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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MARINA GONZALEZ and KATHERINE HALLUM, individuals, on behalf of themselves, and on behalf of all persons similarly situated,

Plaintiffs,

v.

ORTHOPAEDIC AND NEUROLOGICAL REHABILITATION, SPEECH PATHOLOGY, INC., a California corporation; ORTHOPAEDIC AND NEUROLOGICAL REHABILITATION, INC., a California corporation; EMPOWERME WELLNESS, LLC, a Missouri limited liability company; and DOES 1-50, Inclusive,

Defendants.

Case No. 23CV033481

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

Date: December 4, 2025
Time: 10:30 a.m.
Reservation ID: A-33481-003

Judge: Hon. Patrick McKinney
Dept.: 18

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I. INTRODUCTION

Plaintiffs MARIA GONZALEZ and KATHERINE HALLUM (hereinafter "Plaintiffs") seek final approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims ("Agreement")[1], which if approved, would provide valuable monetary relief for 2,128 Settlement Class Members employed by Defendants ORTHOPAEDIC AND NEUROLOGICAL REHABILITATION, SPEECH PATHOLOGY, INC., ORTHOPAEDIC AND NEUROLOGICAL REHABILITATION, INC., and EMPOWERME WELLNESS, LLC, (hereinafter "Defendants") during the Class Period. Plaintiffs and Class Counsel also seek approval of Attorneys' Fees and Attorneys' Expenses in an amount of $593,530.72, comprised of $565,500.00 (30% of the Gross Settlement Amount) in attorneys' fees, and $28,030.72 for reimbursement of actually incurred litigation expenses.[2]

An objective evaluation of the proposed settlement of $1,885,000.00 ("Gross Settlement Amount") confirms that 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 J. Serratore, Esq., an experienced mediator of wage and hour class and PAGA actions. Declaration of Jean-Claude Lapuyade ("JCL Dec."), ¶ 9. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately $1,161,500.00, an average Individual Settlement Payment of **$**545.82**,** high payment of **$**2,120.80**,** and a low payment of $1.02. Aggrieved Employees will receive an estimated average gross payment of **$**13.44, a high payment of **$**31.63, and a low payment of **$**0.03. Declaration of Stacey Shim ("Apex Dec."), ¶¶ 15-18.

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., ¶ 10.

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[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 incurred $27,780.72 in litigation expenses and anticipates an additional $250 in costs to file this motion.

II. OVERVIEW OF THE LITIGATION

Defendants provide orthopedic, neurological, speech pathology rehabilitation and therapy services throughout California, including the County of Alameda where Plaintiffs worked. Plaintiff Gonzalez worked for Defendants as a non-exempt employee in California between approximately February of 2023 to approximately May of 2023. Declaration of Maria Gonzalez ("Gonzalez Dec.") at ¶ 3. Plaintiff Hallum worked for Defendants as a non-exempt employee in California since approximately September of 2023. Declaration of Katherine Hallum ("Hallum Dec.") at ¶ 3. At all times during their employment, Plaintiffs were paid an hourly wage and were entitled to legally compliant meal and rest periods. Throughout their employment, Plaintiffs were subject to Defendants' written policies and procedures contained in, among other documents, Defendants' Employee Handbook. JCL Dec., ¶ 11.

Generally, Plaintiffs claim that Defendants failed to provide compliant meal and rest periods, failed to pay for all time worked, failed to pay overtime and sick pay at the correct regular rate of pay, failed to reimburse for mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages when due. Defendants forcefully deny liability for each of Plaintiffs' claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, compliant meal and rest period policies, compliant wage statements, and timely payment all wages due upon separation of employment. JCL Dec., ¶ 12.

On May 17, 2023, Plaintiff Gonzalez filed a class action complaint in Alameda County Superior Court (Case No. 23CV033481) against Defendants, alleging nine causes of action for: (1) Violation of California Business & Professions Code §§ 17200, et seq. (Unfair Competition); (2) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (3) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (4) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (5) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (7) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (8) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);

and (9) Violation of California Labor Code § 246 (Unpaid Sick Pay). JCL Dec., ¶ 13.

