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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LYNDON MILLER and ADAM LOR,
individually, and on behalf of other members of the
general public similarly situated;

Plaintiffs,
vs.

FOOD SAFETY NET SERVICES, LTD., an
unknown business entity; FOOD SAFETY NET
SERVICES-CALIFORNIA, LP., a Nevada limited
partnership; and DOES 1 through 100, inclusive,

Defendants.

Case No. 22STCV15337

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

Date: December 4, 2024
Time: 11:00 a.m.

Judge: Hon. William F. Highberger
Dept.: 10

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1 I. INTRODUCTION

2 Plaintiffs LYNDON MILLER and ADAM LOR (hereinafter “Plaintiffs”) seek final approval of
3 the Class Action and PAGA Settlement Agreement and Class Notice (“Agreement”)¹, which if
4 approved, would provide valuable monetary relief for 291 Participating Class Members employed by
5 Defendants FOOD SAFETY NET SERVICES, LTD. and FOOD SAFETY NET SERVICES-
6 CALIFORNIA, LP. (hereinafter “Defendants”) during the Class Period.

7 In an order dated August 13, 2024, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade, Esq., (“JCL Dec.”), ¶ 4. On
9 September 3, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First
10 Class Mail. Declaration of Katherine Rovertoni (“Apex Dec.”), ¶ 7. There are zero requests for
11 exclusion and zero objections to the Settlement. Apex Dec., ¶¶ 11-13. The unanimous approval by the
12 Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

13 An objective evaluation of the proposed settlement of Nine Hundred Ninety-Seven Thousand
14 Two Hundred Fifty Dollars and Zero Cents (\$997,250.00) (“Gross Settlement Amount”) confirms that
15 the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement
16 is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and
17 presided over by the Honorable Brian Walsh (Ret.), a highly experienced mediator of wage and hour
18 class and representative actions. After deducting any Court-approved attorneys’ fees and litigation
19 costs, class representative incentive payments, settlement administration fees, and the payment to the
20 Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to
21 the Settlement Class based on the number of Workweeks they worked while employed by Defendant
22 during the Class Period. *The Class greeted news of the Settlement with a 100% approval. There are*
23 *zero opt-outs and zero objections to the Settlement.* JCL Dec., ¶ 8.

24 This Settlement provides substantial recovery to Settlement Class Members. Plaintiffs estimate
25 that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$576,**
26

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

1 438.65. Apex Dec. at ¶ 14. This will result in an average Individual Class Payment of \$2,352.81, and a
2 high payment of \$8,107.59. Apex Dec. at ¶ 15. Aggrieved Employees will receive an average Individual
3 PAGA Payment of \$54.05 and a high payment of \$113.46. JCL Dec., ¶ 9; Apex Dec. at ¶ 17.

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

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

13 II. OVERVIEW OF THE LITIGATION

14 Defendants are the largest microbial food safety testing network in North America. They provide
15 microbiological and chemical analyses of all food matrices and environmental samples. Plaintiff Miller
16 was employed by Defendants as a Courier, a full-time, non-exempt position working in the Los Angeles,
17 CA laboratory. Plaintiff Miller worked from September 10, 2018 to September 20, 2019. Plaintiff
18 Miller was responsible for the safe and efficient transport of food samples to and from the laboratory
19 testing facility. Plaintiff Lor was employed by Defendants as a Lab Technician, a full-time, non-exempt
20 position working in Fresno, CA. Plaintiff Lor worked from July 2021 to December 29, 2022. Plaintiff
21 Lor was responsible for logging samples and running tests. At all times during their employment,
22 Plaintiffs earned an hourly wage and were entitled to legally complaint meal and/or rest periods,
23 minimum, regular, and overtime wages. Throughout their employment, Plaintiffs were subject to
24 Defendants' written policies and procedures. JCL Dec., ¶ 12; Declaration of Lyndon Miller ("PLA
25 MILLER Dec."), ¶¶ 2-4. Declaration of Adam Lor ("PLA LOR Dec."), ¶¶ 2-4.

26 Defendants forcefully deny liability for each of Plaintiffs' claims. Further, Defendants assert that
27 it fully complied with all applicable employment laws and raised several other significant defenses to
28

1 Plaintiffs' claims, including but not limited to, Arbitration Agreements, facially compliant meal and rest
2 period policies, payment of meal premiums, compliant wage statements, reimbursement for all required
3 business expenses, and payment of all wages upon separation. JCL Dec., ¶ 13.

