay wages for all hours worked at minimum wage in violation of Labor Code Sections 1194 and 1197; (2) failure to pay overtime wages for daily overtime worked in violation of Labor Code sections 510 and 1194; (3) failure to authorize or permit meal periods in violation of Labor Code sections 512 and 226.7; (4) failure to indemnify employees for employment-related losses/expenditures in violation of Labor Code section 2802; (5) failure to provide complete and accurate wage statements in violation of Labor Code section 226; and (6) unfair business practices, in violation of Business and Professions Code sections 17200, et seq. SOZ Dec., ¶ 14. Also on March 7, 2024, Plaintiff Burton filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on

Defendant. SOZ Dec., ¶ #. On May 13, 2024, Plaintiff Burton filed a separate representative action in Contra Costa Superior Court, Case No. C24-01268, for a single cause of action for violations of PAGA pursuant to Labor Code Sections 2698, et seq. (the "*Burton* PAGA Action"). SOZ Dec., ¶ 15.

On September 10, 2024, Plaintiff Gonzales, Plaintiff Burton, and Defendant participated in a second global mediation presided over by Brandon McKelvey, an experienced mediator of wage and hour class and PAGA actions. The Parties accepted a Mediator's global settlement 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. SOZ Dec., ¶ 16.

On August 25, 2025, for purposes of effectuating the settlement, the parties stipulated to allow Plaintiff Gonzales to file a First Amended Complaint to add Plaintiff Nicole Burton to the Complaint, and to incorporate the claims and factual allegations from the Buron Class Action and the Burton PAGA Action. SOZ Dec., ¶ 17.

On August 4, 2026, this Court granted preliminary approval of the Settlement. SOZ Dec., ¶ 4. On September 1, 2026, the Administrator mailed Notice Packets to all 2,208 Class Members. 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 Class to the Settlement was outstanding – 99.8% of the Class Members are participating in the Settlement. Apex Dec., ¶ 15.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved a Gross Settlement Amount of Three Million Fifty Thousand Dollars and Zero Cents ($3,050,000.00) based on an estimated 251,000 Workweeks[1] worked by the Class through September 10, 2024. The Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Service Awards; (3) to satisfy the Attorneys' Fees and Attorneys' Expenses; (4) to satisfy the PAGA Payment; and (5) to satisfy the Settlement Administration Costs. Agreement, §§ I(P), III(A)(1).

[1] The Parties' Administrator has confirmed that the actual number of Workweeks worked by the Class is 228,967. Thus, the escalator clause was not triggered. Apex Dec., ¶ 16; Agreement at § III(2)(A).

Defendant will fund the Settlement by depositing the Gross Settlement Amount into a Qualified Settlement Fund, through the Settlement Administrator, within thirty (30) calendar days after the Effective Date. Agreement, §§ I(O), III(A)(3). The Settlement Administrator shall mail the Individual Settlement Payments to the Settlement Class Members and the individual shares of the Aggrieved Employee Payment to the Aggrieved Employees no later than fifteen (15) calendar days after the Funding Date. Agreement, § III(P)(8). The Settlement Administrator will calculate Individual Settlement Payments by dividing each Class Member's Workweeks by the total Workweeks for all Class Members to determine each Class Member's Payment Ratio, and then multiplying that Payment Ratio by the Net Settlement Amount. Agreement, § III(P)(1). The estimated average Individual Class Payment is approximately $832.75. Apex Dec., ¶ 17.

As of the Effective Date and Defendant fully funding the Gross Settlement Amount and the employer's share of payroll taxes, Plaintiffs and the Settlement Class Members will release the Released Parties from the Released Class Claims. Agreement, § III(F). The Released Class Claims are all claims that were asserted or that could have reasonably been asserted in the Actions and/or LWDA Notices, and all claims arising from or reasonably related to the facts and/or claims alleged in the Actions and/or LWDA Notices. These claims include, but are not limited to, failure to pay all wages due, including minimum wages, straight time, overtime, double-time, and reporting time compensation; calculation of the regular rate of pay; failure to provide meal and rest periods and to pay proper meal and rest period premiums; failure to pay overtime, meal and rest period premiums, sick pay, and reporting time pay at the regular rate of pay; failure to provide proper sick leave and written notice of paid sick leave; off-the-clock work; rounding and/or time-shaving; failure to provide accurate itemized wage statements; failure to reimburse business expenses; failure to timely pay wages during employment and at separation; unlawful deductions; failure to provide one day's rest in seven; failure to maintain accurate records; unfair business practices arising from the released Labor Code violations; related penalties, interest, attorneys' fees and costs; and claims under the Fair Labor Standards Act. The release excludes the release of claims not permitted by law. Agreement, § I(GG) [2].

