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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

KAREN TRUELLE and ANTHONY
BROUSSARD, individuals, on behalf of
themselves, and on behalf of all persons
similarly situated,

Plaintiff,

v.

CHILDREN OF THE RAINBOW, INC., a
California corporation, and DOES 1-50,
Inclusive,

Defendants.

Case No. 37-2022-00034860-CU-OE-CTL [Lead]
Case No. 37-2023-00006660-CU-OE-CTL

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

Date: December 13, 2024
Time: 8:30 a.m.

Judge: Hon. Robert Longstreth
Department: C-65

Trial Date: N/A
Action Filed: August 30, 2022

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I. INTRODUCTION

Plaintiffs KAREN TRUELLE and ANTHONY BROUSSARD (hereinafter “Plaintiffs”) seek 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 106 Settlement Class Members employed by defendant CHILDREN OF THE RAINBOW, INC. (“Defendant”) during the Class Period. Plaintiffs and Class Counsel also seek approval of the request Attorneys’ Fees and Attorneys’ Expenses in the amount of up to \$105,000.00 comprised of \$80,000.00 for attorneys’ fees (one-third of the Gross Settlement Amount) and up to \$25,000.00 for reimbursement of actually incurred litigation expenses.²

An objective evaluation of the proposed settlement of \$240,000.00 (“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 the Hon. Steven R. Denton (Ret.), a retired jurist and experienced mediator. JCL Dec., ¶ 10. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately \$99,500.00, an average Individual Class Payment of **\$938.68** and high payment of **\$2,012.91**. Declaration of Madely Nava (“Apex Dec.”), ¶¶ 14-15; JCL Dec., ¶ 11.

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., ¶ 12-13.

II. OVERVIEW OF THE LITIGATION

Defendant Children of the Rainbow, Inc. owns, operates, and/or manages childcare facilities in San Diego County, where Plaintiffs worked. This action asserts claims on behalf of all non-

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 \$16,858.26. Class Counsel will provide an updated total at the time of hearing on this motion.

1 exempt employees who are or who previously were employed by Defendant and performed work in
2 California at any time during the period between August 30, 2018, to June 30, 2023. At all times
3 during their employment, Plaintiffs earned an hourly wage and were entitled to legally compliant
4 meal and/or rest periods, and minimum, regular and overtime wages for all hours worked.
5 Throughout their employment, Plaintiffs were subject to Defendant’s written policies and procedures
6 contained in, among other documents, the “Children of the Rainbow Employee Handbook.” JCL
7 Dec., ¶ 14.

8 On July 28, 2022, Plaintiff Trudelle served Defendant and the Labor and Workforce
9 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff Trudelle’s
10 PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations of various
11 provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) *Wage*
12 *Order* and of her intent to pursue claims under California Labor Code Private Attorneys
13 General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). JCL Dec., ¶ 16.

14 On August 30, 2022, Plaintiff Trudelle filed a class action complaint in the San Diego Superior
15 Court, Case Number 37-2022-00034860-CU-OE-CTL (“Trudelle Action”). The Trudelle Action
16 alleged eight causes of action against Defendant for: (1) Unfair Competition in Violation of
17 California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation
18 of California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation
19 of California Labor Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of
20 Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal.
21 Lab. Code §§ 226.7 and 512; (6) Failure to Reimburse Employees for Required Expenses in
22 Violation of Cal. Lab. Code §2802; (7) Failure to Provide Wages When Due in Violation of Cal. Lab.
23 Code §§ 201, 202 and 203; and (8) Failure to Provide Accurate Itemized Wage Statements in
24 Violation of Cal. Lab. Code §226. JCL Dec., ¶ 17.

25 On October 3, 2022, Plaintiff Trudelle filed the operative First Amended Complaint, which
26 added a ninth cause of action for Violation of the Private Attorneys General Act. JCL Dec., ¶ 18.

27 On February 14, 2023, Plaintiff Broussard served Defendant and the Labor and Workforce
28 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff

1 Broussard’s PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations
2 of various provisions of the California Labor Code and applicable Industrial Welfare Commissions
3 (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private
4 Attorneys General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). JCL Dec., ¶ 19.

