

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

Andrea Amaya (State Bar #348080)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

jlapuyade@jcl-lawfirm.com

mdelatorre@jcl-lawfirm.com

aamaya@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 255-9047

shani@zakaylaw.com

Attorneys for PLAINTIFFS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

BRITNEY CLARKE and DOMINIQUE
BOWIE, individuals, and on behalf of other
members of the general public similarly situated;

Plaintiffs,
vs.

ST ANNES MATERNITY HOME, an unknown
business entity; ST. ANNE'S MATERNITY
HOME, an unknown business entity; ST.
ANNE'S FOUNDATION, a California
corporation; ST. ANNE'S FAMILY SERVICES,
a California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 22STCV14674

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

Date: November 14, 2024

Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice

Dept.: 1

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1 I. INTRODUCTION

2 Plaintiffs BRITNEY CLARKE and DOMINIQUE BOWIE (hereinafter “Plaintiffs”) seeks final
3 approval of the Amended Class Action and PAGA Settlement Agreement and Class Notice
4 (“Agreement”)¹, which if approved, would provide valuable monetary relief for 899 Settlement Class
5 Members employed by Defendants ST ANNES MATERNITY HOME, ST. ANNE’S MATERNITY
6 HOME, ST. ANNE’S FOUNDATION, and ST. ANNE’S FAMILY SERVICES (hereinafter
7 “Defendants”) during the Class Period.

8 In an order dated February 20, 2024, this Court preliminarily approved the Agreement and
9 preliminarily certified a Class of 859 employees. In Late April 2024, Defendants became aware and
10 immediately advised that 40 class members were inadvertently excluded from the class list and thus
11 were not included in the initial production of Class Data. The original Class Data contained 859 Class
12 Members that worked a total of 65,029 workweeks. The additional 40 Class Members worked a total
13 collective amount of 5,077 work weeks. Accordingly, the Class increased to 899 Class Members who
14 collectively worked 70,106 work weeks. On or about July 16, 2024, the Parties entered a Stipulation to
15 Modify Preliminary Approval Order and Reschedule the Final Approval Hearing date. The additional
16 Class Members were added to the Class Data bringing the total Class Members to 899 with an
17 approximate work week count of 70,106. The Escalator clause was triggered as a result of the Class
18 Members collectively working 6.8433% over the 10% threshold, resulting in an increase in the Gross
19 Settlement Amount from \$1,150,000 to \$1,228,698 (an increase of \$78,698.34). This in turn increased
20 the 33.33% Attorney’s fees authorized by the Settlement Agreement to \$409,566.11 (an increase of
21 26,232.78 from the original \$383,333.33); however, Class Counsel has agreed to seek only an additional
22 \$15,000 because of the additional Class Members, Notice and work required, for a total of \$398,333.33
23 in Attorney’s fees. The Parties have also agreed and stipulated that the new increased GSA to be
24 submitted by Defendants to the Administrator will be **\$1,217, 465.56** (a total increase of \$67, 465.56 to
25

26
27 ¹ The Agreement is attached as Ex “1” to the Declaration of Shani Zakay (“Dec. Zakay”) at ¶ 3. All citations to the Agreement
28 incorporates by this reference a citation to the Dec. Zakay. Further, unless indicated otherwise, capitalized terms used herein
have the same meaning as those defined by the Agreement.

1 the previous GSA).² Declaration of Shani O. Zakay (“Dec. Zakay”), ¶ 8

2 The Parties further stipulated and agreed that class notice would be sent to the 40 newly identified
3 Class Members who did not previously receive a Class Notice, and a postcard would be sent to the
4 originally identified 859 Class Members advising of the updated GSA, Class Counsel Fees Payment,
5 Administrator Expenses Payment and updating the Class Members of their estimated share and new
6 Final Approval hearing date. Dec. Zakay, ¶ 9

7 On July 29, 2024, this Court executed an amended the preliminary approval order to account for
8 the additional 40 employees, additional workweeks, increased Class Counsel Fees Payment, increased
9 Gross Settlement Amount, amended notice to the new and existing class members, and revised timeline.
10 Dec. Zakay, ¶ 10.

