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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

PASSION MORRIS, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

v.

HABERFELDE FORD, a California corporation;
JIM BURKE FORD LINCOLN, an unknown
business entity; and DOES 1 through 100,
Inclusive,

Defendants.

Case No. BCV-23-100471

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

Date: January 17, 2025

Time: 8:30 a.m.

Judge: Hon. Thomas S. Clark

Dept.: 17

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I. INTRODUCTION

Plaintiff PASSION MORRIS (hereinafter “Plaintiff”) seeks final approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement” or “Settlement Agreement”)¹, which if approved, would provide valuable monetary relief for 642 Settlement Class Members employed by Defendants Haberfelde Ford and Jim Burke Ford Lincoln (hereinafter “Defendant” and/or “Defendants”) during the Class Period.

In an order dated August 13, 2024, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On September 9, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Katherine Rovertoni (“Apex Dec.”), ¶ 7. ***The Class greeted news of the Settlement with near unanimous² approval.*** This approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 7.

An objective evaluation of the proposed settlement of One Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class Members is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Brian Sinclair, Esq. After deducting any Court-approved attorneys’ fees and costs, enhancement award, administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to Settlement Class Members based on the number of Workweeks they worked while employed by Defendants during the Class Period. JCL Dec., ¶ 8.

This Settlement provides substantial recovery for Defendants’ alleged wage and hour violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$880,000**. This will result in an average Individual Settlement Payment of \$1,370.72, a

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

² As detailed below and in the Apex Declaration, two of the 642 Class Members have attempted to opt out. These attempts did not meet comply with the technical requirements outlined by the Class Notice for opting out of the Settlement, and the Parties disagree as to whether to accept these attempts as valid opt-outs. Apex Dec. ¶¶11 - 15 JCL Dec., ¶ 9.

high payment of \$3,572.09, and low payment of \$1.83. JCL Dec., ¶ 10; Apex Dec. at ¶¶ 17-18.

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 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., ¶ 11.

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., ¶ 12.

II. OVERVIEW OF THE LITIGATION

On February 14, 2023, Plaintiff filed her class action complaint alleging ten causes of action for; (1) Violation of Cal. Lab. Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of Cal. Lab. Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of Cal. Lab. Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of Cal. Lab. Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of Cal. Lab. Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of Cal. Lab. Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of Cal. Lab. Code § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of Cal. Lab. Code §§ 2800 and 2802 (Unreimbursed Business Expenses); and (10) Violation of Cal. Business & Professions Code §§ 17200, *et seq.* JCL Dec., ¶ 13.

Prior to mediation, the Parties agreed to informally exchange documents and information in connection with the Action. As part of this process, Defendants provided time and pay records for 218 employees, approximately 33.9% of the total Class. Plaintiff's statistician found this to be sufficient to develop a meaningful damages model. Additionally, the 33.9% sample is statistically reliable, approximately resulting in a confidence level of 95% with a margin of error of 5.4%. In addition to the time and payroll records, Defendants produced written policies and agreements contained in, among other things, the Employee Policy Handbook. JCL at ¶ 14.

1 On March 15, 2024, the Parties participated in an all-day mediation presided over by Brian
2 Sinclair, Esq., a mediator of wage and hour class actions. After arms-length negotiations and
3 bargaining, the Parties reached a settlement of \$1,500,000.00, with the understanding that this
4 settlement would include not only a release of the PAGA claims alleged, but also a release of class
5 claims for the same Labor Code violations. The Parties thereafter documented the agreement in the
6 form of a Settlement Agreement, which was signed by the Parties and is now presented to this Court
7 for final approval. JCL Dec at ¶ 15.

8 In order to facilitate the Settlement, on March 18, 2024, Plaintiff filed a Notice of Violations
9 with the LWDA and served the same on Defendants. On July 3, 2024, Plaintiff filed a First Amended
10 Complaint to add an additional cause of action for violations of the Private Attorneys General Act,
11 California Labor Code section 2698, *et seq.* JCL Dec at ¶ 16.