Also on May 17, 2023, Plaintiff Gonzalez served Defendants and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Gonzalez's PAGA Notice set forth the facts and theories supporting Defendants' alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under PAGA. On July 24, 2024, Plaintiff Gonzalez filed a First Amended Complaint to the Class Action, adding a cause of action for violations of PAGA (the "Action"). JCL Dec., ¶ 14.

On June 24, 2024, Plaintiff Hallum filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendants. JCL Dec., ¶ 15.

On December 3, 2024, the Parties attended mediation with Steven J. Serratore, Esq., a mediator experienced in wage and hour class actions. The mediation concluded without settlement, but Mr. Serratore made a mediator's proposal, which was accepted by the Parties shortly after the mediation and was subsequently memorialized in the form of a Memorandum of Understanding. JCL Dec., ¶ 16 On April 3, 2025, Plaintiff Gonzalez amended the Complaint to name Plaintiff Hallum as an additional Class Representative in the Action. JCL Dec., ¶ 17.

On August 1, 2025, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. Shortly thereafter, on August 22, 2025, the Settlement Administrator mailed Notice Packets to all 2,130 Class Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. Agreement at § I(KK). In response, approximately 99.9% of the Class Members are participating in the Settlement. Apex Dec., ¶¶ 11, 14.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved a Gross Settlement Amount of $1,885,000.00. Defendants will fund the Gross Settlement Amount no later than sixty (60) days of the Court's entry of the order granting final approval of this Settlement. Agreement at §§ I(M) – I(N). The Gross Settlement Amount is all-in with no reversion to Defendants, and Defendants must separately pay for their share of the employer payroll taxes. Agreement at § III(A)(1), (4). The Net Settlement Amount shall be used for the payment of all Individual Settlement Payments to satisfy all Released Class Claims. The Settlement Administrator will calculate Individual Settlement Payments by adding up the total number of Workweeks for all Class Members. The respective Workweek for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment. Agreement at § III(N)(1).

In exchange for this valuable consideration, as of the Funding Date, the Settlement Class Members will release the Released Parties from the Released Class Claims for the Class Period. Agreement at § III(B). Apex Class Action LLC was appointed as the Settlement Administrator for the class. The Claims Administration Expenses are $17,990.00. Apex Dec., ¶ 19. These expenses will be paid from the Gross Settlement Amount. Agreement at § III(KK). Subject to Court approval, Class Counsel shall seek Attorneys' Fees and Expenses in the amount of $593,530.72, comprised of $565,500.00 (30% of the Gross Settlement Amount) in attorneys' fees, and $28,030.72 for actually incurred litigation expenses.

Subject to Court approval, the Agreement provides for Service Awards in the amount of $10,000.00 for each Plaintiff in consideration of their time, risk, and efforts as the Class Representatives on behalf of the Settlement Class. Agreement at §§ I(II), III(N)(9).

As set forth in the Agreement, $80,000.00 of the Gross Settlement Amount has been allocated for civil penalties under the PAGA ("PAGA Payment"). Seventy-Five percent (75%) of the PAGA Payment will be paid to the California Labor Workforce and Development Agency ("LWDA Payment"). The Settlement Administrator shall distribute the remaining twenty-five percent (25%) of the PAGA Payment to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement at §§ I(D); III(N)(11).

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the Class and should be granted final approval. Given the complexities of this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 18.

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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*, 52 Cal. App. 4th 259, 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran. v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000).

"[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) *citing Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). The court must decide whether the proposed settlement falls within the range of reasonable settlements, 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*, 91 Cal.App.4th 224, 246 (2001). 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. In these cases, courts have repeatedly emphasized that there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. The presumption of fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here, all of these factors support a presumption of fairness.

