

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
John L. Nitti (State Bar #330752)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
jnitti@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Nicole Noursamadi (State Bar #357246)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
shani@zakaylaw.com
nicole@zakaylaw.com

Attorneys for PLAINTIFF RICHARD WINN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

RICHARD WINN, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiffs,

v.

CITY ELECTRIC SUPPLY COMPANY, a
Florida corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 37-2023-00040231-CU-OE-CTL

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

Date: March 28, 2025
Time: 9:00 a.m.

Judge: Hon. James A. Mangione
Dept.: C-75

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE LITIGATION	2
III.	THE SETTLEMENT BEFORE THE COURT	3
IV.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	4
V.	THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE	5
	A. Class Counsel Conducted a Thorough Investigation.	6
	B. Class Counsel is Experienced in Similar Litigation.	6
	C. The Settlement Class Responded Positively to the Settlement.	6
	D. The Risk, Expense, Complexity and Duration of Further Litigation Favor Settlement.	7
	E. The Gross Settlement Amount is Fair and Reasonable.	9
VI.	THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE	10
VII.	CLASS COUNSEL’S REQUEST FOR FEES AND COSTS	10
	A. Common Fund	11
	B. Class Counsel’s Lodestar Supports the Requested Attorneys’ Fees	13
	C. Class Counsel’s Costs	14

1 D. Plaintiff’s Service Awards Are Reasonable and Should be Approved
214

3 VIII. CONCLUSION
415

27
28 ///

TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Fran. v. Southland Corp.</i>	
4	85 Cal.App.4th 1135, 1150-51 (2000).....	4-5
5	<i>Austrian & German Bank Holocaust Litigation</i>	
6	80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000).....	6-7
7	<i>Barcia v. Contain-A-Way, Inc.</i>	
8	2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009).....	8
9	<i>Bell v. Farmers Ins. Exch.</i>	
10	115 Cal.App.4th 715, 726 (2004).....	14
11	<i>Boeing Co. v. Van Gemert</i>	
12	444 U.S. 472, 478 (1980).....	11
13	<i>Chavez v. Netflix, Inc.</i>	
14	162 Cal.App.4th 43, 66 (2008).....	11
15	<i>Clark v. American Residential Services, LLC</i>	
16	175 Cal.App.4th 785, 804-805 (2009).....	14
17	<i>Contreras v. United Food Group, LLC</i>	
18	Case No. BC389253 (L.A. County Super. Ct.).....	9
19	<i>Dunk v. Ford Motor Co.</i>	
20	48 Cal.App.4th 1794, 1801, 1810 n.2 (1996).....	4-5, 13
21	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
22	213 F.3d 454, 459 (9 th Cir. 2000)	9
23	<i>Emmons v. Quest Diagnostics Clinical Labs., Inc.</i>	
24	2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017).....	13
25	<i>Fukuchi v. Pizza Hut</i>	
26	Case No. BC302589 (LA. County Super. Ct.).....	9
27	<i>Gentry v. Super. Ct.</i>	
28	42 Cal. 4th 443, 455-56 (2007).....	12
	<i>Glass v. UBS Fin. Servs.</i>	
	2007 WL221862.....	7
	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	10
	<i>Hanlon v. Chrysler Corp.</i>	
	150 F.3d 1011, 1026 (9th Cir. 1998).....	8
	<i>Harris v. Marhoefer</i>	
	24 F.3d 16, 19 (9th Cir. 1994).....	14
	<i>Hopson v. Hanesbrands Inc.</i>	
	2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009).....	7
	<i>Huens v. Tatum</i>	
	52 Cal. App. 4th 259, 265 (1997).....	4
	<i>In re Bluetooth Headset Products Liab. Litig.</i>	
	654 F.3d 935, 942 (9th Cir. 2011).....	12
	<i>In re Cellphone</i>	
	186 Cal.App.4th 1380.....	15
	<i>In re Sutter Health Uninsured Pricing Cases</i>	
	171 Cal.App.4th 495, 512 (2009).....	11
	///	

