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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

JULIO C. HERNANDEZ, an individual, on
behalf of himself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

BREAKFAST CLUB LLC, a California limited
liability company, and DOES 1-50, Inclusive,
Defendants.

Case No. CVRI2203757

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

Date: May 30, 2024

Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp

Dept.: 1

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE LITIGATION	2
III.	THE SETTLEMENT BEFORE THE COURT	4
IV.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	5
V.	THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	6
	A. Class Counsel Conducted a Thorough Investigation	7
	B. The Parties Settled At Mediation	8
	C. Class Counsel is Experienced in Similar Litigation	8
	D. The Settlement Class Responded Positively to the Settlement	8
	E. The Gross Settlement Amount is Fair and Reasonable	9
	F. The Strength of Plaintiff's Case and Risks of Continued Litigation	11
VI.	THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE	14
VII.	CONCLUSION	15

///

TABLE OF AUTHORITIES
CASES

7-Eleven Owners for Fair Franchising v. Southland Corp.	
(2000) 85 Cal.App.4th 1135, 1150-1151.....	5-6
<i>Ali v. U.S.A. Cab Ltd.</i>	
(2009) 176 Cal.App.4th 1333, 1341.....	12
<i>Barcia v. Contain-A-Way, Inc.</i>	
2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009).....	13
<i>Brinker</i>	
.....	12
<i>Brown v. Fed Express Corp.</i>	
(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	12
<i>Browning v. Yahoo!, Inc.</i>	
2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007).....	13
<i>Campbell v. Best Buy Stores, L.P.,</i>	
(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	12
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794, 1801.....	6-7
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
(9th Cir. 2000) 213 F.3d 454, 459.....	10
<i>Duran v. U.S. Bank National Association</i>	
(2014) 59 Cal.4th 1, 31.....	12-13
<i>Glass v. UBS Fin. Servs.</i>	
2007 WL221862.....	11
<i>Hanlon v. Chrysler Corp.</i>	
(9th Cir. 1998) 150 F.3d 1011, 1026.....	13
<i>Hopson v. Hanesbrands Inc.</i>	
2009 U.S. Dist. LEXIS 33900 at *1, 9, 19-20 (N.D. Cal. 2009).....	12-14
<i>Huens v. Tatum</i>	
(1997) 52 Cal.App.4th 259, 265.....	5
<i>In re Austrian & German Bank Holocaust Litigation</i>	
(S.D.N.Y. 2000)80 F.Supp.2d 164, 175.....	9
<i>In re Newbridge Networks Sec. Litig.</i>	
(D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2.....	10
<i>Jack v. Hartford Fire Ins. Co.</i>	
No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	14
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2008) 168 Cal.App.4th 116, 128-129.....	7, 9
<i>Laskey v. Int'l Union</i>	
(6th Cir. 1981) 638 F.2d 954.....	9
<i>Leverage v. Traeger Pellet Grills, LLC</i>	
(N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7.....	10
<i>Louie v. Kaiser Foundation Health Plan, Inc.</i>	
2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).....	13
<i>Magadia v. Wal-Mart Associates, Inc.</i>	
(9 th Cir. 2021) 999 F.3d 668.....	12-13
///	

1	<i>Malibu Outrigger Bd. Of Governors v. Superior Court</i>	
	(1980) 103 Cal.App.3d 573, 578-579.....	6
2	<i>McKenzie v. Fed. Express Corp.</i>	
	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	14
3	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
	(2010) 186 Cal.App.4th 399, 408.....	7
4	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9 th Cir. 2018) 904 F.3d 1087, 1133.....	12-13
5	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
	(9 th Cir. 1982) 688 F. 2d 615, 625.....	7
6	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1138.....	7
7	<i>Stoetznner v. U.S. Steel Corp.</i>	
	(3d. Cir. 1990) 897 F.2d 115, 118-119.....	9
8	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
	2015 U.S. Dist. LEXIS 78671, at * 12.....	10
9	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Associates</i>	
	38 Cal.3d 488, 499-500 (1985).....	9
10	<i>Tien v. Tenet Healthcare Corp.</i>	
	(2012) 209 Cal.App.4th 1077, 1088.....	12
11	<i>Viceral v. Mistras Grp., Inc.</i>	
	(N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7.....	10
12	<i>Wershba v. Apple Computer</i>	
	(2001) 91 Cal.App.4th 224, 245-46, 250, 2246.....	6, 9

