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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

TATIANA BOVE, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

v.

S&B RESTAURANT GROUP LLC dba
CHICK-FIL-A, a California limited liability
company; and DOES 1-50, Inclusive,

Defendants.

Case No. 23STCV02528

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

Date: November 15, 2024
Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice
Dept.: 1

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I. INTRODUCTION

Plaintiff Tatiana Bove (hereinafter “Plaintiff”) seeks final approval of the Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for 398 Settlement Class Members employed by Defendant S&B Restaurant Group LLC Dba Chick-Fil-A (hereinafter “Defendant”) during the Class Period.

In an order dated July 29, 2024, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On August 22, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Madely Nava (“Apex Dec.”), ¶ 7. *The Class greeted news of the Settlement with unanimous approval as, at the time of the filing of this motion, all 398 Class Members chose to participate in the Settlement.*² There are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

An objective evaluation of the proposed settlement of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Hon. Brian C. Walsh (Ret.), a respected judge and wage and hour class action mediator. After deducting any Court-approved attorneys’ fees and costs, class representative incentive payments, administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendant during the Class Period. JCL Dec., ¶ 8.

This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$136,000.00**. This will result in an average Individual Class Payment of **\$341.71**, a high payment of **\$1,212.09**, and a low payment of **\$3.22**. Aggrieved Employees will receive an estimated average gross

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 Seventeen (17) Notices were deemed undeliverable. Apex Dec. at ¶ 10.

1 payment of **\$17.01** and a high payment of **\$44.40**. JCL Dec., ¶ 9; Apex Dec. at ¶ 17.

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 Settlement Class will not have to wait
5 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
6 litigation. JCL 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 enter the proposed Final Approval Order and Judgment. JCL Dec., ¶ 11.

11 **II. OVERVIEW OF THE LITIGATION**

12 Defendant owns, operates, and manages a Chick-fil-A restaurant franchise in the county of Los
13 Angeles, where Plaintiff worked. This action asserts claims on behalf of all of Defendant's current and
14 former non-exempt employees employed in California at any time during the Class Period. Plaintiff
15 worked for Defendant as a non-exempt employee in California from April of 2022 to August of 2022.
16 At all times during her employment, Plaintiff earned an hourly wage and was entitled to legally
17 compliant meal and rest periods, and minimum, regular and overtime wages for all hours worked.
18 Throughout her employment, Plaintiff was subject to Defendant's policies and procedures. JCL Dec.,
19 ¶ 12; Declaration of Tatiana Bove ("Bove Dec."), ¶¶ 2-4.

20 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
21 compliant meal and rest periods, failed to reimburse for required business expenses, unlawfully
22 deducted uniform expenses from wages, failed to furnish accurate itemized wage statements, and failed
23 to pay all wages when due. Defendant forcefully denies liability for each of Plaintiff's claims. Further,
24 Defendant asserts that it fully complied with all applicable employment laws and raised several other
25 significant defenses to Plaintiff's claims, including but not limited to, asserting that it paid employees
26 for all hours worked, maintained facially compliant meal and rest period policies, did not engage in
27 unlawful payroll deductions, issued compliant wage statements, and timely paid all wages when due.
28 JCL Dec., ¶ 13.

1 On December 1, 2022, Plaintiff served Defendant and the Labor and Workforce Development
2 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
3 the facts and theories supporting Defendant’s alleged violations of various provisions of the California
4 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to
5 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
6 2698 *et seq.* (“PAGA”). JCL Dec., ¶ 14.

7 On February 6, 2023, Plaintiff filed a class action complaint in the Los Angeles Superior Court,
8 Case Number 23STCV02528 (“Action”). The Action alleged nine causes of action against Defendant
9 for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) Failure to Pay
10 Minimum Wages in Violation Of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime
11 Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in
12 Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide
13 Required Rest Periods in Violation Of Cal. Lab Code §§ 226.7 & 512 and the Applicable IWC Wage
14 Order; (6) Failure to Provide Wages When Due in Violation Of Cal. Labor Code §§ 201, 202 and 203;
15 (7) Failure to Provide Accurate Itemized Statements in Violation Of Cal. Lab. Code § 226; (8) Failure
16 Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; and (9) Violation
17 of the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*]. JCL Dec., ¶ 15.

18 The Parties agreed relatively early to mediate the Action. On January 9, 2024, the Parties
19 participated in a full day mediation with retired jurist and mediator Hon. Brian C. Walsh (Ret.). After
20 arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a
21 Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and
22 negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶
23 16.

