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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SISKIYOU

DEANNA RICKETTS, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

MOUNTAIN SILVERADO, INC., a
California Corporation; DENNIS R.
ERICKSON, an individual; and DOES 1
through 50, Inclusive,

Defendants.

Case No. 22CV00796

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

Date: February 20, 2025

Time: 9:30 a.m.

Judge: Hon. Karen L. Dixon

Dept.: 2

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1 I. INTRODUCTION

2 Plaintiff Deanna Ricketts (hereinafter “Plaintiff”) seeks final approval of the Stipulation of
3 Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if
4 approved, would provide valuable monetary relief for 105 Settlement Class Members employed by
5 Mountain Silverado, Inc. and Dennis R. Erickson (hereinafter “Defendants”) during the period from
6 December 9, 2018 to February 29, 2024 (“Class Period”).

7 In an order dated September 26, 2024, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On October
9 17, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
10 Declaration of Madely Nava (“Apex Dec.”), ¶ 7. *The Class greeted news of the Settlement with 100%*
11 *approval.*² There are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-14. The
12 unanimous approval by the Class evidences the clear fairness and reasonableness of the Settlement. JCL
13 Dec., ¶ 8.

14 An objective evaluation of the proposed settlement of Six Hundred Thousand Dollars and Zero
15 Cents (\$600,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the
16 Settlement Class Members is fair, reasonable, and valuable. The Settlement is a product of informed,
17 adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Jason
18 Marsili, Esq., an experienced mediator of wage and hour class and PAGA actions. After deducting the
19 Court-approved PAGA Payment, Service Award, Attorneys’ Fees and Expenses, and the Claims
20 Administration Expenses, the Net Settlement Amount shall be distributed to Settlement Class Members
21 based on the number of Workweeks they worked while employed by Defendants during the Class
22 Period. JCL Dec., ¶ 8.

23 This Settlement provides substantial recovery for Defendants’ alleged wage and hour violations.
24 Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of
25 approximately \$334,500.00. This will result in an average Individual Settlement Payment of **\$3,185.71**,
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., ¶ 3. Further, unless indicated otherwise, capitalized terms
used herein have the same meaning as those defined by the Agreement.

² Five (5) Notices were deemed undeliverable. Apex Dec. at ¶ 10.

1 a high payment of **\$10,220.00**, and low payment of **\$37.30**. JCL Dec., ¶ 9; Apex Dec., ¶ 16.

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

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

11 **II. OVERVIEW OF THE LITIGATION**

12 Defendants operate gas stations and associated convenience stores throughout the state of
13 California, including the county of Siskiyou, where Plaintiff worked. This action asserts claims on
14 behalf of Defendants' current and former non-exempt employees employed in California. Plaintiff
15 worked for Defendants as a non-exempt employee in California between November of 2014 to
16 November of 2021. At all times during her employment, Plaintiff was paid on an hourly basis and was
17 entitled to legally compliant meal and/or rest periods. Throughout her employment, Plaintiff was
18 subject to Defendants' written policies and procedures contained in, among other documents, the
19 "Company Rules and Policies." JCL Dec., ¶ 12; Declaration of Deanna Ricketts ("Ricketts Dec.") at ¶
20 4.

21 Generally, Plaintiff claims that Defendants failed to pay for all time worked, failed to provide
22 compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish
23 accurate itemized wage statements, and failed to pay all wages when due. Defendants forcefully deny
24 liability for Plaintiff's claims. Further, Defendants assert that they fully complied with all applicable
25 employment laws and raised several other significant defenses to Plaintiff's claims, including but not
26 limited to, facially compliant meal and rest period policies, compliant wage statements, and timely
27 payment all wages due upon separation of employment. JCL Dec., ¶ 13.

28 On September 28, 2022, Plaintiff served Defendants and the Labor and Workforce Development

1 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
2 the facts and theories supporting Defendants’ alleged violations of various provisions of the California
3 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to
4 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
5 2698 et seq (“PAGA”). JCL Dec., ¶ 14.