4 On May 9, 2022, Plaintiff Miller filed a class action complaint in the Los Angeles Superior Court,
5 Case Number 22STCV15337 ("Action"). The Action alleged ten causes of action against Defendants
6 Food Safety Net Services, LTD., and/or Food Safety Net Services-California, LP., for: (1) Failure to
7 Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (2) Failure to Provide Required
8 Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (3)
9 Failure to Provide Required Rest Periods in Violation Of Cal. Lab Code §§ 226.7 & 512 and the
10 Applicable IWC Wage Order; (4) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§
11 1194, 1197 & 1197.1; (5) Failure to Pay Wages When Due in Violation Of Cal. Labor Code §§ 201, and
12 202; (6) Failure to Timely Pay Wages During Employment in Violation of Cal. Lab. Code § 204; (7)
13 Failure to Provide Accurate Itemized Statements in Violation Of Cal. Lab. Code § 226; (8) Failure to
14 Keep Requisite Payroll Records in violation of Cal. Lab. Code § 1174(d); (9) Failure to Reimburse
15 Required Business Expenses in violation of Cal. Lab. Code §§ 2800 and 2802; (10) Unfair Competition
16 in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* JCL Dec., ¶ 14.

17 On January 25, 2023, Plaintiff Lor served Defendants Food Safety Net Services, LTD., and/or
18 Food Safety Net Services-California, LP., and the Labor and Workforce Development Agency
19 ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Lor's PAGA Notice set forth the
20 facts and theories supporting Defendants' alleged violations of various provisions of the California
21 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to
22 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
23 2698 *et seq.* ("PAGA"). On May 10, 2023, Plaintiff Miller filed the First Amended Complaint, which
24 added an eleventh cause of action for Violation of the PAGA as well as adding Plaintiff Lor as an
25 additional named Plaintiff. JCL Dec., ¶ 15

26 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
27 information in connection with the Action. The Parties conducted formal and informal discovery. As
28

part of this process, Defendants provided a 40% sampling of time and payroll records for approximately 231 employees, for Class Counsel to review and analyze. Defendants also produced Plaintiffs' records and relevant policies, handbooks and redacted Arbitration Agreements executed by Class Members. Plaintiffs' statistician found this to be sufficient to develop a meaningful damages model. Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data. JCL Dec., ¶ 16.

On January 12, 2024, the Parties participated in an all-day mediation presided over by the Honorable Brian C. Walsh (Ret.), a respected jurist and mediator of wage and hour class actions. After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. Thereafter, the Parties documented the agreement in the form of a Settlement Agreement, which was signed by the Parties and is now the subject of the instant motion. JCL Dec., ¶ 17.

On August 13, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On September 3, 2024, the Settlement Administrator mailed the Notice Packets to all 291 Settlement 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. The response from the Settlement Class to the Settlement is outstanding – 100% of the Class Members are participating in the Settlement. Apex Dec., ¶¶ 11-13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Nine Hundred Ninety-Seven Thousand Two Hundred Fifty Dollars and Zero Cents (\$997,250.00) based on an estimated 19,945 Workweeks worked by the Class during the Class Period. JCL Dec., ¶ 18.

The Gross Settlement Amount shall be used: (1) to satisfy Individual Class Payments; (2) to satisfy the Class Representative Service Payments; (3) to satisfy the Class Counsel Fees and Litigation Expenses Payment; (4) to satisfy the PAGA Penalties; and (5) to satisfy the Administration Expenses incurred in this action. JCL Dec., ¶ 19.

After Final Approval and the Judgment becomes final (the "Effective Date," as defined in the

1 Agreement), Defendant will fully fund the Gross Settlement Amount, and also fund the amounts
2 necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator
3 no later than 60 days after the court's final approval of the settlement or exhaustion of any appeal,
4 whichever is later. Agreement at § 4.3. Within fourteen (14) days after Defendants fund the Gross
5 Settlement Amount, including employer-side payroll taxes, the Administrator will mail on a pro rata
6 basis checks for all Individual Class Payments, all Individual PAGA Payments, the PAGA Payment, the
7 Claims Administration Expenses Payment, the Attorneys' Fees Payment, the Attorneys' Expenses
8 Payment, and the Service Award Payments. Disbursements of the pro rata Attorneys' Fees Payment, the
9 Attorneys' Expenses Payment and the Service Award Payments shall not precede disbursement of
10 Individual Class Payments and Individual PAGA Payments. Agreement at § 4.4; JCL Dec., ¶ 20.

11 The Settlement Administrator will calculate Individual Class Payments by dividing the Net
12 Settlement Amount by the total number of Workweeks worked by all Participating Class Members
13 during the Class Period and multiplying the result by each Participating Class Member's Workweeks
14 during the Class Period. Agreement, § 3.2.4. The estimated average Individual Class Payment is
15 approximately **\$2,352.81**. JCL Dec., ¶ 21; Apex Dec., ¶ 15.

