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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MIRANDA LOPEZ, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

BEHAVIOR FRONTIERS, LLC, a California
limited liability company; and DOES 1 through
100, inclusive,

Defendants.

Case No. 22STCV15331

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

Date: April 9, 2024

Time: 9:00 a.m.

Judge: Hon. Elihu M. Berle

Dept.: 6

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1 I. INTRODUCTION

2 Plaintiff MIRANDA LOPEZ (hereinafter “Plaintiff”) seeks final approval of the Class Action and
3 PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary
4 relief for 5,429 Settlement Class Members employed by Defendant Behavior Frontiers, LLC,
5 (hereinafter “Defendant”) during the Class Period.

6 In an order dated December 11, 2023, this Court preliminarily approved the Agreement and
7 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On January
8 5, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
9 Declaration of Madely Nava (“Apex Dec.”), ¶ 7. *As of the filing of this motion, the Class greeted news*
10 *of the Settlement with unanimous approval as, at the time of the filing of this motion, all 5,429 Class*
11 *Members chose to participate in the Settlement.*² There are zero opt-outs and zero objections to the
12 Settlement. Apex Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences the clear
13 fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

14 An objective evaluation of the proposed settlement of Two Million Dollars and Zero Cents
15 (\$2,000,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the
16 Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial,
17 and non-collusive negotiations, between experienced counsel, and presided over by Steve Rottman,
18 Esq., a wage and hour class action mediator. After deducting any Court-approved attorneys’ fees and
19 costs, class representative incentive payment, administration costs, and the PAGA Payment, including
20 the payment to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall
21 be distributed to the Settlement Class based on the number of Workweeks they worked while employed
22 by Defendant during the Class Period. JCL Dec., ¶ 8.

23 This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates
24 that the Settlement, if approved, would result in a Net Settlement Amount of approximately
25 **\$1,190,333.33**. This will result in an average gross Individual Class Payment of **\$219.25**, and a high

26
27 ¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the
28 Agreement incorporate by this reference a citation to the JCL Dec. 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, 87 Notices were deemed undeliverable. Apex Dec. at ¶¶ 10.

1 payment of **\$1,707.53**. Aggrieved Employees will receive an estimated average gross payment of **\$6.06**
2 and a high payment of **\$18.19**. JCL Dec., ¶ 9; Apex Dec. at ¶¶ 15, 17.

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

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

12 **II. OVERVIEW OF THE LITIGATION**

13 Defendant provides Applied Behavior Analysis (“ABA”) services to children with autism
14 throughout California, including in Los Angeles County where Plaintiff worked. Plaintiff worked for
15 Defendant in California during 2019 as a non-exempt employee, paid on an hourly basis. At all times
16 during her employment, Plaintiff alleges, among other things, that she was denied legally compliant
17 meal and rest periods, and minimum wages and overtime compensation. Throughout her employment,
18 Plaintiff was subject to Defendant’s written policies and procedures contained in, among other
19 documents, the “Behavior Frontiers Employee Handbook.” JCL Dec., ¶ 12.

20 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
21 compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish
22 accurate itemized wage statements, failed to pay overtime and paid sick time at the correct rate of pay,
23 failed to properly pay reporting time pay, and failed to pay all wages timely during employment and
24 upon separation. Defendant denies liability for each of Plaintiff’s claims. Further, Defendant asserts that
25 it fully complied with all applicable employment laws and raised several other significant defenses to
26 Plaintiff’s claims, including but not limited to, facially compliant meal and rest period policies,
27 compliant wage statements, documentation of expense reimbursement, and that it timely paid all wages
28

1 due upon separation of employment. JCL Dec., ¶ 13.

2 On May 9, 2022, Plaintiff filed a class action complaint in the Los Angeles County Superior
3 Court, Case No. 22STCV15331 (“Action”). The Action alleged ten causes of action against Defendant
4 for: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of
5 California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California
6 Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194,
7 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202
8 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid
9 During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage
10 Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep Requisite Payroll
11 Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
12 (10) Violation of California Business & Professions Code §§ 17200, et seq. JCL Dec., ¶ 14.