[2] Plaintiffs separately entered into individual settlements agreement with Defendant, separate from the Class Action and PAGA Settlement, both of which includes a release of claims against Defendant. Plaintiff Gonzales' individual release

As of the Effective Date and Defendant fully funding the Gross Settlement Amount and the employer's share of payroll taxes, the Aggrieved Employees, Plaintiffs, the LWDA, and the State of California with respect to all Aggrieved Employees will release the Released Parties from the Released PAGA Claims. Agreement, § III(G). The Released PAGA Claims are all claims for civil penalties under PAGA, and attorneys' fees, costs, or interest arising under PAGA, that were alleged or that reasonably could have been alleged in the Actions and/or LWDA Notices based on the factual allegations and legal theories contained therein, during the PAGA Period. Agreement, § I(HH).

Apex Class Action LLC was appointed as the Administrator for the Class. The Administration Expenses Payment includes those expenses of effectuating and administering the Settlement, *i.e.*, the costs incurred to the Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Class Payments, and the fees of the Administrator approved for reimbursement by the court. The Administrator's expenses are $17,100.00. Apex Dec., ¶ 20. These expenses shall be paid from the Gross Settlement Amount. Agreement, § III(P)(13).

Subject to the Court's approval, Class Counsel seeks Attorneys' Fees of $1,016,666.67, representing one-third of the Gross Settlement Amount, and $42,126.94 in actually incurred litigation expenses. Class Counsel are to split the fees as follows: 40% to Zakay Law Group, APLC, 40% to JCL Law Firm, APC, and 20% to Lavi & Ebrahimian, LLP. Agreement, § I(H). Plaintiffs have agreed to this fee split in writing. SOZ Dec., ¶ 18. The Agreement also provides for Service Awards of up to $10,000 to each Plaintiff, for a total of $20,000, in recognition of their efforts and risks in assisting with the prosecution of the Actions. Agreement, §§ I(KK), III(E), III(P)(10). As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval.

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

includes the release of all claims included in a separate FEHA lawsuit Plaintiff Gonzales brought against Defendant, Contra Costa County Superior Court Case No. C24-01237. The individual settlement agreements does not resolve any claims ever presented in any of the actions that the proposed Settlement seeks to resolve. The claims released as part of the proposed class and PAGA settlement are expressly carved out of the separate individual settlements. SOZ Dec. ¶¶ 32.

appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran. v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation").

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

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

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

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford*

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

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

The list of factors is not exhaustive and should be tailored to each case. *Dunk*, *supra*, at 1801. Due regard should be given to what is otherwise a private consensual agreement between the parties. *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.' [Citation omitted.]" *Id.* These factors are analyzed below and all support final approval of the 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, payroll, and policy records, as well as data regarding the number of Class Members, workweeks, and average rate of pay to assess damages before mediation. Class

Counsel retained Berger Consulting Group ("BCG") to analyze 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, Plaintiffs' Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. SOZ Dec., ¶ 19.

B. The Parties Settled at Mediation.

On July 11, 2023, Plaintiff Gonzales and Defendant participated in mediation with Steven Serratore, Esq., an experienced mediator of wage and hour class and PAGA actions, but did not reach a settlement. On September 10, 2024, Plaintiffs and Defendant participated in a full-day, global mediation with Brandon McKelvey, an experienced mediator of wage and hour class and PAGA actions, who helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties exchanged information regarding their respective claims and defenses, including their respective evaluations of damages. Following arm's-length negotiations, the mediator issued a mediator's proposal, which the Parties accepted and memorialized in a Memorandum of Understanding. The complete and final terms of the Parties' settlement are now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. SOZ Dec., ¶ 20.

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. SOZ Dec., ¶¶ 21-23; Declaration of Jean-Claude Lapuyade, Esq. ("JCL Dec."), ¶¶ 3-9; Declaration of Monique Toby, Esq. ¶¶ 3-7.

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D. The Gross Settlement Amount is Fair and Reasonable.

The Gross Settlement Amount of Three Million Fifty Thousand Dollars and Zero Cents ($3,050,000.00) in this case is fair and well within the range of recognized reasonableness. There is no reversion to Defendant and Defendant must separately pay for their share of the employer payroll taxes[3]. Agreement at § I(P), III(A)(1). 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 $3,050,000.00 represents a discount on Defendant's potential exposure if Plaintiffs 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 the court could award significantly less in damages than Plaintiffs' 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. SOZ Dec., ¶ 24.