V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

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

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

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

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

A. <u>Class Counsel Conducted a Thorough Investigation.</u>

As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel assessed the value of the class claims using data and documents provided by Defendants through informal discovery. Class Counsel obtained time, payroll, and policy records for the Class Members, aggregate workweek and pay period data, and copies of applicable handbooks containing, *inter alia*, compensation, timekeeping, and meal and rest period policies. Class Counsel retained BCG to analyze Defendants' time and payroll data to formulate damage models estimating Defendants' liability exposure. Class Counsel's investigation, research, experience, and damage model informed and guided the mediated negotiations that resulted in this settlement. JCL Dec., ¶ 19.

B. The Parties Settled After Mediation.

The Settlement is the product of a mediation session with a respected mediator and subsequent negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arms-length and tempered by the efforts of both sides to serve the interests of their clients. JCL Dec., ¶ 20.

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. Class Counsel's experience is summarized in their concurrently filed declarations. Class Counsel has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 8, 21-27; Declaration of Shani O. Zakay ("Zakay Dec.") ¶ 4.

D. The Settlement Class Responded Positively to the Settlement.

The reaction of the Settlement Class unequivocally supports approval of the Settlement. Only two of the 2,130 members of the Class opted-out of the Settlement. Moreover, there are ***zero*** objections. Stated differently, approximately **99.9%** of the Settlement Class chose to participate in the Settlement. JCL Dec., ¶ 9; Apex Dec., ¶¶ 11-12, 14.

The high 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*, 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000). Consequently, Class Counsel respectfully requests the Court to follow the high approval of the Settlement Class and grant final approval of the Settlement.

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

Although Plaintiffs 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., ¶ 28. 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., ¶ 29.

Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless recognize that Defendants have 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 Plaintiffs' claims and, in fact, already has. JCL Dec., ¶ 30.

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

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

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

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

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

Plaintiffs and Class Counsel recognize the expense and length of a trial against Defendants through possible appeals which could take another three years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel are also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiffs 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., ¶ 31.

F. <u>The Gross Settlement Amount is Fair and Reasonable.</u>

The Gross Settlement Amount of $1,885,000.00 in this case is fair and well within the range of recognized reasonableness. As detailed at the time of preliminary approval, 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 varied economic damages models measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various models were 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 Gross Settlement Amount represents between approximately 9.1% and 24.9% of Defendants' class-wide liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 32.

In *Stovall-Gusman v. W.W. Granger, Inc.,* 2015 U.S. Dist. LEXIS 78671, at * 12, the District Court for the Northern District of California granted final approval in a wage and hour misclassification action and found that the total settlement representing 10% of the estimated trial award was within the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000), 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 Plaintiffs' action, the settlement is clearly fair and reasonable.

The settlement provides significant relief to the Settlement Class Members. The average settlement payment is approximately $545.82, the highest is approximately $2,120.80, and the lowest is approximately $1.02. Apex Dec., ¶ 16. This average net recovery is greater than many wage and hour class action settlements approved by California state and federal courts. *See, e.g.*, *Palencia v. 99 Cents Only Stores,* No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately $80); *Fukuchi v. Pizza Hut,* Case No. BC302589 (LA. County Super. Ct.) (average net recovery of approximately $120); *Contreras v. United Food Group, LLC,* Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately $120); *Ressler v. Federated Department Stores, Inc.,* Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90). Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is entitled to final approval. JCL Dec., ¶ 33.

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

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

Here, Plaintiffs and Defendants negotiated a good faith PAGA Payment in the amount of $80,000.00 which is 4.2% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment ($60,000.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment ($20,000.00) to be distributed to the Aggrieved Employees, which is within the range of PAGA Payment approved by courts and should be approved. JCL Dec., ¶ 34.

