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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

MANUEL DIAZ NUNEZ, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

TITAN AG SERVICES, INC., a California
Corporation; ROYAL FARMS, INC., a
California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. VCU296822

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

Date: January 28, 2025

Time: 8:30 a.m.

Judge: Hon. Bret D. Hilman

Dept.: 2

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I. INTRODUCTION

Plaintiff MANUEL DIAZ NUNEZ (hereinafter “Plaintiff”) seeks final approval of the Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for 9,781 Settlement Class Members employed by Defendants TITAN AG SERVICES, INC. and ROYAL FARMS, INC. (hereinafter collectively “Defendants”).

In an order dated July 16, 2024, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On September 9, 2024, the Settlement Administrator delivered notice of the proposed settlement to the Class. Declaration of Madely Nava (“Apex Dec.”), ¶ 7.

*The Class greeted news of the Settlement with unanimous approval as, at the time of the filing of this motion, all 9,781 Class Members chose to participate in the Settlement.*² There are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-13. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 10.

An objective evaluation of the proposed settlement of One Million, Two Hundred Thousand Dollars and Zero Cents (\$1,200,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Lisa Klerman, Esq., a mediator of wage and hour class and representative actions. After deducting any Court-approved Class Counsel Award, Class Representative Service Award, Settlement Administration Costs, and PAGA Payment, the Net Settlement Amount shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendants during the Class Period. JCL Dec., ¶ 10.

This Settlement provides substantial recovery to Class Members. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$704,517.05**.

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 As of the filing date of this Motion, 709 Notices were deemed undeliverable.

1 Apex Dec., ¶ 14. This will result in an average Individual Class Payment of **\$72.03**, a high
2 Individual Class Payment of \$760.80, and a low of \$11.70. Apex Dec., ¶ 15. Aggrieved Employees
3 will receive an estimated average Aggrieved Employee Payment of \$5.77, with the highest
4 Aggrieved Employee Payment estimated to be \$24.10, and a low of \$2.01. JCL Dec., ¶ 11; Apex
5 Dec., ¶ 17.

6 The relief offered by the Settlement is immediate and is particularly impressive when viewed
7 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).
8 Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
9 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and
10 uncertain litigation. JCL Dec., ¶ 12.

11 As discussed below, the proposed Settlement satisfies all criteria for final settlement approval
12 under California law and falls well within the range of reasonableness. Accordingly, the Class
13 Representative and Class Counsel respectfully request this Court grant final approval of the
14 Agreement and entry of the proposed Final Approval Order and Judgment. JCL Dec., ¶ 13.

15 **II. OVERVIEW OF THE LITIGATION**

16 Defendants operate an agriculture and farming business in the state of California, including
17 in Tulare County, where Plaintiff worked. This action asserts claims on behalf of all non-exempt
18 employees who are or previously were employed by Defendant Titan AG Services, Inc., staffed to
19 work at Defendant Royal Farms, Inc.'s farms and performed work in California during the Class
20 Period. Plaintiff worked for Defendants as a non-exempt employee in California from September
21 2022 to October 2022. At all times during his employment, Plaintiff earned an hourly wage and was
22 entitled to legally compliant meal and rest periods, and minimum, regular and overtime wages for
23 all hours worked. Throughout his employment, Plaintiff was subject to Defendants' policies and
24 procedures contained in, among other documents, the "Titan AG Service Inc. Employee
25 Handbook." JCL Dec., ¶ 14.

26 Generally, Plaintiff claims that Defendants failed to pay for all time worked, failed to provide
27 compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to
28 furnish accurate itemized wage statements, and failed to pay all wages upon separation. Defendants

1 forcefully deny liability for each of Plaintiff’s claims. Further, Defendants assert that they fully
2 complied with all applicable employment laws and raised several other significant defenses to
3 Plaintiff’s claims, including but not limited to, asserting that they paid employees for all hours
4 worked, maintained facially compliant meal and rest period policies, reimbursed employees for
5 expenses, issued compliant wage statements, and timely paid all wages due upon separation of
6 employment. JCL Dec., ¶ 15.

7 On March 21, 2023, Plaintiff served Defendants and the Labor and Workforce Development
8 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set
9 forth the facts and theories supporting Defendants’ alleged violations of various provisions of the
10 California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and
11 of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab.
12 Code Sections 2698 *et seq.* (“PAGA”). JCL Dec., ¶ 16.

13 On March 21, 2023, Plaintiff filed a class action complaint in the Tulare Superior Court, Case
14 Number VCU296822 (“Action”). The Action alleged eight causes of action against Defendants
15 Titan AG Services, Inc. and Royal Farms, Inc. for violations of the California Labor Code. JCL
16 Dec., ¶ 17.

