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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

PRISCILLA ESTRADA an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

MANPOWER TEMPORARY SERVICES
f.k.a. CPM, LTD. which will be doing
business
in California as MANPOWER TEMPORARY
SERVICES, a Nevada corporation; CPM,
LTD., a Nevada corporation; C.L.M.P., LTD.,
a California corporation; EQUUS
WORKFORCE SOLUTIONS, a Kentucky
limited liability company; and DOES 1-50,
Inclusive,

Defendants.

Case No. 37-2022-00030943-CU-OE-CTL

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

Date: July 19, 2024
Time: 9:00 a.m.

Judge: Hon. James A. Mangione
Dept.: C-75

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I. INTRODUCTION

Plaintiff PRISCILLA ESTRADA (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 126 Settlement Class Members employed by CPM Ltd, Inc. dba Manpower of San Diego (“Manpower”) and Res-Care Inc. dba Equus Workforce Solutions (“Res Care”) (collectively, “Defendants”) during the Class Period. Plaintiff and Class Counsel also seek approval of the Class Counsel Award in the amount of **\$90,000.00**, comprised of \$75,000.00 (one-third of the Gross Settlement Amount) and up to \$15,000.00 for reimbursement of actually incurred litigation expenses.²

An objective evaluation of the proposed settlement of \$225,000.00 (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, guided by the wisdom and experience of the Hon. Steven Denton (Ret.) an experienced jurist and mediator. JCL Dec., ¶ 10. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately \$106,000, an average Individual Settlement Payment of **\$841.27**, high payment of **\$3,008.32**, and a low payment of **\$14.46**. Aggrieved Employees will receive an estimated average gross payment of **\$49.24**, a high payment of **\$173.69**, and a low payment of **\$2.85**. Declaration of Madely Nava (“Apex Dec.”), ¶¶ 14, 15, 17.

The relief offered by the Settlement is immediate and is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*). As discussed below, the proposed Settlement satisfies all criteria for final settlement approval under California law and falls well within the range of reasonableness. JCL Dec., ¶ 11-12.

II. OVERVIEW OF THE LITIGATION

13. Defendants operate workforce staffing service companies throughout the state of California, including San Diego County, where Plaintiff worked. Plaintiff was employed by Defendants

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 Currently Class Counsel’s actually incurred litigation expenses are \$10,964.68. Class Counsel will provide an updated total at the time of hearing on this motion.

1 from November of 2021 to March of 2022, as a non-exempt employee. Declaration of Priscilla Estrada
2 (“Estrada Dec.”) at ¶ 3. Plaintiff alleges that she was denied legally compliant meal and rest periods,
3 and minimum wages and overtime compensation, at all times during her employment. Throughout her
4 employment, Plaintiff was subject to Defendants’ written policies and procedures contained in, among
5 other documents, the “Manpower Associate Handbook.” JCL Dec., ¶ 13.

6 Generally, Plaintiff claims that Defendants failed to provide compliant meal and rest periods,
7 failed to pay for all time worked, failed to pay overtime and meal period premiums, failed to furnish
8 accurate itemized wage statements, failed to reimburse for mandatory business expenses, and failed to
9 pay wages when due. Defendants deny liability for each of Plaintiff’s claims. Further, Defendants assert
10 that they fully complied with all applicable employment laws and raised several other significant
11 defenses to Plaintiff’s claims, including but not limited to, facially compliant meal and rest period
12 policies, compliant wage statements, compliant reimbursement practices, and timely payment of all
13 wages due. JCL Dec., ¶ 14.

14 On May 31, 2022, Plaintiff Estrada served Defendant Res-Care and the Labor and Workforce
15 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA
16 Notice set forth the facts and theories supporting Defendants’ alleged violations of various provisions
17 of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order
18 and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal.
19 Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 15. On September 20, 2022, Plaintiff Estrada
20 served Defendant Manpower and the Labor and Workforce Development Agency (“LWDA”) with an
21 Amended Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth the facts and
22 theories supporting Defendants’ alleged violations of various provisions of the California Labor Code
23 and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to pursue claims
24 under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq*
25 (“PAGA”). JCL Dec., ¶ 15.

