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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

LAGERALD WEBB, an individual, on behalf
of himself, and on behalf of all persons
similarly situated,

Plaintiff,

vs.

SERVICE FIRST OF NORTHERN
CALIFORNIA, a California corporation, and
DOES 1-50, Inclusive,

Defendants.

Case No. STK-CV- UOE-2022-0007604

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

Date: November 22, 2024

Time: 9:00 a.m.

Judge: Hon. Barbara Kronlund

Dept.: 10D

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1 I. INTRODUCTION

2 Plaintiff LAGERALD WEBB (hereinafter “Plaintiff”) seeks final approval of the Stipulation of
3 Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if
4 approved, would provide valuable monetary relief for approximately 428 Settlement Class Members
5 employed by defendant SERVICE FIRST OF NORTHERN CALIFORNIA (hereinafter “Defendant”)
6 during the Class Period.

7 In an order dated February 7, 2024, this Court preliminarily approved the Agreement and
8 preliminarily certified the Settlement Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4.

9 On or around March 30, 2024, the Claims Administrator, Apex Class Action LLC, informed the
10 Parties that the escalator provision in the Agreement triggered, resulting in an increase to the Gross
11 Settlement Amount and Attorneys’ Fees. JCL Dec., ¶ 5.

12 On July 25, 2024, pursuant to the Parties stipulation, this Court amended the preliminary approval
13 order to account for the increased Gross Settlement Amount of \$220,892.07 and the increased Attorneys’
14 Fees of \$73,630.69. JCL Dec., ¶ 5.

15 On August 13, 2024, the Claims Administrator delivered notice of the proposed settlement to the
16 Settlement Class. Declaration of Madely Nava (“Apex Dec.”), ¶ 7.

17 *The Settlement Class greeted news of the Settlement with nearly unanimous approval* There
18 zero objections and only one opt-out to the Settlement. Apex Dec., ¶¶ 11-12. The 99.8% approval by
19 the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 9.

20 An objective evaluation of the proposed settlement of \$220,892.07 (“Gross Settlement Amount”)
21 confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable.
22 The Settlement is a product of informed, adversarial, and non-collusive negotiations, between
23 experienced counsel, guided by the wisdom and experience of the Hon. Brian C. Walsh (Ret.), a retired
24 judge and experienced mediator of wage and hour class and PAGA actions. After deducting any Court-
25 approved attorneys’ fees and costs, class representative incentive payments, administration costs, and
26 payments to the Labor & Workforce Development Agency (“LWDA”), the Net Settlement Amount

27
28 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.

1 shall be distributed to the Settlement Class Members based on the number of Workweeks they worked
2 while employed by Defendant during the Class Period. JCL Dec., ¶ 9.

3 This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations.
4 Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of
5 \$81,005.56. This will result in an average Individual Settlement Payment of **\$189.71** and high payment
6 of **\$922.72**. Apex Dec., ¶ 14-15; JCL Dec., ¶ 10.

7 Additionally, if approved \$20,000 of the Gross Settlement Amount will be allocated to Plaintiff’s
8 claims arising out of the Private Attorney General Act (“PAGA Penalties”). This will result in a \$15,000
9 payment to the LWDA (“LWDA Payment”) to continue enforcing labor laws throughout California
10 and providing education to employers and employees about their rights and responsibilities under the
11 Labor Code. The remaining \$5,000 will be allocated to the Aggrieved Employees. Agreement at §
12 I(Z).

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

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

22 **II. OVERVIEW OF THE LITIGATION**

23 Defendant operates community-based programs that provide supportive services to individuals
24 in need throughout California, including San Joaquin County where Plaintiff worked. Plaintiff worked
25 for Defendant in California from May 2017 to August 2021 as a non-exempt employee, paid on an
26 hourly basis. At all times during his employment, Plaintiff alleges that he was denied legally compliant
27 meal and rest periods, and minimum wages and overtime compensation. Throughout his employment,
28 Plaintiff was subject to Defendant’s written policies and procedures contained in, among other

documents, the “Employee Packet.” JCL Dec., ¶ 13.

Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages timely during employment and upon separation. Defendant denies liability for each of Plaintiff’s claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff’s claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, and that it timely paid all wages due upon separation of employment. JCL Dec., ¶ 14.