RULES, CODES, AND STATUTES

15	<i>Cal. Bus. and Prof. Code</i> §§ 17200.....	3
16	<i>Cal. Lab. Code</i> § 201.....	3
17	<i>Cal. Lab. Code</i> § 202.....	3
	<i>Cal. Lab. Code</i> § 203.....	3
18	<i>Cal. Lab. Code</i> § 226.....	3
	<i>Cal. Lab. Code</i> § 226.7.....	3
19	<i>Cal. Lab. Code</i> § 351.....	3
	<i>Cal. Lab. Code</i> §§ 510 et seq.....	3
20	<i>Cal. Lab. Code</i> § 512.....	3
21	<i>Cal. Lab. Code</i> § 1194.....	3
	<i>Cal. Lab. Code</i> § 1197.....	3
22	<i>Cal. Lab. Code</i> § 1197.1.....	3
	<i>Cal. Lab. Code</i> §§ 2698 et seq.....	3
23	<i>Cal. Lab. Code</i> § 2802.....	3
24	<i>Code of Civ. Proc.</i> § 877.6.....	9

SECONDARY SOURCES

26	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992) §11.41, pp. 11-91	
27		6

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I. INTRODUCTION

Plaintiff JULIO C. HERNANDEZ (hereinafter “Plaintiff”) seeks final approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for 121 Settlement Class Members employed by Defendant BREAKFAST CLUB LLC (hereinafter “Defendant”).

In an order dated February 5, 2024, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On April 2, 2024, the Settlement Administrator delivered notice of the proposed settlement to the Class. Declaration of Madely Nava (“APEX Dec.”), ¶ 7.

*As of the filing of this motion, the Class greeted news of the Settlement with unanimous approval as, at the time of the filing of this motion, 100% of Class Members have chosen to participate in the Settlement.*² There are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 10-12. The high approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 11.

An objective evaluation of the proposed settlement of Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00) (“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 mediator Judge Carl West (Ret.). After deducting any Court-approved attorneys’ fees and costs, class representative service awards, settlement administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement amount 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., ¶ 11.

This Settlement provides substantial recovery to Class Members. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$112,235.00**.

¹ The Agreement is attached as Ex “1” 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 As of the filing date of this Motion, 3 Notices were deemed undeliverable. Apex Dec. ¶ 10. The deadline for Class Members to opt-out or object is May 17, 2024. Apex Dec., ¶¶ 11-12. Class Counsel will provide an updated declaration from the Settlement Administrator following the response deadline and prior to the May 30, 2024 hearing.

1 This will result in an average Individual Settlement Payment of **\$927.56**, with the estimated highest
2 gross payment being **\$4,573.05**. Aggrieved Employees will receive an estimated average gross
3 payment of \$31.25, with the estimated highest gross payment being \$90.66. JCL Dec., ¶ 12; APEX
4 Dec., ¶¶ 15, 17.

5 The relief offered by the Settlement is immediate and is particularly impressive when viewed
6 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).
7 Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
8 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and
9 uncertain litigation. JCL Dec., ¶ 13.

10 As discussed below, the proposed Settlement satisfies all criteria for final settlement approval
11 under California law and falls well within the range of reasonableness. Accordingly, the Class
12 Representative and Class Counsel respectfully request this Court grant final approval of the
13 Agreement and entry of the proposed Final Approval Order and Judgment. JCL Dec., ¶ 14.

14 **II. OVERVIEW OF THE LITIGATION**

15 Defendant owns and operates a restaurant in Riverside, California. This action asserts claims
16 on behalf of Defendant's current and former non-exempt employees employed in California.
17 Plaintiff worked for Defendant as a non-exempt employee during the Class Period. At all times
18 during his employment, Plaintiff earned hourly wage, was entitled to legally compliant meal and/or
19 rest periods, and minimum, regular and overtime wages for all hours worked. Throughout his
20 employment, Plaintiff was subject to Defendant's written policies and procedures. JCL Dec., ¶ 15.

