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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

GRETA BARTEK, an individual, on behalf of all
persons similarly situated;

Plaintiff,

vs.

THE COMPUTER MERCHANT, LTD., a
Massachusetts corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 34-2023-00336866

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

Date: February 14, 2025

Time: 9:00 a.m.

Judge: Hon. Jill H. Talley

Dept.: 23

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 after Mediation.	8
C. Class Counsel is Experienced in Similar Litigation.	9
D. The Settlement Class Responded Positively to the Settlement.	9
E. The Gross Settlement Amount is Fair and Reasonable.	10
F. The Strength of Plaintiffs' 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, 1150-1151.....	6
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).....	15
Brinker	
.....	13
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.....	6-7
Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)	
(9th Cir. 2000) 213 F.3d 454, 459.....	10
Duran v. U.S. Bank National Association	
(2014) 59 Cal.4th 1, 31.....	13, 15
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.....	15
Hopson v. Hanesbrands Inc.	
2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009); 2009 WL 928133, at *1, 9 (N.D. Cal. Apr. 3, 2009).....	14-16
Huens v. Tatum	
(1997) 52 Cal.App.4th 259, 265.....	6
In re Austrian & German Bank Holocaust Litigation	
(S.D.N.Y. 2000)80 F.Supp.2d 164, 175.....	9
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).....	16
Kullar v. Foot Locker Retail, Inc.	

1	(2008) 168 Cal.App.4th 116, 128-29.....	7, 10
2	<i>Laskey v. Int'l Union</i>	
3	(6th Cir. 1981) 638 F.2d 954.....	9
4	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
5	(N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7.....	11
6	<i>Lim v. Victoria's Secret Stores, Inc.</i>	
7	Case No. 04CC00213 (Orange County Super. Ct.).....	12
8	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i>	
9	2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).....	15
10	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
11	(9 th Cir. 2021) 999 F.3d 668.....	13, 15
12	<i>Malibu Outrigger Bd. Of Governors v. Superior Court</i>	
13	(1980) 103 Cal.App.3d 573, 578-579.....	6
14	<i>McKenzie v. Fed. Express Corp.</i>	
15	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	16
16	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
17	(2010) 186 Cal.App.4th 399, 408.....	7
18	<i>O'Conner v. Uber Technologies, Inc.</i>	
19	(9 th Cir. 2018) 904 F.3d 1087, 1133.....	13, 15
20	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
21	(9 th Cir. 1982) 688 F. 2d 615, 625.....	7
22	<i>Palencia v. 99 Cents Only Stores</i>	
23	No. 34-2010-00079619.....	11-12
24	<i>Rebney v. Wells Fargo Bank</i>	
25	(1990) 220 Cal.App.3d 1117, 1138.....	7
26	<i>Ressler v. Federated Department Stores, Inc.</i>	
27	Case No. BC335018 (L.A. County Super. Ct.).....	12
28	<i>Sorenson v. PetSmart, Inc.</i>	
	Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.).....	12
	<i>Stoetznor v. U.S. Steel Corp.</i>	
	(3d. Cir. 1990) 897 F.2d 115, 118-119.....	9
	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
	2015 U.S. Dist. LEXIS 78671.....	10
	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Associates</i>	
	38 Cal.3d 488, 499-500 (1985).....	10
	<i>Tien v. Tenet Healthcare Corp.</i>	
	(2012) 209 Cal.App.4th 1077, 1088.....	13
	<i>Viceral v. Mistras Grp., Inc.</i>	
	(N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7.....	11
	<i>Wershba v. Apple Computer</i>	
	(2001) 91 Cal.App.4th 224, 245-46, 250.....	6, 10