5 On February 14, 2023, Plaintiff Broussard filed a class action complaint in the San Diego
6 Superior Court, Case Number 37-2023-00006660-CU-OE-CTL (“Broussard Action”). The Broussard
7 Action alleged seven causes of action against Defendant for: (1) Minimum Wage Violations (Labor
8 Code §§ 1182.12, 1194, 1194.2, 1197); (2) Failure to Pay All Overtime Wages (Labor Code §§ 204,
9 510, 558, 1194, 1198); (3) Meal Period Violations (Labor Code §§ 226.7, 512, 558); (4) Failure to
10 Reimburse Necessary Business Expenses (Labor Code §§ 2802, 2804); (5) Wage Statement
11 Violations (Labor Code § 226 *et seq.*); (6) Waiting Time Penalties (Labor Code § 201-203); and (7)
12 Unfair Competition (Business & Professions Code § 17200 *et seq.*). JCL Dec., ¶ 20.

13 On April 21, 2023, Plaintiff Broussard filed a First Amended Complaint, which added an
14 eighth cause of action for Violation of the Private Attorneys General Act. JCL Dec., ¶ 21.

15 On October 9, 2023, the Court ordered the consolidation of the Trudelle Action and the
16 Broussard Action, with the Trudelle Action being the lead case. JCL Dec., ¶ 22.

17 Generally, Plaintiffs claim that Defendant failed to provide meal breaks and rest breaks, failed
18 to reimburse for required business expenses, failed to pay minimum wages, and failed to issue
19 accurate itemized wage statements. Defendant forcefully denies liability for each Plaintiffs’ claims.
20 Further, Defendant asserts that it fully complied with all applicable employment laws and raised
21 several other significant defenses to Plaintiffs’ claims, including but not limited to, facially compliant
22 meal and rest period policies, payment of minimum wages, reimbursed its employees for business
23 expenses, compliant wage statements, and timely paid all wages due upon separation of employment.
24 JCL Dec., ¶ 15.

25 Plaintiffs commenced written discovery in February 2023. Before answering Plaintiffs’
26 written discovery, the Parties agreed to mediate the action. In anticipation of mediation, the Parties
27 agreed to stay formal discovery and continue deadlines for class certification. JCL Dec., ¶ 23.

28 To prepare for mediation, the Parties agreed to informally produce additional documents and

1 data points subject to the mediation privilege, including but not limited to, a sampling of the Class
2 Members' time and payroll data, and pertinent written wage and hour policies. As discussed *infra*,
3 Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze
4 Defendant's time and payroll data. JCL Dec., ¶ 24.

5 On June 20, 2023, the Parties participated in a full day mediation with the Hon. Steven R.
6 Denton (Ret.), an experienced jurist and mediator. After arms-length negotiations and bargaining, the
7 Parties accepted a Mediator's proposal and signed a Memorandum of Understanding. After reaching
8 an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which
9 is the subject of the instant motion. JCL Dec., ¶ 25. On July 1, 2024, this Court granted preliminary
10 approval of the Settlement. JCL Dec., ¶ 4. Shortly, thereafter, the Settlement Administrator mailed
11 Notice Packets to all 106 Settlement Class members. Apex Dec., ¶¶ 4-7. The mailing of the Notice
12 Packets triggered a ninety (90) day Response Deadline for the Settlement Class to submit requests for
13 exclusion or objections to the Settlement. Agreement, ¶ I(GG). As of the filing of this motion, 100%
14 of the Class Members are participating in the Settlement. Apex Dec., ¶ 13.

15 **III. THE SETTLEMENT BEFORE THE COURT**

16 The Court preliminarily approved a Gross Settlement Amount of \$240,000.00. The Gross
17 Settlement Amount is all-in with no reversion to Defendant. Agreement, ¶ III(A)(1). The Net
18 Settlement Amount shall be used for the payment of all Individual Class Payments to satisfy all
19 Released Class Claims. The Settlement Administrator will calculate Individual Class Payments by
20 adding up the total number of Workweeks for all Class Members. The respective Workweeks for each
21 Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment
22 Ratio for each Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by
23 the Net Settlement Amount to calculate each Class Member's estimated Individual Class Payment.
24 Agreement, ¶ III(N)(1). The Settlement Administrator estimates the average Individual Class Payment
25 is **\$938.68** and the highest Individual Class Payment is **\$2,012.91**. Apex Dec., ¶ 15.

26 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
27 the Settlement Class Members will release the Released Parties from the Released Class Claims for the
28 Class Period. Plaintiff, the LWDA, and the State of California will release the Released Parties from

the Released PAGA Claims for the PAGA Period. Agreement, ¶¶ III(B); III(C).

