

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo-Johnson (State Bar #343881)
Perssia Razma (State Bar #351398)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

WENDY LEAL HERERRA, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

MEADOWBROOK ASSISTED LIVING LLC, a
California limited liability company; SLH
AGOURA HILLS MANAGER, LLC, an Illinois
limited liability company; and DOES 1-50,
Inclusive,

Defendants.

Case No.: 22STCV34427

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

Date: May 9, 2024

Time: 10:00 a.m.

Judge: Hon. Lawrence P. Riff

Dept.: 7

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 Following Mediation.	8
	C. Class Counsel is Experienced in Similar Litigation.	8
	D. The 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

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1150-51.....	5-6
5	<i>Ali v. U.S.A. Cab Ltd.</i>	
6	(2009) 176 Cal.App.4th 1333, 1341.....	12
7	<i>Barcia v. Contain-A-Way, Inc.</i>	
8	2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009).....	13
9	<i>Brinker</i>	
10		12
11	<i>Brown v. Fed Express Corp.</i>	
12	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	12
13	<i>Browning v. Yahoo!, Inc.</i>	
14	2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007).....	13
15	<i>Campbell v. Best Buy Stores, L.P.,</i>	
16	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	12
17	<i>Contreras v. United Food Group, LLC</i>	
18	Case No. BC389253 (L.A. County Super. Ct.).....	11
19	<i>Doty v. Costco Wholesale Corp.</i>	
20	Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007).....	11
21	<i>Dunk v. Ford Motor Co.</i>	
22	(1996) 48 Cal.App.4th 1794, 1801.....	6-7
23	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
24	(9th Cir. 2000) 213 F.3d 454, 459.....	10
25	<i>Duran v. U.S. Bank National Association</i>	
26	(2014) 59 Cal.4th 1, 31.....	12, 14
27	<i>Fukuchi v. Pizza Hut</i>	
28	Case No. BC302589 (L.A. County Super. Ct.).....	11
	<i>Glass v. UBS Fin. Servs.</i>	
	2007 WL221862.....	11-12
	<i>Gomez v. Amadeus Salon, Inc.</i>	
	Case No. BC392297 (L.A. Super. Ct.).....	11
	<i>Hanlon v. Chrysler Corp.</i>	
	(9th Cir. 1998) 150 F.3d 1011, 1026.....	13-14
	<i>Hopson v. Hanesbrands Inc.</i>	
	No. CV-08-0844 EDL, 2009 WL 928133, at *1, 9, 19-20 (N.D. Cal. Apr. 3, 2009).....	13-14
	<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).....	14-15
	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 128-29.....	7, 9
	<i>Laskey v. Int'l Union</i>	
	(6th Cir. 1981) 638 F.2d 954.....	8

1	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
2	(N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7.....	10
3	<i>Lim v. Victoria’s Secret Stores, Inc.</i>	
4	Case No. 04CC00213 (Orange County Super. Ct.).....	11
5	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i>	
6	2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).....	13
7	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
8	(9 th Cir. 2021) 999 F.3d 668.....	12, 14
9	<i>Malibu Outrigger Bd. Of Governors v. Superior Court</i>	
10	(1980) 103 Cal.App.3d 573, 578-579.....	6
11	<i>McKenzie v. Fed. Express Corp.</i>	
12	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	15
13	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
14	(2010) 186 Cal.App.4th 399, 408.....	7
15	<i>O’Conner v. Uber Technologies, Inc.</i>	
16	(9 th Cir. 2018) 904 F.3d 1087, 1133.....	12, 14
17	<i>Officers for Justice v. Civil Serv. Comm’n</i>	
18	(9 th Cir. 1982) 688 F. 2d 615, 625.....	6
19	<i>Palencia v. 99 Cents Only Stores</i>	
20	No. 34-2010-00079619.....	11
21	<i>Rebney v. Wells Fargo Bank</i>	
22	(1990) 220 Cal.App.3d 1117, 1138.....	7
23	<i>Ressler v. Federated Department Stores, Inc.</i>	
24	Case No. BC335018 (L.A. County Super. Ct.).....	11
25	<i>Sorenson v. PetSmart, Inc.</i>	
26	Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.).....	11
27	<i>Stoetzner v. U.S. Steel Corp.</i>	
28	(3d. Cir. 1990) 897 F.2d 115, 118-119.....	9
29	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
30	2015 U.S. Dist. LEXIS 78671, at *12.....	10
31	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Associates</i>	
32	38 Cal.3d 488, 499-500 (1985).....	9
33	<i>Tien v. Tenet Healthcare Corp.</i>	
34	(2012) 209 Cal.App.4th 1077, 1088.....	12
35	<i>Viceral v. Mistras Grp., Inc.</i>	
36	(N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7.....	10
37	<i>Wershba v. Apple Computer</i>	
38	(2001) 91 Cal.App.4th 224, 245-46, 250, 2246.....	6, 9