1 ///

RULES, CODES, AND STATUTES

2	<i>Cal. Code of Civ. Proc.</i> § 877.6.....	10
3	<i>Cal. Lab. Code</i> § 201.....	2
4	<i>Cal. Lab. Code</i> § 202.....	2
5	<i>Cal. Lab. Code</i> § 203.....	2
6	<i>Cal. Lab. Code</i> § 226.....	2
7	<i>Cal. Lab. Code</i> § 226.7.....	2
8	<i>Cal. Lab. Code</i> § 510.....	2
9	<i>Cal. Lab. Code</i> § 512.....	2
10	<i>Cal. Lab. Code</i> § 1194.....	2
11	<i>Cal. Lab. Code</i> § 1197.....	2
12	<i>Cal. Lab. Code</i> § 1197.1.....	2
13	<i>Cal. Lab. Code</i> § 2698 <i>et seq.</i>	3
14	<i>Cal. Code of Bus. & Prof.</i> § 17200.....	2

SECONDARY SOURCES

15	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992) §11.41, pp. 11-91	
16		7

1 I. INTRODUCTION

2 Plaintiff GRETA BARTEK (hereinafter “Plaintiff”) seeks final approval of the Stipulation
3 of Settlement of Class and PAGA Action and Release of Claims (“Agreement”)¹, which if
4 approved, would provide valuable monetary relief for 166 Settlement Class Members employed by
5 Defendant The Computer Merchant, LTD. (“Defendants”).

6 In an order dated October 15, 2024, this Court preliminarily approved the Agreement and
7 preliminarily certified the Class.² Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On
8 November 5, 2024, the Settlement Administrator delivered notice of the proposed settlement to the
9 Class. Declaration of Nicole Nastaro (“Apex Dec.”), ¶ 7.

10 *The Class greeted news of the Settlement with unanimous approval as, at the time of the*
11 *filing of this motion, all 116 Class Members chose to participate in the Settlement.*³ There are
12 zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The unanimous approval
13 by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec.,
14 ¶ 8.

15 An objective evaluation of the proposed settlement of Two Hundred Fifty Thousand Dollars
16 and Zero Cents (\$250,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on
17 behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of
18 informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided
19 over by Judge Carl West (Ret.), a respected jurist and an experienced mediator of wage and hour
20 class and PAGA actions. After deducting any Court-approved Class Counsel Award, Service
21 Award, PAGA Payment, and Settlement Administration Costs, the Net Settlement Amount shall be
22 distributed to the Settlement Class based on the number of Workweeks they worked while employed
23 by Defendant during the Class Period. JCL Dec., ¶ 8.

24 This Settlement provides substantial recovery to Class Members. Plaintiff estimates that the
25 Settlement, if approved, would result in a Net Settlement Amount of approximately **\$116,176.67**.

26
27 ¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations
28 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.

³ As of the filing date of this Motion, 3 Notices were deemed undeliverable.

1 This will result in an average Individual Settlement Payment of **\$699.86**, with the estimated highest
2 gross payment being **\$6,191.82** and the lowest gross payment being **\$26.69**. Aggrieved Employees
3 will receive an estimated average gross payment of **\$39.06**, with the estimated highest gross
4 payment being **\$144.49** and the lowest gross payment being **\$1.51**. JCL Dec., ¶ 9; APEX Dec., ¶¶
5 15-18.

6 The relief offered by the Settlement is immediate and is particularly impressive when viewed
7 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).
8 Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
9 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and
10 uncertain litigation. JCL Dec., ¶ 10.

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

15 II. OVERVIEW OF THE LITIGATION

16 On March 23, 2023, Plaintiff filed a Notice of Violations with the LWDA and served the
17 same on Defendant. JCL Dec., ¶ 12.

18 On March 30, 2023, Plaintiff filed a Class Action complaint in the Sacramento Superior
19 Court Case No. 34-2023-00336866 (“Class Action”), alleging claims for: (1) Unfair Competition
20 In Violation Of Cal. Bus. & Prof. Code §17200 et seq; (2) Failure To Pay Minimum Wages In
21 Violation Of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure To Pay Overtime Wages In
22 Violation Of Cal. Lab. Code §§ 510, et seq; (4) Failure To Provide Required Meal Periods In
23 Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure To
24 Provide Required Rest Periods In Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
25 IWC Wage Order; (6) Failure To Provide Accurate Itemized Statements In Violation Of Cal. Lab.
26 Code § 226; and (7) Failure To Provide Wages When Due In Violation Of Cal. Lab. Code §§ 201,
27 202 and 203. JCL Dec., ¶ 13.