13 Both Parties propounded written discovery in July of 2022. After responding to discovery, the
14 Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally produce
15 additional documents and data points subject to the mediation privilege, including but not limited to, a
16 sample of the Class Members’ time and payroll data and certain payroll data points. As discussed infra,
17 Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze
18 Defendant’s time and payroll data. JCL Dec., ¶ 15.

19 On April 28, 2023, the Parties participated in a full day mediation with wage and hour and PAGA
20 mediator Steve Rottman, Esq. The mediation concluded with a settlement after both sides agreed to a
21 Mediator’s proposal which was subsequently memorialized in the form of a Memorandum of
22 Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which
23 is the subject of the instant motion. JCL Dec., ¶ 16.

24 On July 19, 2023, and August 14, 2023, for purposes of effectuating the settlement, Plaintiff
25 served Defendant and the Labor and Workforce Development Agency (“LWDA”) with a Notice of
26 Violations and Amended Notice (collectively referred to as “PAGA Notice”). Plaintiff’s PAGA Notice
27 set forth the facts and theories supporting Defendant’s alleged violations of various provisions of the
28

California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). JCL Dec., ¶ 17.

On August 23, 2023, the Parties filed a stipulation for leave to amend the complaint to allow Plaintiff to file a First Amended Complaint adding the following claims/legal theories: (1) failure to pay paid sick time at the correct rate of pay; (2) failure to properly pay reporting time pay; and (3) an additional cause of action for violation of PAGA based on the same violations alleged in the Complaint and First Amended Complaint. On October 23, 2023, Plaintiff filed the First Amended Complaint. JCL Dec., ¶ 18.

On December 11, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On January 5, 2024, the Administrator mailed Notice Packets to all 5,429 Settlement Class Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a sixty (60) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement was outstanding – as of the filing of this motion, 100% of the Class Members are participating in the Settlement. Apex Dec., ¶ 13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Two Million Dollars and Zero Cents (\$2,000,000.00) based on a total of an estimated 176,546 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Class Payments; (2) to satisfy Individual PAGA Payments; (3) to satisfy the LWDA Payment; (4) to satisfy Attorneys’ Fees and Litigation Costs; (5) to satisfy the Class Representative Payment; and (6) to satisfy the Administration Expenses Payment incurred in this action. JCL Dec., ¶ 19.

Defendant will fund the Gross Settlement Amount on May 16, 2024, or within fourteen (14) days of the date the Court has entered the order granting final approval of this Settlement and Judgment is final, whichever is later. Agreement at § 4.3. The Administrator shall disburse the Individual Class Payments and Individual PAGA Payments to the Settlement Class Members and/or Aggrieved Employees no later than fourteen (14) days after Defendant funds the Gross Settlement Amount.

1 Agreement, § 4.4. The Administrator will calculate Individual Class Payments by dividing the Net
2 Settlement Amount by the total number of Workweeks worked by all Participating Class Members
3 during the Class Period and multiplying the result by each Participating Class Member's Workweeks.
4 Agreement, § 3.2.4. Participating Class Members who are former employees of Defendant will have
5 four Workweeks added to their total number of Workweeks. Apex Dec., ¶ 14. The estimated average
6 Individual Class Payment is approximately **\$219.25**. JCL Dec., ¶ 9; Apex Dec., ¶ 15.

7 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
8 the Participating Class Members will release the Defendant from the Released Class Claims that accrued
9 during the Class Period. The Aggrieved Employees, the LWDA, and the State of California will release
10 the Defendant from the Released PAGA Claims for the PAGA Period. Agreement at § 1.40, 1.41.

11 Apex Class Action LLC was appointed as the Administrator for the Class. The Administration
12 Expenses Payment includes those expenses of effectuating and administering the Settlement, i.e., the
13 costs incurred to the Administrator, the costs of giving notice to the Class, the costs of administering
14 and disbursing the Individual Class Payments, and the fees of the Administrator approved for
15 reimbursement by the court. The Administrator's expenses are \$33,000.00. Apex Dec., ¶ 18. These
16 expenses shall be paid from the Gross Settlement Amount. Agreement, § 3.2.3.