6 On December 9, 2022, Plaintiff filed a class action complaint in the Siskiyou Superior Court,
7 Case Number 22CV00796 (“Action”). The Action alleged nine causes of action against Defendants
8 for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2)
9 Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3)
10 Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4) Failure to
11 Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide
12 Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Reimburse
13 Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Wages
14 When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure to Provide Accurate Itemized
15 Wage Statements in Violation of Cal. Lab. Code §226; and (9) Violation of the Private Attorneys
16 General Act [Labor Code §§ 2698 *et seq.*]. JCL Dec., ¶ 15.

17 Plaintiff propounded written discovery on April 12, 2023. Thereafter, the Parties agreed to
18 mediate the Action with Jason Marsili, Esq., an experienced wage and hour mediator. To prepare for
19 mediation, Defendants agreed to informally produce documents and data points subject to the mediation
20 privilege, including but not limited to, the Class Members’ time data and certain payroll data points.
21 As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group
22 (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 16.

23 On December 28, 2023, the Parties participated in a full day mediation with Jason Marsili, Esq.
24 After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a
25 Memorandum of Understanding. Subsequently, the Parties drafted and negotiated a long-form
26 settlement agreement, which is the subject of the instant motion. The Parties now seek approval of the
27 entire Agreement. JCL Dec., ¶ 17.

28 The Court preliminarily approved the Gross Settlement Amount of Six Hundred Thousand

Dollars and Zero Cents (\$600,000.00) based on a total of an estimated 8,836 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used to satisfy: (1) the Individual Settlement Payments; (2) the Service Award; (3) the Attorneys' Fees and Expenses; (4) the PAGA Payment; and (5) the Claims Administration Expenses incurred in this action. JCL Dec., ¶ 18.

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 Class, the absence of any objections to the Settlement and the average Individual Settlement Payment of **\$3,185.71**. JCL Dec., ¶ 19.

On September 26, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On October 17, 2024, the Administrator mailed Notice Packets to all 105 Class Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Class to submit requests for exclusion or objections to the Settlement. The response from the Class to the Settlement was outstanding – 100% of the Class Members are participating in the Settlement. Apex Dec., ¶ 14.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved the Gross Settlement Amount of Six Hundred Thousand Dollars and Zero Cents (\$600,000.00) based on a total of an estimated 8,836 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used to satisfy: (1) the Individual Settlement Payments; (2) the Service Award; (3) the Attorneys' Fees and Expenses; (4) the PAGA Payment; and (5) the Claims Administration Expenses incurred in this action. JCL Dec., ¶ 19.

Defendants will fund the Settlement by transferring the Gross Settlement Amount into a Qualified Settlement Fund within sixty (60) calendar days after the Effective Date. Agreement, ¶ I(P); I(M). The Administrator shall mail checks for all of the Individual Settlement Payments to the Settlement Class Member no later than fifteen (15) calendar days after Defendants fund the Gross Settlement Amount. Agreement, ¶ III(L)(7). The Administrator will calculate Individual Settlement Payments by adding up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will then be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net

Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Agreement, ¶ III(L)(1). The estimated average Individual Settlement Payment is approximately \$3,185.71. Apex Dec., ¶ 16.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, the Settlement Class Member will release the Released Parties from the Released Class Claims as defined in the Agreement. Agreement, ¶ III(B).

Apex Class Action LLC was appointed as the Administrator for the Class. The Claims Administration Expenses include those expenses of effectuating and administering the Settlement, i.e., the costs incurred to the Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Settlement Payments, and the fees of the Administrator approved for reimbursement by the court. The Administrator expenses are \$5,500.00. Apex Dec., ¶ 19. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ III(M)(12).

Subject to Court approval, Class Counsel shall seek a payment of Attorneys' Fees and Expenses in the amount of \$220,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be at least \$200,000.00 and up to \$20,000.00 for actually incurred litigation expenses. Agreement, ¶ III(M)(10). Class Counsel is to split the fees 50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC. Agreement, ¶ I(E). The Agreement also provides for a Service Award in the amount of \$10,000.00 to Plaintiff, in consideration of her time, risk, and efforts as the Class Representative on behalf of the Class and a general release. Agreement, ¶ I(HH); III(M)(9).