On June 22, 2022, Plaintiff filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served the same on Defendant. Plaintiff’s PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 15.

On August 30, 2022, Plaintiff filed a class action complaint in the San Joaquin County Superior Court, Case Number STK-CV-UOE-2022-7604 (“Action”). The Action alleged nine causes of action against Defendant for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200 *et. seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and The Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; ; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (8) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; and (9) Violations of the Private Attorney General Act at Labor Code Sections 2698 *et seq*. JCL Dec., ¶ 16.

1 Plaintiff propounded written discovery in January of 2023. After responding to discovery, the
2 Parties agreed to mediate this action to prepare for mediation. The Parties agreed to informally produce
3 additional documents and data points subject to the mediation privilege, including but not limited to, a
4 sample of the Class Members' time data and certain payroll data points. As discussed *infra*, Plaintiff's
5 counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's
6 time and payroll data. JCL Dec., ¶ 17.

7 On October 5, 2023, the Parties participated in a full day mediation with Hon. Brian C. Walsh
8 (Ret), a retired judge and experienced mediator of wage and hour class and PAGA actions. The
9 mediation concluded with a settlement which was subsequently memorialized in the form of a
10 Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement
11 agreement, which is the subject of the instant motion. JCL Dec., ¶ 18.

12 On February 7, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶
13 19.

14 On or around March 26, 2024, Defendant provided the Class Data to the Claims Administrator.
15 On or around March 30, 2024, the Claims Administrator informed the Parties that the escalator
16 provision in the Agreement triggered, resulting in an increase to the Gross Settlement Amount and
17 Attorneys' Fees. Specifically, at the time of mediation, Defendant estimated that there was a total of
18 20,370 workweeks during the Class Period. However, the Class Data showed that there was a total of
19 24,534.86 workweeks during the Class Period. Thus, pursuant to the Agreement, the escalator provision
20 was triggered as a result of the Class Members collectively working 10.45% over the 10% threshold,
21 resulting in an increase in the Gross Settlement Amount from \$200,000 to \$220,892.07 (an increase of
22 \$20,892.07). This in turn increased the 33.33% Attorney's Fees authorized by the Agreement to
23 \$73,630.69 (an increase of \$6,964.02 from the original \$66,666.67). JCL Dec., ¶ 20.

24 On July 25, 2024, pursuant to the Parties stipulation, this Court amended the preliminary approval
25 order to account for the increased Gross Settlement Amount and Attorneys' Fees. JCL Dec., ¶ 21.

26 On August 13, 2024, Claims Administrator mailed Notice Packets to all 428 Settlement Class
27 members. Apex Dec. ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response
28 Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The

1 response from the Settlement Class to the Settlement was outstanding – 99.78% of Settlement Class
2 members are participating in the Settlement. Apex Dec., ¶ 13.

3 **III. THE SETTLEMENT BEFORE THE COURT**

4 The Court preliminarily approved a Gross Settlement Amount of \$220,892.07 based on a total of
5 approximately 23,534.86 Workweeks worked by the Settlement Class during the Class Period. The
6 Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the
7 Service Award; (3) to satisfy the PAGA Penalties; (4) to satisfy Claims Administration Expenses; and
8 (5) to satisfy Attorneys' Fees and Attorneys' Expenses. The remainder, the Net Settlement Amount,
9 shall be used for the payment of all Individual Settlement Payments to satisfy all Released Claims. JCL
10 Dec., ¶ 22.

11 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
12 Settlement Fund in two (2) installments. The first installment in the amount of \$110,446.04 shall be paid
13 on or before January 23, 2025. The second installment in the amount of \$110,446.04 shall be paid on
14 or before February 23, 2025. Agreement at § I(LL). Within fourteen (14) calendar days after Defendant
15 funds the Gross Settlement Amount in an amount sufficient to cover the Individual Settlement Payments,
16 Individual Aggrieved Employee Payment, and the Service Award, the Claims Administrator will mail
17 checks for all Individual Settlement Payments and all Aggrieved Employees Payments, and the Service
18 Award. Thereafter, within fourteen (14) calendar days after Defendant funds the Gross Settlement
19 Amount in full, the Claims Administrator will mail checks for the LWDA Payment, the Claims
20 Administration Expenses, the Attorneys' Fees, and Attorneys' Expenses. Disbursement of the Attorneys'
21 Fees, and Attorneys' Expenses, and the Claims Administration Expenses shall not precede disbursement
22 of Individual Settlement Payments and Individual Aggrieved Employee Payments. Agreement at §
23 III(A)(3).

