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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ALBERT AJERO , an individual, on behalf of himself, and on behalf of all persons similarly situated, Plaintiff, vs. WILDCAT DISCOVERY TECHNOLOGIES, INC., a Delaware corporation; and DOES 1-50, Inclusive, Defendants.	Case No. 37-2023-00055145-CU-OE-CTL Action Filed: December 20, 2023 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: December 5, 2025 Time: 10:15 a.m. Judge: Hon. Wendy M. Behan Department: C-66

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I. INTRODUCTION

Plaintiff ALBERT AJERO (hereinafter "Plaintiff") seeks final approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement")[1], which if approved, would provide valuable monetary relief for 106 Settlement Class Members employed by Defendant WILDCAT DISCOVERY TECHNOLOGIES, INC., ("Defendant") during the Class Period. Plaintiff and Class Counsel also seek approval of Class Counsel Award in the amount of **$150,000.00**, comprised of $120,000.00 (one-third of the Gross Settlement Amount) and up to $30,000.00 for reimbursement of actually incurred litigation expenses[2].

An objective evaluation of the proposed settlement of $360,000.00 ("Gross Settlement Amount") confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations between experienced counsel, guided by the wisdom and experience of Honorable Brian C. Walsh (Ret.), a retired jurist and mediator of class and PAGA actions. (Declaration of Sydney Castillo-Johnson ("SCJ Dec."), ¶ 7.) Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately $173,010.00, with an average Individual Settlement Payment of **$1,647.71**, a high payment of $5,228.53, and a low payment of $10.71. Aggrieved Employees will receive an estimated average Individual Settlement Payment of **$104.45**, a high payment of $65.40, and a low payment of $5.85. Declaration of Madely Nava ("Apex Dec."), ¶¶ 15-18; SCJ Dec., ¶ 7.).

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)*. As discussed below, the proposed Settlement satisfies all criteria for final settlement approval under California law and falls well within the range of reasonableness. (SCJ Dec., ¶ 8.).

II. OVERVIEW OF THE LITIGATION

Defendant is a leading US-based battery material developer and supplier, , with its headquarters in San Diego County, where Plaintiff worked. Plaintiff was employed by Defendant from November

[1] The Agreement is attached as Ex "1" to the Declaration of Sydney Castillo-Johnson ("SCJ Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the SCJ Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

[2] Currently Class Counsel's actually incurred litigation expenses are $ $16,563.54. Class Counsel will provide an updated total at the time of hearing on this motion.

2022 to May 2023. At all times during his employment, Plaintiff was classified by Defendant as a non-exempt employee, paid on an hourly basis, and was entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendant's written policies and procedures contained in, among other documents, the "Employee Handbook.". (SCJ Dec., ¶ 9; Declaration of Albert Ajero ("AA Dec.") at ¶¶ 3-4.).

On November 15, 2023, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq. ("PAGA"). (SCJ Dec., ¶ 10.).

On December 20, 2023, Plaintiff filed a class action complaint in the San Diego Superior Court, Case Number 37-2023-00055145-CU-OE-CTL ("Action"). The Action alleged eight causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200 *et seq.*; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; and (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203 (the "Action"). (SCJ Dec., ¶ 11.).

Generally, Plaintiff claims that Defendant failed to pay employees for all time worked, failed to provide them with legally compliant meal and rest breaks, failed to reimburse for required business expenses, failed to properly calculate the regular rate of pay for purposes of overtime and sick pay, failed to provide accurate itemized wage statements, and failed to timely pay wages due upon separation of employment. Defendant forcefully deny liability for each of Plaintiff's claims. Further, Defendant asserts that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, payment of minimum wages and overtime, facially compliant meal and rest period polices, reimbursement to its employees for business expenses, properly calculated the regular rate of pay for purposes of overtime and sick pay, provided compliant wage statements, and timely payment of all wages due upon separation of employment. (SCJ Dec., ¶ 12.).