RULES, CODES, AND STATUTES

39	<i>Cal. Bus. & Prof. Code §§ 17200, et seq</i>	3
40	<i>Cal. Code of Civ. Proc. § 877.6</i>	9
41	<i>Cal. Lab. Code § 201</i>	3
42	<i>Cal. Lab. Code § 202</i>	3
43	<i>Cal. Lab. Code § 203</i>	3
44	<i>Cal. Lab. Code § 226</i>	3
45	<i>Cal. Lab. Code § 226.7</i>	3
46	<i>Cal. Lab. Code §§ 510, et seq</i>	3
47	<i>Cal. Lab. Code § 512</i>	3

Cal. Lab. Code § 1194.....3

Cal. Lab. Code § 1197.....3

Cal. Lab. Code § 1197.1.....3

Cal. Lab. Code §§ 2698, et seq.....3

Cal. Lab. Code § 2802.....3

SECONDARY SOURCES

Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91
.....6

I. INTRODUCTION

Plaintiff WENDY LEAL HERERRA (hereinafter “Plaintiff”) seeks final approval of the Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for 345 Participating Class Members employed by Defendants SLH Agoura Hills Manager, LLC and Senior Lifestyle Holding Company, LLC (hereinafter “Defendants”) during the period from October 27, 2018, through July 18, 2023 (“Class Period”).

In an order dated December 5, 2023, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On January 24, 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 99.13% approval.*² There were three opt-out and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The high participation rate by the Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 9.

An objective evaluation of the proposed settlement of Six Hundred Thousand Dollars and Zero Cents (\$600,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Participating Class Members is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Steven Serratore. After deducting any Court-approved PAGA Payment, Class Representative Payment, Attorneys’ Fees and Litigation Costs, and the Administration Expenses Payment, the Net Settlement Amount shall be distributed to Participating Class Members based on the number of Workweeks they worked while employed by Defendants during the Class Period. JCL Dec., ¶ 9.

This Settlement provides substantial recovery for Defendants’ alleged wage and hour violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately \$331,800.00. This will result in an average Individual Class Payment of **\$970.18**, a high payment of **\$5,126.67**, and low payment of **\$6.79**. JCL Dec., ¶ 10; Apex Dec. at ¶ 15.

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 Nineteen (19) Notices were deemed undeliverable. Apex Dec. at ¶¶ 10.

1 The relief offered by the Settlement is immediate and is particularly impressive when viewed
2 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).
3 Indeed, by settling now rather than proceeding to trial, the Class will not have to wait (possibly years)
4 for relief, nor will they have to bear the risks associated with prolonged and uncertain litigation. JCL
5 Dec., ¶ 11.

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

10 II. OVERVIEW OF THE LITIGATION

11 Defendants SLH Agoura Hills Manager, LLC and Senior Lifestyle Holding Company, LLC
12 (“Defendants”) operate facilities that offer assisted living, memory care, short-term care, independent
13 living and skilled nursing throughout California, including in Los Angeles, where Plaintiff worked.
14 Plaintiff was employed by Defendants from October 2020 to June 2021, as a non-exempt employee.
15 Declaration of Wendy Leal Herrera (“Leal Dec.”) at ¶ 4. Plaintiff alleges that she was denied legally
16 compliant meal and rest periods, and minimum wages and overtime compensation during her
17 employment. Throughout her employment, Plaintiff was subject to Defendants’ written policies and
18 procedures contained in, among other documents, the “Team Member Handbook.” JCL Dec., ¶ 13.

19 Generally, Plaintiff claims that Defendants failed to pay for all time worked, failed to provide
20 compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish
21 accurate itemized wage statements, and failed to pay all wages during employment and upon separation.
22 Defendants deny liability for each of Plaintiff’s claims. Further, Defendants assert that they fully
23 complied with all applicable employment laws and raised several other significant defenses to
24 Plaintiff’s claims, including but not limited to, facially compliant meal and rest period policies,
25 compliant wage statements, compliant reimbursement practices, and it timely paid all wages due upon
26 separation of employment. JCL Dec., ¶ 14.

27 On August 16, 2022, Plaintiff served Defendants and the Labor and Workforce Development
28 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth

1 the facts and theories supporting Defendants’ alleged violations of various provisions of the California
2 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of their intent
3 to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
4 2698 *et seq* (“PAGA”). JCL Dec., ¶ 15.