28 On July 19, 2023, Plaintiff filed a First Amended Complaint to add an eighth cause of action

1 for alleged violations of the Private Attorneys General Act California Labor Code §§ 2698 *et seq.*
2 (“PAGA”). JCL Dec., ¶ 14.

3 Plaintiff seeks to represent a putative class of all non-exempt employees who worked for
4 Defendant, The Computer Merchant, Ltd., in California at any time during the period beginning
5 March 24, 2019, to May 25, 2024, (the “Class Members”). There are approximately 166 Class
6 Members that worked a total of 4,356 Workweeks during the Class Period. The Complaint
7 generally alleges the causes of actions listed above. The Action seeks unpaid wages, statutory and
8 PAGA penalties, attorneys’ fees, and litigation costs. JCL Dec., ¶ 15.

9 Plaintiff also seeks to represent a PAGA group of Aggrieved Employees which is comprised
10 of all non-exempt employees who worked for Defendant The Computer Merchant, Ltd., in
11 California (“Aggrieved Employees”) during the period of March 23, 2022, to May 25, 2024, (the
12 “PAGA Period”). *See* Agreement at §§ I(C), I(Y). JCL Dec., ¶ 16.

13 Prior to mediation, Class Counsel investigated the facts relevant to the Action, including
14 conducting an independent investigation as to the allegations, reviewing documents and information
15 exchanged through informal discovery, and reviewing documents and information provided by
16 Defendant pursuant to informal requests for information to prepare for mediation. As part of this
17 process, Defendant provided Plaintiff’s personnel file including her check history register, emails
18 regarding onboarding, employment agreement, guidelines and expectations, offer letter, placement
19 record and time sheets. Defendant also produced 100% of the payroll data for 166 class members;
20 and 103 pages of relevant documents including Subcontractor travel and expense reimbursement
21 policies, Gainwell California meal and rest period policies, Frequently asked questions, The
22 Computer Merchant California Meal and Rest Period Policy for Non-exempt Workers, Arbitration
23 Agreement, The Computer Merchant Subcontractor Time Reporting Policy, Second Meal break
24 Waiver, Plaintiff’s earning statements, written weekly project time logs for class members, time
25 records for class members, relevant emails regarding schedules for class members, Gainwell work
26 schedules, and Gainwell Time sheets for class members. JCL Dec., ¶ 17.

27 On March 25, 2024, the Parties participated in mediation presided over by Judge Carl West
28 (Ret.), a respected jurist and an experienced mediator of wage and hour class and PAGA actions.

At the conclusion of the mediation, the Parties accepted a Mediator’s settlement proposal, which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties documented the agreement in the form of a Settlement Agreement, which was signed by the Parties and is now presented to this Court for preliminary approval. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 18.

On October 15, 2024, this Court preliminarily approved the Settlement. JCL Dec., ¶ 19. On November 5, 2024, the Settlement Administrator mailed Notice Packets to all 166 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 Settlement Class to the Settlement was outstanding – 100% of the Class Members are participating in the Settlement. Apex Dec., ¶¶ 11-14.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00) based on a total of an estimated 4,356 workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 20.

Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified Settlement Fund within sixty (60) days of notice of entry of the Court’s order granting final approval. If an appeal is filed, Defendant shall pay the Gross Settlement Amount to the Settlement Administrator within sixty (60) days of when the applicable appellate court has rendered a final decision or opinion affirming the Court’s final approval order and judgment without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant. Agreement, ¶ I(N). Individual Settlement Payments and individual shares of the PAGA Payment shall be mailed by regular First-Class U.S. Mail to Settlement Class Members’ and/or Aggrieved Employees’ last

known mailing address no later than fifteen (15) business days after the funding date. Agreement, ¶ III(M)(7). The Settlement Administrator will calculate Individual Settlement Payments by adding up the total number of Workweeks for all Class Members. The Settlement Administrator will then divide the respective Workweeks for each Class Member by the total Workweeks for all Class Members, resulting in a Payment Ratio for each Class Member. Each Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement Payment. Agreement, ¶ III(M)(1). The estimated average Individual Settlement Payment is approximately \$699.86. JCL Dec., ¶ 9.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, the Participating Class Members will release the Defendant from the Released Class Claims that accrued during the Class Period. The Aggrieved Employees, the LWDA, and the State of California will release the Defendant from the Released PAGA Claims for the PAGA Period. Agreement at ¶¶ III(B), III(C).

