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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

EVANGELINA LOZANO and PORFIRIO SANTIAGO, individuals, on behalf of themselves, and on behalf of all persons similarly situated, Plaintiffs, v. CEN CAL BUILDERS & DEVELOPERS, INC., a California corporation; and DOES 1-50, Inclusive, Defendant.	Case No. 23CECG04411 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: July 24, 2025 Time: 3:27 p.m. Judge: Hon. Jeffrey Y. Hamilton, Jr. Dept.: 503

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I. INTRODUCTION

The parties to this action have reached a Settlement and the Court preliminarily approved the Stipulation and Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement"), a true and correct copy of which is attached as Exhibit #1 to the Declaration of Jean Claude Lapuyade ("JCL Dec.")[1]. In accordance with the Law and Motion Minute Order dated March 19, 2025 ("Preliminary Approval Order"), the approved Class Notice has been disseminated to the Class.[2] The purpose of this hearing is to determine whether the proposed settlement of the litigation should be finally approved. Plaintiffs Evangelina Lozano and Porfirio Santiago ("Plaintiffs") respectfully submit this memorandum in support of the unopposed motion for final approval and the proposed entry of the Final Approval Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class and avoids the delays, risks, and costs of further litigation. After disseminating the notice to the members of the Class, there were no objections and no requests for exclusion, which means that 100% of the Class has elected to participate in the Settlement. JCL Dec. ¶8; Decl. of Madely Nava ("Apex Dec.") ¶ 13. This is a positive response from the Class evidencing their collective approval of the settlement. As a result, Plaintiffs respectfully submit that the class settlement should be finally approved for the same reasons that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

II. THE SETTLEMENT BEFORE THE COURT

Plaintiffs and Defendant Cen Cal Builders & Developers, Inc. (hereinafter "Defendant") reached a full and final settlement of the above-captioned action, which is embodied in the Agreement filed concurrently with the Court. As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is Seven Hundred Fifty Thousand Dollars and Zero Cents ($750,000.00). (Agreement at ¶ I(O).) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) Individual Settlement Payments; (2) Service Awards; (3) Class Counsel Award; (4) PAGA Payment; and (5) Settlement Administration Costs. (Agreement

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[1] Capitalized terms are defined in the Agreement.

[2] The "Class" is defined as "all persons who are or previously were employed by Defendant in California and classified as non-exempt employees at any time during the Class Period [January 8, 2020, through August 31, 2024]." (Agreement at ¶¶ I(E); I(I).)

at ¶ III(A)(1)). Defendant's share of employer side payroll taxes is in addition to the Gross Settlement Amount and shall be paid together with the Gross Settlement Amount on the Funding Date. (Agreement at ¶ III(A)(4).) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ III(A)(1).)

Defendant shall fully fund the Gross Settlement Amount to the Settlement Administrator as follows: the First Installment of $400,000 shall be due within ten (10) days after Final Approval of the settlement; the Second Installment of $350,000 shall be made nine (9) months after the First Installment. (Agreement at ¶ I(N)). The Individual Settlement Payments and Aggrieved Employee Payments will be mailed by the Settlement Administrator within fifteen (15) calendar days after the funding of the Gross Settlement Amount. (Agreement at ¶ III(M)(7).)

The Net Settlement Amount shall equal the net amount available for payment to the Class after deducting the Court-approved amounts for the Class Counsel Award, Service Awards, PAGA Payment, and Settlement Administration Costs. (Agreement at ¶ I(S).) The Net Settlement Amount will be distributed as the Individual Settlement Payments to the Class Members who do not timely request exclusion ("Settlement Class Members"). (Agreement at ¶¶ I(NN). The Individual Settlement Payments will be calculated as follows: Using the Class Data, the Settlement Administrator shall add 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 Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. (Agreement at ¶ III(N)(1).)

