

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
Rachel N. Newman (State Bar #350826)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com
rachel@zakaylaw.com

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JOSE GARCIA VALLE, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

PACIFIC SHELLFISH, INC., a California
corporation; and DOES 1 through 100,
Inclusive,

Defendants.

Case No. 37-2021-00021898-CU-OE-CTL

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

Date: March 1, 2024
Time: 8:30 a.m.

Judge: Hon. Ronald F. Frazier
Department: C-65

Trial Date: N/A
Action Filed: May 17, 2021

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I. INTRODUCTION

Plaintiff JOSE GARCIA VALLE (hereinafter “Plaintiff”) seeks final approval of the Stipulation of Settlement of Class and PAGA Action and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for 235 Settlement Class Members employed by defendant PACIFIC SHELLFISH, INC. (“Defendant”) during the Class Period. Plaintiff and Class Counsel also seek approval of the Class Counsel Award in the amount of **\$153,333.33** comprised of \$128,333.33 for attorneys’ fees (one-third of the Gross Settlement Amount) and up to \$25,000.00 for reimbursement of actually incurred litigation expenses².

An objective evaluation of the proposed settlement of \$385,000.00 (“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 Steve Serratore, Esq., an experienced wage and hour class and PAGA action mediator. JCL Dec., ¶ 9. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately \$192,666.67, an average Individual Settlement Payment of **\$819.86** and high payment of **\$3,923.53**. Declaration of Nathalie Hernandez (“ILYM Dec.”), ¶ 14; JCL Dec., ¶ 10.

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., ¶ 11-12.

II. OVERVIEW OF THE LITIGATION

Defendant is a California corporation that distributes seafood to restaurants, hotels, bars, and caterers across Southern California, including in San Diego, where Plaintiff worked. Defendant additionally operates the Fishery, an upscale seafood restaurant in San Diego. This action asserts claims on behalf of Defendant’s current and former non-exempt employees employed in California. Plaintiff

¹ The Agreement is attached as Ex “A” 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’s actually incurred litigation expenses are \$13,740.19. Class Counsel will provide an updated total at the time of hearing on this motion.

1 worked for Defendants as a non-exempt employee during the Class Period. JCL Dec., ¶ 13.

2 Among other claims, Plaintiff claims that Defendant failed to maintain accurate time records,
3 pay for all hours worked, provide compliant meal and rest periods, issued non-compliant wage
4 statements, and failed to pay all wages when due. Defendant forcefully denies liability for each of
5 Plaintiff's claims. JCL Dec., ¶ 14.

6 On August 10, 2022, Plaintiff served Defendant and the Labor and Workforce Development
7 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). On May 17, 2021, Plaintiff filed
8 this class and representative action complaint ("Class Action") alleging six causes of action for various
9 violations of the labor code. On December 9, 2022, Plaintiff filed a First Amended Complaint, alleging
10 an additional cause of action for violations of the Private Attorneys General Act at Labor Code §§ 2698,
11 *et seq.* JCL Dec., ¶¶ 15-17.

12 The Parties agreed to collectively mediate the Class Action. To prepare for mediation, the Parties
13 agreed to informally produce documents and data points subject to the mediation privilege, including
14 but not limited to, the Class Members' time data and certain payroll data points. As discussed *infra*,
15 Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze
16 Defendants' time and payroll data. JCL Dec., ¶ 18.

17 On April 5, 2022, the Parties participated in a full day mediation presided over by Steve
18 Serratore, Esq. The mediation concluded without a mediator proposal that was accepted by all Parties.
19 After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement
20 agreement, which is the subject of the instant motion. JCL Dec., ¶ 19. On July 21, 2023, this Court
21 granted preliminary approval of the Settlement. JCL Dec., ¶ 4. Shortly, thereafter, the Settlement
22 Administrator mailed Notice Packets to all 235 Settlement Class members. ILYM Dec., ¶¶ 4-7. The
23 mailing of the Notice Packets triggered a ninety (90) day Response Deadline for the Settlement Class
24 to submit requests for exclusion or objections to the Settlement. Agreement, ¶ I(EE). As of the filing
25 of this motion, 100% of the Class Members are participating in the Settlement. ILYM Dec., ¶¶ 13.

26 **III. THE SETTLEMENT BEFORE THE COURT**

27 The Court preliminarily approved a Gross Settlement Amount of \$385,000.00. The Gross
28 Settlement Amount is all-in with no reversion to Defendant. Agreement, ¶ III(A)(1). The Net Settlement

1 Amount shall be used for the payment of all Individual Settlement Payments to satisfy all Released
2 Claims. The Settlement Administrator will calculate Individual Settlement Payments by adding up the
3 total number of Workweeks for all Class Members. The respective Workweeks for each Class Member
4 will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each
5 Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net
6 Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment.
7 Agreement, ¶ III(N)(1). The Settlement Administrator estimates the average Individual Settlement
8 Payment is **\$819.86** and the highest Individual Settlement Payment is **\$3,923.53**. ILYM Dec., ¶ 14.