1	<i>In re Warner Communications</i>	
	618 F.Supp. 735, 749-50 (S.D.N.Y 1985).....	11-12
2	<i>Iskanian v. CLS Transportation Los Angeles, LLC</i>	
	59 Cal.4th 348 (2014).....	12
3	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	10
4	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	168 Cal.App.4th 116, 128 (2008).....	5
5	<i>Laffitte v. Robert Half International, Inc.</i>	
	(2016) 1 Cal.5th 480, 487-89, 496-97.....	11-13
6	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
	(9th Cir. 2021) 999 F.3d 668.....	7
7	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i>	
	103 Cal.App.3d 573, 578-579 (1980).....	4
8	<i>McKenzie v. Fed. Express Corp.</i>	
	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	10
9	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
	186 Cal. App. 4th 399, 408 (2010).....	5
10	<i>Officers for Justice v. Civil Service Com'n,</i>	
	688 F.2d 615, 625 (9th Cir. 1982).....	5
11	<i>Palencia v. 99 Cents Only Stores</i>	
	No. 34-2010-00079619 (Sacramento County Super. Ct).....	10
12	<i>Rider v. City of San Diego</i>	
	11 Cal. App. 4th 1410, 1423 n.6 (1992).....	14
13	<i>Rebney v. Wells Fargo Bank</i>	
	220 Cal.App.3d 1117, 1138 (1990).....	5
14	<i>Ressler v. Federated Department Stores, Inc.</i>	
	Case No. BC335018, at *1, 9 (L.A. County Super. Ct).....	9-10
15	<i>Serrano v. Priest</i>	
	20 Cal. 3d 25, 49 (1977)	13
16	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
	2015 U.S. Dist. LEXIS 78671, at * 12.....	9
17	<i>Taylor v. FedEx Freight, Inc.</i>	
	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016)	13
18	<i>Wershba v. Apple Computer</i>	
	91 Cal. App. 4th 224, 245-46, 255 (2001).....	4-5, 11

RULES AND STATUTES

22	Cal. Lab. Code Sections 2698, <i>et seq.</i>	2
23	Cal. Bus. & Prof. Code §§ 17200, <i>et. seq.</i>	2
24	Cal. Lab. Code § 1194.....	2
	Cal. Lab. Code § 1197.....	2
25	Cal. Lab. Code § 1197.1.....	2
	Cal. Lab. Code § 510, <i>et seq.</i>	2
26	Cal. Lab. Code § 512.....	2
	Cal. Lab. Code § 201.....	2
27	Cal. Lab. Code § 202.....	2
28	Cal. Lab. Code § 203.....	2

1	Cal. Lab. Code § 226.....	2
2	Cal. Lab. Code § 226.7.....	2
3	Cal. Lab. Code § 2698 <i>et seq.</i>	2
4	28 U.S.C. Section 1332.....	2
5	28 U.S.C. Section 1441.....	2
6	28 U.S.C. Section 1446.....	2

SECONDARY SOURCES

7	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992) §11.41, pp. 11-91.....	5
---	---	---

I. INTRODUCTION

Plaintiff RICHARD WINN (hereinafter “Plaintiff”) seeks final approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”).¹ If approved, the Gross Settlement Amount of Six Hundred Seventy-Five Thousand Dollars and Zero Cents (\$675,000.00) provides valuable monetary relief for 174 Settlement Class Members employed by City Electric Supply Company (“Defendant”) during the Class Period. Plaintiff and Class Counsel also seek approval of the Class Counsel Award in the amount of **\$250,000.00** comprised of \$225,000.00 (one-third of the Gross Settlement Amount) and attorneys’ expenses of up to \$25,000.00 for reimbursement of actually incurred litigation expenses.²

An objective evaluation of the Settlement and proposed Gross Settlement Amount confirms 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 Steven Rottman, Esq. JCL Dec., ¶ 10. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$382,300.00**, with an average Individual Settlement Payment of **\$2,197.13**, high payment of **\$7,541.01** and low payment of **\$29.00**. Aggrieved Employees will receive an estimated average gross payment of **\$62.50**, high payment of **\$114.57**, and low payment of **\$2.20**. Declaration of Katherine Rovertoni (“Apex Dec.”), ¶¶ 16, 18.