Apex Class Action Administration was appointed as the Settlement Administrator for the class. The Claims Administration Expenses are \$5,500.00. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ III(N)(12).

Subject to Court approval, Class Counsel shall seek a payment of Attorneys' Fees and Attorneys' Expenses in the amount of up to \$105,000.00 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be at least \$80,000.00 and up to \$25,000.00 for actually incurred litigation expenses. Agreement, ¶ III(N)(10).

Subject to Court approval, the Agreement provides for a Service Award 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 and a broad release of Civil Code section 1542. Agreement, ¶ III(N)(9).

As set forth in the Agreement, \$10,000.00 of the Gross Settlement Amount has been allocated for civil penalties under the PAGA ("PAGA Payment"). Seventy-Five percent of the PAGA Payment will be paid to the California Labor Workforce and Development Agency ("LWDA Payment"). The Settlement Administrator shall distribute the remaining 25% of the PAGA Payment to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement, ¶ III(N)(11).

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. Given the complexities of this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶¶ 26-27.

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

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

"[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class

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

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

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

23 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*
24 *Fargo Bank*, 220 Cal.App.3d 1117, 1138 (1990). “The well-recognized factors that the trial court
25 should consider in evaluating the reasonableness of a class action settlement agreement include 'the
26 strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the
27 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
28 discovery completed and the stage of the proceedings, the experience and views of counsel, the

1 presence of a governmental participant, and the reaction of the class members to the proposed
2 settlement.' [Citations.]" *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008); see also
3 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 408 (2010).

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

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

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

14 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
15 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
16 assessed the value of the class claims using data and documents provided by Defendant in informal
17 discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the
18 number of Class Members, workweeks, and average rate of pay in order to assess damages before
19 mediation. Class Counsel retained Berger Consulting Group to analyze Defendant's time and payroll
20 data to formulate damage models estimating Defendant's liability exposure. Class Counsel's
21 investigation, research, experience, and damage models informed and guided the mediated
22 negotiations that resulted in this settlement. JCL Dec., ¶ 28-36.

23 **B. The Parties Settled Shortly After Mediation**

24 The Settlement is the product of a mediation session with a respected mediator and
25 negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arm's
26 length and tempered by the efforts of both sides to serve the interests of their clients. JCL Dec., ¶ 37.

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

28 Class Counsel in this matter have 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 have concluded that the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 38-44. Declaration of Zakay ¶ 3; Declaration of Paul Haines ¶¶ 2-15.

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 106 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; Apex Dec., ¶¶ 7-13.

The unanimous approval by the Class Members 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 Class Members and grant final approval of the Settlement.

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

Although Plaintiffs and Class Counsel believe that 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:

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. Consequently, the uncertainty of obtaining

1 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶¶
2 45-46.

3 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
4 recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat or
5 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
6 drastically affect the value of Plaintiffs' claims and, in fact, already has. JCL Dec., ¶¶ 47-49.

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

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

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

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

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

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

27 Plaintiffs and Class Counsel recognize the expense and length of a trial against Defendant
28 through possible appeals which could take another three years. In arriving at their informed belief that

the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiffs and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 50.

F. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of \$240,000.00 in this case is fair and well within the range of recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on behalf of the Class Members. The Gross Settlement Amount represents approximately 8.2% of Defendant's maximum liability exposure and 19.51% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 51.

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

1 and reasonable.

2 The settlement provides significant relief to the Class Members. The average settlement
3 payment is approximately \$938.68, and the highest is approximately \$2,012.91. Apex Dec., ¶ 15.
4 This average net recovery is greater than many wage and hour class action settlements approved by
5 California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619
6 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*,
7 Case No. BC302589 (LA. County Super. Ct.) (average net recovery of approximately \$120);
8 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net
9 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018
10 (L.A. County Super. Ct.) (average net recovery of approximately \$90).

11 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
12 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
13 experienced counsel, the settlement is entitled to final approval. JCL Dec., ¶ 52.

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

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

22 Here, Plaintiffs and Defendant negotiated a good faith PAGA Payment in the amount of
23 \$10,000.00, which is 4.16% of the Gross Settlement Amount. This amount falls well within the range
24 of approved PAGA Payments. Seventy-Five percent (75%) of the PAGA Payment (\$7,500.00) will be
25 paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be
26 distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by
27 courts and should be approved. JCL Dec., ¶ 53.