11 On March 15, 2024, the Court-approved Class Notice was mailed to each of the original 859 Class
12 Member via U.S. First Class Mail. Declaration of Madely Nava (“Apex Dec.”), ¶ 7. On June 25, 2024,
13 Counsel for Defendants provided Apex with the revised class data file. The revised Class List consisted
14 of a total of 899 individuals. On August 8, 2024, a second mailing was completed. The Notice packet
15 was sent to 40 Class Members who had not received the initial Notice Packet and a Postcard Notice was
16 mailed to the original 859 Class Members who had not received the initial Notice Packet. Apex Dec. ¶
17 8-9.

18 An objective evaluation of the proposed settlement of One Million Two Hundred Seventeen
19 Thousand Four Hundred Sixty-Five Dollars and Fifty-Six Cents (\$1,217,465.56) (“Gross Settlement
20 Amount”) confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and
21 valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between
22 experienced counsel, and presided over by Steve Serratore a highly regarded and experienced mediator.
23 After the presentation and recommendation of a mediator’s proposal by Mr. Serratore, the Parties
24 reached a settlement. Thereafter, after learning of the additional 40 employees and that the escalator
25 clause had been triggered, the Parties further negotiated at arms-length an agreed upon increased Gross
26 Settlement Amount. After deducting any Court-approved attorneys’ fees and litigation costs, class

27
28 ² On February 20, 2024, the Court entered the Parties Supplemental Proposed Order Granting Preliminary Approval of Class Action and PAGA Settlement, which included the Parties stipulated agreement to increase the GSA.

representative incentive payments, settlement administration fees, and the payment to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendants during the Class Period. Dec. Zakay, ¶ 11

The deadline for submitting a written objection to the Settlement was April 29, 2024, for the initial mailing, and September 23, 2024, for the second mailing. *The Class (899 Class Members) greeted news of the Settlement with unanimous approval as 100% of Class Members have chosen to participate in the Settlement.* There are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 13-15. The high approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. Dec. Zakay, ¶ 12.

This Settlement provides substantial recovery to Settlement Class Members. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$706,582.25**. This will result in an average Individual Class Payment of **\$785.96**, and a high payment of **\$2,811.98**. Apex Dec. at ¶ 17. Aggrieved Employees will receive an average Individual PAGA Payment of **\$22.32** and a high payment of **\$65.85**. Dec. Zakay ¶ 13; Apex Dec. at ¶ 19.

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*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain litigation. Dec. Zakay ¶ 14.

As discussed below, the proposed Settlement satisfies all criteria for final settlement approval under California law and falls well within the range of reasonableness. Accordingly, the Class Representative and Class Counsel respectfully request this Court grant final approval of the Agreement and entry of the proposed Final Approval Order and Judgment. Dec. Zakay ¶15.

II. OVERVIEW OF THE LITIGATION

Defendants provide supporting housing, early childhood education, mental health and community-based supportive services and programs throughout Los Angeles County. Plaintiff Clarke

1 worked for Defendants as a non-exempt employee in California from April 2, 2019 to September 9,
2 2021. Plaintiff Bowie worked for Defendants as a non-exempt employee in California from June 7,
3 2021 to July 15, 2022. At all times during their employment, Plaintiffs earned an hourly wage and were
4 entitled to legally complaint meal and/or rest periods, minimum, regular, and overtime wages.
5 Throughout their employment, Plaintiffs were subject to Defendants’ written policies and procedures.
6 Dec. Zakay ¶ 16; Declaration of Britney Clarke (“BC Dec.”), ¶¶ 2-4; Declaration of Dominique Bowie
7 (“DB Dec.”), ¶¶ 2-4.

8 Defendants forcefully deny liability for each of Plaintiffs’ claims. Further, Defendants assert that
9 they fully complied with all applicable employment laws and raised several other significant defenses
10 to Plaintiffs’ claims, including but not limited to, facially compliant meal and rest period policies,
11 compliant wage statements, reimbursement for all required business expenses, and payment of all wages
12 upon separation Dec. Zakay, ¶ 17. Indeed, as noted by Defendants, the wage and hour issues here were
13 presented before the California Labor Commissioner at a hearing, resulting in a ruling in favor of
14 Defendants in October 2022.