As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample[4] of time and payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel projected Defendant's liability exposure for the claims asserted on behalf of the Settlement

[3] Twenty-five percent (25%) of each Settlement Class Member's Individual Class Payment will be allocated as wages (the "Wage Portion"). The remaining seventy-five percent (75%) will be allocated to penalties, interest, and other non-wage damages, reported on IRS Form 1099. Agreement at § III(P)(3).

[4] Class Counsel requested a sample that would provide a 95% confidence level with a margin of error equal to or less than 4%. Based on this criterion, Class Counsel ultimately accepted a sample of time and payroll records of 28.1% of the Class Members for purposes of determining Defendant's liability at the time of mediation. SOZ Dec., ¶ 25.

Class. The Gross Settlement Amount represents a recovery of 25.8% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. SOZ Dec., ¶ 26.

In *Stovall-Gusman v. W.W. Granger, Inc.,* 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court for the Northern District of California granted final approval in a wage and hour misclassification action and found that the Gross Settlement Amount representing 10% of the estimated trial award was within the "range of reasonableness." In *In re Mego Fin. Corp. Sec. Litig.,* 213 F.3d 454, 457 (9th Cir. 2000), *as amended* (June 19, 2000*),* the Ninth Circuit approved a settlement representing "roughly one-sixth of the potential recovery." Given the amount of the Gross Settlement Amount here as compared to the potential value of the claims, the settlement is clearly fair and reasonable[5].

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 Class Member worked for Defendant and/or Rabobank, N.A. as a non-exempt employee in California during the Class Period. The number of Workweeks is established through Defendant's records, as provided to the Settlement Administrator in the Class Data. The Settlement Administrator is responsible for calculating the Individual Settlement Payments by dividing each Class Member's Workweeks by the total Workweeks for all Class Members to determine each Class Member's Payment Ratio, and then multiplying each Class Member's Payment Ratio by the Net Settlement Amount. The Individual Settlement Payments of any Class Members who submit valid and timely Requests for Exclusion will be redistributed to Settlement Class Members on a pro rata basis. This process establishes an objectively fair and reasonable procedure to compensate the Settlement Class. Agreement, § III(P)(1).

The settlement also provides significant relief to the Settlement Class Members. After deducting the amounts the Court approves for Attorneys' Fees, Attorneys' Expenses, Service Awards, the PAGA

[5] *See also Viceral v. Mistras Grp., Inc*. (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately $29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-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.").

Payment, and Settlement Administration Costs, the Net Settlement Amount is currently estimated to be $1,801,233.33. Apex Dec., ¶ 16. The average Individual Class Payment is approximately $832.75, and the highest is approximately $2,493.77. Apex Dec., ¶ 17. This average net recovery is higher than 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, §§ I(P), III(A)(1).

Clearly, the goal to obtain redress for the class has been reached by this Settlement. Given the amount of the Gross Settlement Amount, 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.

E. <u>The Strength of Plaintiffs' Case and Risks of Continued Litigation</u>

Although Class Counsel believes strongly in Plaintiffs' 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 Plaintiffs' claims. SOZ Dec., ¶ 27. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL 221862 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). SOZ Dec., ¶ 28.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of the 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 of the 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."). SOZ Dec., ¶ 29.

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 Plaintiffs 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 judgment against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgment 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). 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 Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless recognize 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 Plaintiffs' claims and, in fact, already has. SOZ Dec., ¶ 30.

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

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

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

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

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

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

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

The Class Representatives and Class Counsel recognize the expense and length of a trial against Defendant through possible appeals, which could take years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognizes the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval. SOZ Dec., ¶ 31.

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

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

Here, Plaintiffs and Defendant negotiated a good faith PAGA Payment in the amount of $150,000, which is 4.9% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range of approved PAGA settlements. Seventy-five percent (75%) of the PAGA Payment ($112,500.00) will be paid to the LWDA ("LWDA Payment"), with the remaining twenty-five percent (25%) of the PAGA Payment ($37,500.00) to be distributed to the Aggrieved Employees (the "Aggrieved Employee

Payment"). Agreement, §§ I(D), I(T), III(P)(12).

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

VII. CONCLUSION

Plaintiffs respectfully submit 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: November 2, 2026

ZAKAY LAW GROUP, APLC

By: _____
Jaclyn Joyce, Esq.
Attorney for Plaintiff