The Parties agreed relatively early in the litigation to attend private mediation. To facilitate settlement negotiations, Defendant agreed to informally produce documents and data points subject to the mediation privilege, including but not limited to, a sampling of the Class Members' time and payroll data, and pertinent written wage and hour policies. As discussed *infra,* Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. (SCJ Dec., ¶ 13.).

On March 26, 2025, the Parties mediated the Action with Honorable Brian C. Walsh (Ret.), a retired jurist and mediator of class and PAGA actions. The Parties engaged in arms-length settlement negotiations with Judge Walsh's assistance. Specifically, Judge Walsh helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation was successful and the Parties subsequently memorialized the agreement in the form of a Memorandum of Understanding ("MOU"). After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. (SCJ Dec., ¶ 14.).

On July 3, 2025, this Court granted preliminary approval of the Settlement. (SCJ Dec., ¶ 15.). Shortly, thereafter, the Settlement Administrator mailed Notice Packets to all 106 Settlement Class members. (Apex Dec., ¶¶ 4-7.). 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. (Agreement, ¶ I(EE).). As of the date of the filing of this motion, 99.06% of the Class Members are participating in the Settlement. (Apex Dec., ¶ 14.).

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved a Gross Settlement Amount of $360,000.00. The Gross Settlement Amount is all-in with no reversion to Defendant. Agreement, ¶ I(O). The Net Settlement Amount shall be used for the payment of all Individual Settlement Payments to satisfy all Released Claims. The Settlement Administrator will calculate Individual Settlement Payments by adding up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net Class Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment. (Agreement, ¶ III(L)(1).). The Settlement Administrator estimates the average Individual Settlement Payment is **$1,647.71** and the highest Individual Settlement Payment is $5,228.53. (Apex Dec., ¶ 16; SCJ Dec., ¶ 17.).

In exchange for valuable consideration, as of the funding of the Gross Settlement Amount, the Settlement Class Members will release the Released Parties from the Released Class Claims for the Class Period. Plaintiff, the LWDA, and the State of California will release the Released Parties from the Released PAGA Claims for the PAGA Period. (Agreement, ¶¶ III(B), III(C); SCJ Dec., ¶ 18.).

Apex Class Action, LLC, was appointed as the Settlement Administrator for the class. The Settlement Administration Costs are $6,990.00. (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 attorneys' fees in the amount of One Hundred Twenty Thousand Dollars and Zero Cents ($120,000.00), equal to one-third of the Gross Settlement Amount, and attorneys' expenses in an amount not to exceed Thirty Thousand Dollars and Zero Cents ($30,000.00) for actually incurred litigation expenses. (Agreement, ¶ III(L)(10).).

Subject to Court approval, the Agreement provides for a Service Award in the amount of $10,000.00 for Plaintiff in consideration of his time, risk, and efforts as the Class Representative on behalf of the Settlement Class and a broad release of claims, including a waiver of Civil Code section 1542. (Agreement, ¶ III(M)(9).).

As set forth in the Agreement, $20,000.00 of the Gross Settlement Amount has been allocated for civil penalties under the PAGA ("PAGA Payment"). Seventy-five percent (75%) of the PAGA Payment will be paid to the California Labor Workforce and Development Agency ("LWDA Payment"). The Settlement Administrator shall distribute the remaining twenty-five (25%) of the PAGA Settlement to the Aggrieved Employees ("Aggrieved Employee Payment"). (Agreement, ¶ III(M)(11).). The Settlement Administrator estimates that aggrieved employees will receive an average Individual Settlement Payment of **$65.40**, and a high payment of $**104.45**. (Apex Dec., ¶ 18; SCJ Dec., ¶ 19.).

As explained in further detail below, given the complexities of this case, the defenses asserted, and the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted final approval. (SCJ 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*, 52 Cal. App. 4th 259, 265 (1997).). 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.*, 85 Cal.App.4th 1135, 1151 (2000).).