15 On May 3, 2022, Plaintiff Clarke filed a class action complaint in this Court, asserting claims for:
16 (1) Unpaid overtime; (2) Unpaid meal period premiums; (3) Unpaid rest period premiums; (4) Unpaid
17 minimum wages; (5) Final Wages not timely paid; (6) Wages not timely paid during employment; (7)
18 Non-Compliant wage statement; (8) Failure to keep requisite records); (9) Unreimbursed Business
19 Expenses; (10) Violation of Business & Professions Code §§17200, et. seq. On May 11, 2023, Plaintiff
20 Bowie served the Labor and Workforce Development Agency (“LWDA”) and Defendants with a PAGA
21 notice. On May 16, 2023, Claimant Bowie served the LWDA with an amended PAGA notice. As part
22 of the Settlement, on August 2, 2023, Plaintiff filed a First Amended Complaint naming Bowie as an
23 additional Plaintiff and adding an eleventh cause of action for Violations of the Private Attorneys
24 General Act at Labor Code Sections 2698, et seq. (“PAGA”). Dec. Zakay., ¶ 18.

25 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
26 information in connection with the Action. As part of this process, Defendants provided a significant
27 sample of time records and payroll records, Plaintiffs’ personnel files and policies executed therein,
28

1 applicable employee handbooks, as well as other documents and information, to Class Counsel to review
2 and analyze. On July 6, 2023, the Parties participated in an all-day mediation presided over by Steve
3 Serratore, a respected mediator of wage and hour class actions. After the presentation and
4 recommendation of a mediator's proposal by Mr. Serratore, the Parties reached a settlement and
5 thereafter executed a binding Memorandum of Understanding. Thereafter, the Parties documented the
6 agreement in the form of a Settlement Agreement. Dec. Zakay at ¶ 19.

7 In an order dated February 20, 2024, this Court preliminarily approved the Agreement and
8 preliminarily certified a Class of 859 employees. In Late April 2024, Defendants became aware and
9 immediately advised that 40 class members were inadvertently excluded from the class list and thus
10 were not included in the initial production of Class Data. The original Class Data contained 859 Class
11 Members that worked a total of 65,029 workweeks. The additional 40 Class Members worked a total
12 collective amount of 5,077 work weeks. Accordingly, the Class increased to 899 Class Members who
13 collectively worked 70,106 work weeks. On or about July 16, 2024, the Parties entered a Stipulation to
14 Modify Preliminary Approval Order and Reschedule the Final Approval Hearing date. Dec. Zakay., ¶
15 20.

16 The Escalator clause was triggered as a result of the Class Members collectively working
17 6.8433% over the 10% threshold, resulting in an increase in the Gross Settlement Amount from
18 \$1,150,000 to \$1,228,698 (an increase of \$78,698.34). This in turn increased the 33.33% Attorney's
19 fees authorized by the Settlement Agreement to \$409,566.11 (an increase of 26,232.78 from the original
20 \$383,333.33); However, Class Counsel has agreed to seek only an additional \$15,000 because of the
21 additional Class Members, Notice and work required, for a total of \$398,333.33 in Attorney's fees. The
22 Parties have also agreed and stipulated that the new increased GSA to be submitted by Defendants to
23 the Administrator will be **\$1,217,465.56** (a total increase of \$67,465.56 to the previous GSA). Dec.
24 Zakay, ¶ 21

25 On July 29, 2024, this Court amended the preliminary approval order to account for the additional
26 40 employees, additional workweeks, increased Class Counsel Fees Payment, increased Gross
27 Settlement Amount, and revised timeline. Dec. Zakay, ¶ 22.

1 On March 15, 2024, the Court-approved Class Notice was mailed to each of the original 859 Class
2 Member via U.S. First Class Mail. Declaration of Madely Nava (“Apex Dec.”), ¶ 7. On June 25, 2024,
3 Counsel for Defendants provided Apex with the revised class data file. The revised Class list consisted
4 of a total of 899 individuals. On August 8, 2024, a second mailing was completed. The Notice packet
5 was sent to 40 Class Members who had not received the initial Notice Packet and a Postcard Notice was
6 mailed to the original 859 Class Members who had not received the initial Notice Packet. Apex Dec. ¶
7 8-9

8 The Parties agreed to having the Administrator send the Class Notice and a Postcard Notice to all
9 Class Members within 10 days of the signed amended order, who then had forty-five (45) days to again
10 object, opt-out or dispute the settlement. Dec. Zakay, ¶ 22. The response from the Settlement Class to
11 the Settlement is outstanding – 100% of the Class Members are participating in the Settlement. Apex
12 Dec., ¶ 15.