Class Members could opt-out of the Settlement by following the directions in the Class Notice. (Agreement at ¶ III(M)(7)). All Class Members who did not "opt out" are deemed Settlement Class Members who will be bound by the Settlement and will be entitled to receive a Settlement Share. Aggrieved Employees who opt out the Settlement will still be paid their allocation of the PAGA Payment, respectively, and will remain bound by the release of the Released PAGA Claims, regardless of their request for exclusion. (Agreement at ¶ III(M)(2)(a)). Finally, the Class Notice also advised the Class Members of their right to object to the Settlement. (Agreement at ¶ III(N)(8)).

A Settlement Class Member must cash his or her Settlement Share check within 180 days after the date of issuance. (Agreement at ¶ III(N)(8)). The Settlement Administrator will send a reminder to Settlement Class Members and/or Aggrieved Employees who have not cashed their checks 90 days before the expiration date. (Agreement at ¶ III(N)(8).) Any settlement checks not cashed within 180 days will be voided and any funds from such uncashed checks shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq*., in the names and corresponding amounts associated with each Class Member and/or Aggrieved Employee whose check(s) are cancelled. (Agreement at ¶ III(N)(8).)

APEX Class Action LLC was appointed by the Court as the Settlement Administrator for the Settlement. From the Gross Settlement Amount, the Settlement Administrator shall be paid for the expenses of administering the Settlement in an amount not to exceed $20,000.00 (Agreement at ¶ I(MM).) The Settlement Administration Costs, including fees and costs incurred to-date, as well as anticipated fees and costs for completion of the settlement administration, are $19,990.00. Apex Dec., ¶ 18.

Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not to exceed $250,000.00 (one-third of the Gross Settlement Amount) plus costs of $30,000.00. (Agreement at ¶ I(G).) Subject to Court approval, the Agreement provides for a payment of no more than $10,000.00 to each Plaintiff as a Service Award. (Agreement at ¶ I(JJ).) In support of this separate motion for Class Counsel Award and Service Award, Class Counsel is providing evidentiary support for these requests, including lodestar.

The Parties seek approval from the Court for the PAGA Payment of $40,000.00 out of the Gross Settlement Amount, which shall be allocated 75% ($30,000.00) to the LWDA as the LWDA Payment pursuant to PAGA and 25% ($10,000.00) will be distributed to the Aggrieved Employees based on their respective pay periods worked during the PAGA Period ("Aggrieved Employee Payment"). (Agreement at ¶ III(N)(11).)

All Aggrieved Employees will be sent their Aggrieved Employee Payment and will be subject to the release of the Released PAGA Claims, whether or not they opt out of the Settlement. (Agreement at ¶ III(M)(7).) As set forth in the accompanying proof of service, the LWDA has been served with this motion and the Agreement on June 30, 2025. JCL Dec. ¶ 6. The Settlement is fair, adequate and reasonable to the class and should be finally approved for the same reasons the Court granted preliminary approval of the Settlement, agreeing that the settlement is "fair, adequate, and reasonable." (Preliminary Approval Order at Section (2)(b).) In sum, the Settlement valued at $750,000.00 is an excellent result for the Class. This result is particularly favorable in light of the fact that liability and class certification in this case were far from certain in light of the defenses asserted by Defendant. Given the complexities of this case, the defenses asserted, 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 finally approved. JCL Dec. ¶ 9.

III. 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) ("[V]oluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation.")

"[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval." *Dunk v. Ford Motor Co.*, 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 Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) ("The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.") In *Wershba*, appellants argued that the settlement was too low given the "clear" liability, however, the Court rejected this argument and held that "the merits of the underlying class claims are not a basis for upsetting the settlement of a class action." *Id.*; *see also 7-Eleven*, *supra*, at 1150.

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

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

IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

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. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117 (2009). "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.'" *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (internal citations omitted); see also *Munoz v. BCI Coca-Cola Bottling Co. of L. A.*, 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 seriatim below, and all support final approval of the class action settlement before this Court, consistent with this Court's Preliminary Approval.