17 Subject to Court approval, Class Counsel shall seek payment for Attorneys' Fees and Litigation
18 Costs in the amount of \$706,666.67, comprised of Attorneys' Fees equal to one-third of the Gross
19 Settlement Amount estimated to be at least \$666,666.67 and up to \$40,000 for actually incurred litigation
20 expenses. Plaintiff's counsel is to split the fees 32.5% to the JCL Law Firm, APC, 32.5% to the Zakay
21 Law Group, APLC, and 35% to Lawyers for Justice, APC. Agreement, § 1.5. The Agreement also
22 provides for a Class Representative Payment in the amount of \$10,000 for Plaintiff, in consideration of
23 her time, risk, and efforts as the Class Representative on behalf of the Settlement Class and a general
24 release. Agreement, §§ 1.14; 3.2.1.

25 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
26 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
27 the Settlement Class, the absence of any objections to the Settlement and the average Individual Class
28

1 Payment of \$219.25. Apex Dec., ¶¶ 11-15; JCL Dec., ¶ 9.

2
3 **IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
4 **OF CLASS ACTION SETTLEMENTS**

5 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
6 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
7 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
8 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the
9 preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

21 In these cases, Courts have repeatedly emphasized that there is a strong initial presumption that
22 the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not substitute
23 their judgment for that of the parties who negotiated the settlement. *Id.* At 246. The presumption of
24 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act
25 intelligently; (2) the settlement is reached through arm’s-length bargaining; (3) counsel is experienced
26 in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1801, citing
27 Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here, all of these factors
28

1 support a presumption of fairness.

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

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

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

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

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

27 These factors are analyzed seriatim below and all support final approval of the class action
28

1 settlement before this Court.

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

3 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
4 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
5 assessed the value of the class claims using data and documents provided by Defendant through informal
6 discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the number
7 of Class Members, workweeks, and average rate of pay to assess damages before mediation. Class
8 Counsel retained Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data to
9 formulate damage models estimating Defendant's liability exposure. Class Counsel's investigation,
10 research, experience, and damage models informed and guided the mediated negotiations that resulted
11 in this settlement. Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the
12 class claims before the parties reached a settlement. JCL Dec., ¶ 21-27.

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

14 On April 28, 2023, the Parties conducted a full day of mediation with Steve Rottman, Esq.
15 Mediator Rottman helped manage the Parties' expectations and provided a useful, neutral analysis of
16 the issues and risks to both sides. The Parties made substantial progress with Mediator Rottman's
17 assistance. Namely, the Parties exchanged information regarding their respective claims and defenses,
18 including their respective evaluation of the damages. The mediation concluded with a settlement, after
19 both sides agreed to a Mediator's proposal. The complete and final terms of the Parties' settlement are
20 now set forth in the Agreement. Class Counsel submits that the Settlement constitutes a fair, adequate,
21 and reasonable compromise of the claims at issue. JCL Dec., ¶ 28.

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

23 Class Counsel in this matter has extensive class action experience in multiple fields and has
24 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
25 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
26 similar wage and hour class actions throughout the State of California. As such, courts throughout the
27 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
28

Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 29-35; Declaration of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3; Declaration of Joanna Ghosh (“Ghosh Dec.”), ¶¶ 13-18.

D. The Settlement Class Responded Positively to the Settlement.

The reaction of the Settlement Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Settlement Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Class Payments. As of the filing of this motion, none of the 5,429 members of the Settlement Class opted-out of the Settlement. Moreover, there are zero objections. Stated differently, **100%** of the Settlement Class chose to participate in the Settlement. JCL Dec., ¶ 8; Apex Dec., ¶¶ 11-13.