17 In May 2023, Plaintiff propounded discovery. After Defendants responded to discovery, the
18 Parties agreed to mediate the Action. To prepare for mediation, the Parties agreed that Defendants
19 would informally produce additional documents and data points subject to the mediation privilege,
20 including but not limited to, a sample of the Class Members’ time and payroll data and certain
21 payroll data points. As discussed *infra*, Class Counsel retained the forensic consultants at Berger
22 Consulting Group (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 18.

23 On June 6, 2023, Plaintiff filed a First Amended Complaint (the “Operative Complaint”)
24 alleging an additional cause of action for violations of PAGA. JCL Dec. ¶ 19.

25 On December 13, 2023, the Parties participated in a full day mediation with Lisa Klerman,
26 Esq., an experienced mediator of wage and hour class and PAGA actions. The mediation concluded
27 with a settlement after both sides agreed to a Mediator’s proposal which was subsequently
28 memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and

1 negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec.,
2 ¶ 20.

3 On July 16, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 6.
4 On September 9, 2024, the Settlement Administrator mailed Notice Packets to all 9,781 Class
5 Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a sixty (60) day Response
6 Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement.
7 The response from the Settlement Class to the Settlement was outstanding – 100% of the Class
8 Members are participating in the Settlement. Apex Dec., ¶¶ 11-13.

9 **III. THE SETTLEMENT BEFORE THE COURT**

10 The Court preliminarily approved an initial Gross Settlement Amount of One Million, Two
11 Hundred Thousand Dollars and Zero Cents (\$1,200,000.00) based on a total of an estimated 60,191
12 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be
13 used: (1) to satisfy Individual Class Payments; (2) to satisfy the Class Representative Service
14 Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Payment; and (5) to satisfy
15 the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 21.

16 Defendants will fund the \$1,200,000.00 Gross Settlement Amount in two (2) installments as
17 follows: First, Defendants shall transfer \$1,000,000 of the Gross Settlement to the Settlement
18 Administrator within sixty (60) days of the Effective Date (“Funding Date #1”), and second,
19 Defendants shall transfer the remaining \$200,000 within six (6) months of Funding Date #1
20 (“Funding Date #2”). Agreement at § I(O)-(P). Individual Class Payments and Aggrieved
21 Employee Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members’
22 and/or Aggrieved Employees’ last known mailing address no later than fifteen (15) calendar days
23 after Funding Date #1. Agreement, ¶ III(L)(7). The Settlement Administrator will calculate
24 Individual Class Payments by adding up the total number of Workweeks for all Class Members.
25 The Settlement Administrator will then divide the respective Workweeks for each member of the
26 Settlement Class by the total Workweeks for the entire Settlement Class, resulting in a Payment
27 Ratio for each Class Member. Each Settlement Class Member’s Payment Ratio is then multiplied
28 by the Net Settlement Amount to calculate each estimated Individual Class Payment. Agreement, ¶

1 III(L)(1). The estimated average Individual Class Payment is approximately **\$72.03**. JCL Dec., ¶
2 22.

3 In exchange for the valuable consideration, as of the funding in full of the Gross Settlement
4 Amount, the Settlement Class Members will release the Released Parties from the Released Class
5 Claims that accrued during the Class Period. The Plaintiff, the LWDA, and the State of California
6 will release the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement
7 at ¶¶ III(B), III(C).

8 APEX Class Action LLC was appointed as the Settlement Administrator for the Class.
9 Settlement Administration Costs include those expenses of effectuating and administering the
10 Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the
11 Class, the costs of administering and disbursing the Individual Class Payments, and the fees of the
12 Settlement Administrator approved for reimbursement by the court. The Settlement Administrator
13 expenses are \$53,000. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement
14 Amount. Agreement, ¶ III(L)(12).

15 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
16 \$425,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount,
17 estimated to be \$400,000.00, and up to \$25,000 for actually incurred litigation expenses.³ Class
18 Counsel is to split the fees 37.5% to the JCL Law Firm, APC, 37.5% to the Zakay Law Group,
19 APLC, and 25% to the Law Office of Tatiana Hernandez, P.C. Agreement, ¶ I(F). The Agreement
20 also provides for a Class Representative Service Award in the amount of \$10,000 to Plaintiff
21 Manuel Diaz Nunez in consideration of his time, risk, and effort as the Class Representative on
22 behalf of the Settlement Class.⁴ Agreement, ¶¶ I(J); III(L)(9).

23 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the
24 class and should be granted final approval. This is evidenced by the unanimous approval of the
25 Settlement by the Settlement Class and absence of any objections to the Settlement and the average
26 Individual Class Payment of **\$72.03**. Apex Dec., ¶ 15; JCL Dec., ¶ 22.

28 ³ On July 16, 2024, the Court preliminarily approved attorneys' fees in the amount of \$352,482.95. JCL Dec., ¶ 4.