24 The Claims Administrator will calculate the total number of workweeks worked by each Class
25 Member during the Class Period. The Claims Administrator will then divide the respective Workweeks
26 for each member of the Settlement Class by the total Workweeks for the entire Settlement Class,
27 resulting in a Payment Ratio for each Settlement Class member. Each Settlement Class Member's
28 payment ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual

1 Settlement Payment. Agreement at § III(M)(1). The Claims Administrator estimates the average
2 Individual Settlement Payment is \$189.71 and the highest Individual Settlement Payment is \$922.72.
3 Apex Dec., ¶ 15.

4 In exchange for valuable consideration, as of the funding of the Gross Settlement Amount, the
5 Class Members who do not exclude themselves by properly opting-out of the Settlement will fully
6 release and discharge the Released Parties from the Released Claims for the entire Class Period.
7 Agreement at § III(B).

8 APEX Class Action LLC was appointed as the Claims Administrator for the Class. Claims
9 Administration Expenses include those expenses of effectuating and administering the Settlement, i.e.,
10 the costs incurred to the Claims Administrator, the costs of giving notice to the Class, the costs of
11 administering and disbursing the Individual Settlement Payments, and the fees of the Claims
12 Administrator approved for reimbursement by the court. The Claims Administration expenses are
13 \$10,000. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount. Agreement
14 at § III(M)(12).

15 Subject to Court approval, Class Counsel shall seek Attorneys' Fees not to exceed one-third (1/3)
16 of the Gross Settlement Amount, currently estimated to be Seventy-Three Thousand, Six Hundred Thirty
17 Dollars and Sixty-Nine Cents (\$73,630.69). Class Counsel will also seek reimbursement of costs, in an
18 amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00). Agreement at §
19 III(M)(10).

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

24 As set forth in the Agreement, \$20,000 of the Gross Settlement Amount has been allocated for
25 civil penalties under the PAGA ("PAGA Penalties"). Seventy-Five percent of the PAGA Penalties will
26 be paid to the California Labor Workforce and Development Agency ("LWDA Payment"). The
27 Settlement Administrator shall distribute the remaining 25% of the PAGA Penalties to the Aggrieved
28 Employees ("Aggrieved Employee Payment"). Agreement at § I(Z).

1 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
2 and should be granted final approval. This is evidenced by the near unanimous approval of the
3 Settlement by the Settlement Class and absence of any objections to the Settlement. Apex Dec., ¶¶ 11-
4 12; JCL Dec., ¶ 9.

5 Further supporting final approval, the average Individual Settlement Payment of \$189.71, equals
6 or exceeds settlement payments in similar wage and hour class actions. This result is particularly
7 favorable considering that liability and certification were far from certain. Given the complexities of
8 this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of
9 proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted
10 final approval. JCL Dec., ¶ 10.

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

13 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
14 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
15 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
16 *V. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the
17 preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

1 *supra*, at 1150.

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

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

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

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

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

28 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.

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

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

A. Class Counsel Conducted a Thorough Investigation.

As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel assessed the value of the class claims using data and documents provided by Defendant in informal discovery. Class Counsel obtained time and payroll records, as well as data regarding the number of Class Members, and aggregate workweeks and pay periods data for the Class. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members’ payroll and time data to formulate damage models estimating Defendant’s liability exposure. Class Counsel’s investigation, research, experience and damage models, informed and guided the mediated negotiations that resulted in this Settlement. Accordingly, Class Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 24-31.

B. The Parties Settled at Mediation.

On October 5, 2023, the Parties participated in mediation presided over by Hon. Brian C. Walsh (Ret.), a retired judge and experienced mediator of wage and hour class and PAGA actions. Judge Walsh helped to manage the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Walsh’s assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluations of the damages. The mediation concluded with a settlement, the complete and final terms of which are now set forth in the Agreement. The amount of the Service Award was not negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No

1 action would likely have been taken by Class Members individually, and no compensation would have
2 been recovered for them, but for Plaintiff's services on behalf of the Class. JCL Dec., ¶ 32.