21 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
22 compliant meal and rest periods, failed to furnish accurate itemized wage statements, failed to pay
23 all wages when due and failed to reimburse employees for mandatory business expenses. Defendant
24 forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully
25 complied with all applicable employment laws and raised several other significant defenses to
26 Plaintiff's claims, including but not limited to, facially compliant meal and rest period polices,
27 compliant wage statements, and timely payment of all wages due upon separation of employment.
28 JCL Dec., ¶ 16.

1 On June 29, 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
3 forth the facts and theories supporting Defendant’s alleged violations of various provisions of the
4 California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and
5 of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab.
6 Code Sections 2698 et seq (“PAGA”). JCL Dec., ¶ 17.

7 On September 2, 2022, Plaintiff filed a class action complaint in the Riverside County
8 Superior Court (the “Action”). The Action alleged ten causes of action against Defendant for: (1)
9 Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure
10 to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (3) Failure to
11 Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 et seq.; (4) Failure to Provide Required
12 Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest
13 Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Reimburse Employees for
14 Required Business Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Wages
15 When Due in Violation of Cal. Lab. Code Sections § 201, 202, and 203; (8) Failure to Provide
16 Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (9) Failure to Provide
17 Gratuities in Violation of Cal. Lab. Code § 351; and (10) Violations of the Private Attorney General
18 Act at Lab. Code §§ 2698 et. seq. JCL Dec., ¶ 18.

19 The Parties agreed to mediate the Action. To prepare for mediation, the Parties agreed to
20 informally exchange relevant documents and data points subject to the mediation privilege,
21 including but not limited to, the Class Members’ time and payroll data points. As discussed *infra*,
22 Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze
23 Defendant’s time and payroll data. JCL Dec., ¶ 19.

24 On June 28, 2023, the Parties participated in a full day mediation with experienced wage and
25 hour mediator and Judge West. After arms-length negotiations and bargaining, the mediation
26 concluded in a settlement which was subsequently memorialized in the form of a Memorandum of
27 Understanding. After reaching an agreement in principle, the Parties negotiated a long-form
28 settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 20.

On February 5, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 5. On April 2, 2024, the Settlement Administrator mailed Notice Packets to all 121 Class Members. APEX Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement has been outstanding – as of the time of filing this motion, 100% of the Class Members are participating in the Settlement. APEX Dec., ¶¶ 11-13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Two Hundred Twenty-Five Thousand Dollars and Zero Cents (\$225,000.00) based on a total of an estimated 5,892 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 21.

Defendant will fund the Settlement by transferring the Gross Settlement Amount to the Settlement Administrator on the Funding Date, defined as sixty (60) calendar days after the Effective Date. Agreement, ¶ III(A)(3), I(O). Individual Settlement Payments and Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees' last known mailing address no later than fifteen (15) calendar days after the Funding Date. Agreement, ¶ III(M)(7). The Settlement Administrator will calculate Individual Settlement Payments by adding up the total number of Workweeks for all Class Members. The Settlement Administrator will then divide the respective Workweeks for each member of the Settlement Class by the total Workweeks for the entire Settlement Class, resulting in a Payment Ratio for each Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement Payment. Agreement, ¶ III(M)(1). The estimated average Individual Settlement Payment is approximately **\$927.56**. JCL Dec., ¶ 22.

In exchange for the valuable consideration, as of the funding of the Gross Settlement

1 Amount, the Settlement Class Members will release the Released Parties from the Released Class
2 Claims that accrued during the Class Period. The Plaintiff and the State of California will release
3 the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement at ¶¶ III(B),
4 III(C).

5 Apex Class Action LLC was appointed as the Settlement Administrator for the Class.
6 Settlement Administration Costs include those expenses of effectuating and administering the
7 Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the
8 Class, the costs of administering and disbursing the Individual Settlement Payments, and the fees
9 of the Settlement Administrator approved for reimbursement by the court. The Settlement
10 Administrator expenses are \$5,765.00. APEX Dec., ¶ 18. These expenses shall be paid from the
11 Gross Settlement Amount. Agreement, ¶ III(M)(12).

12 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
13 \$87,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount
14 estimated to be at least \$75,000.00 and up to \$12,000.00 for actually incurred litigation expenses.
15 Plaintiff's counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law
16 Group, APLC. Agreement, ¶ I(E). The Agreement also provides for a Class Representative Service
17 Award in the amount of \$10,000.00 paid to Plaintiff in consideration of his time, risk, and efforts
18 as the Class Representative on behalf of the Settlement Class. Agreement, ¶¶ I(J); III(M)(9).