5 On October 27, 2022, Plaintiff filed a class and representative action complaint in the Los
6 Angeles County Superior Court, Case No. 22STCV34427 (“Action”). The Action alleged nine causes
7 of action against Defendants for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§
8 17200, *et seq.*; (2), Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197,
9 1197.1 (3); Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.* (4) Failure to
10 Provide Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC
11 Wage Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 &
12 512 and the Applicable IWC Wage Order; (6) Failure to Reimburse for Required Expenses in violation
13 of Cal. Lab. Code § 2802; (7) Failure to Pay Wages When Due in violation of Cal. Lab. Code §§ 201,
14 202, and 203; (8) Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code
15 §226; and (9) Violation of the Private Attorneys General Act [Labor Code §§ 2698, *et seq.* (“PAGA”).
16 JCL Dec., ¶ 16.

17 After filing the above action, Class Counsel learned that defendant Meadowbrook Assisted
18 Living LLC was improperly named and thus dismissed this defendant from the action. On January 24,
19 2023, Plaintiff filed an Amendment to the Complaint and substituted Defendant Senior Lifestyle
20 Holding Company, LLC for Doe 1. Thus, the remaining defendants in this action are SLH Agoura
21 Hills Manager, LLC and Senior Lifestyle Holding Company, LLC. JCL Dec., ¶ 17.

22 The Parties agreed to mediate this action. exchange documents and information in connection
23 with the Action. As part of this process, Defendants provided time and pay records for 187 employees,
24 54.7 % of the total Class. Plaintiff’s statistician found this to be sufficient to develop a meaningful
25 damages model. Additionally, the 54.7% sample is statistically reliable, resulting in a confidence level
26 of 95% with a margin of error of 5%. In addition to the time and payroll records, Defendants produced
27 their Employee, as well as other relevant policies and agreements. As discussed *infra*, Plaintiff’s
28 counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’

time and payroll data. JCL Dec., ¶ 18.

On April 24, 2023, the Parties participated in a full day mediation with highly regarded wage and hour and PAGA mediator, Steven Serratore, Esq. The mediation concluded with a settlement after both sides agreed to a Mediator’s proposal which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 19.

On December 5, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On January 24, 2024, the Administrator mailed Notice Packets to all 345 Class Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Class to submit requests for exclusion or objections to the Settlement. The response from the Class to the Settlement was outstanding – 99.13% of the Class Members are participating in the Settlement. Apex Dec., ¶ 14.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Six Hundred Thousand Dollars and Zero Cents (\$600,000.00) based on a total of an estimated 13,781 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used to satisfy: (1) the Individual Class Payments; (2) the Class Representative Payment; (3) the Attorneys’ Fees and Litigation Costs; (4) the PAGA Payment; and (5) the Administration Expenses Payment incurred in this action. JCL Dec., ¶ 20.

Defendants will fund the Settlement by transferring the Gross Settlement Amount into a Qualified Settlement Fund within sixty (60) days after: 1) the court’s approval of the settlement or exhaustion of any appeal, whichever is later, and 2) the date the Administrator provides Defendant with wire instructions for depositing the Gross Settlement Amount and verbally verifies the authenticity of those wire instructions with Defendant by a telephone call prior to the transfer initiated by Defendant using the Settlement Administrator’s telephone number published on its known website. Agreement, ¶ 4.3. The Administrator shall mail the Individual Class Payments to the Participating Class Member no later than fourteen (14) days after Defendants fund the Gross Settlement Amount. Agreement, ¶ 4.4. The Administrator will calculate Individual Class Payments by dividing the Net Settlement Amount by the

total number of Workweeks worked by all Participating Class Members during the Class Period and multiplying the result by each Participating Class Member's Workweeks. Agreement, ¶ 3.2.4. The estimated average Individual Class Payment is approximately **\$970.18**. Apex Dec., ¶ 15.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, the Participating Class Member will release the Released Parties from the Released Class Claims as defined in the Agreement. Agreement, ¶ 5.2.

Apex Class Action LLC was appointed as the Administrator for the Class. The 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 approved for reimbursement by the court. The Administrator expenses are \$8,200. 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 a payment of Attorneys' Fees and Litigation Costs in the amount of \$220,000, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be at least \$200,000 and up to \$20,000 for actually incurred litigation expenses. Agreement, ¶ 3.2.2. Class Counsel is to split the fees 50% to JCL Law Firm, APC, and 50% to Zakay Law Group, APLC. Agreement, ¶ 1.5. The Agreement also provides for a Class Representative Payment in the amount of \$10,000, in consideration of her time, risk, and efforts as the Class Representative on behalf of the 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 high approval of the Settlement by the Class, the absence of any objections to the Settlement and the average Individual Class Payment of **\$970.18**. Apex Dec., ¶¶ 15; JCL Dec., ¶ 21.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 damage models informed and guided the mediated negotiations that resulted in this settlement.
2 Accordingly, Class Counsel fully understood the strengths and weaknesses of the class claims before
3 the parties reached a settlement. JCL Dec., ¶ 22-28.