16 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
17 the Participating Class Members will release the Defendant from the Released Class Claims that accrued
18 during the Class Period. The Aggrieved Employees, the LWDA, and the State of California will release
19 the Defendant from the Released PAGA Claims for the PAGA Period. Agreement at § 5.

20 Apex Class Action LLC was appointed as the Settlement Administrator for the Class. The
21 Administration Expenses Payment include those expenses of effectuating and administering the
22 Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class,
23 the costs of administering and disbursing the Individual Settlement Payments, and the fees of the
24 Settlement Administrator approved for reimbursement by the court. The Settlement Administrator
25 expenses are \$7,340.00. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement
26 Amount. Agreement, and Amendment to Agreement § 3.2.3.

27 Subject to Court approval, Class Counsel shall seek payment of Class Counsel's Fees and
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Litigation Expenses in the amount of \$576,438.65, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be at least \$332,416.66 and litigation expenses in the amount of \$21,054.69 for actually incurred litigation expenses. Agreement, § 3.2.2. Plaintiffs' counsel is to split the fees between the JCL Law Firm, APC (32.5%), Zakay Law Group, APLC (32.5%) and Lawyers For Justice, PC (35%). The Agreement also provides for a Class Representative Service Payments 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, § 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 \$2,352.81. APEX Dec., ¶¶ 11-13, 15; JCL Dec., ¶ 22.

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

1 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for
2 upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

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

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

20 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*
21 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial court should
22 consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of
23 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of
24 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
25 completed and the stage of the proceedings, the experience and views of counsel, the presence of a
26 governmental participant, and the reaction of the class members to the proposed settlement.' [Citations.]"
27 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128; *see also Munoz v. BCI Coca-Cola*
28

1 *Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.

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

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

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

12 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
13 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
14 assessed the value of the class claims using data and documents provided by Defendant through formal
15 and informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data
16 regarding the number of Class Members, and workweeks, to assess damages before mediation. Class
17 Counsel retained Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data to
18 formulate damage models estimating Defendant’s liability exposure. Class Counsel’s investigation,
19 research, experience, and damage models informed and guided the mediated negotiations that resulted
20 in this settlement. Accordingly, Plaintiffs’ Counsel fully understood the strengths and weaknesses of the
21 class claims before the parties reached a settlement. JCL Dec., ¶ 23.

22 **B. The Parties Settled after Mediation.**

23 On January 12, 2024, the Parties conducted a full-day mediation with Honorable Brian C. Walsh
24 (Ret.), a respected jurist and mediator of wage and hour class actions. Judge Walsh helped manage the
25 Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. The
26 Parties made substantial progress with Judge Walsh’s assistance. Namely, the Parties exchanged
27 information regarding their respective claims and defenses, including their respective evaluations of the
28

1 damages. Ultimately, the Parties were able to reach a settlement at mediation, and executed a binding
2 Memorandum of Understanding. Thereafter, the Parties documented the agreement in the form of a
3 Settlement Agreement. No action would likely have been taken by Class Members individually, and no
4 compensation would have been recovered for them, but for Plaintiffs' service on behalf of the Class.
5 JCL Dec., ¶ 24.

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

7 Class Counsel in this matter has extensive class action experience in multiple fields and has
8 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
9 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
10 similar wage and hour class actions throughout the State of California. As such, courts throughout
11 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
12 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
13 is fair, adequate, and reasonable and in the best interests of the Class. Declaration of Shani O. Zakay
14 ("SOZ Dec"), ¶ 3; JCL Dec., ¶¶ 25-31.

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

16 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
17 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
18 member with the terms of the Settlement, including the specific estimated Individual Class Payments,
19 zero of the 291 members of the Class opted-out of the Settlement. Moreover, there are zero objections.
20 Stated differently, 100% of the Class have chosen to participate in the Settlement. JCL Dec., ¶ 32; Apex
21 Dec., ¶¶ 11-13.

22 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement
23 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y.
24 2000)80 F.Supp.2d 164, 175 ("If only a small number of objections are received, that fact can be viewed
25 as indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d
26 115, 118-119 (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
27 *Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed
28

1 settlement should be considered when determining fairness of settlement.). Consequently, Class Counsel
2 respectfully requests the Court to follow the unanimous approval of the Settlement Class and grant final
3 approval of the Settlement.

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

5 The Gross Settlement Amount of Nine Hundred Ninety-Seven Thousand Two Hundred Fifty
6 Dollars and Zero Cents (\$997,250.00) in this case is fair and well within the range of recognized
7 reasonableness. The *Kullar* court acknowledged that “as the court does when it approves a settlement
8 as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that
9 the class settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc.*
10 *v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).)