28 Further, on May 22, 2024, Class Counsel gave the LWDA notice of this Settlement and

proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with the LWDA. On November 18, 2024, Plaintiffs gave the LWDA notice of this motion seeking final approval of this settlement. JCL Dec., ¶¶ 5-6, 54. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

VII. CLASS COUNSEL’S REQUEST FOR FEES AND COSTS

As part of the settlement, the parties agreed to a \$80,000.00 for Attorneys’ Fees (one-third of the Gross Settlement Amount) and up to \$25,000.00 for Attorneys’ Expenses. The requested attorneys’ fee portion of the Attorneys’ Fees equal to one-third of the Gross Settlement Amount is fair compensation and, respectfully, should be approved as follows: \$20,000.00 (equivalent to 25% of the total fee award) to JCL Law Firm, APC, \$20,000.00 (equivalent to 25% of the total fee award) to Zakay Law Group, APLC, and \$40,000.00 (equivalent to 50% of the total fee award) to Haines Law Group, APC. Class Counsel undertook complex, risky, and time-consuming wage and hour litigation on a contingent basis. The attorneys’ fee request is within the historically recognized range attorneys’ fees awarded in common fund class action settlements – between 25% and 50% – and is supported by Class Counsel’s lodestar cross-check with a negative 0.46 multiplier. That is well-below the 2.13 multiplier approved by the Supreme Court in *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, with additional work to be performed, and within the recognized multiplier range of between 2 and 4.³ Thus, the reasonableness of the requested Attorneys’ Fees and Attorneys’ Expenses is confirmed by reference to the lodestar with a negative multiplier with significant additional work still to be performed. JCL Dec., ¶¶ 65-67.

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

³ See *Laffitte*, *supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with 2 multiplier); *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 255 (2001) (“multipliers can range from 2 to 4 or even higher.”); *In re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as “fair and reasonable”); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 as well within the approved range of 2 to 4).

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 Class Members is by awarding 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 Attorneys' Fees from the common fund. Accordingly, it is well within the Court's discretion to award fees to Class Counsel under the common fund doctrine. Class Counsel requests attorneys' fees in the amount of \$80,000.00 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 is

1 in the middle of historically recognized range of attorneys' fees awarded in common fund
2 settlements. JCL Dec., ¶¶ 59-63.

3 The Attorneys' Fees request should be awarded based upon the Gross Settlement Amount in
4 accordance with *Laffitte*, i.e., percentage of the fund with a lodestar cross check. As further
5 explained below, the reasonableness of the requested \$80,000.00 Attorneys' Fee award is further
6 supported by the lodestar cross-check.

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

8 Class Counsel's lodestar to date is \$172,270.00 *exclusive of costs*, with significant work
9 remaining. JCL Dec., ¶¶ 55-58; Declaration of Paul Haines ¶ 20. Thus, Class Counsel's fee request
10 is equal to Class Counsel's lodestar with a 0.46 multiplier – below the 2.13 multiplier approved in
11 *Laffitte* – is well within the recognized multiplier range between 2 and 4. See also *Taylor v. FedEx*
12 *Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee
13 award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs.,*
14 *Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award
15 with cross-check lodestar multiplier of 1.7).

16 Because the Settlement in this case is a pure common fund case, and the percentage of the
17 fund is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award
18 based upon the percentage of the common fund. Moreover, Class Counsel's lodestar supports the
19 requested attorneys' fees with a multiplier well within the recognized range reasonableness, and in
20 fact, below what the California Supreme Court approved in *Laffitte*. JCL Dec., ¶ 72.

21 Based on Plaintiffs' Counsel's lodestar, Plaintiffs' Counsel's requested fee award reflects a
22 request for a reasonable hourly rate of \$428.29. Specifically, dividing \$80,000 by the number of
23 hours spent by Plaintiffs' Counsel on the case (186.7), results in an average hourly rate of \$428.29,
24 which is reasonable and should be awarded. JCL Dec., ¶ 73.