12 Plaintiff seeks to represent a putative class of all non-exempt employees who are or previously
13 were employed by Defendants, who performed work in California during the period of February 14,
14 2019 through June 13, 2024 (the “Class Period”). The Action seeks unpaid wages, statutory and PAGA
15 penalties, attorneys’ fees, and litigation costs. Plaintiff also seeks to represent a PAGA group of
16 Aggrieved Employees which is comprised of all non-exempt employees who are or previously were
17 employed by Defendants, who performed work in California during the period of February 12, 2023
18 through June 13, 2024 (the “PAGA Period”). JCL Dec at ¶ 17.

19 Class Counsel has conducted a thorough investigation into the facts of the action. Class Counsel
20 has diligently evaluated the Class Members’ claims against Defendants. Prior to the mediation, counsel
21 for Defendants provided Class Counsel with access to the necessary data and information as noted above
22 to evaluate the claims by the Class. Class Counsel reviewed the production of documents from the
23 Defendants and conducted an extensive review of a significant sample of time records and data with the
24 assistance of an expert, Berger Consulting Group (“BCG”). Based on the foregoing and their own
25 independent investigation, evaluation and experience, Class Counsel believe that the Settlement is fair,
26 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
27 circumstances, including the risk of significant delay, defenses asserted by Defendants, and potential
28 appellate issues. JCL Dec at ¶ 18.

1 On August 13, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4.
2 On September 9, 2024, the Settlement Administrator mailed Notice Packets to all 642 Class Members.
3 Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline
4 for the Class to submit requests for exclusion or objections to the Settlement. The response from the
5 Class to the Settlement was outstanding – 100%³ of the Class Members are participating in the
6 Settlement. Apex Dec., ¶¶ 16.

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

8 The Court preliminarily approved an initial Gross Settlement Amount of One Million Five
9 Hundred Thousand Dollars and Zero Cents (\$1,500,000.00) based on a total of an estimated 68,521.71
10 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used:
11 (1) to satisfy the Individual Settlement Payments; (2) to satisfy the Enhancement Award; (3) to satisfy
12 the Attorneys' Fees and Attorneys' Expenses; (4) to satisfy the PAGA Penalties; and (5) to satisfy the
13 Administration Costs incurred in this action. JCL Dec., ¶ 19.

14 Defendants will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
15 Settlement Fund within thirty (30) days after the Effective Date. Agreement, § I(P). The Settlement
16 Administrator shall disburse the Individual Settlement Payments to the Settlement Class Member no
17 later than fifteen (15) days after Defendants fund the Gross Settlement Amount. Agreement, § III(M)(7).
18 The Settlement Administrator will calculate Individual Settlement Payments by dividing the Net
19 Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during
20 the Class Period and multiplying the result by each Settlement Class Member's Workweeks.
21 Agreement, § III(M)(1). The estimated average Individual Settlement Payment is approximately
22 \$1,370.72. Apex Dec., ¶ 18.

23 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
24 the Settlement Class Member will release the Released Parties from the Released Class Claims that
25 accrued during the Class Period. Agreement, § III(B).

26 Apex Class Action, LLC was appointed as the Settlement Administrator for the Class. The
27

28 ³ Subject to the Court's determination as to whether the two attempted opt outs should be deemed as valid. If the Court deems these opt-out attempts as valid, 99.7% of the Class will be participating in the Settlement.

Administration Costs include those expenses of effectuating and administering the Settlement, *i.e.*, the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Settlement Payments, and the fees of the Settlement Administrator approved for reimbursement by the court. The Administration Costs are \$10,000.00. Apex Dec., ¶ 21. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ § III(M)(12).

Subject to Court approval, Class Counsel shall seek Attorneys' Fees and Attorneys' Expenses in the amount of \$550,000.00, comprised of attorneys' fees equal to 35% of the Gross Settlement Amount estimated to be \$525,000.00 and up to \$25,000 for actually incurred litigation expenses. Agreement, § III(M)(10). Plaintiff's counsel is to split the fees 32.5% to the JCL Law Firm, APC, 32.5% to the Zakay Law Group, APLC, and 35% to Lawyers *for* Justice, P.C. Agreement, § I(F). The Agreement also provides for an Enhancement Award in the amount of \$10,000 for Plaintiff, in consideration of her time, risk, and efforts as the Class Representative on behalf of the Class and a general release. Agreement, § 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 unanimous or near unanimous approval of the Settlement by the Class, the absence of any objections to the Settlement and the average Individual Settlement Payment of \$1,370.72. Apex Dec., ¶¶ 11-16; 15; JCL Dec., ¶ 20.