13 **III. THE SETTLEMENT BEFORE THE COURT**

14 On February 20, 2024, the Court preliminarily approved an initial Gross Settlement Amount of
15 One Million One Hundred fifty Dollars and Zero cents (\$1,150,000) based on a total of an estimated
16 859 Class Members and 65,029 Workweeks worked by the Class during the Class Period. Dec. Zakay,
17 ¶ 23. In Late April 2024, Defendants advised that 40 class members were inadvertently excluded from
18 the original class list. The additional 40 Class Members worked a total collective amount of 5,077 work
19 weeks. Accordingly, the Class increased to 899 Class Members who collectively worked 70,106 work
20 weeks. On or about July 16, 2024, the Parties entered a Stipulation to Modify Preliminary Approval
21 Order and Reschedule the Final Approval Hearing date. The increase triggered the escalator clause.
22 Ultimately, Class Counsel agreed to seek only an additional \$15,000 in fees, for a total of \$389,333.33
23 in Attorney’s fees. The Parties also agreed and stipulated to a new increased GSA of **\$1,217,465.56** (a
24 total increase of \$67,465.56 to the previous GSA). On July 29, 2024, this Court amended the preliminary
25 approval order to account for the additional 40 employees, additional workweeks, increased Class
26 Counsel Fees Payment, increased Gross Settlement Amount, and revised timeline. Dec. Zakay, ¶ 24.

27 The Gross Settlement Amount shall be used: (1) to satisfy Individual Class Payments; (2) to
28

1 satisfy the Class Representative Service Payments; (3) to satisfy the Class Counsel Fees and Litigation
2 Expenses Payment; (4) to satisfy the PAGA Penalties; and (5) to satisfy the Administration Expenses
3 incurred in this action. Dec. Zakay., ¶ 25.

4 Defendants will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
5 Settlement Fund within thirty (30) days after the court's approval of the settlement or exhaustion of any
6 appeal, whichever is later. Agreement, § 4.3. The Settlement Administrator shall mail the Individual
7 Class Payments and Individual PAGA Payments to the Settlement Class Members and/or Aggrieved
8 Employees no later than fourteen (14) calendar days after Defendants fund the Gross Settlement
9 Amount. Agreement, § 4.4. The Settlement Administrator will calculate Individual Class Payments by
10 dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class
11 Members during the Class Period and multiplying the result by each Settlement Class Member's
12 Workweeks. Agreement, § 3.2.4. The estimated average Individual Class Payment is approximately
13 **\$785.96**. Dec. Zakay, ¶ 26; Apex Dec., ¶ 17.

14 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
15 the Participating Class Members will release the Defendants from the Released Class Claims that
16 accrued during the Class Period. The Aggrieved Employees, the LWDA, and the State of California
17 will release the Defendants from the Released PAGA Claims for the PAGA Period. Agreement at § 5.2
18 and 5.3

19 Apex Class Action LLC was appointed as the Settlement Administrator for the Class. The
20 Administration Expenses Payment include those expenses of effectuating and administering the
21 Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class,
22 the costs of administering and disbursing the Individual Settlement Payments, and the fees of the
23 Settlement Administrator approved for reimbursement by the court. The Settlement Administrator
24 expenses are \$11,4500.00. Apex Dec., ¶ 20. These expenses shall be paid from the Gross Settlement
25 Amount. Agreement, § 3.2.3.

26 Subject to Court approval, Class Counsel shall seek payment of Class Counsel's Fees and
27 Litigation Expenses in the amount of \$419,383.31, comprised of attorneys' fees equal to the agreed upon
28

sum of \$398,333.33 and \$21,049.98 for actually incurred litigation expenses. Class counsel is to split the fees as follows: 32.5% to the JCL Law Firm, APC; 32.5% to Zakay Law Group, APLC; and 35% to Lawyers for Justice, PC. The Agreement also provides for a Class Representative Service Payment in the amount of \$10,000.00 to each Plaintiff, in consideration of their time, risk, and efforts as the Class Representatives on behalf of the Settlement Class. Agreement, § 3.2.1.

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by the Settlement Class, the absence of any objections to the Settlement and the Average Individual Class Payment of \$785.96. APEX Dec., ¶¶ 15 and 17; Dec. Zakay, ¶ 27.