⁴ On July 16, 2024, the Court preliminarily approved a Class Representative Service Award of \$5,000. JCL Dec., ¶ 4.

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

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

9 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
10 action requires court approval.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
11 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The
12 court must decide whether the proposed settlement falls within the range of reasonable settlements,
13 considering that settlements are compromises between the parties reflecting subjective,
14 unquantifiable judgments concerning the risks and possible outcomes of litigation. *See also*
15 *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to
16 be judged against a hypothetical or speculative measure of what might have been achieved had
17 plaintiffs prevailed at trial.”). In *Wershba*, appellants argued that the settlement was too low given
18 the “clear” liability, however, the Court rejected this argument and held that “the merits of the
19 underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba*,
20 *supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

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

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

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

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

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

1 settlement before this Court.

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

3 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated
4 the proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class
5 Counsel assessed the value of the claims using data and documents provided by Defendants through
6 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data
7 regarding the number of Class Members, workweeks, and average rate of pay to assess damages
8 before mediation. Class Counsel retained BCG to analyze Defendants' time and payroll data to
9 formulate damage models estimating Defendants' liability exposure. Class Counsel's investigation,
10 research, experience, and damage models informed and guided the mediated negotiations that
11 resulted in this settlement. Accordingly, Class Counsel fully understood the strengths and
12 weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶¶ 23-29.

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

14 On December 13, 2023, the Parties conducted a full-day mediation with Lisa Klerman, Esq.
15 a respected mediator of wage and hour class and representative actions. Mediator Klerman helped
16 to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks
17 to both sides. The Parties made substantial progress with Mediator Klerman's assistance. Namely,
18 the Parties exchanged information regarding their respective claims and defenses, including their
19 respective evaluations of the damages. After more than eight hours of arm's length and adversarial
20 negotiations, the mediation concluded with a settlement. The amount of the service award was not
21 negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No
22 action would likely have been taken by Class Members individually, and no compensation would
23 have been recovered for them, but for Plaintiff's services on behalf of the Class. JCL Dec., ¶ 30.

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

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

1 throughout California have deemed Class Counsel experienced and knowledgeable in this area of
2 law. Class Counsel has participated in every aspect of the settlement discussions and has concluded
3 the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶
4 31-37; Declaration of Shani Zakay at ¶¶ 1-3; Declaration of Tatiana Hernandez at ¶¶ 9-14.

5 **D. The Settlement Class Responded Positively to the Settlement.**

6 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
7 Significantly, after dissemination of the notice to the Class Members, which provided each Class
8 Member with the terms of the Settlement, including the specific estimated Individual Class
9 Payments. To date, none of the 9,781 Class Members have opted-out of the Settlement. Moreover,
10 there are zero objections. Stated differently, 100% of the Settlement Class Members chose to
11 participate in the Settlement. JCL Dec., ¶ 10; Apex Dec., ¶¶ 11-13.

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

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

22 The Gross Settlement Amount of One Million, Two Hundred Thousand Dollars and Zero
23 Cents (\$1,200,000.00) in this case is fair and well within the range of recognized reasonableness.
24 The *Kullar* court acknowledged that “as the court does when it approves a settlement as in good
25 faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class
26 settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v.*
27 *Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

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

1 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
2 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
3 Cal.App.4th at 250. While the Gross Settlement Amount of One Million, Two Hundred Thousand
4 Dollars and Zero Cents (\$1,200,000.00) represents a discount on Defendants' potential exposure if
5 Plaintiff established liability on all claims and were awarded the full amount of the estimated
6 damages at trial, this compromise is reasonable because (1) the formidable defenses raised by
7 Defendants presented a risk that could award significantly less in damages than Plaintiff's estimate
8 and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in
9 added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 38.

10 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
11 reasonable considering the nature and magnitude of the claims being settled and the various
12 potential impediments to recovery. Class Counsel developed varied economic damages models
13 measuring Defendants' liability exposure while accounting for the uncertainties of continued
14 litigation. The various models were informed by Class Counsel's investigation, including the
15 analysis of a significant sample of time and payroll data. As detailed in greater depth during the
16 preliminary approval process, Class Counsel projected a range of Defendants' liability exposure for
17 the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents
18 approximately between 6.17% ("Aggressive Model") and 32.83% ("Conservative Model") of
19 Defendants' *class-wide* liability exposure, assuming all of these amounts could be proved at trial.
20 JCL Dec., ¶ 39.

