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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

RICARDO COLIN COVARRUBIAS, an
individual, on behalf of himself and on behalf
of all persons similarly situated,

Plaintiff,

v.

PENINSULA CUSTOM HOMES, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. CU0000023

**NOTICE OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: January 19, 2024
Time: 10:00 a.m.

Judge: Hon. S. Robert Tice-Raskin
Dept.: 6

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1 I. INTRODUCTION

2 Plaintiffs TIFFANY BRITTON and KAYJHONNIE SMITH (hereinafter “Plaintiffs”) seek
3 final approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of
4 Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for five
5 hundred forty-seven (547) Settlement Class Members employed by Defendant MOUNTAIN
6 VALLEY CHILD AND FAMILY SERVICES, INC. (hereinafter “Defendant”).

7 In an order dated October 13, 2023, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On
9 November 13, 2023, the Settlement Administrator delivered notice of the proposed settlement to
10 the Class. Declaration of Madely Nava (“Apex Dec.”), ¶ 7.

11 *As of the filing of this Motion, the Class has greeted news of the Settlement with 99.82%*
12 *approval.*² There is currently one opt-out and zero objections to the Settlement. Apex Dec., ¶¶ 11-
13 13. The high approval by the Settlement Class evidences the clear fairness and reasonableness of
14 the Settlement. JCL Dec., ¶ 10.

15 An objective evaluation of the proposed settlement of Four Hundred Thousand Dollars and
16 Zero Cents (\$400,000.00) (“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 Hon. Brian C. Walsh (Ret.), a respected jurist and experienced mediator of wage and hour
20 class and representative actions. After deducting any Court-approved attorneys’ fees and expenses,
21 class representative service awards, claims administration expenses, and the payments to the Labor
22 & Workforce Development Agency (“LWDA”), the net settlement amount shall be distributed to
23 the Settlement Class based on the number of Workweeks they worked while employed by
24 Defendant during the Class Period. JCL Dec., ¶ 10.

25 This Settlement provides substantial recovery to Class Members. Plaintiff estimates that the
26 Settlement, if approved, would result in a Net Settlement Amount of approximately **\$198,166.67**.

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.

² As of the filing date of this Motion, 3 Notice Packets were deemed undeliverable.

1 This will result in an average Individual Settlement Payment of **\$362.94**, with the estimated highest
2 gross payment being \$1,395.94. PAGA Class Members will receive an estimated average gross
3 payment of \$26.88, with the estimated highest gross payment being \$50.44. JCL Dec., ¶ 11; Apex
4 Dec., ¶¶ 14-17.

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

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

14 **II. OVERVIEW OF THE LITIGATION**

15 Defendant operates residential treatment programs for boys and girls, which provide mental
16 health services and therapeutic behavioral services in Nevada County, California, where Plaintiffs
17 worked. This action asserts claims on behalf of Defendant's current and former non-exempt
18 employees employed in California. Plaintiffs both worked for Defendant as non-exempt employees
19 during the Class Period. At all times during their employment, Plaintiffs earned an hourly wage,
20 were entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime
21 wages for all hours worked. Throughout their employment, Plaintiffs were subject to Defendant's
22 written policies and procedures. JCL Dec., ¶ 14; Declaration of Tiffany Britton ("TB Dec.") at ¶ 1-
23 5; Declaration of Kayjhonnie Smith ("KS Dec.") at ¶ 1-5.

24 Generally, Plaintiffs claim that Defendant failed to include non-discretionary incentive
25 compensation when calculating the regular rate of pay when paying overtime wages, meal period
26 premiums, and sick pay, failed to provide compliant meal and rest periods, failed to pay for all hours
27 worked, failed to reimburse for required business expenses, failed to furnish accurate itemized wage
28 statements, and failed to pay all wages when due. Defendant forcefully denies liability for each of

1 Plaintiffs’ claims. Further, Defendant asserts that it fully complied with all applicable employment
2 laws and raised several other significant defenses to Plaintiff’s claims, including but not limited to,
3 asserting that it maintained compliant reimbursement policies, maintained facially compliant meal
4 and rest period polices, issued compliant wage statements, and timely paid all wages when due.
5 JCL Dec., ¶ 15.

6 On April 19, 2022, Plaintiff Britton filed a class action complaint in the Nevada County
7 Superior Court, Case Number CU0000023 (the “Action”). The Action alleged ten causes of action
8 against Defendant for: (1) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510
9 and 1198; (2) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7
10 and 512(a); (3) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7;
11 (4) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (5)
12 Failure to Pay Final Wages When Due in Violation of Cal. Lab. Code §§ 201 and 202; (6) Failure
13 to Pay Wages When Due During Employment in Violation of Cal. Lab. Code § 204; (7) Failure to
14 Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226(a); (8) Failure to
15 Keep Requisite Payroll Records in Violation of Cal. Lab. Code § 1174(d); (9) Failure to Reimburse
16 Employees for Required Expenses in Violation of Cal. Lab. Code §§ 2800 and 2802; and (10) Unfair
17 Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* JCL Dec., ¶ 16.