Apex Class Action LLC was appointed as the Settlement Administrator for the Class. 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 Settlement Administrator costs are \$7,990.00. Apex Dec., ¶ 19. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ III(M)(12).

Subject to Court approval, Class Counsel shall seek an award in the amount of \$108,333.33, comprised of Attorneys' Fees in the amount of \$83,333.33(one-third of the Gross Settlement Amount) **and** up to \$25,000.00 for actually incurred litigation expenses. Plaintiffs' counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC. Agreement, ¶ I(G). Plaintiff reviewed the terms of the Agreement, including the monetary terms and releases, and executed the Agreement. Declaration of Greta Bartek ("Bartek Dec.") at ¶12. The Agreement also provides for Service Award in the amount of \$7,500.00 in consideration of Plaintiff's time, risk, and efforts as the Class Representative on behalf of the Settlement Class.

1 Agreement, ¶¶ I(II); III(M)(9). As explained in further detail below, the Settlement is fair, adequate,
2 and reasonable to the class and should be granted final approval. This is evidenced by the unanimous
3 approval of the Settlement by the Settlement Class and absence of any objections to the Settlement
4 and the average Individual Settlement Payment of **\$699.86**. APEX Dec., ¶ 16; JCL Dec., ¶ 21.

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

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

13 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
14 action requires court approval.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
15 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The
16 court must decide whether the proposed settlement falls within the range of reasonable settlements,
17 considering that settlements are compromises between the parties reflecting subjective,
18 unquantifiable judgments concerning the risks and possible outcomes of litigation. *See also*
19 *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to
20 be judged against a hypothetical or speculative measure of what might have been achieved had
21 plaintiffs prevailed at trial.”). In *Wershba*, appellants argued that the settlement was too low given
22 the “clear” liability, however, the Court rejected this argument and held that “the merits of the
23 underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba*,
24 *supra*, at 246; *see also 7-Eleven, supra*, at 1150.

25 In these cases, Courts have repeatedly emphasized that there is a strong initial presumption
26 that the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not
27 substitute their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The
28 presumption of fairness exists where: (1) investigation and discovery are sufficient to allow counsel

1 and the court to act intelligently; (2) the settlement is reached through arm's-length bargaining; (3)
2 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48
3 Cal.App.4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41,
4 pp. 11-91. Here, all of these factors support a presumption of fairness.

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

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

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

15 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v.*
16 *Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial
17 court should consider in evaluating the reasonableness of a class action settlement agreement
18 include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
19 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
20 the extent of discovery completed and the stage of the proceedings, the experience and views of
21 counsel, the presence of a governmental participant, and the reaction of the class members to the
22 proposed settlement.’ [Citations.]” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
23 128; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
24 408.

25 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
26 Due regard should be given to what is otherwise a private consensual agreement between the parties.
27 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
28 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating

1 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
2 *Id.* “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate
3 balancing, gross approximations and rough justice.’ [Citation omitted.]” *Id.* These factors are
4 analyzed seriatim below and all support final approval of the class action settlement before this
5 Court.

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

7 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated
8 the proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class
9 Counsel assessed the value of the class claims using data and documents provided by Defendant
10 through informal discovery. Class Counsel obtained extensive payroll and policy records, as well
11 as data regarding the number of Class Members, workweeks, and average rate of pay to assess
12 damages before mediation. Class Counsel retained Berger Consulting Group (“BCG”) to analyze
13 Defendant’s time and payroll data to formulate damage models estimating Defendant’s liability
14 exposure. Class Counsel’s investigation, research, experience, and damage models informed and
15 guided the mediated negotiations that resulted in this settlement. Accordingly, Plaintiff’s Counsel
16 fully understood the strengths and weaknesses of the class claims before the parties reached a
17 settlement. JCL Dec., ¶ 22-29.