9 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
10 the Settlement Class Members will release the Released Parties from the Released Class Claims for the
11 Class Period. Plaintiff, the LWDA, and the State of California will release the Released Parties from the
12 Released PAGA Claims for the PAGA Period. Agreement, ¶¶ III(B), III(C).

13 ILYM Group, Inc. was appointed as the Settlement Administrator for the class. The Settlement
14 Administration Cost are \$9,000.00. ILYM Dec., ¶ 15. These expenses shall be paid from the Gross
15 Settlement Amount. Agreement, ¶ III(N)(12).

16 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
17 \$153,333.33 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
18 to be at least \$128,333.33 and up to \$25,000.00 for actually incurred litigation expenses. Agreement, ¶
19 III(N)(10).

20 Subject to Court approval, the Agreement provides for a Class Representative Service Award in
21 the amount of \$10,000.00 for Plaintiff in consideration of his time, risk, and efforts as the Class
22 Representative on behalf of the Settlement Class and a broad release of Civil Code section 1542.
23 Settlement Agreement, ¶ III(N)(9).

24 As set forth in the Agreement, \$20,000.00 of the Gross Settlement Amount has been allocated for
25 civil penalties under the PAGA ("PAGA Payment"). Seventy-Five percent of the PAGA Payment will
26 be paid to the California Labor Workforce and Development Agency ("LWDA Payment"). The
27 Settlement Administrator shall distribute the remaining 25% of the PAGA Settlement to the Aggrieved
28 Employees ("Aggrieved Employee Payment"). Agreement, ¶ III(N)(11).

1 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
2 and should be granted final approval. Given the complexities of this case, the defenses asserted, the
3 uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed
4 settlement is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 20-21.

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

7 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
8 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
9 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
10 *v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000).

11 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
12 action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) *citing*
13 *Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). The
14 court must decide whether the proposed settlement falls within the range of reasonable settlements,
15 taking into account that settlements are compromises between the parties reflecting subjective,
16 unquantifiable judgments concerning the risks and possible outcomes of litigation. See also *Wershba v.*
17 *Apple Computer*, 91 Cal.App.4th 224, 246 (2001) In *Wershba*, appellants argued that the settlement was
18 too low given the “clear” liability, however, the Court rejected this argument and held that “the merits
19 of the underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba*,
20 *supra*, at 246; *see also 7-Eleven, supra*, at 1150. In these cases, Courts have repeatedly emphasized that
21 there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91
22 Cal.App.4th at 245. The presumption of fairness exists where: (1) investigation and discovery are
23 sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm’s-
24 length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
25 small. *Dunk*, 48 Cal. App. 4th at 1801, *citing Newberg & Conte, Newberg on Class Actions*, (3d ed.
26 1992) §11.41, pp. 11-91. Here, all of these factors support a presumption of fairness.

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

28 The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford*

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

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

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

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

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

24 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
25 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
26 assessed the value of the class claims using data and documents provided by Defendant in informal
27 discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the
28 number of Class Members, workweeks, and average rate of pay in order to assess damages before

mediation. Class Counsel retained Berger Consulting Group to analyze Defendant's time and payroll data to formulate damage models estimating Defendant's liability exposure. Class Counsel's investigation, research, experience, and damage models informed and guided the mediated negotiations that resulted in this settlement. JCL Dec., ¶ 22-30.

B. The Parties Settled Shortly After Mediation.

The Settlement is the product of a mediation session with a respected mediator and negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. JCL Dec., ¶ 31.

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., ¶¶ 32-38; Declaration of Zakay ¶ 3.

D. The Settlement Class Responded Positively to the Settlement.

The reaction of the Settlement Class unequivocally supports approval of the Settlement. To date, none of the 235 members of the Settlement Class opted-out of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement Class has chosen to participate in the Settlement. JCL Dec., ¶ 11; ILYM Dec., ¶¶ 7-13.

The unanimous approval by the Settlement Class strongly supports a finding that the Settlement is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) Consequently, Class Counsel respectfully request the Court to follow the unanimous approval of the Settlement Class and grant final approval of the Settlement.

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

Although Plaintiff and Class Counsel believe that their case has merit, they recognized the potential risks both sides would face if litigation of this action continued. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

8 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
9 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
10 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
11 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
12 trial court to enter judgement in favor of the employer. Consequently, the uncertainty of obtaining
13 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶¶
14 39-41.

15 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes
16 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
17 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
18 affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶¶ 42-43.

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

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

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

33 **The potential complexity and possible duration of trial also weigh in**
34 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
35 of proving damages, recognize the uncertainty of outcome, and believe
36 defendant would appeal in the event of adverse judgment. A post-judgment
37 appeal would require many years to resolve and delay payment to class
38 members. Plaintiffs believe the benefits of a guaranteed recovery today

1 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the
2 Court agrees, the actual recovery confers substantial benefits on the class
3 that outweigh the potential recovery through full adjudication.

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

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

9 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendant through
10 possible appeals which could take another three years. In arriving at their informed belief that the
11 present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk
12 inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent
13 problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-
14 trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would
15 have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and Class
16 Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the
17 Class. Based upon their evaluation, Class Representative and Class Counsel have determined that the
18 Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate,
19 and should be granted final approval. JCL Dec., ¶ 44.

20 **F. The Gross Settlement Amount is Fair and Reasonable.**

21 The Gross Settlement Amount of \$385,000.00 in this case is fair and well within the range of
22 recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement
23 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the
24 various potential impediments to recovery. Class Counsel developed varied economic damages models
25 measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation.
26 The various models were informed by Class Counsel's investigation, including the analysis of a
27 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
28 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on
29 behalf of the Settlement Class. The Gross Settlement Amount represents approximately 16.4% of

1 Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL
2 Dec., ¶ 45.

3 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
4 Court for the Northern District of California granted final approval in a wage and hour misclassification
5 action and found that the Total Settlement representing 10% of the estimated trial award was within the
6 "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459
7 (9th Cir. 2000), the Ninth Circuit approved a settlement representing "roughly one-sixth of the potential
8 recovery." Given the amount of the settlement here as compared to potential value of the claims,
9 particularly the strength of Plaintiff's action, the settlement is clearly fair and reasonable.

10 The settlement provides significant relief to the Settlement Class Members. The average
11 settlement payment is approximately \$819.86, and the highest is approximately \$3,923.53. ILYM Dec.,
12 ¶ 14. This average net recovery is greater than many wage and hour class action settlements approved
13 by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-
14 00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v.*
15 *Pizza Hut*, Case No. BC302589 (LA. County Super. Ct.) (average net recovery of approximately \$120);
16 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net
17 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018
18 (L.A. County Super. Ct.) (average net recovery of approximately \$90).

19 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
20 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
21 experienced counsel, the settlement is entitled to final approval. JCL Dec., ¶ 46.

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

24 Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of
25 the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*,
26 No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
27 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
28 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim

1 settlements in the range of zero to two percent of the total settlement).

2 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of
3 \$20,000.00 which is 5.2% of the Gross Settlement Amount. This amount falls well within the range
4 of approved PAGA Payments. Seventy-Five percent (75%) of the PAGA Settlement (\$15,000.00) will
5 be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) to be
6 distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by
7 courts and should be approved. JCL Dec., ¶ 47.

8 Further, on May 3, 2023, Class Counsel gave the LWDA notice of this Settlement and proposed
9 allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with the LWDA.
10 On February 6, 2024, Plaintiff gave the LWDA notice of this motion seeking final approval of this
11 settlement. JCL Dec., ¶¶ 5-6, 48. By not registering an objection with either Class Counsel or the
12 Court, the LWDA has accepted and approved of the proposed PAGA Payment.

13 **VII. CLASS COUNSEL’S REQUEST FOR FEES AND COSTS**

14 As part of the settlement, the parties agreed to a Class Counsel Award comprised of \$128,333.33
15 for attorneys’ fees (one-third of the Gross Settlement Amount) and up to \$25,000.00 for
16 reimbursement of actually incurred litigation expenses. The requested attorneys’ fee portion of the
17 Class Counsel Award equal to one-third of the Gross Settlement Amount is fair compensation and,
18 respectfully, should be approved. Class Counsel undertook complex, risky, and time-consuming wage
19 and hour litigation on a contingent basis. The attorneys’ fee portion of the requested Class Counsel
20 Award is within the historically recognized range attorneys’ fees awarded in common fund class action
21 settlements – between 25% and 50% – and is supported by Class Counsel’s lodestar cross-check with
22 a reasonable 0.98 multiplier. That is well-below the 2.13 multiplier approved by the Supreme Court
23 in *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, with additional work to be
24 performed, and within the recognized multiplier range of between 2 and 4³. Thus, the reasonableness
25 of the requested Class Counsel Award is confirmed by reference to the lodestar with a reasonable
26

27 ³ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with 2 multiplier); *Wershba v. Apple Computer*, 91 Cal.
28 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).

multiplier with significant additional work still to be performed. JCL Dec., ¶¶ 49-56.