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. JCL Dec., ¶ 11-12.

II. OVERVIEW OF THE LITIGATION

Defendant operates an electrical wholesale business throughout California, including San Diego County, where Plaintiff worked. Plaintiff was employed by Defendant from 2007 to approximately January 2023, as a non-exempt employee. Plaintiff seeks to represent class Members who are or

¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

² Currently Class Counsel’s actually incurred litigation expenses are \$20,161.78. Class Counsel will provide an updated total at the time of hearing on this motion.

1 previously were employed by Defendant during the Class Period, which is July 13, 2019, through June
2 30, 2024. At all times during his employment, Plaintiff earned an hourly wage and was entitled to
3 legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours
4 worked. JCL Dec., ¶ 13-14.

5 On July 13, 2023, Plaintiff Winn served Defendant and the Labor and Workforce Development
6 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
7 the facts and theories supporting Defendant’s alleged violations of various provisions of the California
8 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
9 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
10 2698, *et seq* (“PAGA”). JCL Dec., ¶ 15.

11 On July 13, 2023, Plaintiff filed a class action complaint in the San Diego County Superior Court,
12 Case No. 37-2023-00029456-CU-OE-CTL (“Class Action”). The Class Action alleged eight causes of
13 action against Defendant for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 17200,
14 *et. seq.*; (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3)
15 Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide
16 Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage
17 Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and
18 the Applicable IWC Wage Order; (6) Failure to Pay Wages When Due in violation of Cal. Lab. Code
19 §§ 201, 202, and 203; (7) Failure to Provide Accurate Itemized Wages Statements in violation of Cal.
20 Lab. Code § 226; and (8) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code
21 § 2802. JCL Dec., ¶ 16.

22 On September 18, 2023, Plaintiff filed a separate representative action complaint in the San
23 Diego County Superior Court, Case No. 37-2023-00040231-CU-OE-CTL (“PAGA Action”) alleging
24 a single cause of action for violations of PAGA. JCL Dec., ¶ 17.

25 On August 29, 2023, Defendant filed a notice of removal in the Class Action removing the case
26 to the United States District Court, Southern District of California, Case No. 3:23-cv-01577-RBM-
27 BLM asserting jurisdiction pursuant to 28 U.S.C. sections 1332, 1441, and 1446. JCL Dec., ¶ 18.

28 The parties subsequently agreed to mediate the case. To prepare for mediation, the Parties agreed

1 to informally produce additional documents and data points, including but not limited to, a sampling of
2 the Class Members' time and payroll data, and pertinent written wage and hour policies. Plaintiff's
3 counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's
4 time and payroll data. JCL Dec., ¶ 19.

5 On April 29, 2024, the Parties participated in a full day mediation with Steven Rottman, Esq.,
6 an experienced mediator of class and PAGA actions and reached a settlement agreement and signed a
7 Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement
8 agreement, which is the subject of the instant motion. JCL Dec., ¶ 20.

9 On October 11, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶¶ 4,
10 21. Shortly thereafter, on November 8, 2024, the Settlement Administrator mailed Notice Packets to all
11 174 Settlement Class members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-
12 five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections
13 to the Settlement. Agreement § III(N)(7)-(8). In response, 100% of the Class Members are participating
14 in the Settlement. Apex Dec., ¶ 14.