Further, on July 24, 2025 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with the LWDA. On November 4, 2025, Plaintiffs gave the LWDA notice of this motion seeking final approval of this settlement. JCL Dec., ¶¶ 5-6, 35. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

VII. CLASS COUNSEL'S REQUEST FOR FEES AND COSTS

As part of the settlement, the parties agreed to award Class Counsel's Attorneys' Fees and Expenses is an amount of up to $668,333.33, comprised of $628,333.33 (one-third of the Gross Settlement Amount) for attorneys' fees, and up to $40,000.00 for reimbursement of actually incurred litigation expenses. Given the Court's benchmark, Class Counsel is requesting a reduced amount of 30% of the Gross Settlement Amount. These Attonreys' Fees are fair compensation and, respectfully, should be approved. Class Counsel undertook complex, risky, and time-consuming wage and hour litigation on a contingent basis. Further, the reduced Attorneys' Fees of 30% of the Gross Settlement Amount are within the historically recognized range attorneys' fees awarded in common fund class action settlements – between 25% and 50% – and is supported by Class Counsel's lodestar cross-check with a negative multiplier of 1.7. That is below the 2.13 multiplier approved by the Supreme Court in *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, with additional work to be performed, and well below the recognized multiplier range of between 2 and 4[3]. Thus, the reasonableness of the requested Attorneys' Fees is confirmed by reference to the lodestar with a reasonable multiplier with significant additional work still to be performed. JCL Dec., ¶ 41.

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

A. <u>Common Fund</u>

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

As noted above, in *Laffitte*, the California Supreme Court upheld the trial court's award of 33.33% of the settlement amount of $19 million dollars with a 2.13 multiplier and affirmed that "empirical studies show the percentage method with a lodestar cross-check is the most prevalent form of fee method in practice." *Laffitte*, 1 Cal. 5th at 496-97. In fact, courts have historically awarded between 25% and 50% of the common fund as attorneys' fees class action settlements. *In re Warner Communications,* 618 F.Supp. 735, 749-50 (S.D.N.Y. 1985).

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

The Agreement provides for payment of Class Counsel's Attorneys' Fees from the common fund. Accordingly, it is well within the Court's discretion to award fees to Class Counsel under the common fund doctrine. Class Counsel requests attorneys' fees in the amount of $565,500.00 representing 30% of the Gross Settlement Amount. Class Counsel's request is consistent with many fee awards in similar wage and hour class actions. Moreover, the requested attorneys' fee award is in the middle of historically recognized range of attorneys' fees awarded in common fund settlements. JCL Dec., ¶ 42.

The negotiated Attorneys' Fees should be awarded based upon the Gross Settlement Amount in accordance with *Laffitte*, i.e., the percentage of the fund with a lodestar cross check. As further explained below, the reasonableness of the requested $565,500.00 attorneys' fee award is further supported by the lodestar cross-check.

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

Class Counsel's lodestar to date is $329,707.50, ***exclusive of costs***, with significant work remaining. JCL Dec., ¶ 38. Thus, Class Counsel's fee request is equal to Class Counsel's lodestar with a 1.7 multiplier – well below the 2.13 multiplier approved in *Laffitte* – is well within the recognized multiplier range between 2 and 4. See *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte,* approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte,* approved 33% fee award with cross-check lodestar multiplier of 1.7). JCL Dec. ¶¶ 36-38, 41,

Because the Settlement in this case is a pure common fund case, and the percentage of the fund is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award based upon the percentage of the common fund. Moreover, Class Counsel's lodestar supports the requested attorneys' fees with a multiplier well within the recognized range reasonableness, and in fact, below what the California Supreme Court approved in *Laffitte.* JCL Dec., ¶ 43.