26 On August 4, 2022, Plaintiff filed a class action complaint in the San Diego County Superior
27 Court, Case No. 37-2022-00030943-CU-OE-CTL (“Class Action”). The Class Action alleged eleven
28 causes of action against Defendants for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code

1 §§ 17200, et. seq.; (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197,
2 1197.1; (3) Failure to Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, et seq.; (4) Failure
3 to Provide Required Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
4 IWC Wage Order; (5) Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7
5 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements
6 in violation of Cal. Lab Code §226; (7) Failure to Pay Wages When Due in violation of Cal. Lab. Code
7 §§ 201, 202, and 203; (8) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code
8 § 2802; (9) Wrongful Termination in Violation of Public Policy; (10) Retaliation in Violation of Cal.
9 Lab. Code §§ 6310 and 1102.5; and (11) Violation of the Private Attorneys General Act [Labor Code
10 §§ 2698 et seq.]. JCL Dec., ¶ 16.

11 Plaintiff propounded written discovery in January of 2022. After the initial round of discovery,
12 the Parties agreed to mediate the Action. The Parties also agreed to engage in informal discovery to
13 prepare for mediation. Such discovery included production of additional documents and data points
14 subject to the mediation privilege, including but not limited to, the Class Members’ time and payroll
15 data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic
16 consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data. JCL
17 Dec., ¶ 17.

18 On July 18, 2023, the Parties participated in a full day mediation with respected jurist and
19 mediator, the Hon. Judge Steven Denton (Ret.). The mediation concluded with a settlement after both
20 sides agreed to a Mediator’s proposal which was subsequently memorialized in the form of a
21 Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement
22 agreement, which is the subject of the instant motion. JCL Dec., ¶ 18.

23 On February 2, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶¶ 4,
24 19. Shortly thereafter, on March 5, 2024, the Settlement Administrator mailed Notice Packets to all
25 126 Settlement Class members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-
26 five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections
27 to the Settlement. Agreement, ¶ I(FF). In response, 100% of the Class Members are participating in
28 the Settlement. Apex Dec., ¶ 11.

1 **III. THE SETTLEMENT BEFORE THE COURT**

2 The Court preliminarily approved a Gross Settlement Amount of \$225,000.00. The Gross
3 Settlement Amount is all-in with no reversion to Defendants. Agreement, ¶ III(A)(1). The Net
4 Settlement Amount shall be used for the payment of all Individual Settlement Payments to satisfy all
5 Released Class Claims. The Settlement Administrator will calculate Individual Settlement Payments by
6 adding up the total number of Workweeks for all Class Members. The respective Workweek for each
7 Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment
8 Ratio for each Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by
9 the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment.
10 Agreement, ¶ III(N)(1). The Settlement Administrator estimates the average Individual Settlement
11 Payment is **\$841.27**, the highest Individual Settlement Payment is **\$3,008.32**, and the lowest Individual
12 Settlement Payment is **\$14.46**. Apex Dec., ¶ 15.

13 In exchange for this valuable consideration, as of the funding of the Gross Settlement Amount,
14 the Settlement Class Members will release the Released Parties from the Released Class Claims for the
15 Class Period. Agreement, ¶ III(B).

16 Apex Class Action LLC was appointed as the Settlement Administrator for the class. The Claims
17 Administration Expenses are \$7,000.00. Apex Dec., ¶ 18. These expenses will be paid from the Gross
18 Settlement Amount. Agreement, ¶ III(N)(12).

19 Subject to Court approval, Class Counsel shall seek a Class Counsel Award in the amount of
20 \$90,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
21 to be at least \$75,000.00 and up to \$15,000.00 for actually incurred litigation expenses. Agreement, ¶
22 III(N)(10).

23 Subject to Court approval, the Agreement provides for a Service Award in the amount of \$10,000
24 for Plaintiff in consideration of her time, risk, and efforts as the Class Representative on behalf of the
25 Settlement Class. Agreement, ¶¶ I(II), III(N)(9).

26 As set forth in the Agreement, \$12,000 of the Gross Settlement Amount has been allocated for
27 civil penalties under the PAGA ("PAGA Payment"). Seventy-Five percent of the PAGA Payment will
28 be paid to the California Labor Workforce and Development Agency ("LWDA Payment"). The

1 Settlement Administrator shall distribute the remaining 25% of the PAGA Payment to the Aggrieved
2 Employees (“Aggrieved Employee Payment”). Agreement, ¶ III(N)(11).

3 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
4 and should be granted final approval. Given the complexities of this case, the defenses asserted, and the
5 uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed
6 settlement is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 20-21.

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

9 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
10 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
11 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
12 *v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000).