"[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.*, 48 Cal. App. 4th 1794, 1801 (1996) *citing Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980).). The court must decide whether the proposed settlement falls within the range of reasonable settlements, taking into account that settlements are compromises between the parties reflecting subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. (See also *Wershba v. Apple Computer*, 91 Cal.App.4th 224, 246 (2001).). In *Wershba*, appellants argued that the settlement was too low given the "clear" liability, however, the Court rejected this argument and held that "the merits of the underlying class claims are not a basis for upsetting the settlement of a class action." (*Wershba*, *supra*, at 246; see also *7-Eleven*, *supra*, at 1150.). In these cases, Courts have repeatedly emphasized that there is a strong initial presumption that the compromise is fair and reasonable. (*Wershba*, 91 Cal.App.4th at 245.). The presumption of fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk*, 48 Cal. App. 4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91.). Here, all of these factors support a presumption of fairness.

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

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

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

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

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

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

As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel assessed the value of the class claims using data and documents provided by Defendant in informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the number of Class Members, workweeks, pay periods, and average rate of pay in order to assess damages before mediation. Class Counsel retained Berger Consulting Group to analyze Defendant's time and payroll data to formulate damage models estimating Defendant's liability exposure. Class Counsel's investigation, research, experience, and damage models informed and guided the mediated negotiations that resulted in this settlement. (SCJ Dec., ¶ 21.).

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

The Settlement is the product of a mediation session with a retired jurist and respected mediator and negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. (SCJ Dec., ¶ 22.).

C. <u>Class Counsel is Experienced in Similar Litigation.</u>

Class Counsel in this matter have extensive class action experience in multiple fields and have represented tens-of-thousands of persons in class actions. Class Counsel's experience is summarized in their concurrently filed declarations. Class Counsel has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. (SCJ Dec., ¶ 23; Declaration of Shani Zakay ("SOZ Dec."), ¶ 3; Declaration of Jean-Claude Lapuyade, Esq. ("JCL Dec."), filed concurrently herewith, ¶ 15-20.).

D. <u>The Settlement Class Responded Positively to the Settlement.</u>

The reaction of the Settlement Class unequivocally supports approval of the Settlement. To date, only <u>one</u> of the 106 members of the Class opted-out of the Settlement. Moreover, there are ***<u>zero</u>*** objections. Stated differently, **<u>99.06%</u>** of the Settlement Class has chosen to participate in the Settlement. (SCJ Dec., ¶ 26; Apex Dec., ¶¶ 11-14.).

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

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

Although Plaintiff and Class Counsel believe that their case has merit, they recognize the potential risks both sides would face if litigation of this action continued. (SCJ Dec., ¶ 27.). As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. (See also *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 [following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy]; *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 [denying certification of driver meal and rest period claims based on the predominance of individual issues].). (SCJ Dec., ¶ 28.).

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendant's liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*

Association (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage and hour class action. (See also *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ["[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."]; SCJ Dec., ¶ 29.).

Finally, even if a class is certified and Defendant is found liable for the class claims alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded a $110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. (See also *O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 [decertification of wage and hour misclassification action]; SCJ Dec., ¶ 30.).

Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. (SCJ Dec., ¶ 31.).

Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically affect the value of Plaintiff's claims and, in fact, already has. (SCJ Dec., ¶ 32.).

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

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

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).

In sum, while other courts 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).).

Plaintiff 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 the benefits of an ultimate victory. Plaintiff and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Plaintiff 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. (SCJ Dec., ¶ 33.).

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

The Gross Settlement Amount of Three Hundred Sixty Thousand Dollars and Zero Cents ($360,000.00) in this case is fair and well within the range of recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery.

Class Counsel developed varied economic damages models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents approximately 19.28% of Defendant's *total* liability exposure and 44.14% of Defendant's *maximum* class-wide exposure as estimated by Class Counsel at the time of mediation. (SCJ Dec., ¶ 34.).