15 **III. THE SETTLEMENT BEFORE THE COURT**

16 The Court preliminarily approved a Gross Settlement Amount of \$675,000.00. The Gross
17 Settlement Amount is all-in with no reversion to Defendant. Agreement, ¶ III(A)(1). The Net Settlement
18 Amount shall be used for payment of all Individual Settlement Payments to satisfy all Released Class
19 Claims. The Settlement Administrator will calculate Individual Settlement Payments as agreed to in the
20 Agreement and currently estimates the average Individual Settlement Payment is **\$2,197.13**, the highest
21 Individual Settlement Payment is **\$7,541.01**, and the lowest Individual Settlement Payment is **\$29.00**.
22 Apex Dec., ¶ 16. In exchange for the valuable consideration, Plaintiff and the Settlement Class Members
23 on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs,
24 administrators, successors and assigns, release the Released Parties from the Released Class Claims for
25 the Class Period. Agreement, ¶ III(B).

26 Apex Class Action LLC was appointed as the Settlement Administrator for the class. The
27 Settlement Administration Cost is \$5,200.00 and will be paid from the Gross Settlement Amount.
28 Agreement, ¶ III(N)(12).

1 Subject to Court approval, Class Counsel shall seek a Class Counsel Award in the amount of
2 \$250,000.00 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
3 to be at least \$225,000.00 and up to \$25,000.00 for actually incurred litigation expenses. Agreement, ¶
4 III(N)(10).

5 Subject to Court approval, the Agreement provides for a Class Representative Service Award in
6 the amount of \$7,500 for Plaintiff Richard Winn in consideration of his time, risk, and efforts as the
7 Class Representative on behalf of the Settlement Class. Agreement, ¶¶ I(L), III(N)(9).

8 As set forth in the Agreement, \$30,000.00 of the Gross Settlement Amount has been allocated for
9 civil penalties under the PAGA ("PAGA Penalties"). Seventy-Five percent of the PAGA Penalties will
10 be paid to the California Labor Workforce and Development Agency ("LWDA Payment"). The
11 Settlement Administrator shall distribute the remaining 25% of the PAGA Penalties to the Aggrieved
12 Employees ("Aggrieved Employee Payment"). Agreement, ¶ III(N)(11).

13 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
14 and should be granted final approval. Given the complexities of this case, the defenses asserted, and the
15 uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed
16 settlement is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶¶ 22-23.

17 **IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
18 **OF CLASS ACTION SETTLEMENTS**

19 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
20 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
21 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
22 *v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000).

23 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
24 action requires court approval." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) *citing*
25 *Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). The
26 court must decide whether the proposed settlement falls within the range of reasonable settlements,
27 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
28 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*

1 *Computer*, 91 Cal.App.4th 224, 246 (2001). In *Wershba*, appellants argued that the settlement was too
2 low given the “clear” liability, however, the Court rejected this argument and held that “the merits of
3 the underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba*,
4 *supra*, at 246; *see also 7-Eleven, supra*, at 1150. In these cases, Courts have repeatedly emphasized that
5 there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91
6 Cal.App.4th at 245. The presumption of fairness exists where: (1) investigation and discovery are
7 sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm’s-
8 length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
9 small. *Dunk*, 48 Cal. App. 4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed.
10 1992) §11.41, pp. 11-91. Here, all of these factors support a presumption of fairness.

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

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

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

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

1 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
2 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* “Ultimately, the
3 [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
4 approximations and rough justice.' [Citation omitted.]” *Id.* These factors are analyzed seriatim below
5 and all support final approval of the class action settlement before this Court.

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

7 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
8 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
9 assessed the value of the class claims using data and documents provided by Defendant through
10 informal discovery. Class Counsel obtained time, payroll, and policy records for the Class Members,
11 aggregate workweek and pay period data, and copies of applicable handbooks containing, *inter alia*,
12 compensation, timekeeping, and meal and rest period policies. Class Counsel retained BCG to analyze
13 Defendant’s time and payroll data to formulate damage models estimating Defendant’s liability
14 exposure. Class Counsel’s investigation, research, experience, and damage model informed and guided
15 the mediated negotiations that resulted in this settlement. JCL Dec., ¶ 24-31.