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

19 On March 25, 2024, the Parties conducted a full-day mediation with Judge Carl West (Ret.),
20 a respected jurist and an experienced mediator of wage and hour class and PAGA actions. Judge
21 West helped to manage the Parties’ expectations and provided a useful, neutral analysis of the issues
22 and risks to both sides. The Parties made substantial progress with Judge West’s assistance. Namely,
23 the Parties exchanged information regarding their respective claims and defenses, including their
24 respective evaluations of the damages. At the conclusion of the mediation, the Parties accepted a
25 Mediator’s settlement proposal. The complete and final terms of the Parties’ settlement are now set
26 forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate, and
27 reasonable compromise of the claims at issue. JCL Dec., ¶ 30.

28 As discussed above, the Parties subsequently negotiated the terms of the Agreement based

on Defendant's representations and Judge West's recommendation. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class. JCL Dec., ¶ 31.

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. Class 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. JCL Dec., ¶¶ 32-38; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

D. The Settlement Class Responded Positively to the Settlement.

The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Class Members, which provided each class member with the terms of the Settlement, including the specific estimated Individual Settlement Payments, none of the 166 members of the Settlement Class have opted-out of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Class chose to participate in the Settlement. JCL Dec., ¶ 8; Apex Dec., ¶ 14.

The unanimous 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."); *Stoetznner 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 request the Court to follow the high approval of the Settlement Class and grant final approval of the Settlement.

1 **E. The Gross Settlement Amount is Fair and Reasonable.**

2 The Gross Settlement Amount of Two Hundred Fifty Thousand Dollars and Zero Cents
3 (\$250,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
4 court acknowledged that “as the court does when it approves a settlement as in good faith under
5 Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement
6 is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-*
7 *Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

8 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
9 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
10 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
11 Cal.App.4th at 250. While the Gross Settlement Amount of Two Hundred Fifty Thousand Dollars
12 and Zero Cents (\$250,000.00) represents a discount on Defendant’s potential exposure if Plaintiff
13 established liability on all claims and was awarded the full amount of the estimated damages at trial,
14 this compromise is reasonable because (1) the formidable defenses raised by Defendant presented
15 a risk that could award significantly less in damages than Plaintiff’s estimate and (2) any theoretical
16 post-trial recovery may require many more years of litigation, resulting in added fees and costs
17 without any guarantee of recovery for the Class. JCL Dec., ¶ 39.

18 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
19 reasonable considering the nature and magnitude of the claims being settled and the various
20 potential impediments to recovery. Class Counsel developed varied economic damages models
21 measuring Defendant’s liability exposure while accounting for the uncertainties of continued
22 litigation. The various models were informed by Class Counsel’s investigation, including the
23 analysis of a significant sample of payroll data. As detailed in greater depth during the preliminary
24 approval process, Class Counsel projected a range of Defendant’s liability exposure for the claims
25 asserted on behalf of the Settlement Class. The Gross Settlement Amount represents approximately
26 22.2% of the maximum estimated *damages*, and 9.4% of the maximum combination of damages
27 and penalties to the Class. JCL Dec., ¶ 40.

28 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District

1 Court for the Northern District of California granted final approval in a wage and hour
2 misclassification action and found that the Gross Settlement Amount representing 10% of the
3 estimated trial award was within the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego*
4 *Fin. Corp. Sec. Litig.)* (9th Cir. 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement
5 representing “roughly one-sixth of the potential recovery.” Given the amount of the settlement here
6 as compared to potential value of the claims, particularly the strength of Plaintiffs’ action, the
7 settlement is clearly fair and reasonable.⁴

8 The calculation methodology used to compensate the Settlement Class Members for the
9 alleged damages was negotiated at the time of the Settlement. More importantly, the methodology
10 is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks
11 each Settlement Class Member worked for Defendant during the Class Period. The number of
12 Workweeks for the Settlement Class Members is established through Defendant’s data and
13 documented compensation records. The Settlement Administrator is responsible for calculating the
14 Individual Settlement Payments by multiplying the Payment Ratio for each Class Member by the
15 Net Settlement Amount. The Settlement Administrator will calculate the Payment Ratio by dividing
16 the total number of Workweeks for each Class Member by the total number of Workweeks for all
17 Class Members. This process establishes an objectively fair and reasonable procedure to
18 compensate the Settlement Class. Agreement, ¶ III(M)(1).