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

4 Class Counsel in this matter has extensive class action experience in multiple fields and has
5 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
6 and hour class actions involving similar meal and rest period violations. Class Counsel has been
7 approved as class counsel in similar wage and hour class actions throughout the State of California. As
8 such, courts throughout the California have deemed Class Counsel experienced and knowledgeable in
9 this area of law. Class Counsel has participated in every aspect of the settlement discussions and has
10 concluded the settlement is fair, adequate and reasonable and in the best interests of the Class. JCL
11 Dec., ¶¶ 33-39; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

13 The reaction of the Settlement Class unequivocally supports approval of the Settlement. The
14 notice sent to the Settlement Class provided each class member with the terms of the Settlement,
15 including the specific estimated Individual Settlement Payments. To date, only one of the 428 members
16 of the Settlement Class opted-out of the Settlement. Moreover, there are zero objections. Thus, 99.8%
17 of the Settlement Class chose to participate in the Settlement. JCL Dec., ¶ 9; Apex Dec., ¶¶ 11-13.

18 The near unanimous approval by the Settlement Class strongly supports a finding that the
19 Settlement is fair, reasonable and adequate. *See In re Austrian & German Bank Holocaust Litigation*,
20 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact
21 can be viewed as indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d
22 115, 118-119 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement");
23 *Laskey v. Int'l Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected
24 to the proposed settlement should be considered when determining fairness of settlement.).
25 Consequently, Class Counsel respectfully request the Court to follow the unanimous approval of the
26 Settlement Class and grant final approval of the Settlement.

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

2 The Gross Settlement Amount of Two Hundred Twenty Thousand, Eight Hundred Ninety-Two
3 Dollars and Seven Cents (\$220,892.07) in this case is fair and well within the range of recognized
4 reasonableness. The *Kullar* court acknowledged that “as the court does when it approves a settlement
5 as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that
6 the class settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt,*
7 *Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).)

8 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
9 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the
10 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
11 While the Gross Settlement Amount represents a discount on Defendant’s potential exposure if Plaintiff
12 established liability on all claims and was awarded the full amount of the estimated damages at trial, this
13 compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that
14 could award significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial
15 recovery may require many more years of litigation, resulting in added fees and costs without any
16 guarantee of recovery for the Class. JCL Dec., ¶ 40.

17 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
18 reasonable considering the nature and magnitude of the claims being settled and the various potential
19 impediments to recovery. Class Counsel developed varied economic damages models measuring
20 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
21 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
22 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
23 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the
24 Settlement Class. The Gross Settlement Amount represents between approximately between 34.47%
25 and 10.02% of Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of
26 mediation. JCL Dec., ¶ 41.

27 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
28 for the Northern District of California granted final approval in a wage and hour misclassification action

1 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
2 the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
3 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
4 potential recovery.” Given the amount of the settlement here as compared to potential value of the
5 claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable².

6 The calculation methodology used to compensate the Settlement Class for the alleged damages
7 was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
8 impartial. The calculation methodology is based on the number of Workweeks each Settlement Class
9 Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement
10 Class Members is established through Defendant’s data and documented compensation records. The
11 Claims Administrator is responsible for calculating the Individual Class Payments by dividing the Net
12 Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during
13 the Class Period and then multiplying the result by each Settlement Class Member's Workweeks worked
14 during the Class Period. Agreement at § III (M)(1). This process establishes an objectively fair and
15 reasonable procedure to compensate the Settlement Class.

16 The settlement also provides significant relief to the Settlement Class Members. After deductions
17 for the Attorneys’ Fees, Attorneys’ Expenses, Claims Administration Expenses, the PAGA Penalties,
18 and the Service Award, the Net Settlement Amount is currently estimated to be \$81,005.56. Apex Dec.,
19 ¶ 14. The average Individual Class Payment is approximately \$189.71, the highest is approximately
20 \$922.72, and the lowest payment is approximately \$0.48. Apex Dec., ¶ 15. This average net recovery
21 is on par with many wage and hour class action settlements approved by California state and federal
22 courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super.
23 Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (LA.