18 On March 20, 2023, Plaintiff Smith served Defendant and the Labor and Workforce
19 Development Agency (“LWDA”) with a Notice Violations (“PAGA Notice”). Plaintiff Smith’s
20 PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations of various
21 provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”)
22 Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys
23 General Act, Cal. Lab. Code Sections 2698 *et seq.* (“PAGA”). On June 12, 2023, Plaintiff Britton
24 filed a First Amended Complaint in the Action, which added Plaintiff Smith as a named plaintiff
25 and alleged an eleventh cause of action for violation of PAGA. JCL Dec., ¶ 17.

26 The Parties agreed relatively early to mediate the Action. To prepare for mediation, the
27 Parties agreed to informally exchange relevant documents and data points subject to the mediation
28 privilege. Pursuant to that agreement, Defendant produced a sample of the Class Members’ time

1 and payroll data along with itemized wage statements and relevant policies applicable to Class
2 Members. As discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Berger
3 Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 18.

4 On April 18, 2023, the Parties participated in a full day mediation with highly regarded jurist
5 and wage and hour mediator, Judge Brian C. Walsh (Ret.). After arms-length negotiations and
6 bargaining, the settlement concluded with a settlement, which was subsequently memorialized in
7 the form of a Memorandum of Understanding. After reaching an agreement in principle, the Parties
8 negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec.,
9 ¶ 19.

10 On October 13, 2023, this Court granted preliminary approval of the Settlement. JCL Dec.,
11 ¶ 6. On November 13, 2023, the Settlement Administrator mailed Notice Packets to all 547 Class
12 Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day
13 Response Deadline for the Settlement Class to submit requests for exclusion or objections to the
14 Settlement. As of the filing of this motion, the response from the Settlement Class to the Settlement
15 has been outstanding – 99.82% of the Class Members are participating in the Settlement. Apex
16 Dec., ¶¶ 11-13.

17 **III. THE SETTLEMENT BEFORE THE COURT**

18 The Court preliminarily approved an initial Gross Settlement Amount of Four Hundred
19 Thousand Dollars and Zero Cents (\$400,000.00) based on a total of an estimated 37,351 Workweeks
20 worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to
21 satisfy Individual Settlement Payments; (2) to satisfy the Service Awards; (3) to satisfy the
22 Attorneys’ Fees and Attorneys’ Expenses; (4) to satisfy the PAGA Payment; and (5) to satisfy the
23 Claims Administration Expenses incurred in this action. JCL Dec., ¶ 20.

24 Defendant will fund the Settlement by transferring the Gross Settlement Amount to the
25 Settlement Administrator as follows: \$220,000.00 on the later of February 18, 2024 or 90 days after
26 final approval of the settlement, and \$20,000.00 every thirty (30) days thereafter for nine (9) months
27 for total of \$180,000.00. Agreement, ¶ III(L). Individual Settlement Payments and PAGA Class
28 Member Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members’

1 and/or PAGA Class Members' last known mailing address no later than thirty (30) business days
2 after the Defendant deposits the initial payment. Agreement, ¶ III(L)(7). The Settlement
3 Administrator will calculate Individual Settlement Payments by adding up the total number of
4 Workweeks for all Class Members. The Settlement Administrator will then divide the respective
5 Workweeks for each member of the Settlement Class by the total Workweeks for the entire
6 Settlement Class, resulting in a Payment Ratio for each Class Member. Each Settlement Class
7 Member's Payment Ratio is then multiplied by the Net Settlement Amount to calculate each
8 estimated Individual Settlement Payment. Agreement, ¶ III(L)(1). The estimated average
9 Individual Settlement Payment is approximately **\$362.94**. JCL Dec., ¶ 21.

10 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount
11 in full, the Settlement Class Members will release the Released Parties from the Released Class
12 Claims that accrued during the Class Period. The PAGA Members, the LWDA, and the State of
13 California will release the Released Parties from the Released PAGA Claims for the PAGA Period.
14 Agreement at ¶¶ III(B), III(C).

15 Apex Class Action LLC was appointed as the Settlement Administrator for the Class. Claims
16 Administration Expenses include those expenses of effectuating and administering the Settlement,
17 i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the
18 costs of administering and disbursing the Individual Settlement Payments, and the fees of the
19 Settlement Administrator approved for reimbursement by the court. The Settlement Administrator
20 expenses are \$8,500.00. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement
21 Amount. Agreement, ¶ III(L)(12).