19 The Settlement also provides significant relief to the Settlement Class Members. After
20 deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Payment,
21 and the Service Award, the Net Settlement Amount is currently estimated to be **\$116,176.67**. The
22 average settlement payment is approximately **\$699.86**. Apex Dec., ¶ 15-16. This average net
23 recovery is on par with many wage and hour class action settlements approved by California state
24 and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento

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
26 (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-
27 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,
28 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.”).

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. JCL Dec., ¶ 41. Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, ¶ III(A)(4).

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., ¶ 42.

F. The Strength of Plaintiffs' 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, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 43. 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

1 the certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009)
2 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court’s denial of class
3 certification because employees’ declarations attesting to having taken meal and rest breaks
4 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best*
5 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
6 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform
7 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
8 certification of driver meal and rest period claims based on the predominance of individual issues).
9 JCL Dec., ¶ 44.

10 Further, even if a class is certified, liability remains uncertain. The risks attendant to the
11 issue of Defendant’s liability in similar wage and hour actions are demonstrated by *Duran v. U.S.*
12 *Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in
13 favor plaintiffs in a wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012)
14 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks
15 were predominantly individualized questions of fact not susceptible to class treatment.”). JCL
16 Dec., ¶ 45.

17 Finally, even if a class is certified and Defendant is found liable for the class claims alleged,
18 post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and
19 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-*
20 *Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and
21 remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying
22 overtime, and directed the trial court to enter judgement in favor of the employer. *See also*
23 *O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and
24 hour misclassification action). JCL Dec., ¶ 46.

25 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
26 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
27 risk factor favoring settlement. JCL Dec., ¶ 47.

28 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless

1 recognizes that Defendant has factual and legal defenses that, if successful, would potentially
2 defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour
3 litigation can drastically affect the value of Plaintiff's claims and, in fact, already has. JCL Dec.,
4 ¶ 48.

5 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*,
6 No. CV-08-0844 EDL, 2009 WL 928133 (N.D. Cal. Apr. 3, 2009) granted approval of an
7 overtime class action settlement and explained:

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

19 See also *Browning v. Yahoo! Inc.*, No. C04-01463 HRL, 2007 WL 4105971, at *10 (N.D. Cal.
20 Nov. 16, 2007) ("In considering the strength of Plaintiff's case, legal uncertainties at the time of
21 settlement—particularly those which go to fundamental legal issues—favor approval.").

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

23 **The potential complexity and possible duration of trial also weigh**
24 **in favor of granting final approval.** Plaintiffs acknowledge the
25 difficulties of proving damages, recognize the uncertainty of
26 outcome, and believe defendant would appeal in the event of adverse
27 judgment. A post-judgment appeal would require many years to
28 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., No. 07CV938-IEG-JMA, 2009 WL 587844, at *3 (S.D. Cal. Mar. 6, 2009); see also Louie v. Kaiser Found. Health Plan, Inc., No. 08CV0795 IEG RBB, 2008 WL 4473183 (S.D. Cal. Oct. 6, 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.*, 150 F. 3d 1011, 1026 (9th Cir. 1998).)

As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668 and *O’Conner v. Uber Technologies*, 82 F. Supp. 3d 1133 (N.D. Cal. 2018) and *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a bond and appeal. 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. JCL Dec., ¶ 49.

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., ¶ 50.

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, the Parties negotiated a good faith PAGA Payment in the amount of \$10,000.00 which is approximately 4% 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 (\$\$7,500.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$2,500) to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 51.

Further, on September 18, 2024, Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with the LWDA. On January 21, 2025, Plaintiff gave the LWDA notice of this motion seeking final approval of this settlement. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment. JCL Dec., ¶ 52.

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: January 21, 2025

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