13 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
14 action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) *citing*
15 *Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). The
16 court must decide whether the proposed settlement falls within the range of reasonable settlements,
17 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
18 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*
19 *Computer*, 91 Cal.App.4th 224, 246 (2001). In *Wershba*, appellants argued that the settlement was too
20 low given the “clear” liability, however, the Court rejected this argument and held that “the merits of
21 the underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba*,
22 *supra*, at 246; *see also 7-Eleven, supra*, at 1150. In these cases, Courts have repeatedly emphasized that
23 there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91
24 Cal.App.4th at 245. The presumption of fairness exists where: (1) investigation and discovery are
25 sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm’s-
26 length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
27 small. *Dunk*, 48 Cal. App. 4th at 1801, *citing Newberg & Conte, Newberg on Class Actions*, (3d ed.
28 1992) §11.41, pp. 11-91. Here, all of these factors support a presumption of fairness.

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

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

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

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

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

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

26 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
27 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
28 assessed the value of the class claims using data and documents provided by Defendants through formal

1 and informal discovery. Class Counsel obtained time, payroll, and policy records for the Class
2 Members, aggregate workweek and pay period data, and copies of applicable handbooks containing,
3 *inter alia*, compensation, timekeeping, and meal and rest period policies. Class Counsel retained BCG
4 to analyze Defendants' time and payroll data to formulate damage models estimating Defendants'
5 liability exposure. Class Counsel's investigation, research, experience, and damage model informed
6 and guided the mediated negotiations that resulted in this settlement. JCL Dec., ¶ 22-28.

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

8 The Settlement is the product of a mediation session with a respected mediator and subsequent
9 negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arms-
10 length and tempered by the efforts of both sides to serve the interests of their clients. JCL Dec., ¶ 29-
11 31.

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

13 Class Counsel in this matter has extensive class action experience in multiple fields and has
14 represented tens-of-thousands of persons in class actions. Class Counsel's experience is summarized
15 in their concurrently filed declarations. Class Counsel has concluded the settlement is fair, adequate,
16 and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 9, 32-38; Declaration of Shani O.
17 Zakay ("Zakay Dec.") ¶ 4.

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

19 The reaction of the Settlement Class unequivocally supports approval of the Settlement. To date,
20 none of the 126 members of the Settlement Class opted-out of the Settlement. Moreover, there are zero
21 objections. Stated differently, 100% of the Settlement Class chose to participate in the Settlement.
22 JCL Dec., ¶ 10; Apex Dec., ¶¶ 11-13.

23 The high approval by the Settlement Class strongly supports a finding that the Settlement is fair,
24 reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d
25 164, 175 (S.D.N.Y. 2000) Consequently, Class Counsel respectfully request the Court to follow the
26 high approval of the Settlement Class and grant final approval of the Settlement.

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

28 Although Plaintiff and Class Counsel believe that this case has merit, they recognized the

1 potential risks both sides would face if litigation of this action continued. JCL Dec., ¶40. As the federal
2 court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar
3 to those in this litigation:

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
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.”

8 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
9 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
10 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
11 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
12 trial court to enter judgement in favor of the employer. Consequently, the uncertainty of obtaining
13 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶41.

14 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
15 that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair
16 the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
17 affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶42.

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

21 **Plaintiffs may have a strong case, but the risks inherent in continued**
22 **litigation are great.** Defendants strongly deny liability for Plaintiffs’
23 principal claim that full-time Service Associates were misclassified as
24 exempt. In addition to the uncertainties raised by Defendants at the
25 preliminary stage regarding Plaintiffs’ chance of success in this case,
26 Defendants notes that the question of an employer’s duty to provide rest and
27 meal periods is an open one, signaling even less certainty for
28 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.

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

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

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

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

15 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendants
16 through possible appeals which could take another three years. In arriving at their informed belief that
17 the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk
18 inherent in complex actions such as this one. Class Counsel are also mindful of and recognize the
19 inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
20 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
21 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
22 Plaintiff and Class Counsel believe that the Settlement confers substantial monetary and non-monetary
23 benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have
24 determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair,
25 reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 43.

26 **F. The Gross Settlement Amount is Fair and Reasonable.**

27 The Gross Settlement Amount of \$225,000.00 in this case is fair and well within the range of
28 recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement
29 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the
30 various potential impediments to recovery. Class Counsel developed varied economic damages models
31 measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation.
32 The various models were informed by Class Counsel's investigation, including the analysis of a

1 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
2 process, Class Counsel projected a range of Defendants' liability exposure for the claims asserted on
3 behalf of the Settlement Class. The Gross Settlement Amount represents between approximately
4 15.27% of Defendants' maximum liability and approximately 39.80% of Defendants' *class-wide*
5 liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 44.