16 **B. Class Counsel is Experienced in Similar Litigation.**

17 Class Counsel in this matter has extensive class action experience in multiple fields and has
18 represented tens of thousands of persons in class actions. Class Counsel’s experience is summarized
19 in their concurrently filed declarations and have concluded the settlement is fair, adequate, and
20 reasonable and in the best interests of the Class. JCL Dec., ¶¶ 32-38; Declaration of Shani O. Zakay
21 (“Zakay Dec.”) ¶ 3-4.

22 **C. The Settlement Class Responded Positively to the Settlement.**

23 The reaction of the Settlement Class unequivocally supports approval of the Settlement. To date,
24 none of the 174 members of the Settlement Class opted out of the Settlement. Moreover, there are zero
25 objections. Stated differently, 100% of the Settlement Class chose to participate in the Settlement.
26 JCL Dec., ¶ 10; Apex Dec., ¶¶ 11-13.

27 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement
28 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp.

2d 164, 175 (S.D.N.Y. 2000) Consequently, Class Counsel respectfully request the Court to follow the unanimous approval of the Settlement Class and grant final approval of the Settlement.

D. The Risk, Expense, Complexity and Duration of Further Litigation Favor Settlement.

Although Plaintiff and Class Counsel believe that this case has merit, they recognized the potential risks both sides would face if litigation of this action continued. 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. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶¶ 41-44.

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. JCL Dec., ¶ 45. 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,

1 Defendants notes that the question of an employer's duty to provide rest and
2 meal periods is an open one, signaling even less certainty for
3 Plaintiffs.....[T]he **Total Settlement amount and the Class Members'**
4 **expected net recovery, after fees and other costs are deducted, appear**
5 **to be a reasonable compromise, in light of the risks of litigation.**

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

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

16 *Barcia v. Contain-A-Way, Inc.*, 2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009);

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

21 The Class Representative and Class Counsel recognize the expense and length of a trial against
22 Defendant through possible appeals, which could take another three years. In arriving at their informed
23 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain
24 outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and
25 recognizes the inherent problems of proof under, and alleged defenses to, the claims asserted in the
26 litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have
27 mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an
28 ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial
monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative
and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest
of the Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶¶ 46-
47.

///

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

2 The Gross Settlement Amount of \$675,000.00 in this case is fair and well within the range of
3 recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement
4 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the
5 various potential impediments to recovery. Class Counsel developed varied economic damages models
6 measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation.
7 The various models were informed by Class Counsel's investigation, including the analysis of a
8 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
9 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on
10 behalf of the Settlement Class. The Gross Settlement Amount represents approximately 29.45% of
11 Defendant's realistic class-wide liability exposure for damages and statutory penalties, and
12 approximately 48.59% of Defendant's maximum *class-wide* realistic liability exposure for damages
13 and statutory penalties. JCL Dec., ¶ 48.

14 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
15 Court for the Northern District of California granted final approval in a wage and hour misclassification
16 action and found that the total settlement representing 10% of the estimated trial award was within the
17 "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454,
18 459 (9th Cir. 2000), the Ninth Circuit approved a settlement representing "roughly one-sixth of the
19 potential recovery." Given the amount of the settlement here as compared to potential value of the
20 claims, particularly the strength of Plaintiff's action, the settlement is clearly fair and reasonable.

21 The settlement provides significant relief to the Settlement Class Members. The average
22 settlement payment is approximately **\$2,197.13**, the highest is approximately **\$7,541.01**, and the lowest
23 is approximately **\$29.00**. Apex Dec., ¶ 16. This average net recovery is greater than many wage and
24 hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99*
25 *Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of
26 approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (LA. County Super. Ct.) (average net
27 recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
28 County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department*

1 *Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately
2 \$90).

3 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
4 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
5 experienced counsel, the settlement is entitled to final approval. JCL Dec., ¶ 49.

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

8 Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of
9 the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*,
10 No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
11 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
12 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
13 in the range of zero to two percent of the total settlement).