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

1 must decide whether the proposed settlement falls within the range of reasonable settlements,
2 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
3 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*
4 *Computer* (2001) 91 Cal.App.4th 224, 246 (The proposed settlement is not to be judged against a
5 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”).
6 In *Wershba*, appellants argued that the settlement was too low given the “clear” liability, however, the
7 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for
8 upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

20 V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

26 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*
27 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial court should
28 consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of

1 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of
2 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
3 completed and the stage of the proceedings, the experience and views of counsel, the presence of a
4 governmental participant, and the reaction of the class members to the proposed settlement.' [Citations.]"

5 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128; see also *Munoz v. BCI Coca-Cola*
6 *Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.

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

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

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

17 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
18 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
19 assessed the value of the class claims using data and documents provided by Defendants through
20 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
21 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
22 Class Counsel retained BCG to analyze Defendant's time and payroll data to formulate damage models
23 estimating Defendant's liability exposure. Class Counsel's investigation, research, experience, and
24 damage models informed and guided the mediated negotiations that resulted in this settlement.
25 Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the class claims
26 before the parties reached a settlement. JCL Dec., ¶ 21.

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

28 On March 15, 2024, the Parties conducted a full day mediation with Brian Sinclair, Esq., an

1 experienced wage and hour mediator. Mediator Sinclair helped to manage the Parties' expectations
2 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
3 progress with Mediator Sinclair's assistance. Namely, the Parties exchanged information regarding
4 their respective claims and defenses, including their respective evaluations of the damages. After arm's
5 length and adversarial negotiations, the mediation concluded with a settlement. The amount of the
6 enhancement award was not negotiated until after the parties agreed to the Gross Settlement Amount
7 and many other terms. No action would likely have been taken by Class Members individually, and no
8 compensation would have been recovered for them, but for Plaintiff's service on behalf of the Class.
9 JCL Dec., ¶ 22.

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

11 Class Counsel in this matter has extensive class action experience in multiple fields and has
12 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
13 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
14 similar wage and hour class actions throughout the State of California. As such, courts throughout
15 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
16 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
17 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 23-39; Declaration
18 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3; Declaration of Selena Matavosian at ¶¶ 6-9; 21.

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

20 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
21 dissemination of the notice to the Class, which provided each class member with the terms of the
22 Settlement, including the specific estimated Individual Settlement Payments, just two of the 642 Class
23 Members attempted to opt out of the Settlement. In both instances, as detailed in the Apex Declaration,
24 these individuals did not comply with the technical requirements included in the Class Notice for opting
25 out. Apex Dec. ¶¶ 11- 13. Plaintiff's counsel has agreed to accept these opt-outs as valid despite falling
26 short of strictly complying with the opt-out requirements, as Plaintiff's counsel believes substantial
27 compliance has been met. Defendants' counsel, however, has not agreed to accept these attempts as
28 valid opt-outs. The Parties have not reached an agreement as to whether to accept these opt-outs as

valid, though have agreed to abide by the Court’s decision as to the validity of these opt-out attempts. JCL Dec., ¶ 9.

The nearly unanimous approval by the 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."); *Stoetznier 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 nearly unanimous approval of the Class and grant final approval of the Settlement.

E. The Gross Settlement Amount is Fair and Reasonable.

The Gross Settlement Amount of One Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00) 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 Members 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 One Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00) 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 Defendants 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., ¶ 30.

1 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
2 reasonable considering the nature and magnitude of the claims being settled and the various potential
3 impediments to recovery. Class Counsel developed varied economic damages models measuring
4 Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various
5 models were informed by Class Counsel's investigation, including the analysis of a significant sample
6 of time and payroll data. Detailed in greater depth during the preliminary approval process, Class
7 Counsel projected a range of Defendants' liability exposure for the claims asserted on behalf of the
8 Class. The Gross Settlement Amount represents approximately 45% of Defendants' *class-wide* liability
9 exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 31.