24 On July 29, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On
25 August 22, 2024, the Administrator mailed Notice Packets to all 398 Settlement Class Members. Apex
26 Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the
27 Settlement Class to submit requests for exclusion or objections to the Settlement. The response from
28 the Settlement Class to the Settlement was outstanding – 100% of the Class Members are participating

1 in the Settlement. Apex Dec., ¶ 13.

2 **III. THE SETTLEMENT BEFORE THE COURT**

3 The Court preliminarily approved an initial Gross Settlement Amount of Three Hundred
4 Thousand Dollars and Zero Cents (\$300,000.00) based on a total of an estimated 18,425 Workweeks
5 worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy
6 Individual Class Payments; (2) to satisfy the Class Representative Payment; (3) to satisfy the Attorneys'
7 Fees and Litigation Costs; (4) to satisfy the PAGA Payment; and (5) to satisfy the Administration
8 Expenses Payment incurred in this action. JCL Dec., ¶ 17.

9 Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$300,000.00
10 Gross Settlement Amount in two (2) installments. The first installment in the amount of \$195,000.00
11 shall be paid by April 11, 2025, or 60 days after the Court grants final approval of the settlement,
12 whichever is later. The second installment in the amount of \$105,000.00 shall be paid by February 11,
13 2026. *See generally* Agreement at 4.3. Within fourteen (14) days after Defendant funds the First
14 Installment, including required payroll taxes, the Administrator will mail on a pro rata basis checks for
15 all Individual Class Payments, all Individual PAGA Payments, the LWDA Payment, and the Class
16 Representative Payment. Agreement, ¶ 4.4. Within fourteen (14) days after Defendant funds the Second
17 Installment, including required payroll taxes, the Administrator disburse the Attorneys' Fees, Litigation
18 Costs, and the Administration Expenses Payment. Disbursements of payment for Attorneys' Fees,
19 Litigation Costs, and Class Representative Payment shall not precede disbursement of Individual Class
20 Payments and Individual PAGA Payments. Agreement, ¶ 4.4.

21 The Administrator will calculate Individual Class Payments by dividing the Net Settlement
22 Amount by the total number of Workweeks worked by all Participating Class Members during the Class
23 Period and then multiplying the result by each Participating Class Member's Workweeks worked during
24 the Class Period. Agreement, ¶ 3.2.4. The estimated average Individual Class Payment is approximately
25 **\$341.71**. JCL Dec., ¶ 9; Apex Dec., ¶ 15.

26 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
27 Plaintiff and the Settlement Class Members will release the Released Parties from the Released Class
28 Claims for the Class Period. Agreement at ¶ 5.2. The Aggrieved Employees will release the Released

Parties from the Released PAGA Claims for the PAGA Period. Agreement at ¶ 5.3.

Apex Class Action, LLC was appointed as the Administrator for the Class. Administration Expenses Payment 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 Class Payments, and the fees of the Administrator (“Administration Expenses Payment”) approved for reimbursement by the court. The Administration Expenses Payment is \$9,000.00. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ 3.2.3.

Subject to Court approval, Class Counsel shall seek Attorneys’ Fees and Litigation Costs in the amount of \$125,000 comprised of attorneys’ fees of \$100,000 (one-third of the Gross Settlement Amount) and up to \$25,000 for actually incurred litigation expenses. Plaintiff’s counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC. Agreement, ¶ 1.5. Plaintiff and Class Counsel have in place a written contingency fee agreement wherein Plaintiff agreed to the split of fees. JCL Dec., ¶ 17. The Agreement also provides for a Class Representative Payment in the amount of \$10,000 for Plaintiff, in consideration of her time, risk, and efforts as the Class Representative on behalf of the Settlement Class and a general release. Agreement, ¶ 3.2.1.

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by the Settlement Class, the absence of any objections to the Settlement and the average Individual Class Payment of \$341.71. Apex Dec., ¶¶ 11-13; JCL Dec., ¶ 18.

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

Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran. v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

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

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

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

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

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

28 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*

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

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

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

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

19 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
20 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
21 assessed the value of the class claims using data and documents provided by Defendant through
22 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
23 the number of Class Members, aggregate workweeks and pay periods data for the Class, full and
24 complete copies of applicable handbooks containing, *inter alia*, compensation, timekeeping, and meal
25 and rest period policies. Class Counsel retained Berger Consulting Group (“BCG”) to analyze
26 Defendant’s time and payroll data to formulate damage models estimating Defendant’s liability
27 exposure. Class Counsel’s investigation, research, experience, and damage models informed and
28 guided the mediated negotiations that resulted in this settlement. Accordingly, Plaintiff’s Counsel fully

1 understood the strengths and weaknesses of the class claims before the parties reached a settlement.
2 JCL Dec., ¶ 19-26.