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

Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th 259, 265. 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.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary 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.* (1996) 48 Cal.App.4th 1794, 1801 *citing Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court must decide whether the proposed settlement falls within the range of reasonable settlements, considering that settlements are compromises between the parties reflecting subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See also Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 246 (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.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

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

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

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

27 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
28

1 Due regard should be given to what is otherwise a private consensual agreement between the parties.
2 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement
3 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
4 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* “Ultimately, the
5 [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
6 approximations and rough justice.' [Citation omitted.]” *Id.*

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

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

10 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
11 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
12 assessed the value of the class claims using data and documents provided by Defendants through
13 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
14 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
15 Class Counsel retained Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data
16 to formulate damage models estimating Defendants’ liability exposure. Class Counsel’s investigation,
17 research, experience, and damage models informed and guided the mediated negotiations. Ultimately,
18 through the assistance Steve Serratore a highly regarded and experienced mediator, and a mediator’s
19 proposal, the Parties were able to reach to an agreement. Plaintiffs’ Counsel fully understood the
20 strengths and weaknesses of the class claims before the parties reached a settlement. Dec. Zakay, ¶ 28.

21 **B. The Parties Settled After Mediation.**

22 On July 6, 2023, the Parties conducted a full-day mediation with Steve Serratore, a highly
23 regarded mediator. Mr. Serratore helped to manage the Parties’ expectations and provided a useful,
24 neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mr.
25 Serratore’s assistance. Namely, the Parties exchanged information regarding their respective claims and
26 defenses, including their respective evaluations of the damages. After the presentation and
27 recommendation of a mediator’s proposal by Mr. Serratore, the Parties reached a settlement and
28

thereafter executed a binding Memorandum of Understanding. Thereafter, the Parties documented the agreement in the form of a Settlement Agreement. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiffs' service on behalf of the Class. Dec. Zakay, ¶ 29.

C. Class Counsel is Experienced in Similar Litigation.

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar claims. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout California have deemed Class Counsel experienced and knowledgeable in this area of law. Class 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. Dec. Zakay, ¶ 30; Declaration of Jean-Claude Lapuyade, ¶¶ 1-3; Declaration of Vartan Madoyan, ¶¶ 13-18nn.

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 and Postcard to the Settlement Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Class Payments, zero of the 899 members of the Class opted-out of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Class have chosen to participate in the Settlement. Dec. Zakay, ¶ 31; Apex Dec., ¶¶ 15.

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."); *Stoetznor 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 One Million Two Hundred Seventeen Thousand Four hundred Sixty-Five Dollars and Fifty-Six Cents (\$1,217,465.56) 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 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250. While the Gross Settlement Amount of One Million Two Hundred Seventeen Thousand Four hundred Sixty-Five Dollars and Fifty-Six Cents (\$1,217,465.56) represents a discount on Defendants’ potential exposure if Plaintiffs established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendants presented a risk that could award significantly less in damages than Plaintiffs’ estimate and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class. Dec. Zakay, ¶ 32.

As detailed at the time of preliminary approval and through the Parties’ Stipulation to Modify Preliminary Approval Order and Reschedule The Final Approval Hearing Date that the Court entered on July 29, 2024, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed an economic damages model measuring Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The economic damage model was informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendants;

liability exposure for the claims asserted on behalf of the Settlement Class. The original Gross Settlement Amount represents approximately 11% of Defendants’ *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. Dec. Zakay, ¶ 33. Furthermore, the escalator clause was triggered through the introduction of 40 additional Class Members and 5,077 Workweeks which led to an agreed upon increase in the GSA of One Million Two Hundred Seventeen Thousand Four hundred Sixty-Five Dollars and Fifty-Six Cents (\$1,217,465.56), which the Court approved. Dec. Zakay, ¶ 34.

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

The calculation methodology used to compensate the Settlement Class for the alleged damages was negotiated at the time of the Settlement. The methodology is fair, objective, and impartial, and is based on the number of Workweeks each Settlement Class Member worked for Defendants during the Class Period. The number of Workweeks for the Settlement Class Members is established through Defendants’ data and documented compensation records. The Settlement Administrator is responsible for calculating the Individual Class Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and multiplying the result by each Settlement Class Member’s Workweeks. This process establishes an objectively fair and reasonable procedure to compensate the Settlement Class. Agreement, § 3.2.4.