24 ² *See also Vical v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving
25 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
26 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
27 *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); *see also*
28 *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.”).

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 at § III (A)(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., ¶ 42.

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

Although Plaintiff and Class Counsel believe that their case has merit, they recognized the potential risks both sides would face if litigation of this action continued. JCL Dec., ¶ 43. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176

1 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court’s denial of class
2 certification because employees’ declarations attesting to having taken meal and rest breaks
3 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*
4 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification
5 of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
6 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
7 period claims based on the predominance of individual issues). JCL Dec., ¶ 44.

8 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of
9 Defendant’s liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*
10 *Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a
11 wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088
12 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized
13 questions of fact not susceptible to class treatment.”). JCL Dec., ¶ 45.

14 Finally, even if a class is certified and Defendant is found liable for the class claims alleged,
15 post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and
16 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*
17 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded
18 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and
19 directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber*
20 *Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification
21 action). JCL Dec., ¶ 46.

22 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
23 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
24 factor favoring settlement. JCL Dec., ¶ 47.

25 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes
26 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
27 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
28 affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 48.

1 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*, No.
2 CV-08-0844 EDL, 2009 WL 928133 (N.D. Cal. Apr. 3, 2009) granted approval of an overtime class
3 action settlement and explained:

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

14 *See also Browning v. Yahoo! Inc.*, No. C04-01463 HRL, 2007 WL 4105971, at *10 (N.D. Cal. Nov. 16,
15 2007) (“In considering the strength of Plaintiff's case, legal uncertainties at the time of settlement—
16 particularly those which go to fundamental legal issues—favor approval.”).

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

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

27 *Barcia v. Contain-A-Way, Inc.*, No. 07CV938-IEG-JMA, 2009 WL 587844, at *3 (S.D. Cal. Mar. 6,
28 2009); *see also Louie v. Kaiser Found. Health Plan, Inc.*, No. 08CV0795 IEG RBB, 2008 WL 4473183

1 (S.D. Cal. Oct. 6, 2008)

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

6 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668 and *O'Conner v. Uber*
7 *Technologies*, 82 F. Supp. 3d 1133 (N.D. Cal. 2018) and *Duran v. U.S. Bank National Assn.*, 59 Cal.
8 4th 1 (2014), the complexities and duration of further litigation cannot be overstated. There is little
9 doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to
10 post a bond and appeal. A post-judgment appeal by Defendant would have required many more years
11 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the
12 case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today
13 outweigh an uncertain result three or more years in the future. JCL Dec., ¶ 49.

14 Further, as detailed in the motion for preliminary approval, Defendant's financial condition
15 supports final approval of the settlement. Class Counsel retained Certified Public Accountant, Kenneth
16 L. Creal, to analyze Defendant's financial condition and assess Defendant's ability to satisfy a class-
17 wide settlement. As detailed in Mr. Creal's Declaration filed concurrently with the motion for
18 preliminary approval, Mr. Creal determined that Defendant could not afford a settlement larger than
19 the one contemplated here. Moreover, Mr. Creal determined that due to Defendant's available assets,
20 debts to be services, revenues and expenses, the payment plan contemplated by the Agreement is
21 necessary. JCL Dec., ¶ 50.

22 Class Representative and Class Counsel believe that the Settlement confers substantial monetary
23 and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
24 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
25 Class, is fair, reasonable and adequate, and should be granted final approval. JCL Dec., ¶ 51.

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VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004

ARE REASONABLE

Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense of class members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA 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 Defendant negotiated good faith PAGA Penalties in the amount of \$20,000 which is approximately 9% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$15,000) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 52.

Further, on January 12, 2024, Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with the LWDA. On October 28, 2024, Plaintiff gave the LWDA notice of this motion seeking final approval of this settlement. JCL Dec., ¶¶ 7, 53. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Penalties.

/ / /

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 request entry of the Final Approval Order and Judgment submitted herewith.
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6 Dated: October 28, 2024

JCL LAW FIRM, APC

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8 By: 
9 Jean-Claude Lapuyade, Esq.
Attorneys for Plaintiff
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