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

The settlement provides significant relief to the Settlement Class Members. The average Class Member individual settlement payment is approximately $1,647.71, the highest is approximately $5,228.53, and the lowest is approximately $10.71. (Apex Dec., ¶ 16.). This average net recovery is greater than many wage and hour class action settlements approved by California state and federal courts. (See*, e.g., Palencia v. 99 Cents Only Stores,* No. 34-2010-00079619 (Sacramento County Super. Ct) [average net recovery of approximately $80); *Fukuchi v. Pizza Hut,* Case No. BC302589 (LA. County Super. Ct.] [average net recovery of approximately $120]; *Contreras v. United Food Group, LLC,* Case No. BC389253 (L.A. County Super. Ct.) [average net recovery of approximately $120]; *Ressler v. Federated Department Stores, Inc.,* Case No. BC335018 (L.A. County Super. Ct.) [average net recovery of approximately $90].).

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 entitled to final approval. (SCJ Dec., ¶ 35.).

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

Courts routinely approve amounts for PAGA penalties in the range of zero to two percent of the settlement. (See id. at *1, 9 [approving a PAGA payment of 0.3%]; *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) [acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement].).

Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of $20,000.00 which is 5.5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments. Seventy-Five percent (75%) of the PAGA Settlement ($15,000.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment ($5,000.00) to be distributed to the Aggrieved Employees, which is within the range of PAGA Payment approved by courts and should be approved. (SCJ Dec., ¶ 36.). The Settlement Administrator estimates that aggrieved employees will receive an average Individual Settlement Payment of **$65.40** and a high payment of $104.45. (Apex Dec., ¶ 18.).

Further, on June 10, 2025, 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 November 5, 2025, Plaintiff gave the LWDA notice of this motion seeking final approval of this settlement. (SCJ Dec., ¶ 37.). By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

VII. CLASS COUNSEL'S REQUEST FOR FEES AND COSTS

As part of the settlement, the parties agreed to a payment of attorneys' fees in the amount of one-third of the Gross Settlement Amount ($120,000.00) and Attorneys' Expenses in an amount of up to $30,000.00. The requested attorneys' fees equal to one-third of the Gross Settlement Amount is fair compensation and, respectfully, should be approved. Class Counsel undertook complex, risky, and time-consuming wage and hour litigation on a contingent basis. The attorneys' fees are within the historically recognized range attorneys' fees awarded in common fund class action settlements –

between 25% and 50% – and are supported by Class Counsel's lodestar cross-check with a reasonable .72 multiplier. That is well-below the 2.13 multiplier approved by the Supreme Court in *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, with additional work to be performed, and within the recognized multiplier range of between 2 and 4[3]. Thus, the reasonableness of the requested attorneys' fees is confirmed by reference to the lodestar with a reasonable multiplier with significant additional work still to be performed. (SCJ Dec., ¶ 38.).

A. <u>Common Fund</u>

Courts have long recognized that when class counsel's efforts result in the creation of a common fund that benefits plaintiffs and unnamed class members, class counsel have an equitable right to be compensated from that fund. (See*, e.g.*, *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ["recogniz[ing] consistently that a litigant or a lawyer who recovers a common fund…is entitled to a reasonable attorney's fee from the fund as a whole"]; *Laffitte*, 1 Cal. 5th at 488-89 [common fund doctrine "long recognized" under California law].). The common fund doctrine rests on the understanding that attorneys should normally be paid by their clients and that, unless attorneys' fees are paid out of the common fund, those who benefit from the fund will be "unjustly enriched." (*Boeing*, 444 U.S. at 478.).

As noted above, in *Laffitte*, the California Supreme Court upheld the trial court's award of 33.33% of the settlement amount of $19 million with a 2.13 multiplier and affirmed that "empirical studies show the percentage method with a lodestar cross-check is the most prevalent form of fee method in practice." (*Laffitte*, 1 Cal. 5th at 496-97.). In fact, courts have historically awarded between 25% and 50% of the common fund as attorneys' fees class action settlements. (*In re Warner Communications,* 618 F.Supp. 735, 749-50 (S.D.N.Y 1985).).