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

1 The settlement also provides significant relief to the Participating Class Members. After
2 deductions for the Class Counsel's Attorneys' Fees and Litigation Expenses, Administration Expenses,
3 the PAGA Penalties, and the Class Representative Service Awards, the Net Settlement Amount is
4 currently estimated to be \$706,582.25. Apex Dec., ¶16. The average settlement payment is
5 approximately **\$785.96**, and the highest is approximately **\$2,811.98**. Apex Dec., ¶ 17. This average net
6 recovery well above many wage and hour class action settlements approved by California state and
7 federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County
8 Super. Ct.) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589
9 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food*
10 *Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately
11 \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.)
12 (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241
13 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v.*
14 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately
15 \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average
16 net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A.
17 Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendants must separately fund
18 their share of any employer side payroll taxes. Agreement, § 3.1.

19 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
20 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
21 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
22 Dec. Zakay, ¶ 35.

23 **F. The Strength of Plaintiffs' Case and Risks of Continued Litigation**

24 Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to ignore
25 the asserted defenses. If successful on any one of its defenses, Defendants could defend the action or,
26 at least, drastically undercut Plaintiffs' claims. Dec. Zakay, ¶ 36. As the federal court in *Glass v. UBS*
27 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:
28

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

8 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
9 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.*
10 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
11 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
12 to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir.
13 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S.*
14 *Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage
15 and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he
16 reason, if any, that employees might not take their breaks were predominantly individualized questions
17 of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341
18 (affirming denial of certification because employees’ declarations attesting to having taken meal and
19 rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*
20 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
21 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy);
22 *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver
23 meal and rest period claims based on the predominance of individual issues). Collectively, the examples
24 cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining
25 certification through a contested motion is a significant risk factor favoring settlement. Dec. Zakay, ¶
26 38.

27 The fast-changing landscape of wage and hour litigation can also drastically affect the value of
28 Plaintiffs’ claims and, in fact, already has. Dec. Zakay, ¶ 38

 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

1 settlement and explained:

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

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

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

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

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

27 In sum, while other cases have approved class certification in wage and hour claims, class
28 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 Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post

1 a bond and appeal. A post-judgment appeal by Defendants would have required many more years to
2 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
3 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
4 an uncertain result three or more years in the future. Dec. Zakay, ¶ 39.

5 The Class Representatives and Class Counsel recognize the expense and length of a trial against
6 Defendants through possible appeals which could take another three years. In arriving at their informed
7 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
8 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
9 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
10 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
11 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
12 Class Representatives and Class Counsel believe that the Settlement confers substantial monetary and
13 non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives and Class
14 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
15 Class, is fair, reasonable, and adequate, and should be granted final approval. Dec. Zakay, ¶ 40.

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

18 Where settlements “negotiate a good faith amount” for PAGA settlements and “there is no
19 indication that this amount was the result of self-interest at the expense of class members,” such amounts
20 are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
21 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA settlements in
22 the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of
23 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal.
24 Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-
25 02420 GAF (PLA), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts
26 approve PAGA claim settlements in the range of zero to two percent of the total settlement).

27 Here, Plaintiffs and Defendants negotiated a good faith PAGA Payment in the amount of
28

1 \$60,000.00 which is approximately 5.0% of the current Gross Settlement Amount. As illustrated above,
2 this amount falls well within the range of approved PAGA Settlements. Seventy-five percent (75%) of
3 the PAGA Payment (\$45,000.00) will be paid to the LWDA (“LWDA Payment”) with the remaining
4 twenty-five percent (25%) or \$15,000 to be distributed to the Aggrieved Employees, which is within the
5 range of PAGA Payment approved by courts and should be approved. Dec. Zakay, ¶ 41.

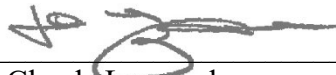
6 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy
7 of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the
8 LWDA. Dec. Zakay, ¶¶ 7 and 42. By not registering an objection with either Class Counsel or the Court,
9 the LWDA has accepted and approved of the proposed PAGA Payment.

10 **VII. CONCLUSION**

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

14
15 Dated: October 21, 2024

JCL LAW FIRM, APC

16 By: 
17 Jean-Claude Lapuyade
18 Monnett De La Torre

19 Attorneys for Plaintiffs
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