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

E. The Gross Settlement Amount is Fair and Reasonable.

The Gross Settlement Amount of Two Million Dollars and Zero Cents (\$2,000,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar* court acknowledged that “as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement

1 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the
2 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
3 While the Gross Settlement Amount of Two Million Dollars and Zero Cents (\$2,000,000.00) represents
4 a discount on Defendant’s potential exposure if Plaintiff established liability on all claims and was
5 awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1)
6 the formidable defenses raised by Defendant presented a risk that could award significantly less in
7 damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may require many more
8 years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class.
9 JCL Dec., ¶ 36.

10 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
11 reasonable considering the nature and magnitude of the claims being settled and the various potential
12 impediments to recovery. Class Counsel developed varied economic damages models measuring
13 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
14 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
15 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
16 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the
17 Settlement Class. The Gross Settlement Amount represents a recovery of between 42.07% (“Realistic
18 Damages”) and 12.12% (“Maximum Damages”) of Defendant’s *class-wide* liability exposure as
19 estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 37.

20 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
21 for the Northern District of California granted final approval in a wage and hour misclassification action
22 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
23 the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
24 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
25 potential recovery.” Given the amount of the settlement here as compared to potential value of the
26 claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable³.

27
28 ³ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving

1 The calculation methodology used to compensate the Settlement Class for the alleged damages
2 was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
3 impartial. The calculation methodology is based on the number of Workweeks each Settlement Class
4 Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement
5 Class Members is established through Defendant's data and documented compensation records. The
6 Administrator is responsible for calculating the Individual Class Payments by dividing the Net
7 Settlement Amount by the total number of Workweeks worked by all Participating Class Members
8 during the Class Period and multiplying the result by each Participating Class Member's Workweeks.
9 Participating Class Members who are former employees of Defendant will have four Workweeks added to
10 their total. This process establishes an objectively fair and reasonable procedure to compensate the
11 Settlement Class. Agreement, § 3.2.4.

12 The settlement also provides significant relief to the Settlement Class Members. After deductions
13 for the amounts approved by the Court for the Class Representative Payment, Attorneys' Fees and
14 Litigation Costs, PAGA Payment, and the Administration Expenses Payment, the Net Settlement
15 Amount is currently estimated to be **\$1,190,333.33**. Apex Dec., ¶14. The average settlement payment
16 is approximately **\$219.25**, and the highest is approximately **\$1,707.53**. Apex Dec., ¶ 15. This average
17 net recovery is on par with many wage and hour class action settlements approved by California state
18 and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento
19 County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No.
20 BC302589 (LA. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United*
21 *Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of
22 approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County
23 Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No.

24
25 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
26 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
27 *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); *see also*
28 *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.").

CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, § 3.1.

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

F. The Strength of Plaintiff's Case and Risks of Continued Litigation

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 40. 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 *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); *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

1 and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he
2 reason, if any, that employees might not take their breaks were predominantly individualized questions
3 of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341
4 (affirming denial of certification because employees’ declarations attesting to having taken meal and
5 rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*
6 *Buy 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 policy);
8 *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver
9 meal and rest period claims based on the predominance of individual issues). Collectively, the examples
10 cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining
11 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 39.

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

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

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

The Class Representative 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

1 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
2 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
3 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
4 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
5 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 44.

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

8 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no indication
9 that this amount was the result of self-interest at the expense of class members,” such amounts are
10 generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
11 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the
12 range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%);
13 *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct.
14 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420
15 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve
16 PAGA claim settlements in the range of zero to two percent of the total settlement).

17 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of \$60,000
18 which is 3% of the Gross Settlement Amount. As illustrated above, this amount falls well within the
19 range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Payment (\$45,000.00)
20 will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) to be
21 distributed to the Aggrieved Employees (“Individual PAGA Payment”), which is within the range of
22 PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 45.

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

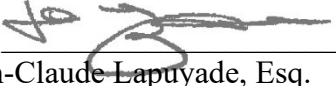
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1 **VII. CONCLUSION**

2 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
3 established in California law and should therefore be finally approved as fair, reasonable, and adequate
4 and requests entry of the Final Approval Order and Judgment submitted herewith.
5

6 Dated: February 5, 2024

JCL LAW FIRM, APC

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8 By: 
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