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

13 The settlement provides significant relief to the Settlement Class Members. The average
14 settlement payment is approximately **\$841.27**, the highest is approximately **\$3,008.32**, and the lowest
15 is approximately **\$14.46**. Apex Dec., ¶ 15. This average net recovery is greater than many wage and
16 hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99*
17 *Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of
18 approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net
19 recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
20 County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department*
21 *Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately
22 \$90).

23 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
24 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
25 experienced counsel, the settlement is entitled to final approval. JCL Dec., ¶ 45.

26 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**
27 **ARE REASONABLE**

28 Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of

1 the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*,
2 No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
3 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
4 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
5 in the range of zero to two percent of the total settlement).

6 Here, Plaintiff and Defendants negotiated a good faith PAGA Payment in the amount of \$12,000
7 which is 5.3% of the Gross Settlement Amount. This amount falls well within the range of approved
8 PAGA Payment. Seventy-Five percent (75%) of the PAGA Payment (\$9,000) will be paid to the
9 LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment
10 (\$3,000) to be distributed to the Aggrieved Employees, which is within the range of PAGA Payment
11 approved by courts and should be approved. JCL Dec., ¶ 46.

12 Further, on December 18, 2023, Class Counsel gave the LWDA notice of this Settlement and
13 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with
14 the LWDA. On June 25, 2024, Plaintiff gave the LWDA notice of this motion seeking final approval
15 of this settlement. JCL Dec., ¶¶ 5-6, 47. By not registering an objection with either Class Counsel or
16 the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

17 **VII. CLASS COUNSEL’S REQUEST FOR FEES AND COSTS**

18 As part of the settlement, the parties agreed to a Class Counsel Award of **\$90,000.00**, comprised
19 of \$75,000.00 for attorneys’ fees (one-third of the Gross Settlement Amount) and up to \$15,000.00 for
20 reimbursement of actually incurred litigation expenses. The requested attorneys’ fee portion of the
21 Class Counsel Award, which equals one-third of the Gross Settlement Amount, is fair compensation
22 and, respectfully, should be approved. Class Counsel undertook complex, risky, and time-consuming
23 wage and hour litigation on a contingent basis. Further, the attorneys’ fee portion of the requested Class
24 Counsel Award are within the historically recognized range attorneys’ fees awarded in common fund
25 class action settlements – between 25% and 50% – and is supported by Class Counsel’s lodestar cross-
26 check with a reasonable 0.85 multiplier. That is below the 2.13 multiplier approved by the Supreme
27 Court in *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, with additional work to be
28

performed, and within the recognized multiplier range of between 2 and 4³. Thus, the reasonableness of the requested Class Counsel Award is confirmed by reference to the lodestar with a reasonable multiplier with significant additional work still to be performed. JCL Dec., ¶¶ 48-57.

A. Common Fund

Courts have long recognized that when class counsel's efforts result in the creation of a common fund that benefits plaintiffs and unnamed class members, class counsel have an equitable right to be compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("recogniz[ing] consistently that a litigant or a lawyer who recovers a common fund...is entitled to a reasonable attorney's fee from the fund as a whole"); *Laffitte*, 1 Cal. 5th at 488-89 (common fund doctrine "long recognized" under California law). The common fund doctrine rests on the understanding that attorneys should normally be paid by their clients and that, unless attorneys' fees are paid out of the common fund, those who benefit from the fund will be "unjustly enriched." *Boeing*, 444 U.S. at 478.

As noted above, in *Laffitte*, the California Supreme Court upheld the trial court's award of 33.33% of the settlement amount of \$19 million dollars with a 2.13 multiplier and affirmed that "empirical studies show the percentage method with a lodestar cross-check is the most prevalent form of fee method in practice." *Laffitte*, 1 Cal. 5th at 496-97. In fact, courts have historically awarded between 25% and 50% of the common fund as attorneys' fees class action settlements. *In re Warner Communications*, 618 F.Supp. 735, 749-50 (S.D.N.Y 1985).