A. The Settlement Satisfies the California Test for Fairness

1. <u>The Investigation and Analysis of Documents are Sufficient to Allow Counsel and the Court to Act Intelligently</u>

Over the course of twenty-three (23) months, the Parties engaged in the investigation of the claims, including the production of documents, class data, and other information, allowing for the full and complete analysis of liabilities and defenses to the claims in this Action. The procedural history and investigation performed was detailed at length in support of the motion for preliminary approval. The Settlement was the product of one arms-length mediation and contentious negotiations through an all-day mediation presided over by Tripper Ortman, Esq., a mediator of wage and hour class actions. JCL Dec. at ¶10.

2. <u>The Settlement was Reached Through Arm's Length Bargaining</u>

This Settlement is the result of extensive and hard-fought litigation as well as negotiations before an experienced mediator. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class Claims in accordance with this Settlement. Class Counsel are experienced and qualified to evaluate the class claims, the viability of the defenses asserted, and the risks and benefits of trial and settlement, and Class Counsel are experienced in wage and hour class actions, as Class Counsel has previously litigated and certified similar claims against other employers. JCL Dec. ¶11.

The Parties attended an arms-length mediation session with Tripper Ortman, Esq., a mediator of wage and hour class actions, in order to reach this Settlement. In preparation for the mediation, Defendant provided Class Counsel with necessary information for the members of the Class, including a sampling of time data, payroll data and data concerning the composition of the Class. Plaintiffs analyzed the data with the assistance of damages expert, Berger Consulting Group ("BCG"), and prepared and submitted a mediation brief and damage valuation to the Mediator. The mediation concluded with a settlement after the Parties agreed to the mediator's settlement proposal. The final settlement terms were negotiated and set forth in the Agreement now presented for this Court's approval. JCL Dec. ¶12. The fact that the settlement was negotiated with the assistance of an experienced mediator supports approval. *Alberto v. GMRI, Inc*., 252 F.R.D. 652, 666 (E.D. Cal. Jun 24, 2008); *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA) 1330, at *15 (N.D. Cal. 2007) ("The settlement was negotiated and approved by experienced counsel on both sides of the litigation, with the assistance of a well-respected mediator with substantial experience in employment litigation [, and] this factor supports approval of the settlement").

From November 2024 to February 2025, the settlement agreement and exhibits thereto were finalized and executed. On February 24, 2025, the Motion for Preliminary Approval was filed. On March 19, 2025, the Court issued its Order granting preliminary approval of the settlement as fair and reasonable to the Class.[3] JCL Dec. ¶13.

3. Class Counsel is Experienced in Similar Litigation

Class Counsel in this matter has extensive class action experience and has represented thousands of persons in class actions including employment litigation, wage and hour class actions, and complex litigation. Class Counsel has previously litigated wage and hour class actions involving employees and claims similar to this case and have been approved as experienced class

[3] The Court's Law and Motion Minute Order preliminarily approved a Class Counsel Award in the amount of $280,000.00. (Preliminary Approval Order at Section 1). Theis amount is reflected in this Motion.

counsel in courts throughout California. As such, Class Counsel is experienced and knowledgeable in this area of law. JCL Dec., at ¶14; Declaration of Shani O. Zakay at ¶3; Declaration of Justin Lo ¶¶ 8-11. Class Counsel have participated in every aspect of the settlement discussions and have concluded the settlement is fair, adequate and reasonable and in the best interests of the Class. JCL Dec. ¶14.

4. There Are No Objections and No Requests for Exclusion

The reaction of the Class unequivocally supports approval of the Settlement. On April 18, 2025, the Settlement Administrator mailed the Court-approved Class Notice to the Class Members, which provided each class member with the terms of the Settlement, including notice of the claims at issue and the financial terms of the settlement, including the attorneys' fees, costs, and service award that were being sought, how Individual Settlement Payment would be calculated, and the specific, estimated payment amount to that individual. See Apex Dec. ¶ 7. In disseminating the notice, the Settlement Administrator followed the notice procedures authorized by the Court in its Preliminary Approval Order. Significantly, there have been no objections and no opt-outs. Apex Dec. ¶¶ 11-13. As such, 100% of the Class will participate in the Settlement and will be sent a settlement check. Apex Dec. at ¶ 14; JCL Dec. ¶8.