14 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of
15 \$30,000.00 which is 4.4% of the Gross Settlement Amount. This amount falls well within the range of
16 approved PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$22,500.00) will be
17 paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA
18 Penalties (\$7,500.00) to be distributed to the Aggrieved Employees, which is within the range of PAGA
19 penalties approved by courts and should be approved. JCL Dec., ¶ 50.

20 Further, on September 17, 2024, Class Counsel gave the LWDA notice of this Settlement and
21 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with
22 the LWDA. On March 5, 2025, Plaintiff gave the LWDA notice of this motion seeking final approval
23 of this settlement. By not registering an objection with either Class Counsel or the Court, the LWDA
24 has accepted and approved of the proposed PAGA Penalties. JCL Dec., ¶¶ 5-6, 51.

25 **VII. CLASS COUNSEL'S REQUEST FOR FEES AND COSTS**

26 As part of the settlement, the parties agreed to a Class Counsel Award of \$250,000.00, comprised
27 of \$225,000.00 for attorneys' fees (one-third of the Gross Settlement Amount) and up to \$25,000.00
28 for reimbursement of actually incurred litigation expenses. The requested attorneys' fee portion of the

1 Class Counsel Award is fair compensation and, respectfully, should be approved. Class Counsel
2 undertook complex, risky, and time-consuming wage and hour litigation on a contingent basis. Further,
3 the attorneys' fee portion of the requested Class Counsel Award are within the historically recognized
4 range attorneys' fees awarded in common fund class action settlements – between 25% and 50% – and
5 is supported by Class Counsel's lodestar cross-check with a reasonable 1.29 multiplier. That is well-
6 below the 2.13 multiplier approved by the Supreme Court in *Laffitte v. Robert Half International, Inc.*
7 (2016) 1 Cal.5th 480, with additional work to be performed, and within the recognized multiplier range
8 of between 2 and 4³. Thus, the reasonableness of the requested Class Counsel Award is confirmed by
9 reference to the lodestar with a reasonable multiplier with significant additional work still to be
10 performed. JCL Dec., ¶¶ 52-60.

11 **A. Common Fund**

12 Courts have long recognized that when class counsel's efforts result in the creation of a common
13 fund that benefits plaintiffs and unnamed class members, class counsel have an equitable right to be
14 compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)
15 ("recogniz[ing] consistently that a litigant or a lawyer who recovers a common fund...is entitled to a
16 reasonable attorney's fee from the fund as a whole"); *Laffitte*, 1 Cal. 5th at 488-89 (common fund
17 doctrine "long recognized" under California law). The common fund doctrine rests on the
18 understanding that attorneys should normally be paid by their clients and that, unless attorneys' fees
19 are paid out of the common fund, those who benefit from the fund will be "unjustly enriched." *Boeing*,
20 444 U.S. at 478.

21 As noted above, in *Laffitte*, the California Supreme Court upheld the trial court's award of
22 33.33% of the settlement amount of \$19 million dollars with a 2.13 multiplier and affirmed that
23 "empirical studies show the percentage method with a lodestar cross-check is the most prevalent form
24 of fee method in practice." *Laffitte*, 1 Cal. 5th at 496-97. In fact, courts have historically awarded
25 between 25% and 50% of the common fund as attorneys' fees class action settlements. *In re Warner*
26

27 ³ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with 2 multiplier); *Wershba v. Apple Computer*, 91 Cal.
28 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).

1 *Communications*, 618 F.Supp. 735, 749-50 (S.D.N.Y 1985).

2 Here, the fairest way to calculate a reasonable fee when contingency-fee litigation has produced
3 a fixed settlement amount for the Settlement Class Members is by awarding Settlement Class Counsel
4 a percentage of the total settlement sum. *See, e.g., In re Bluetooth Headset Products Liab. Litig.*, 654
5 F.3d 935, 942 (9th Cir. 2011). More importantly, a fee award under the common fund method here
6 would achieve the two underlying goals of the common fund doctrine by: (1) equitably requiring the
7 beneficiaries of the common fund to pay their pro rata share of fees incurred in creating the fund; and
8 (2) providing an incentive to attract competent counsel to handle wage and hour class actions, which
9 California courts recognize as a fundamental tool to ensure the effective enforcement of the Labor Code
10 and minimum labor standards. *See, e.g., Gentry v. Super. Ct.*, 42 Cal. 4th 443, 455-56 (2007) (overruled
11 on other grounds by *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014)
12 (emphasizing the indispensable value of private enforcement of California's wage-and-hour laws
13 through class actions).