A. Common Fund

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 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 the Class Counsel Award 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 \$128,333.33 representing **one-third** 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., ¶¶ 56-57.

The attorneys’ fee portion of the Class Counsel Award request should be awarded based upon the Gross Settlement Amount in accordance with *Laffitte*, i.e., percentage of the fund with a lodestar cross check. As further explained below, the reasonableness of the requested \$128,333.33 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 \$125,252.50 *exclusive of costs*, with significant work remaining. JCL Dec., ¶¶ 49-52. Thus, Class Counsel’s fee request is equal to Class Counsel’s lodestar with a 0.98 multiplier – below the 2.13 multiplier approved in *Laffitte* – is well within the recognized multiplier range between 2 and 4. See also *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).

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., ¶ 56.

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 \$385,000.00, is an excellent result for the Settlement Class, (2) Collectively, Class Counsel worked hard on this case and, expended approximately 236.12 hours in the prosecution of this litigation in the nearly 3 years since it was filed for a total lodestar of \$125,252.50, (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 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 attorney's 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) Settlement Class Counsel's hourly rates are set forth in the concurrently filed declarations of Jean-Claude Lapuyade, Esq., Shani Zakay, Esq., and Paul K. Haines, Esq. and 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. JCL Dec., ¶¶ 49-78.

C. Class Counsel's Costs

Moreover, 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

1 whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See*
2 *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

3 As of the date of this filing, Class Counsel has incurred a total of \$13,740.19 litigating this
4 action. All of Class Counsel's out-of-pocket expenses are the types of expenses normally charged to
5 paying clients including the following: filing fees; copying; telephone; postage; factual and legal
6 research charges; mediation fees; expert costs and travel expenses, which were all incurred during,
7 and were necessary for the successful prosecution of, the litigation and, therefore, should be
8 reimbursed. JCL Dec. ¶¶ 7, 79-81; Zakay Dec., ¶¶ 7-8.

9 **D. Plaintiff's Service Award Is Reasonable and Should be Approved**

10 Courts routinely approve service awards to compensate named plaintiffs for the services they
11 provide and the risks they incur during the class litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th
12 715, 726 (2004) The factors courts use in determining the amount of service awards include: (1) a
13 comparison between the service awards and the range of monetary recovery available to the class; (2)
14 time and effort put into the litigation; (3) whether the litigation will further the public policy underlying
15 the statutory scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, 175
16 Cal.App.4th 785, 804-805 (2009).

17 As a preliminary matter, Plaintiff granted Defendant a broad and general release of all claims
18 arising from his employment. In exchange, the Class Representative Service Award is, in part,
19 intended to compensate Plaintiff for executing this general release. This release is far broader than the
20 release that binds the remainder of the Settlement Class. JCL Dec., ¶¶ 82-83.

21 Regarding the amount of the requested award, courts frequently approve awards of \$10,000.00
22 or more. *See In re Cellphone*, 186 Cal.App.4th 1380. The amount of the requested Class
23 Representative Service Award to Plaintiff for \$10,000.00 is reasonable by reference to the amounts
24 that California courts (both federal and state) have repeatedly awarded in similar class action
25 settlements. Further, the unanimous consent by the Class Members favors the Court's approval of the
26 requested Class Representative Service Award. Equally important, the time effort and services
27 provided to the Settlement Class justifies the requested Service Award. The Class Representative
28 performed his duties to the Settlement Class admirably. Plaintiff's work is summarized in his

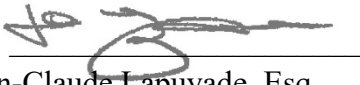
1 declaration filed concurrently herewith. Plaintiff assumed the serious risk of liability for Defendant's
2 costs and potentially fees if the case was unsuccessful. Nevertheless, Plaintiff knowingly and
3 voluntarily undertook the risk to vindicate the rights of the Settlement Class. JCL Dec., ¶ 83-86.

4 **VIII. CONCLUSION**

5 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
6 established in California law and should therefore be finally approved as fair, reasonable, and adequate
7 and requests entry of the Final Approval Order and Judgment submitted herewith. Further, based on the
8 foregoing, Class Counsel respectfully requests approval of the Class Counsel Award in the amount of
9 \$153,333.33, comprised of (1) \$128,333.33 as compensation for attorneys' fees (one-third of the Gross
10 Settlement Amount of \$385,000.00) and (2) litigation expenses up to \$25,000.00 as supported by Class
11 Counsel's billing records. Class Counsel and the Class Representative also respectfully request approval
12 of the requested Class Representative Service Award in the amount of \$10,000.00 to Plaintiff.

13
14 Dated: February 6, 2024

JCL LAW FIRM, APC

15 By: 

16 Jean-Claude Lapuyade, Esq.
17 Attorneys for Plaintiff
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