22 Subject to Court approval, Class Counsel shall seek an award of Attorneys' Fees and
23 Attorneys' Expenses in the amount of \$153,333.33, comprised of attorneys' fees equal to one-third
24 of the Gross Settlement Amount estimated to be at least \$133,333.33 and up to \$20,000.00 for
25 actually incurred litigation expenses. Plaintiffs' counsel is to split the fees 35% to Lawyers *for*
26 Justice, PC, 32.5% to the JCL Law Firm, APC, and 32.5% to the Zakay Law Group, APLC.
27 Agreement, ¶ I(D). The Agreement also provides for Service Awards in the amount of \$10,000.00
28 paid to Plaintiffs in consideration of their time, risk, and efforts as the Class Representatives on

1 behalf of the Settlement Class. Agreement, ¶¶ I(HH); III(L)(9).

2 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the
3 class and should be granted final approval. This is evidenced by the high approval of the Settlement
4 by the Settlement Class and absence of any objections to the Settlement and the average Individual
5 Settlement Payment of **\$362.94**. Apex Dec., ¶ 15; JCL Dec., ¶ 21.

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

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

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

26 In these cases, Courts have repeatedly emphasized that there is a strong initial presumption
27 that the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not
28 substitute their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The

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

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

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

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

16 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v.*
17 *Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. "The well-recognized factors that the trial
18 court should consider in evaluating the reasonableness of a class action settlement agreement
19 include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further
20 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
21 the extent of discovery completed and the stage of the proceedings, the experience and views of
22 counsel, the presence of a governmental participant, and the reaction of the class members to the
23 proposed settlement.' [Citations.]" *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
24 128; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
25 408.

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

1 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
2 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
3 *Id.* “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate
4 balancing, gross approximations and rough justice.’ [Citation omitted.]” *Id.*

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

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

8 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated
9 the proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class
10 Counsel assessed the value of the claims using data and documents provided by Defendant through
11 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data
12 regarding the number of Class Members, workweeks, and average rate of pay to assess damages
13 before mediation. Class Counsel retained BCG to analyze Defendant’s time and payroll data to
14 formulate damage models estimating Defendant’s liability exposure. Class Counsel’s investigation,
15 research, experience, and damage models informed and guided the mediated negotiations that
16 resulted in this settlement. Accordingly, Class Counsel fully understood the strengths and
17 weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 22-27.

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

19 On April 18, 2023, the Parties conducted a full-day mediation with Hon. Brian C. Walsh
20 (Ret.), a respected jurist and experienced mediator of wage and hour class and representative
21 actions. Judge Walsh helped to manage the Parties’ expectations and provided a useful, neutral
22 analysis of the issues and risks to both sides. The Parties made substantial progress with Judge
23 Walsh’s assistance. Namely, the Parties exchanged information regarding their respective claims
24 and defenses, including their respective evaluations of the damages. After more than eight (8) hours
25 of arm’s length and adversarial negotiations, the mediation concluded with a settlement. The
26 amount of the service awards was not negotiated until after the parties agreed to the Gross
27 Settlement Amount and many other terms. No action would likely have been taken by Class
28 Members individually, and no compensation would have been recovered for them, but for Plaintiffs’

1 services on behalf of the Class. JCL Dec., ¶ 28.

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

3 Class Counsel in this matter has extensive class action experience in multiple fields and has
4 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar
5 wage and hour class actions involving similar claims. Class Counsel has been approved as class
6 counsel in similar wage and hour class actions throughout the State of California. As such, courts
7 throughout the California have deemed Class Counsel experienced and knowledgeable in this area
8 of law. Class Counsel has participated in every aspect of the settlement discussions and has
9 concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL
10 Dec., ¶¶ 29-35; Declaration of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3; Declaration of Edwin Aiwazian
11 (“Aiwazian Dec.”), ¶¶ 14-16.

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

13 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
14 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
15 member with the terms of the Settlement, including the specific estimated Individual Settlement
16 Payments. To date, only one of the 547 members of the Settlement Class has opted-out of the
17 Settlement. Moreover, there are zero objections. Stated differently, 99.82% of the Settlement Class
18 chose to participate in the Settlement. JCL Dec., ¶ 10; Apex Dec., ¶¶ 11-13.

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

28 ///

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

2 The Gross Settlement Amount of Four Hundred Thousand Dollars and Zero Cents
3 (\$400,000.00) 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 Four Hundred Thousand Dollars and
12 Zero Cents (\$400,000.00) represents a discount on Defendant’s potential exposure if Plaintiffs
13 established liability on all claims and were awarded the full amount of the estimated damages at
14 trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant
15 presented a risk that could award significantly less in damages than Plaintiffs’ estimate and (2) any
16 theoretical post-trial recovery may require many more years of litigation, resulting in added fees
17 and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 36.