10 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
11 Court for the Northern District of California granted final approval in a wage and hour misclassification
12 action and found that the Gross Settlement Amount representing 10% of the estimated trial award was
13 within the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir.
14 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing "roughly one-sixth of the
15 potential recovery." Given the amount of the settlement here as compared to potential value of the
16 claims, particularly the strength of Plaintiff's action, the settlement is clearly fair and reasonable.⁴

17 The calculation methodology used to compensate the Settlement Class Member for the alleged
18 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
19 objective, and impartial. The calculation methodology is based on the number of Workweeks each
20 Settlement Class Member worked for Defendants during the Class Period. The number of Workweeks
21 for the Settlement Class Member is established through Defendant's data and documented compensation
22 records. The Settlement Administrator is responsible for calculating the Individual Settlement Payments
23 by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement
24

25 ⁴ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving
26 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
27 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
28 *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.").

Class Members during the Class Period and multiplying the result by each Settlement Class Member's Workweeks. Agreement, § III(M)(1). This process establishes an objectively fair and reasonable procedure to compensate the Class. JCL Dec., ¶ 32.

The settlement also provides significant relief to the Settlement Class Members. After deductions for Attorneys' Fees and Attorneys' Expense, Administration Costs, the PAGA Penalties, and the Enhancement Award, the Net Settlement Amount is currently estimated to be \$880,000. Apex Dec., ¶ 17. The average settlement payment is approximately \$1,370.72, and the highest is approximately \$3,572.09. Apex Dec., ¶ 18. 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 (L.A. 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, Defendants must separately fund its share of any employer side payroll taxes. Agreement, § III(M)(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. JCL Dec., ¶ 33.

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., ¶ 34. As the federal court in *Glass v. UBS*

1 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
2 litigation:

3 ***In light of the above-referenced uncertainty in the law, the risk, expense,***
4 ***complexity, and likely duration of further litigation likewise favors the***
5 ***settlement.*** Regardless of how this Court might have ruled on the merits of
6 the legal issues, the losing party likely would have appealed, and the parties
7 would have faced the expense and uncertainty of litigating an appeal. The
8 expense and possible duration of the litigation should be considered in
9 evaluating the reasonableness of [a] settlement.

10 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
11 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
12 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
13 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
14 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
15 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
16 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
17 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
18 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
19 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
20 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
21 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
22 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
23 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
24 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
25 certification of driver meal and rest period claims based on the predominance of individual issues).
26 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
27 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
28 settlement. JCL Dec., ¶ 35.

Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair

1 the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
2 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 36.

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

6 **Plaintiffs may have a strong case, but the risks inherent in continued**
7 **litigation are great.** Defendants strongly deny liability for Plaintiffs'
8 principal claim that full-time Service Associates were misclassified as
9 exempt. In addition to the uncertainties raised by Defendants at the
10 preliminary stage regarding Plaintiffs' chance of success in this case,
11 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
12 Plaintiffs.....[T]he **Total Settlement amount and the Class Members'**
13 **expected net recovery, after fees and other costs are deducted, appear**
14 **to be a reasonable compromise, in light of the risks of litigation.**

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

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

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

28 *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.)

1 As demonstrated by the decisions in *Magadia*, *supra*, 999 F.3d 668, *O’Conner v. Uber*
2 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
3 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
4 that if Defendants faced a large adverse judgement, Defendants would post a bond and appeal. A post-
5 judgment appeal by Defendants would have required many more years to resolve, assuming the
6 judgment was affirmed. If the judgment was not affirmed in total, then the case could have dragged on
7 for years after the appeal. The benefits of a guaranteed recovery today outweigh an uncertain result
8 three or more years in the future. JCL Dec., ¶ 37.

9 Class Representative and Class Counsel recognize the expense and length of a trial against
10 Defendants through possible appeals which could take another three years. In arriving at their informed
11 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
12 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
13 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
14 Moreover, post-trial motions and appeals would have been inevitable. Costs would have increased, and
15 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
16 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
17 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
18 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
19 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 38.

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

22 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
23 indication that this amount was the result of self-interest at the expense of class members,” such
24 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
25 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
26 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
27 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at
28 *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 Defendants negotiated a good faith PAGA Penalties payment in the amount of \$50,000 which is 3.33% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA Penalties (\$37,500.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Penalties (\$12,500.00) to be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"), which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 39.

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., ¶¶ 5-6, 40. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Penalties.

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: December 23, 2024

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