3 **B. The Parties Settled At Mediation.**

4 On January 9, 2024, the Parties attended a full-day mediation with Hon. Brian C. Walsh (Ret.),
5 a well-respected jurist and mediator of wage and hour class and representative actions. Judge Walsh
6 helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and
7 risks to both sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the
8 Parties exchanged information regarding their respective claims and defenses, including their
9 respective evaluations of the damages. The mediation concluded with a settlement, the complete and
10 final terms of which are now set forth in the Agreement. The amount of the Class Representative
11 Payment was not negotiated until after the parties agreed to the Gross Settlement Amount and many
12 other terms. No action would likely have been taken by Class Members individually, and no
13 compensation would have been recovered for them, but for Plaintiff's service on behalf of the Class.
14 JCL Dec., ¶ 27.

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

16 Class Counsel in this matter has extensive class action experience in multiple fields and has
17 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
18 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
19 similar wage and hour class actions throughout the State of California. As such, courts throughout
20 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
21 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
22 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 28-34; Declaration
23 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

25 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
26 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
27 member with the terms of the Settlement, including the specific estimated Individual Class Payments.
28 As of the filing of this motion, none of the 398 members of the Settlement Class opted-out of the

1 Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement Class
2 chose to participate in the Settlement. JCL Dec., ¶ 8; Apex Dec., ¶¶ 11-13.

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

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

13 The Gross Settlement Amount of Three Hundred Thousand Dollars and Zero Cents
14 (\$300,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
15 court acknowledged that "as the court does when it approves a settlement as in good faith under Code
16 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
17 the 'ballpark' of reasonableness." *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
18 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

19 Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement
20 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the
21 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
22 While the Gross Settlement Amount represents a discount on Defendant's potential exposure if Plaintiff
23 established liability on all claims and was awarded the full amount of the estimated damages at trial, this
24 compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that
25 could award significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial
26 recovery may require many more years of litigation, resulting in added fees and costs without any
27 guarantee of recovery for the Class. JCL Dec., ¶ 35.

28 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and

1 reasonable considering the nature and magnitude of the claims being settled and the various potential
2 impediments to recovery. Class Counsel developed varied economic damages models measuring
3 Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various
4 models were informed by Class Counsel's investigation, including the analysis of a significant sample
5 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
6 Counsel projected a range of Defendant's liability exposure for the claims asserted on behalf of the
7 Settlement Class. The Gross Settlement Amount represents between approximately 13.44% to 39.74%
8 of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation.
9 JCL Dec., ¶ 36.

10 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
11 for the Northern District of California granted final approval in a wage and hour misclassification action
12 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
13 the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
14 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing "roughly one-sixth of the
15 potential recovery." Given the amount of the settlement here as compared to potential value of the
16 claims, particularly the strength of Plaintiff's action, the settlement is clearly fair and reasonable³.

17 The calculation methodology used to compensate the Settlement Class for the alleged damages
18 was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
19 impartial. The calculation methodology is based on the number of Workweeks each Settlement Class
20 Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement
21 Class Members is established through Defendant's data and documented compensation records. The
22 Administrator is responsible for calculating the Individual Class Payments by dividing the Net
23 Settlement Amount by the total number of Workweeks worked by all Participating Class Members
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.").

during the Class Period and then multiplying the result by each Participating Class Member's Workweeks worked during the Class Period. Agreement, ¶ 3.2.4. This process establishes an objectively fair and reasonable procedure to compensate the Settlement Class.

The settlement also provides significant relief to the Settlement Class Members. After deductions for the Attorneys' Fees and Litigation Costs, Administration Expenses Payment, the PAGA Payment, and the Class Representative Payment, the Net Settlement Amount is currently estimated to be \$136,000.00. Apex Dec., ¶14. The average Individual Class Payment is approximately \$341.71, the highest is approximately \$1,212.09, and the lowest payment is approximately \$3.22. Apex Dec., ¶ 15. This average net recovery is on par with many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, ¶ 3.1.

Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval. JCL Dec., ¶ 37.