14 The Agreement provides for payment of the Class Counsel Award from the common fund.
15 Accordingly, it is well within the Court's discretion to award fees to Class Counsel under the common
16 fund doctrine. Class Counsel requests attorneys' fees in the amount of \$225,000.00 representing one-
17 third of the Gross Settlement Amount. Class Counsel's request is consistent with many fee awards in
18 similar wage and hour class actions. Moreover, the requested attorneys' fee award is in the middle of
19 historically recognized range of attorneys' fees awarded in common fund settlements. JCL Dec., ¶¶
20 61. The attorneys' fee portion of the Class Counsel Award request should be awarded based upon the
21 Gross Settlement Amount in accordance with *Laffitte*, i.e., percentage of the fund with a lodestar cross
22 check. As further explained below, the reasonableness of the requested \$225,000.00 attorneys' fee
23 award is further supported by the lodestar cross-check. JCL Dec., ¶ 62.

24 **B. Class Counsels' Lodestar Supports the Requested Attorneys' Fees**

25 Class Counsel's lodestar to date is \$174,322.00, *exclusive of costs*, with significant work
26 remaining. JCL Dec., ¶¶ 52-54. Thus, Class Counsel's fee request is equal to Class Counsel's lodestar
27 with a 1.29 multiplier – below the 2.13 multiplier approved in *Laffitte* – is well within the recognized
28 multiplier range between 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS

1 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar
2 multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249
3 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of
4 1.7).

5 Because the Settlement in this case is a pure common fund case, and the percentage of the fund
6 is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award based
7 upon the percentage of the common fund. Moreover, Class Counsel's lodestar supports the requested
8 attorneys' fees with a multiplier well within the recognized range reasonableness, and in fact, below
9 what the California Supreme Court approved in *Laffitte*. JCL Dec., ¶ 66.

10 Although no rigid formula applies, an analysis of each of the following "basic factors" that
11 California courts typically consider further supports the reasonableness of a fee request: **(1)** the result
12 class counsel obtained; **(2)** the time and labor required of the attorneys; **(3)** the contingent nature of the
13 case and the delay in payment to class counsel; **(4)** the extent to which the nature of the litigation
14 precluded other employment by class counsel; **(5)** the experience, reputation, and ability of the attorneys
15 who performed the services, the skill they displayed in the litigation, and the novelty, complexity and
16 difficulty of the case; and **(6)** the informed consent of the clients to the fee agreement. *Serrano v. Priest*,
17 20 Cal. 3d 25, 49 (1977); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1810 n.2. Those factors support
18 Class Counsel's request and are addressed in more detail in Counsel's declarations submitted
19 concurrently herewith. In short: **(1)** Considering the issues presented in the case, the Gross Settlement
20 Amount of \$675,000.00 is an excellent result for the Settlement Class, **(2)** Collectively, Class Counsel
21 worked hard on this case and, expended approximately 317.7 hours in the prosecution of this litigation
22 in the twenty (20) months since it was filed for a total lodestar of \$174,322.00, **(3)** Class Counsel
23 undertook this litigation on a contingent-fee basis, assuming a significant risk that the litigation would
24 yield no recovery after many years of work, **(4)** Class Counsel negotiated a one-third contingency fee
25 arrangement, which is a reasonable arrangement to obtain competent counsel in the marketplace for
26 representation in wage and hour class actions of this nature, and it is only equitable that Settlement
27 Class who share in the excellent results achieved by this Settlement bear their pro rata share of the
28 attorney's fees award to Class Counsel, **(5)** Class Counsel possesses significant experience litigating