Here, the fairest way to calculate a reasonable fee when contingency-fee litigation has produced a fixed settlement amount for the Settlement Class Members is by awarding Settlement Class Counsel a percentage of the total settlement sum. (See*, e.g., In re Bluetooth Headset Products Liab. Litig.*, 654

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[3] See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with 2 multiplier); *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 255 (2001) ("multipliers can range from 2 to 4 or even higher."); *In re Sutter Health Uninsured Pricing Cases*,171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as "fair and reasonable); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 as well within the approved range of 2 to 4).

F.3d 935, 942 (9th Cir. 2011).). More importantly, a fee award under the common fund method here would achieve the two underlying goals of the common fund doctrine by: (1) equitably requiring the beneficiaries of the common fund to pay their pro rata share of fees incurred in creating the fund; and (2) providing an incentive to attract competent counsel to handle wage and hour class actions, which California courts recognize as a fundamental tool to ensure the effective enforcement of the Labor Code and minimum labor standards. (See*, e.g.*, *Gentry v. Super. Ct.*, 42 Cal. 4th 443, 455-56 (2007) [overruled on other grounds by *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014) emphasizing the indispensable value of private enforcement of California's wage-and-hour laws through class actions].).

The Agreement provides for payment of the Class Counsel Award from the common fund. Accordingly, it is well within the Court's discretion to award fees to Class Counsel under the common fund doctrine. Class Counsel requests attorneys' Fees in the amount of $120,000.00, representing one-third of the Gross Settlement Amount. Class Counsel's request is consistent with many fee awards in similar wage and hour class actions. Moreover, the requested Attorneys' Fee award is in the middle of historically recognized range of attorneys' fees awarded in common fund settlements. (SCJ Dec., ¶ 39.).

The attorneys' fees request should be awarded based upon the Gross Settlement Amount in accordance with *Laffitte*, i.e., percentage of the fund with a lodestar cross check. As explained below, the reasonableness of the requested $120,000.00 attorneys' fees is further supported by the lodestar cross-check. (SCJ Dec., ¶ 40.).

B. <u>Class Counsels' Lodestar Supports the Requested Attorneys' Fees</u>

Class Counsel's lodestar to date is $166,750.00 ***exclusive of costs***, with significant work remaining. (SCJ Dec., ¶ 41.). Thus, Class Counsel's fee request is equal to Class Counsel's lodestar with a .72 multiplier – below the 2.13 multiplier approved in *Laffitte* – is well within the recognized multiplier range between 2 and 4. (See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) [following *Laffitte,* approved 30% fee award with cross-check lodestar multiplier of 2.26]; *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) [following *Laffitte,* approved 33% fee award with cross-check lodestar multiplier of

1.7].).

Because the Settlement in this case is a pure common fund case, and the percentage of the fund is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award based upon the percentage of the common fund. Moreover, Class Counsel's lodestar supports the requested attorneys' fees with a multiplier well within the recognized range reasonableness, and in fact, below what the California Supreme Court approved in *Laffitte.* (SCJ Dec., ¶ 42.).

Although no rigid formula applies, an analysis of each of the following "basic factors" that California courts typically consider further supports the reasonableness of a fee request: (1) the result class counsel obtained; (2) the time and labor required of the attorneys; (3) the contingent nature of the case and the delay in payment to class counsel; (4) the extent to which the nature of the litigation precluded other employment by class counsel; (5) the experience, reputation, and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity and difficulty of the case; and (6) the informed consent of the clients to the fee agreement. (*Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977); *Dunk v. Ford Motor Co.,* 48 Cal.App.4th at 1810 n.2.). Those factors support Class Counsel's request and are addressed in more detail in Counsel's declarations submitted concurrently herewith. In short: (1) Considering the issues presented in the case, the Gross Settlement Amount of Three Hundred Sixty Thousand Dollars and Zero Cents ($360,000.00), is an excellent result for the Settlement Class, (2) Collectively, Class Counsel worked hard on this case and expended approximately 271.5 hours in the prosecution of this litigation in the nearly 2 years since it was filed for a total lodestar of $166,570.00, (3) Class Counsel undertook this litigation on a contingent-fee basis, assuming a significant risk that the litigation would yield no recovery after many years of work, (4) Class Counsel negotiated a one-third contingency fee arrangement, which is a reasonable arrangement to obtain competent counsel in the marketplace for representation in wage and hour class actions of this nature, and it is only equitable that Settlement Class who share in the excellent results achieved by this Settlement bear his/her pro rata share of the attorney's fees award to Class Counsel, (5) Class Counsel possesses significant experience litigating complex wage and hour class actions and the way this Settlement was achieved is demonstrative of the highly efficient way this litigation was managed and resolved (See Class Counsel's declarations for a detailed outline of their skills and experience), and (6) Settlement Class Counsel's hourly rates, which are set forth in the concurrently filed declarations of Jean-Claude Lapuyade, Esq. and Shani Zakay, Esq., are well within the range of rates billed by comparable attorneys in this market and reasonably compare with rates approved by other trial courts in wage and hour class action litigation. (SCJ Dec., ¶ 43; SOZ Dec., ¶¶ 4-10; JCL Dec., ¶¶ 5-11.).