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 time and payroll data. As detailed in greater depth during the
24 preliminary approval process, Class Counsel projected a range of Defendant’s liability exposure for
25 the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents
26 approximately 17.8% of the value of the maximum potential *damages* at issue. Even when
27 including the PAGA penalties and penalties for Plaintiffs’ claim for wage statement violations and
28 waiting time penalties under *Labor Code* Sections 203 and 226, the settlement represents up to 7.8%

1 of the maximum potential liability, assuming all of these amounts could be proved at trial. JCL
2 Dec., ¶ 37.

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

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

22 The Settlement also provides significant relief to the Settlement Class Members. After
23 deductions for the Attorneys’ Fees and Attorneys’ Expenses, Claims Administration Expenses, the
24

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

1 PAGA Payment, and the Service Awards, the Net Settlement Amount is currently estimated to be
2 **\$198,166.67**. The average settlement payment is approximately **\$362.94**. Apex Dec., ¶¶ 14-15. This
3 average net recovery is on par with many wage and hour class action settlements approved by
4 California state and federal courts. JCL Dec., ¶ 38. Additionally, Defendant must separately fund
5 its share of any employer side payroll taxes. Agreement, ¶ III(A)(4).

6 Clearly the goal of this litigation – to obtain redress for the class – has been met by this
7 Settlement. Given the amount of the Settlement, the risks of litigation, and the arm’s length
8 negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore
9 entitled to final approval. JCL Dec., ¶ 39.

10 **F. The Strength of Plaintiffs’ Case and Risks of Continued Litigation**

11 Although Class Counsel believes strongly in Plaintiffs’ claims, it would be misguided to
12 ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the
13 action or, at least, drastically undercut Plaintiffs’ claims. JCL Dec., ¶ 40. As the federal court in
14 *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to
15 those in this litigation:

16 *In light of the above-referenced uncertainty in the law, the risk,*
17 *expense, complexity, and likely duration of further litigation*
18 *likewise favors the settlement.* Regardless of how this Court might
19 have ruled on the merits of the legal issues, the losing party likely
20 would have appealed, and the parties would have faced the expense
21 and uncertainty of litigating an appeal. The expense and possible
22 duration of the litigation should be considered in evaluating the
23 reasonableness of [a] settlement.

24 With respect to the most immediate challenge, i.e., class certification, the risks attendant to
25 the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
26 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and
27 remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying
28 overtime, and directed the trial court to enter judgement in favor of the employer. *See also*
O’Conner v. Uber Technologies, Inc. (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and
hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th
1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet*

1 *Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might
2 not take their breaks were predominantly individualized questions of fact not susceptible to class
3 treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of
4 certification because employees’ declarations attesting to having taken meal and rest breaks
5 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy*
6 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
7 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform
8 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
9 certification of driver meal and rest period claims based on the predominance of individual issues).
10 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
11 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
12 risk factor favoring settlement. JCL Dec., ¶ 41.

13 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
14 recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat
15 or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation
16 can drastically affect the value of Plaintiffs’ claims and, in fact, already has. JCL Dec., ¶ 42.

17 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*,
18 2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009), granted approval of an overtime class
19 action settlement and explained:

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

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

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

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

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

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

As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. 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., ¶ 43.

Class Representatives and Class Counsel recognize the expense and length of a trial against Defendant through possible appeals which could take another three years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing

1 the benefits of an ultimate victory. Class Representatives and Class Counsel believe that the
2 Settlement confers substantial monetary and non-monetary benefits upon the Class.

3 Further, prior to and during the mediation and settlement discussions, the Parties exchanged
4 information and engaged in a detailed discussion regarding their evaluate of the case and various
5 aspects of the matter, including but not limited to, the risks and delays of further litigation, as well
6 as evidence of Defendant's financial condition and ability to pay a settlement. The Parties only
7 reached a Settlement after Judge Walsh heard arguments, reviewed evidence, evaluated the Parties'
8 respective claims and defenses, and accounted for Defendant's financial ability to pay any agreed
9 upon settlement. Based upon their evaluation, Class Representatives and Class Counsel have
10 determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair,
11 reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 44.

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

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

24 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$20,000.00 which
25 is 5% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range
26 of approved PAGA settlements. Seventy-five percent (75%) of the PAGA Payment (\$15,000.00)
27 will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be
28 distributed to the PAGA Class Members, which is within the range of PAGA penalties approved by

1 courts and should be approved. JCL Dec., ¶ 45.

2 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
3 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
4 with the LWDA. JCL Dec., ¶¶ 5-6, 46. By not registering an objection with either Class Counsel
5 or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

6 **VII. CONCLUSION**

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

10
11 DATED: December 21, 2023

ZAKAY LAW GROUP, APLC

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13 By:  _____

14 Shani O. Zakay
15 Attorney for Plaintiff
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