1 complex wage and hour class actions and the way this Settlement was achieved is demonstrative of the
2 highly efficient way this litigation was managed and resolved (*See* Class Counsel’s declarations for a
3 detailed outline of their skills and experience), and (6) Class Counsel’s hourly rates are set forth in the
4 concurrently filed declarations of Jean-Claude Lapuyade, Esq. and Shani Zakay, Esq. are well within
5 the range of rates billed by comparable attorneys in this market and reasonably compare with rates
6 approved by other trial courts in wage and hour class action litigation. JCL Dec., ¶¶ 67-81; Zakay Dec.,
7 ¶ 5-7.

8 **C. Class Counsel’s Costs**

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

14 As of the date of this filing, Class Counsel has incurred a total of \$20,161.78 litigating this action.
15 All of Class Counsel’s out-of-pocket expenses are the types of expenses normally charged to paying
16 clients including the following: filing fees; copying; postage; factual; mediation fees; and expert costs,
17 which were all incurred during, and were necessary for the successful prosecution of, the litigation and,
18 therefore, should be reimbursed. JCL Dec. ¶¶ 7, 82-84; Zakay Dec., ¶¶ 8-9.

19 **D. Plaintiff’s Class Representative Service Award Is Reasonable and Should be**
20 **Approved**

21 Courts routinely approve service awards to compensate named plaintiffs for the services they
22 provide and the risks they incur during the class litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th
23 715, 726 (2004) The factors courts use in determining the amount of service awards include: (1) a
24 comparison between the service awards and the range of monetary recovery available to the class; (2)
25 time and effort put into the litigation; (3) whether the litigation will further the public policy underlying
26 the statutory scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, 175
27 Cal.App.4th 785, 804-805 (2009).

28 Regarding the amount of the requested award, courts frequently approve awards of \$10,000.00

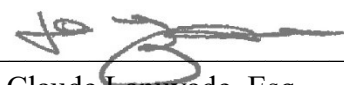
1 or more. *See In re Cellphone*, 186 Cal.App.4th 1380. The amount of the requested Class Representative
2 Service Award to Plaintiff Richard Winn for \$7,500.00 is reasonable by reference to the amounts that
3 California courts (both federal and state) have repeatedly awarded in similar class action settlements.
4 Further, the unanimous consent by the Class Members favors the Court's approval of the requested
5 Class Representative Service Award. Equally important, the time, effort, and services provided to the
6 Settlement Class justifies the requested Service Award. The Class Representative performed his duties
7 to the Settlement Class admirably. Plaintiff's work is summarized in his declaration filed concurrently
8 herewith. Plaintiff assumed the serious risk of liability for Defendant's costs and potentially fees if the
9 case was unsuccessful. Nevertheless, Plaintiff knowingly and voluntarily undertook the risk to vindicate
10 the rights of the Settlement Class. Richard Winn ("Winn Dec.") ¶ 1-12; JCL Dec., ¶¶ 85-89.

11 **VIII. CONCLUSION**

12 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
13 established in California law and should therefore be finally approved as fair, reasonable, and adequate
14 and requests entry of the Final Approval Order and Judgment submitted herewith. Further, based on the
15 foregoing, Class Counsel respectfully requests approval of the Class Counsel Award payment in the
16 amount of \$250,000.00, comprised of (1) \$225,000.00 as compensation for attorneys' fees (one-third of
17 the Gross Settlement Amount of \$675,000.00) and (2) litigation expenses up to \$25,000.00 as supported
18 by Class Counsel's billing records. Class Counsel and the Class Representative also respectfully request
19 approval of the requested Class Representative Service Award in the amount of \$7,500.00 for Plaintiff
20 Richard Winn.

21
22 Dated: March 6, 2025

JCL LAW FIRM, APC

23 By: 
24 Jean-Claude Lapuyade, Esq.
25 Attorneys for Plaintiff
26
27
28