11 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
12 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the
13 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
14 While the Gross Settlement Amount of Nine Hundred Ninety-Seven Thousand Two Hundred Fifty
15 Dollars and Zero Cents (\$997,250.00) represents a discount on Defendants’ potential exposure if
16 Plaintiffs established liability on all claims and were awarded the full amount of the estimated damages
17 at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendants
18 presented a risk that could award significantly less in damages than Plaintiffs’ estimate and (2) any
19 theoretical post-trial recovery may require many more years of litigation, resulting in added fees and
20 costs without any guarantee of recovery for the Class. JCL Dec., ¶ 33.

21 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
22 reasonable considering the nature and magnitude of the claims being settled and the various potential
23 impediments to recovery. Class Counsel developed an economic damages model measuring
24 Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The
25 economic damage model was informed by Class Counsel’s investigation, including the analysis of a a
26 40% sample of time and payroll data. As detailed in greater depth during the preliminary approval
27 process, Class Counsel projected a range of Defendants’ liability exposure for the claims asserted on
28

1 behalf of the Settlement Class. The Gross Settlement Amount represents approximately 33.4% of
2 Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL
3 Dec., ¶ 34.

4 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
5 for the Northern District of California granted final approval in a wage and hour misclassification action
6 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
7 the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
8 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing "roughly one-sixth of the
9 potential recovery." Given the amount of the settlement here as compared to potential value of the
10 claims, particularly the strength of Plaintiffs' action, the settlement is clearly fair and reasonable².

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

20 The settlement also provides significant relief to the Participating Class Members. After
21 deductions for the Class Counsel's Attorneys' Fees and Litigation Expenses, Administration Expenses,
22 the PAGA Penalties, and the Class Representative Service Award, the Net Settlement Amount is
23 currently estimated to be \$576,438.65. Apex Dec., ¶ 14. The average settlement payment is

24 ² See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving
25 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
26 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
27 *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); see also
28 *In re Newbridge Networks Sec. Litig.* (D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2 ("Courts have not identified a precise
numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures roughly
six to twelve percent of a potential trial recovery, while preventing further expenditures and delays and eliminating the risk
that no recovery at all will be won, seems to be within the targeted range of reasonableness.").

approximately **\$2,352.81**, and the highest is approximately **\$8,107.59**. Apex Dec., ¶ 15. This average net recovery is on par with 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); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must separately fund their share of any employer side payroll taxes. Agreement, § 3.1.

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

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

Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiffs' claims. JCL Dec., ¶ 36. 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.

1 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
2 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.*
3 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
4 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
5 to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir.
6 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S.*
7 *Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage
8 and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he
9 reason, if any, that employees might not take their breaks were predominantly individualized questions
10 of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341
11 (affirming denial of certification because employees’ declarations attesting to having taken meal and
12 rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*
13 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
14 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy);
15 *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver
16 meal and rest period claims based on the predominance of individual issues). Collectively, the examples
17 cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining
18 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 37.

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

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

24 **Plaintiffs may have a strong case, but the risks inherent in continued**
25 **litigation are great.** Defendants strongly deny liability for Plaintiffs’
26 principal claim that full-time Service Associates were misclassified as
27 exempt. In addition to the uncertainties raised by Defendants at the
28 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

1 Plaintiffs.....[T]he **Total Settlement amount and the Class Members'**
2 **expected net recovery, after fees and other costs are deducted, appear**
3 **to be a reasonable compromise, in light of the risks of litigation.**

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

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

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

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

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

24 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
25 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
26 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
27 that if Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post
28 a bond and appeal. A post-judgment appeal by Defendants would have required many more years to
29 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
30 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
31 an uncertain result three or more years in the future. JCL Dec., ¶ 39.

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

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

14 Where settlements “negotiate a good faith amount” for PAGA settlements and “there is no
15 indication that this amount was the result of self-interest at the expense of class members,” such amounts
16 are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
17 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA settlements in
18 the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of
19 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal.
20 Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-
21 02420 GAF (PLA), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts
22 approve PAGA claim settlements in the range of zero to two percent of the total settlement).

23 Here, Plaintiffs and Defendants negotiated a good faith PAGA Payment in the amount of
24 \$40,000.00 which is 4% of the Gross Settlement Amount. As illustrated above, this amount falls well
25 within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Payment
26 (\$30,000.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent
27 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA Payment
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1 approved by courts and should be approved. JCL Dec., ¶ 41.

2 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy
3 of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the
4 LWDA. JCL Dec., ¶¶ 5-6, 42. By not registering an objection with either Class Counsel or the Court,
5 the LWDA has accepted and approved of the proposed PAGA Payment.

6 **VII. CONCLUSION**

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

10
11 Dated: November 6, 2024

JCL LAW FIRM, APC

12 By: 
13 Jean-Claude Lapuyade
14 Attorney for Plaintiffs
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