19 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the
20 class and should be granted final approval. This is evidenced by the high approval of the Settlement
21 by the Settlement Class and absence of any objections to the Settlement and the average Individual
22 Settlement Payment of \$927.56. APEX Dec., ¶ 14; JCL Dec., ¶ 22.

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

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

1 conciliation and settlement are the preferred means of dispute resolution. This is especially true in
2 complex class action litigation”).

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

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

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

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

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

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

5 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v.*
6 *Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial
7 court should consider in evaluating the reasonableness of a class action settlement agreement
8 include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
9 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
10 the extent of discovery completed and the stage of the proceedings, the experience and views of
11 counsel, the presence of a governmental participant, and the reaction of the class members to the
12 proposed settlement.’ [Citations.]” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
13 128; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
14 408.

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

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

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

25 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated
26 the proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class
27 Counsel assessed the value of the claims using data and documents provided by Defendant through
28 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data

1 regarding the number of Class Members, workweeks, and average rate of pay to assess damages
2 before mediation. Class Counsel retained BCG to analyze Defendant's time and payroll data to
3 formulate damage models estimating Defendant's liability exposure. Class Counsel's investigation,
4 research, experience, and damage models informed and guided the mediated negotiations that
5 resulted in this settlement. Accordingly, Class Counsel fully understood the strengths and
6 weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 23-29.

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

8 On June 28, 2023, the Parties conducted a full-day mediation with Hon. Carl West (Ret.), an
9 experienced judge and mediator of wage and hour class and representative actions. Judge West
10 helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and
11 risks to both sides. The Parties made substantial progress with Judge West's assistance. Namely,
12 the Parties exchanged information regarding their respective claims and defenses, including their
13 respective evaluations of the damages. After more than eight hours of arm's length and adversarial
14 negotiations, the mediation concluded with a settlement. The amount of the service award was not
15 negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No
16 action would likely have been taken by Class Members individually, and no compensation would
17 have been recovered for them, but for Plaintiff's services on behalf of the Class. JCL Dec., ¶ 30.

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

19 Class Counsel in this matter has extensive class action experience in multiple fields and has
20 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar
21 wage and hour class actions involving similar claims. Class Counsel has been approved as class
22 counsel in similar wage and hour class actions throughout the State of California. As such, courts
23 throughout the California have deemed Class Counsel experienced and knowledgeable in this area
24 of law. Class Counsel has participated in every aspect of the settlement discussions and has
25 concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL
26 Dec., ¶¶ 31-37; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

28 The reaction of the Settlement Class unequivocally supports approval of the Settlement.

1 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
2 member with the terms of the Settlement, including the specific estimated Individual Settlement
3 Payments. As of the date of filing this motion, zero of the 121 members of the Settlement Class
4 have opted-out of the Settlement. Moreover, as of the date of filing this motion, there are zero
5 objections. Stated differently, as of the date of filing this motion, 100% of the Settlement Class
6 chose to participate in the Settlement. JCL Dec., ¶ 11; APEX Dec., ¶¶ 11-13.

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

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

17 The Gross Settlement Amount of Two Hundred Twenty-Five Thousand Dollars and Zero
18 Cents (\$225,000.00) in this case is fair and well within the range of recognized reasonableness. The
19 *Kullar* court acknowledged that “as the court does when it approves a settlement as in good faith
20 under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class
21 settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v.*
22 *Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

23 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
24 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
25 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
26 Cal.App.4th at 250. While the Gross Settlement Amount of Two Hundred Twenty-Five Thousand
27 Dollars and Zero Cents (\$225,000.00) represents a discount on Defendant’s potential exposure if
28 Plaintiff established liability on all claims and were awarded the full amount of the estimated

1 damages at trial, this compromise is reasonable because (1) the formidable defenses raised by
2 Defendant presented a risk that could award significantly less in damages than Plaintiff's estimate
3 and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in
4 added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 38.