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1 **F. The Strength of Plaintiff’s Case and Risks of Continued Litigation**

2 Although Class Counsel believe strongly in Plaintiff’s claims, it would be misguided to ignore
3 the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or,
4 at least, drastically undercut Plaintiff’s claims. JCL Dec., ¶ 38. As the federal court in *Glass v. UBS*
5 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
6 litigation:

7 ***In light of the above-referenced uncertainty in the law, the risk, expense,***
8 ***complexity, and likely duration of further litigation likewise favors the***
9 ***settlement.*** Regardless of how this Court might have ruled on the merits of
10 the legal issues, the losing party likely would have appealed, and the parties
11 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.

12 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
13 certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176
14 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court’s denial of class
15 certification because employees’ declarations attesting to having taken meal and rest breaks
16 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*
17 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification
18 of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
19 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
20 period claims based on the predominance of individual issues). JCL Dec., ¶ 39.

21 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of
22 Defendant’s liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*
23 *Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a
24 wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088
25 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized
26 questions of fact not susceptible to class treatment.”). JCL Dec., ¶ 40.

27 Finally, even if a class is certified and Defendant is found liable for the class claims alleged,
28 post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and

1 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*
2 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded
3 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and
4 directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber*
5 *Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification
6 action). JCL Dec., ¶ 41.

7 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
8 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
9 factor favoring settlement. JCL Dec., ¶ 42.

10 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
11 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
12 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
13 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 43.

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

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

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

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

The potential complexity and possible duration of trial also weigh in
favor of granting final approval. Plaintiffs acknowledge the difficulties

1 of proving damages, recognize the uncertainty of outcome, and believe
2 defendant would appeal in the event of adverse judgment. A post-judgment
3 appeal would require many years to resolve and delay payment to class
4 members. Plaintiffs believe the benefits of a guaranteed recovery today
5 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the
6 Court agrees, the actual recovery confers substantial benefits on the class
7 that outweigh the potential recovery through full adjudication.

8
9 *Barcia v. Contain-A-Way, Inc.*, 2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009); see also *Louie v.*
10 *Kaiser Foundation Health Plan, Inc.*, 2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).

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

15 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
16 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
17 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. Plaintiff fully expects
18 that Defendant would appeal any favorable judgment. A post-judgment appeal by Defendant would
19 have required many more years to resolve, assuming the judgment was affirmed. If the judgment was
20 not affirmed in total, then the case could have dragged on for years after the appeal. The benefits of a
21 guaranteed recovery today outweigh an uncertain result three or more years in the future. JCL Dec., ¶
22 44.

23 Further, as detailed in the motion for preliminary approval, Defendant’s financial condition
24 supports final approval of the settlement. Class Counsel retained Certified Public Accountant, Kenneth
25 L. Creal, to analyze Defendant’s financial condition and assess Defendant’s ability to satisfy a class-
26 wide settlement. As detailed in Mr. Creal’s Declaration filed concurrently with the motion for
27 preliminary approval, Mr. Creal determined that Defendant could not afford a settlement larger than
28 the one contemplated here. Moreover, Mr. Creal determined that due to the profit/loss history of the
business and the day-to-day cash needs of the business, the payment plan contemplated by the
Agreement is necessary. JCL Dec., ¶ 45.

Class Representative and Class Counsel believe that the Settlement confers substantial monetary

1 and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and
2 Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of
3 the Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 46.

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

6 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
7 indication that this amount was the result of self-interest at the expense of class members,” such
8 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
9 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
10 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
11 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at
12 *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*,
13 No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging
14 that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

15 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of \$20,000
16 which is 6.67% of the Gross Settlement Amount. As illustrated above, this amount falls well within
17 the range of approved PAGA Payments. Seventy-five percent (75%) of the PAGA Payment (\$15,000)
18 will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the
19 PAGA Payment (\$5,000) to be distributed to the Aggrieved Employees (“Individual PAGA
20 Payments”), which is within the range of PAGA penalties approved by courts and should be approved.
21 JCL Dec., ¶ 47.

22 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
23 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
24 with the LWDA. JCL Dec., ¶¶ 4-6, 48. By not registering an objection with either Class Counsel or
25 the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

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28 ///

1 **VII. CONCLUSION**

2 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
3 established in California law and should therefore be finally approved as fair, reasonable, and adequate
4 and requests entry of the Final Approval Order and Judgment submitted herewith.
5

6 Dated: October 22, 2024

JCL LAW FIRM, APC

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8 By: 
Jean-Claude Lapuyade, Esq.

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10 Attorneys for PLAINTIFF
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