25 Although no rigid formula applies, an analysis of each of the following "basic factors" that
26 California courts typically consider further supports the reasonableness of a fee request: **(1)** the result
27 class counsel obtained; **(2)** the time and labor required of the attorneys; **(3)** the contingent nature of
28 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 Class Counsel's declarations submitted concurrently herewith. In short: (1) Considering the issues presented in the case, the Gross Settlement Amount of \$240,000.00, is an excellent result for the Settlement Class, (2) Collectively, Class Counsel worked hard on this case and, expended approximately 186.7 hours in the prosecution of this litigation in the nearly 2 years since it was filed for a total lodestar of \$172,270.00, (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 Class Members 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) 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 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., ¶¶ 74-88.

C. Class Counsel's Costs

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

1 As of the date of this filing, Class Counsel has incurred a total of \$16,858.26 litigating this
2 action, comprised of: \$4,778.42 by JCL Law Firm, APC, \$6,174.32 by Zakay Law Group, APLC,
3 and \$5,905.52 by Haines Law Group, APC. All of Class Counsel's out-of-pocket expenses are the
4 types of expenses normally charged to paying clients including the following: filing fees; copying;
5 postage; factual and legal research charges; mediation fees; expert costs, which were all incurred
6 during, and were necessary for the successful prosecution of, the litigation and, therefore, should be
7 reimbursed. JCL Dec. ¶¶ 7, 89-91; Zakay Dec., ¶¶ 7-8, Declaration of Paul Haines ¶ 19.

8 **D. Plaintiffs' Service Awards Are Reasonable and Should be Approved**

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

16 As a preliminary matter, Plaintiff Broussard granted Defendant a broad and general release of
17 all claims arising from their employment. Settlement Agreement, § III(D). In exchange, the Class
18 Representatives Service Award is, in part, intended to compensate Plaintiff for executing this general
19 release. Settlement Agreement § III(N)(9). More specifically, this broad release prevents Plaintiff
20 Broussard from pursuing any unrelated claims for wrongful termination, harassment, hostile
21 workplace and/or retaliation. This release is far broader than the release that binds the remainder of
22 the Settlement Class. Absent the Class Representatives Service Awards, there is no consideration
23 for Plaintiff Broussard's broad general release. Thus, the requested Class Representatives Service
24 Awards can hardly be considered either a "salary" or "bounty" for bringing suit. To the contrary, the
25 Class Representatives Service Awards are the sole consideration for granting a general release.
26 Moreover, the amount of the requested award of \$10,000.00 for Plaintiff Broussard is fair
27 compensation for the broad release. JCL Dec., ¶ 92.

28 Regarding the amount of the requested award, courts frequently approve awards of

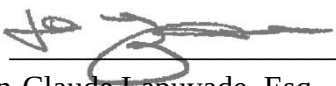
1 \$10,000.00 or more. *See In re Cellphone*, 186 Cal.App.4th 1380. The amount of the requested
2 Service Award to Plaintiffs for \$10,000.00 each is reasonable by reference to the amounts that
3 California courts (both federal and state) have repeatedly awarded in similar class action settlements.
4 Further, the unanimous consent by the Class Members favors the Court's approval of the requested
5 Service Award. Equally important, the time effort and services provided to the Class Members
6 justifies the requested Service Award. The Class Representatives performed their duties to the
7 Settlement Class admirably. Plaintiffs' work is summarized in their declarations filed concurrently
8 herewith. Plaintiffs assumed the serious risk of liability for Defendant's costs and potentially fees if
9 the case was unsuccessful. Nevertheless, Plaintiffs knowingly and voluntarily undertook the risk to
10 vindicate the rights of the Class Members. JCL Dec., ¶ 93-96.

11 **VIII. CONCLUSION**

12 Plaintiffs respectfully submit that the proposed settlement satisfies the standard of fairness
13 established in California law and should therefore be finally approved as fair, reasonable, and adequate
14 and requests entry of the Final Approval Order and Judgment submitted herewith. Further, based on
15 the foregoing, Class Counsel respectfully requests approval of (1) \$80,000.00 as compensation for
16 Attorneys' Fees (one-third of the Gross Settlement Amount of \$240,000.00) and (2) litigation
17 expenses up to \$25,000.00 as supported by Class Counsel's billing records. Class Counsel and the
18 Class Representatives also respectfully request approval of the requested Service Award in the amount
19 of \$10,000.00 to each Plaintiff.

20
21 Dated: November 18, 2024

JCL LAW FIRM, APC

22 By: 
23 Jean-Claude Lapuyade, Esq.
24 Attorneys for Plaintiff
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26
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