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 Class, the absence of any objections to the Settlement and the average Individual Settlement Payment of \$3,185.71. Apex Dec., ¶ 16; JCL Dec., ¶ 19.

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.*

1 v. *Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the
2 preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

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

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

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

26 The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford*
27 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *see also Officers for Justice v. Civil Service Com'n* (9th
28 Cir. 1982) 688 F. 2d 615, 625. The purpose of the requirement is "the protection of those class members,

1 including the named plaintiffs, whose rights may not have been given due regard by the negotiating
2 parties." *Dunk, supra*, at 1801.

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

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

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

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

22 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
23 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
24 assessed the value of the class claims using data and documents provided by Defendants through
25 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
26 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
27 Class Counsel retained BCG to analyze Defendants' time and payroll data to formulate damage models
28 estimating Defendants' liability exposure. Class Counsel's investigation, research, experience, and

1 damage models informed and guided the mediated negotiations that resulted in this settlement.
2 Accordingly, Class Counsel fully understood the strengths and weaknesses of the class claims before
3 the parties reached a settlement. JCL Dec., ¶ 20-27.

4 **B. The Parties Settled Following Mediation.**

5 On December 28, 2023, the Parties attended a full day mediation with Jason Marsili, Esq., an
6 experienced wage and hour mediator. Mediator Marsili helped to manage the Parties' expectations and
7 provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
8 progress with Mediator Marsili's assistance. Namely, the Parties exchanged information regarding
9 their respective claims and defenses, including their respective evaluations of the damages. After arm's
10 length and adversarial negotiations, the mediation concluded a settlement. The amount of the service
11 award was not negotiated until after the parties agreed to the Gross Settlement Amount and many other
12 terms. JCL Dec., ¶ 28. No action would likely have been taken by Class Members individually, and
13 no compensation would have been recovered for them, but for Plaintiff's service on behalf of the Class.

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

15 Class Counsel in this matter has extensive class action experience in multiple fields and has
16 represented tens-of-thousands of people in class actions. Counsel has previously litigated similar wage
17 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
18 similar wage and hour class actions throughout the State of California. As such, courts throughout
19 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
20 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
21 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 29-35; Declaration
22 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

24 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
25 dissemination of the notice to the Class, which provided each Class Member with the terms of the
26 Settlement, including the specific estimated Individual Settlement Payments. To date, none of the 105
27 Class Members opted out of the Settlement. Moreover, there are zero objections. Stated differently,
28 **100%** of the Class chose to participate in the Settlement. JCL Dec., ¶ 8; Apex Dec., ¶¶ 11-14.

1 The unanimous approval rate by the Class strongly supports a finding that the Settlement is fair,
2 reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y. 2000) 80
3 F.Supp.2d 164, 175 ("If only a small number of objections are received, that fact can be viewed as
4 indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d
5 115, 118-119 (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
6 *Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed
7 settlement should be considered when determining fairness of settlement.). Consequently, Class
8 Counsel respectfully request the Court to follow the unanimous approval by the Class and grant final
9 approval of the Settlement.

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

11 The Gross Settlement Amount of Six Hundred Thousand Dollars and Zero Cents (\$600,000.00)
12 in this case is fair and well within the range of recognized reasonableness. The *Kullar* court
13 acknowledged that "as the court does when it approves a settlement as in good faith under Code of
14 Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the
15 'ballpark' of reasonableness." *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
16 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

17 Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement
18 provides a sizeable recovery to the Settlement Class Member and need not necessarily obtain 100 percent
19 of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at
20 250. While the Gross Settlement Amount of Six Hundred Thousand Dollars and Zero Cents
21 (\$600,000.00) represents a discount on Defendants' potential exposure if Plaintiff established liability
22 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
23 reasonable because (1) the formidable defenses raised by Defendants presented a risk that could award
24 significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may
25 require many more years of litigation, resulting in added fees and costs without any guarantee of
26 recovery for the Class. JCL Dec., ¶ 36.