21 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
22 Court for the Northern District of California granted final approval in a wage and hour
23 misclassification action and found that the Gross Settlement Amount representing 10% of the
24 estimated trial award was within the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego*
25 *Fin. Corp. Sec. Litig.)* (9th Cir. 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement
26 representing "roughly one-sixth of the potential recovery." Given the amount of the settlement here
27 as compared to potential value of the claims, particularly the strength of Plaintiff's action, the
28

1 settlement is clearly fair and reasonable.⁵

2 The calculation methodology used to compensate the Settlement Class Members for the
3 alleged damages was negotiated at the time of the Settlement. More importantly, the methodology
4 is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks
5 each Settlement Class Member worked for Defendants during the Class Period. The number of
6 Workweeks for the Settlement Class Members is established through Defendants' data and
7 documented compensation records. The Settlement Administrator is responsible for calculating the
8 Individual Class Payments by multiplying the Payment Ratio for each Settlement Class Member by
9 the Net Settlement Amount. The Settlement Administrator will calculate the Payment Ratio by
10 dividing the total number of Workweeks for each Settlement Class Member by the total number of
11 Workweeks for all Settlement Class Members. This process establishes an objectively fair and
12 reasonable procedure to compensate the Settlement Class. Agreement, ¶ III(L)(1).

13 The Settlement also provides significant relief to the Settlement Class Members. After
14 deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Payment,
15 and the Class Representative Service Award, the Net Settlement Amount is currently estimated to
16 be **\$704,517.05**. The average Individual Class Payment is approximately **\$72.03**. Apex Dec., ¶ 15.
17 This average net recovery is on par with many wage and hour class action settlements approved by
18 California state and federal courts. JCL Dec., ¶ 40. Additionally, Defendants must separately fund
19 their share of any employer side payroll taxes. Agreement, ¶ I(Q).

20 Clearly the goal of this litigation to obtain redress for the class has been met by this
21 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length
22 negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore
23 entitled to final approval. JCL Dec., ¶ 41.

24 ⁵ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7
25 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or
26 approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-
27 00784) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of
28 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 **F. The Strength of Plaintiff’s Case and Risks of Continued Litigation**

2 Although Class Counsel believes strongly in Plaintiff’s claims, it would be misguided to
3 ignore the asserted defenses. If successful on any one its defenses, Defendants could defend the
4 action or, at least, drastically undercut Plaintiff’s claims. JCL Dec., ¶ 42. As the federal court in
5 *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to
6 those in this litigation:

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

15 With respect to the most immediate challenge, i.e., class certification, the risks attendant to
16 the certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009)
17 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court’s denial of class
18 certification because employees’ declarations attesting to having taken meal and rest breaks
19 demonstrated that individualized inquiries were required to show harm. *See also 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
22 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
23 certification of driver meal and rest period claims based on the predominance of individual issues).
24 JCL Dec., ¶ 43.

25 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue
26 of Defendant’s liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank*
27 *National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor
28 plaintiffs in a wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209
Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were
predominantly individualized questions of fact not susceptible to class treatment.”). JCL Dec., ¶ 44.

 Finally, even if a class is certified and Defendants are found liable for the class claims

1 alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiff
2 and decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-*
3 *Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and
4 remanded a \$110 million judgment against an employer for, *inter alia*, inaccurately paying
5 overtime, and directed the trial court to enter judgment in favor of the employer. *See also*
6 *O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and
7 hour misclassification action). JCL Dec., ¶ 45.

8 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
9 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
10 risk factor favoring settlement. JCL Dec., ¶ 46.

11 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless
12 recognizes that Defendants have factual and legal defenses that, if successful, would potentially
13 defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour
14 litigation can drastically affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶
15 47.

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

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

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

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

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

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

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

13 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
14 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014)
15 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little
16 doubt that if Defendants faced a large adverse judgement, Defendants undoubtedly have the
17 resources to post a bond and appeal. A post-judgment appeal by Defendants would have required
18 many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed
19 in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed
20 recovery today outweigh an uncertain result for three or more years in the future. JCL Dec., ¶ 48.

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

23 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
24 indication that this amount was the result of self-interest at the expense of class members,” such
25 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
26 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
27 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
28 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942,

1 at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express*
2 *Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)
3 (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of
4 the total settlement).

5 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$60,000 which is
6 5% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range
7 of approved PAGA Payments. Seventy-five percent (75%) of the PAGA Payment (\$45,000) will
8 be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the
9 PAGA Payment (\$15,000) to be distributed to the Aggrieved Employees (“Aggrieved Employee
10 Payment”), which is within the range of PAGA penalties approved by courts and should be
11 approved. JCL Dec., ¶ 49.

12 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
13 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
14 with the LWDA. JCL Dec., ¶¶ 5-6, 50. By not registering an objection with either Class Counsel
15 or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

16 **VII. CONCLUSION**

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

20 DATED: December 19, 2024

JCL LAW FIRM APC

21 By: 
22 Jean-Claude Lapuyade
23 Attorney for Plaintiff
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