The absence of any objector strongly supports the fairness, reasonableness and adequacy of the Settlement. *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.*, 897 F.2d 115, 118-119 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'1Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the proposed settlement should be considered when determining fairness of settlement). Here, where there are no objections, the approval of the class is evident.

5. The Strength of Plaintiffs' Case

The Action generally alleges that Plaintiffs and other Class Members were not properly paid all minimum and overtime wages for hours worked, were not provided meal and rest periods, were not timely paid earned wages, were not paid at the proper regular rate of pay for purposes of overtime and redeemed sick pay, were not provided reimbursement for required expenses, were not provided accurate itemized wage statements, and were not paid all wages at the time of termination. The Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal relief allegedly due to Plaintiffs and the other Class Members by virtue of the foregoing claims. JCL Dec. ¶15.

Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant present serious threats to the claims of the Plaintiffs and the other Class Members. Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that it accurately compensated employees for all hours worked. Defendant contended that their meal and rest period policies fully complied with California law and that Defendant's provided compliant meal and rest periods to Class Members during the Class Period. Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs' claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant also argued that based on their facially lawful practices, they acted in good faith and without willfulness, which if accepted would negate the claims for waiting time penalties and/or inaccurate wage statements. In fact, under the current state of the law, it is questionable whether these penalties could be awarded at all based upon the alleged meal and rest period violations. If successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class. While Plaintiffs believe that these defenses could be overcome, Defendant maintains these defenses have merit and therefore present a serious risk to recovery by the Class. JCL Dec. ¶16.

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), explained in approving an overtime class action settlement:

> 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 gross settlement amount and the Class Members' expected net recovery, after fees

> and other costs are deducted, appear to be a reasonable compromise, in light of the risks of litigation.

see also Browning v. Yahoo!, Inc., 2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In considering the strength of Plaintiff's 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).

There was also a significant risk that, if the Actions were not settled, Plaintiffs would be unable to obtain class certification and thereby not recover on behalf of any employees other than themselves. Defendant argued that the individual experience of each putative class member varied with respect to the claims. Defendant could also contest class certification by arguing injury and good faith were case by case determinations that precluded class certification. Plaintiffs are aware of cases where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification of meal and rest break claims). Defendant also contended that individual differences in work experiences not only impacted damages but would also impact certification. Finally, even if class certification was successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the class has been certified. 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. JCL Dec. ¶17.

In sum, the Settlement is a fair and reasonable result, and provides the Class with a significant recovery, particularly when viewed in light of the fact that the Defendant asserted serious and substantial defenses both to liability and to class certification. JCL Dec. at ¶18. Currently, the maximum and average Individual Settlement Payments are $2,123.59 and $201.86, respectively. Apex Dec. ¶15. Given the complexities of this case, the defenses, along with the uncertainties of proof and appeal, the proposed Settlement is fair, reasonable and adequate, and should be finally approved. JCL Dec. at ¶18.

6. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

As demonstrated by the decision in *Duran*, the complexities and duration of further litigation cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event of an adverse judgment. 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 for three or more years in the future. JCL Dec. ¶19.

Plaintiffs and Class Counsel recognize the expense and length of continuing to litigate and trying this Action against Defendant through possible appeals which could take several years. Class Counsel has also considered the uncertain outcome and risk of litigation, especially in complex class actions such as this Action. Class Counsel is also mindful of and recognizes the inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class Members. JCL Dec. ¶20.

Although Plaintiffs and Class Counsel believe that their case has merit, which Defendant continues to vigorously deny, they recognized the potential risks both sides would face if litigation of the Action continued. As the federal court held in *Glass*, 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." See *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000). Here, the risk of further litigation is substantial.

Id. at *12.