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

5 On April 24, 2023, the Parties conducted a full day mediation with Steven Serratore, Esq., an
6 experienced wage and hour mediator. Mediator Serratore helped to manage the Parties' expectations
7 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
8 progress with Mediator Serratore's assistance. Namely, the Parties exchanged information regarding
9 their respective claims and defenses, including their respective evaluations of the damages. After more
10 than eight hours of arm's length and adversarial negotiations, the mediation concluded a settlement.
11 The amount of the service award was not negotiated until after the parties agreed to the Gross
12 Settlement Amount and many other terms. JCL Dec., ¶ 29. No action would likely have been taken
13 by Class Members individually, and no compensation would have been recovered for them, but for
14 Plaintiff's service on behalf of the Class.

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., ¶¶ 30-35; Declaration
23 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

25 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
26 dissemination of the notice to the Class, which provided each Class Member with the terms of the
27 Settlement, including the specific estimated Individual Class Payments. To date, only three of the 345
28 Class Members opted out of the Settlement. Moreover, there are zero objections. Stated differently,

1 **99.13%** of the Class chose to participate in the Settlement. JCL Dec., ¶ 10; Apex Dec., ¶¶ 11-14.

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

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

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

18 Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement
19 provides a sizeable recovery to the Participating Class Member and need not necessarily obtain 100
20 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
21 Cal.App.4th at 250. While the Gross Settlement Amount of Six Hundred Thousand Dollars and Zero
22 Cents (\$600,000.00) represents a discount on Defendants' potential exposure if Plaintiff established
23 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 Defendants presented a risk
25 that 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., ¶ 36.

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 Defendants' 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. Detailed in greater depth during the preliminary approval process, Class
6 Counsel projected a range of Defendants' liability exposure for the claims asserted on behalf of the
7 Class. The Gross Settlement Amount represents between 42.7% and 25.7% of Defendants' *class-wide*
8 liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 37.

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

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

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.").

Workweeks. Agreement, ¶ 3.2.4. This process establishes an objectively fair and reasonable procedure to compensate the Class. JCL Dec., ¶ 38.

The settlement also provides significant relief to the Participating 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 \$331,800. Apex Dec., ¶ 14. The average Individual Class Payment is approximately \$970.18., and the highest is approximately \$5,126.67. 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, Defendants must separately fund their 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., ¶ 39

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

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

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

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

11 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
12 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
13 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
14 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
15 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
16 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
17 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
18 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
19 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
20 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
21 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
22 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
23 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
24 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
25 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
26 certification of driver meal and rest period claims based on the predominance of individual issues).
27 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
28 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
settlement. JCL Dec., ¶ 41.

Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes

1 that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair
2 the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
3 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 42.

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

7 **Plaintiffs may have a strong case, but the risks inherent in continued**
8 **litigation are great.** Defendants strongly deny liability for Plaintiffs'
9 principal claim that full-time Service Associates were misclassified as
10 exempt. In addition to the uncertainties raised by Defendants at the
11 preliminary stage regarding Plaintiffs' chance of success in this case,
12 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.

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

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

17 **The potential complexity and possible duration of trial also weigh in**
18 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
19 of proving damages, recognize the uncertainty of outcome, and believe
20 defendant would appeal in the event of adverse judgment. A post-judgment
21 appeal would require many years to resolve and delay payment to class
22 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.

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

25 In sum, while other cases have approved class certification in wage and hour claims, class
26 certification in this action would have been hotly disputed and was by no means a foregone conclusion.
27 Where both sides face significant uncertainty, as here, the attendant risks favor settlement. *Hanlon v.*
28

1 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.)

2 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
3 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
4 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
5 that if Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post
6 a bond and appeal. A post-judgment appeal by Defendants would have required many more years to
7 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
8 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
9 an uncertain result three or more years in the future. JCL Dec., ¶ 43.

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

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

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

*6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, Plaintiff and Defendants negotiated a good faith PAGA Payment in the amount of \$30,000 which is 5% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA Payment (\$22,500) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$7,500) to be distributed to the Aggrieved Employees (“Individual PAGA Payments”), which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 45.

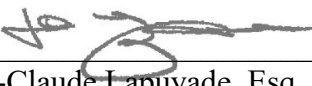
Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the LWDA. JCL Dec., ¶¶ 4-5, 46. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

VII. CONCLUSION

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

Dated: April 19, 2024

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.
Attorneys for Plaintiffs