5 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
6 reasonable considering the nature and magnitude of the claims being settled and the various
7 potential impediments to recovery. Class Counsel developed varied economic damages models
8 measuring Defendant's liability exposure while accounting for the uncertainties of continued
9 litigation. The various models were informed by Class Counsel's investigation, including the
10 analysis of a significant sample of time and payroll data. As detailed in greater depth during the
11 preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for
12 the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents
13 approximately 33.5% of the value of the maximum potential *damages* at issue, assuming all of these
14 amounts could be proved at trial. JCL Dec., ¶ 39.

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

23 The calculation methodology used to compensate the Settlement Class Members for the
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
26 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or
approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-
27 00784) 2017 WL 2797811, at *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,
28 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.").

1 alleged damages was negotiated at the time of the Settlement. More importantly, the methodology
2 is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks
3 each Settlement Class Member worked for Defendant during the Class Period. The number of
4 Workweeks for the Settlement Class Members is established through Defendant's data and
5 documented compensation records. The Settlement Administrator is responsible for calculating the
6 Individual Settlement Payments by multiplying the Payment Ratio for each Settlement Class
7 Member by the Net Settlement Amount. The Settlement Administrator will calculate the Payment
8 Ratio by dividing the total number of Workweeks for each Settlement Class Member by the total
9 number of Workweeks for all Settlement Class Members. This process establishes an objectively
10 fair and reasonable procedure to compensate the Settlement Class. Agreement, ¶ III(M)(1).

11 The Settlement also provides significant relief to the Settlement Class Members. After
12 deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement,
13 and the Class Representative Service Award, the Net Settlement Amount is currently estimated to
14 be \$112,235.00. The average settlement payment is approximately \$927.56. APEX Dec., ¶¶ 14-15.
15 This average net recovery is on par with many wage and hour class action settlements approved by
16 California state and federal courts. JCL Dec., ¶ 40. Additionally, Defendant must separately fund
17 its share of any employer side payroll taxes. Agreement, ¶ III(A)(4).

18 Clearly the goal of this litigation – to obtain redress for the class – has been met by this
19 Settlement. Given the amount of the Settlement, the risks of litigation, and the arm's length
20 negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore
21 entitled to final approval. JCL Dec., ¶ 39.

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

23 Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to
24 ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the
25 action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 42. As the federal court in
26 *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to
27 those in this litigation:

28 *In light of the above-referenced uncertainty in the law, the risk,
expense, complexity, and likely duration of further litigation*

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

7 With respect to the most immediate challenge, i.e., class certification, the risks attendant to
8 the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
9 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and
10 remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying
11 overtime, and directed the trial court to enter judgement in favor of the employer. *See also*
12 *O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and
13 hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th
14 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet*
15 *Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might
16 not take their breaks were predominantly individualized questions of fact not susceptible to class
17 treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of
18 certification because employees’ declarations attesting to having taken meal and rest breaks
19 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy*
20 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
21 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform
22 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
23 certification of driver meal and rest period claims based on the predominance of individual issues).
24 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
25 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
26 risk factor favoring settlement. JCL Dec., ¶ 43.

27 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless
28 recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat
29 or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation
30 can drastically affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 44.

31 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*,

2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009), granted approval of an overtime class action settlement and explained:

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

See also Browning v. Yahoo!, Inc., 2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) (“In 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 of proving damages, recognize the uncertainty of outcome, and believe defendant would appeal in the event of adverse judgment. A post-judgment appeal would require many years to resolve and delay payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees, the actual recovery confers substantial benefits on the class that outweigh the potential recovery through full adjudication.

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

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

As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources

1 to post a bond and appeal. A post-judgment appeal by Defendant would have required many more
2 years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total,
3 then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery
4 today outweigh an uncertain result three or more years in the future. JCL Dec., ¶ 45.

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

17 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**
18 **ARE REASONABLE**

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

1 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$10,000.00
2 which is 4.4% of the Gross Settlement Amount. As illustrated above, this amount falls well within
3 the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement
4 (\$7,500.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent
5 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties
6 approved by courts and should be approved. JCL Dec., ¶ 47.

7 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
8 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
9 with the LWDA. JCL Dec., ¶¶ 6-7, 48. By not registering an objection with either Class Counsel
10 or the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

11 **VII. CONCLUSION**

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

15
16 DATED: May 7, 2024

JCL LAW FIRM APC

17
18 By: 
19 Jean-Claude Lapuyade
20 Attorney for Plaintiff
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