7. The Amount Offered in Settlement

The Settlement in this case is fair, reasonable and adequate considering Defendant's defenses to Plaintiffs' claims. As discussed in detail at the time of preliminary approval, the Gross Settlement Amount compares favorably to the value of the claims. The calculations to compensate for the amount due to the Class Members at the time this Settlement was negotiated were calculated by Plaintiffs' expert, BCG, in advance of mediation. For the individuals whose claims are at issue in this Action, Plaintiffs analyzed the data and determined the potential maximum damages for the class claims. For the Class, Plaintiffs estimated Defendant's exposure for unpaid minimum wages ranged from approximately $206,591.50 and $826,366.00, the estimated exposure for meal period claims ranged from approximately $791,844.11 to $1,583,688.21, the estimated exposure for rest period claims ranged from approximately $791,844.11 to $1,583,688.21, the estimated exposure for regular rate violations for purposes of paying overtime wages and redeemed sick pay ranged from approximately $27,962.50 and $55,925.00, the estimated exposure for unreimbursed business expenses ranged from approximately $6,851.48 to $45,676.50, the estimated exposure for waiting time penalties ranged from approximately $887,010.50 to $8,870,105.00, and for wage statement claims ranged from approximately $811,700.00 to $1,623,400.00. However, these claims for wage statement and waiting time penalties potentially have a much smaller value, even if damages were awarded, to the extent that they are only derivative of other claims alleged. JCL Dec. ¶21.

Consequently, the Gross Settlement Amount represents approximately between 21.28% ("Realistic Damages") and 5.14% ("Maximum Damages") of Defendant's class-wide liability exposure for damages and statutory penalties, assuming these amounts could all be proven in full at trial.[4] The above maximum calculations should then be adjusted in consideration for both the risk of certification and the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.[5] JCL Dec. ¶22. Clearly, the goal of this litigation has been met.

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[4] Because the PAGA claim does not provide a recovery to the Class, Plaintiffs did not include the PAGA claim in this discussion of the Class claim valuation. The PAGA claim is addressed herein below and in the JCL Dec. at ¶ 34.

[5] *See e.g. Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral*

V. THE PARTIES REQUEST APPROVAL OF THE SETTLEMENT OF THE PAGA PAYMENT IS FAIR AND REASONABLE

Labor Code § 2699(l) requires that the Court ”shall review and approve any settlement of any civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court.” The proposed Settlement was submitted to the LWDA on February 24, 2025, when the motion for preliminary approval was filed, and was again served on the LWDA at the time of the filing of this motion, as set forth in the accompanying proof of service. The LWDA has expressed no objection or opposition to this Settlement. Consequently, Plaintiffs respectfully ask the Court to approve the settlement of the PAGA claims and the PAGA Payment to be paid as part of the proposed settlement.

The Parties believe that the PAGA Payment amount is fair and reasonable and therefore ”shall” be reviewed and approved. The Labor and Workforce Development Agency has released data on PAGA settlement amounts. After removing the outliers at the low and high end, the average, total settlement amount of PAGA claims is approximately $10,000.00 to each Plaintiff.

This PAGA Payment amount compares favorably to the estimated amount of PAGA penalties. With the assistance of an expert, Plaintiffs estimated Defendant's potential PAGA exposure ranged from $83,500 to $3,526,400 if successful at trial. Importantly, however, these calculations were performed at the maximum statutory rate for the penalties, when in fact, it is likely that any penalties awarded would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to award a lesser amount than the maximum civil penalty if based on the facts and circumstances to do otherwise would result in an award that is “unjust, arbitrary and oppressive or confiscatory.”[6] JCL Dec., ¶36.

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v. Mistras Grp., Inc., 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action settlement worth "somewhere between 9% and 18%" of full verdict value).

[6] Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. *See Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions* 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial). In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory

Carrington v. Starbucks Corp., 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%. Moreover, in *Carrington*, the Court of Appeal affirmed a judgment after trial which only provided for a PAGA penalty of $5 per pay period. Therefore, at trial, any PAGA penalties awarded in this case could be less than Plaintiffs' calculation, even had Plaintiffs prevailed on the PAGA claim. Here, multiplying the number of pay periods (approximately 16,700) by $5 results in a total potential liability of $83,500.00. JCL Dec., ¶ 37. For the aforementioned reasons, the PAGA allocation of the Gross Settlement Amount is fair, just, and reasonable.

VI. CONCLUSION

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

Dated: June 30, 2025

JCL LAW FIRM, APC

By: ________________________
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language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant.").