Although no rigid formula applies, an analysis of each of the following "basic factors" that California courts typically consider further supports the reasonableness of a fee request: **(1)** the result class counsel obtained; **(2)** the time and labor required of the attorneys; **(3)** the contingent nature of the case and the delay in payment to class counsel; **(4)** the extent to which the nature of the litigation precluded other employment by class counsel; **(5)** the experience, reputation, and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity and difficulty of the case; and **(6)** the informed consent of the clients to the fee agreement. *Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1810 n.2. Those factors support Class Counsel's request and are addressed in more detail in Counsel's declarations submitted concurrently herewith. In short: **(1)** Considering the issues presented in the case, the Gross Settlement Amount of $1,885,000.00 is an excellent result for the Settlement Class; **(2)** Collectively, Class Counsel worked hard on this case and, expended approximately 450.4 hours in the prosecution of this litigation in the nearly 2.5 years since it was filed for a total lodestar of $329,707.50; **(3)** Class Counsel undertook this litigation on a contingent-fee basis, assuming a significant risk that the litigation would yield no recovery after many years of work; **(4)** Class Counsel negotiated a one-third contingency fee arrangement (which, as noted above, it is reducing to 30% in light of this Court's benchmark). Thirty Percent is a reasonable arrangement to obtain competent counsel in the marketplace for representation in wage and hour class actions of this nature, and it is only equitable that Settlement Class who share in the excellent results achieved by this Settlement bear their pro rata share of the attorneys' fees award to Class Counsel; **(5)** Class Counsel possesses significant experience litigating complex wage and hour class actions and the way this Settlement was achieved is demonstrative of the highly efficient way this litigation was managed and resolved (*See* Class Counsel's declarations for a detailed outline of their skills and experience); and **(6)** Class Counsel's hourly rates, which are set forth in the concurrently filed declarations of Jean-Claude Lapuyade, Esq., and Shani Zakay, Esq., are well within the range of rates billed by comparable attorneys in this market and reasonably compare with rates approved by other trial courts in wage and hour class action litigation.

C. <u>Class Counsel's Costs</u>

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

As of the date of this filing, Class Counsel has incurred a total of $27,780.72 litigating this action plus an anticipated $250 in additional costs to file this motion. All of Class Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual; mediation fees; and expert costs, which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. JCL Dec. ¶¶ 7, 44; Zakay Dec., ¶¶ 8-9.

D. <u>Plaintiffs' Service Awards Are Reasonable and Should be Approved</u>

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

Regarding the amount of the requested awards, courts frequently approve awards of $10,000.00 or more. *See In re Cellphone*, 186 Cal.App.4th 1380. The amount of the requested Service Award to Plaintiffs for $10,000.00 each is reasonable by reference to the amounts that California courts (both federal and state) have repeatedly awarded in similar class action settlements. Further, the near unanimous consent by the Class Members favors the Court's approval of the requested Service Awards. Equally important, the time, effort, and services provided to the Settlement Class justifies the requested Service Awards. The Class Representatives performed their duties to the Settlement Class admirably. Plaintiffs' work is summarized in their declarations filed concurrently herewith. Plaintiffs assumed the serious risk of liability for Defendants' costs and potentially fees if the case was unsuccessful. Nevertheless, Plaintiffs knowingly and voluntarily undertook the risk to vindicate the rights of the Settlement Class. Gonzalez Dec. ¶¶ 1-18; Hallum Dec. ¶¶ 1-17; JCL Dec., ¶ 46.

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VIII. CONCLUSION

Plaintiffs respectfully submit that the proposed settlement satisfies the standard of fairness established in California law and should therefore be finally approved as fair, reasonable, and adequate and request entry of the Final Approval Order and Judgment submitted herewith. Further, based on the foregoing, Class Counsel respectfully requests approval of the Class Counsel Award payment in the amount of $656,364.05, comprised of (1) $565,500.00 as compensation for attorneys' fees (30% of the Gross Settlement Amount of $1,885,000.00) and (2) litigation expenses of $28,030.72 as supported by Class Counsel's billing records. Class Counsel and the Class Representatives also respectfully request approval of the requested Service Awards in the amount of $10,000.00 to each Plaintiff.

Dated: November 4, 2025

ZAKAY LAW GROUP, APLC

By: Jaclyn Joyce

Jaclyn Joyce, Esq.
Attorneys for Plaintiff