C. <u>Class Counsel's Costs</u>

Common fund fee and expense awards include counsel's incurred expenses because those who benefit from their effort should share in the cost. (See *Rider v. City of San Diego,* 11 Cal. App. 4th 1410, 1423 n.6 (1992).). The appropriate analysis in deciding if costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. (See *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).).

As of the date of this filing, Class Counsel has expended a total of $16,563.54 in prosecuting this action. All of Class Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; mediation fees; and expert costs, which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. (SCJ Dec ¶ 44; SOZ Dec. ¶¶ 9-10; JCL Dec., ¶¶ 12-14.)

D. <u>Plaintiff's Service Award Is Reasonable and Should be Approved</u>

Courts routinely approve service awards to compensate named plaintiffs for the services they provide and the risks they incur during the class litigation. (*Bell v. Farmers Ins. Exch.,* 115 Cal.App.4th 715, 726 (2004).). The factors courts use in determining the amount of service awards include: (1) a comparison between the service awards and the range of monetary recovery available to the class; (2) time and effort put into the litigation; (3) whether the litigation will further the public policy underlying the statutory scheme; and (4) risks of retaliation. (*Clark v. American Residential Services, LLC,* 175 Cal.App.4th 785, 804-805 (2009).).

As a preliminary matter, Plaintiff granted Defendant a broad and general release of all claims arising from his employment. In exchange, the Plaintiff's Service Award is, in part, intended to compensate Plaintiff for executing this general release. This release is far broader than the release that binds the remainder of the Settlement Class. (SCJ Dec., ¶ 45.).

Regarding the amount of the requested award, courts frequently approve awards of $10,000.00 or more. (See *In re Cellphone*, 186 Cal.App.4th 1380.). The amount of the requested Service Award to Plaintiff for $10,000.00 is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly awarded in similar class action settlements. Further, the unanimous consent by the Class Members favors the Court's approval of the requested Service Award. Equally important, the time, effort, and services provided to the Settlement Class justifies the requested Service Award. The Class Representative performed his duties to the Settlement Class admirably. Plaintiff's work is summarized in his declaration filed concurrently herewith. Plaintiff assumed the serious risk of liability for Defendant's costs and potentially fees if the case was unsuccessful. Nevertheless, Plaintiff knowingly and voluntarily undertook the risk to vindicate the rights of the Settlement Class. (AA Dec., ¶¶ 1-17; SCJ Dec., ¶ 46.).

VIII. <u>CONCLUSION</u>

Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness established by 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. Further, based on the foregoing, Class Counsel respectfully requests approval of the attorneys' fees payment in the amount of $120,000.00, which makes up one-third of the Gross Settlement Amount of $360,000.00, and Attorneys' Expenses in an amount not to exceed $30,000.00, as supported by Class Counsel's billing records. Class Counsel and the Class Representative also respectfully request approval of the requested Service Award in the amount of $10,000.00 to Plaintiff.

Dated: November 5, 2025

JCL LAW FIRM, APC

By: Sydney Castillo-Johnson

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