27 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
28 reasonable considering the nature and magnitude of the claims being settled and the various potential

1 impediments to recovery. Class Counsel developed varied economic damages models measuring
2 Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various
3 models were informed by Class Counsel's investigation, including the analysis of a significant sample
4 of time and payroll data. Detailed in greater depth during the preliminary approval process, Class
5 Counsel projected a range of Defendants' liability exposure for the claims asserted on behalf of the
6 Class. The Gross Settlement Amount represents approximately 51.3%% of Defendants' *class-wide*
7 liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 37.

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

15 The calculation methodology used to compensate the Settlement Class Members for the alleged
16 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
17 objective, and impartial. The calculation methodology is based on the number of Workweeks each
18 Settlement Class Member worked for Defendants during the Class Period. The number of Workweeks
19 for the Settlement Class Member is established through Defendants' data and documented compensation
20 records. The Administrator is responsible for calculating the Individual Settlement Payments by adding
21 up the total number of Workweeks for all Class Members. The respective Workweeks for each Class
22 Member will then be divided by the total Workweeks for all Class Members, resulting in the Payment
23 Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net
24

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

Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Agreement, ¶ III(M)(1). This process establishes an objectively fair and reasonable procedure to compensate the Class. JCL Dec., ¶ 38.

The settlement also provides significant relief to the Settlement Class Members. After deductions for the Attorneys' Fees and Expenses, Claims Administration Expenses, the PAGA Payment, and the Service Award, the Net Settlement Amount is currently estimated to be \$334,500.00. Apex Dec., ¶ 15. The average settlement payment is approximately \$3,185.71, and the highest is approximately \$10,220.00. Apex Dec., ¶ 16. This average net recovery easily exceeds 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, Defendants must separately fund its share of any employer side payroll taxes. Agreement, ¶ III(A)(4).

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., ¶ 39.

F. The Strength of Plaintiff's Case and Risks of Continued Litigation

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendants could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 40. As the federal court in *Glass v. UBS*

1 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
2 litigation:

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

10 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
11 certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176
12 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class
13 certification because employees' declarations attesting to having taken meal and rest breaks
14 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*
15 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification
16 of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
17 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
18 period claims based on the predominance of individual issues). JCL Dec., ¶ 41.

19 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of
20 Defendants' liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*
21 *Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage
22 and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088
23 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized
24 questions of fact not susceptible to class treatment."). JCL Dec., ¶ 42.

25 Finally, even if a class is certified and Defendants are found liable for the class claims alleged,
26 post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and
27 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*
28 *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. *See also O'Conner v. Uber Technologies,*

1 *Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action). JCL
2 Dec., ¶ 43.

3 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
4 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
5 factor favoring settlement. JCL Dec., ¶ 44.

6 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
7 that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair
8 the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
9 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 45.

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

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

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

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

27 **The potential complexity and possible duration of trial also weigh in**
28 **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.

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

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

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

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

21 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
22 indication that this amount was the result of self-interest at the expense of class members,” such
23 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
24 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
25 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
26 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at
27 *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*,
28 No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging

1 that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

2 Here, Plaintiff and Defendants negotiated a good faith PAGA Payment in the amount of
3 \$30,000.00 which is 5% of the Gross Settlement Amount. As illustrated above, this amount falls well
4 within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA Payment
5 (\$22,500.00) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent
6 (25%) of the PAGA Payment (\$7,500.00) to be distributed to the Aggrieved Employees ("Aggrieved
7 Employee Payments"), which is within the range of PAGA penalties approved by courts and should
8 be approved. JCL Dec., ¶ 47.

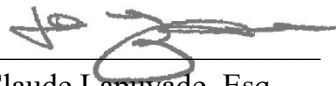
9 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
10 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
11 with the LWDA. JCL Dec., ¶¶ 5-6, 48. By not registering an objection with either Class Counsel or
12 the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

13 VII. CONCLUSION

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

17
18 Dated: January 24, 2025

JCL LAW FIRM, APC

19 By: 

20 Jean-Claude Lapuyade, Esq.

21 Attorneys for Plaintiff
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