Here, the fairest way to calculate a reasonable fee when contingency-fee litigation has produced a fixed settlement amount for the Settlement Class Members is by awarding Settlement Class Counsel a percentage of the total settlement sum. *See, e.g., In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). More importantly, a fee award under the common fund method here would achieve the two underlying goals of the common fund doctrine by: (1) equitably requiring the beneficiaries of the common fund to pay their pro rata share of fees incurred in creating the fund; and

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

(2) providing an incentive to attract competent counsel to handle wage and hour class actions, which California courts recognize as a fundamental tool to ensure the effective enforcement of the Labor Code and minimum labor standards. *See, e.g., Gentry v. Super. Ct.*, 42 Cal. 4th 443, 455-56 (2007) (overruled on other grounds by *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014) (emphasizing the indispensable value of private enforcement of California’s wage-and-hour laws through class actions).

The Agreement provides for payment of the Class Counsel Award from the common fund. Accordingly, it is well within the Court’s discretion to award fees to Class Counsel under the common fund doctrine. Class Counsel requests attorneys’ fees in the amount of \$75,000.00 representing one-third of the Gross Settlement Amount. Class Counsel’s request is consistent with many fee awards in similar wage and hour class actions. Moreover, the requested attorneys’ fee award is in the middle of historically recognized range of attorneys’ fees awarded in common fund settlements. JCL Dec., ¶¶ 58-59.

The attorneys’ fee portion of the Class Counsel Award request should be awarded based upon the Gross Settlement Amount in accordance with *Laffitte*, i.e., the percentage of the fund with a lodestar cross check. As further explained below, the reasonableness of the requested \$75,000.00 attorneys’ fee award is further supported by the lodestar cross-check. JCL Dec., ¶ 60.

B. Class Counsels’ Lodestar Supports the Requested Attorneys’ Fees

Class Counsel’s lodestar to date is \$87,623.50 *exclusive of costs*, with significant work remaining. JCL Dec., ¶¶ 50, 55. Thus, Class Counsel’s fee request is equal to Class Counsel’s lodestar with a 0.85 multiplier – below the 2.13 multiplier approved in *Laffitte* – is well within the recognized multiplier range between 2 and 4. *See Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

Because the Settlement in this case is a pure common fund case, and the percentage of the fund is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award based upon the percentage of the common fund. Moreover, Class Counsel’s lodestar supports the requested

attorneys' fees with a multiplier well within the recognized range reasonableness, and in fact, below what the California Supreme Court approved in *Laffitte*. JCL Dec., ¶ 61.

Although no rigid formula applies, an analysis of each of the following "basic factors" that California courts typically consider further supports the reasonableness of a fee request: **(1)** the result class counsel obtained; **(2)** the time and labor required of the attorneys; **(3)** the contingent nature of the case and the delay in payment to class counsel; **(4)** the extent to which the nature of the litigation precluded other employment by class counsel; **(5)** the experience, reputation, and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity and difficulty of the case; and **(6)** the informed consent of the clients to the fee agreement. *Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1810 n.2. Those factors support Class Counsel's request and are addressed in more detail in Counsel's declarations submitted concurrently herewith. In short: **(1)** Considering the issues presented in the case, the Gross Settlement Amount of \$225,000.00 is an excellent result for the Settlement Class, **(2)** Collectively, Class Counsel worked hard on this case and, expended approximately 160.20 hours in the prosecution of this litigation in the twenty-seven months since it was filed for a total lodestar of \$87,623.50, **(3)** Class Counsel undertook this litigation on a contingent-fee basis, assuming a significant risk that the litigation would yield no recovery after many years of work, **(4)** Class Counsel negotiated a one-third contingency fee arrangement, which is a reasonable arrangement to obtain competent counsel in the marketplace for representation in wage and hour class actions of this nature, and it is only equitable that Settlement Class who share in the excellent results achieved by this Settlement bear their pro rata share of the attorney's fees award to Class Counsel, **(5)** Class Counsel possesses significant experience litigating complex wage and hour class actions and the way this Settlement was achieved is demonstrative of the highly efficient way this litigation was managed and resolved (*See* Class Counsel's declarations for a detailed outline of their skills and experience), and **(6)** Class Counsel's hourly rates, which are set forth in the concurrently filed declarations of Jean-Claude Lapuyade, Esq., and Shani Zakay, Esq., are well within the range of rates billed by comparable attorneys in this market and reasonably compare with rates approved by other trial courts in wage and hour class action litigation. JCL Dec., ¶¶ 62-76; Zakay Dec., ¶ 5-7.

1 **C. Class Counsel's Costs**

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

7 As of the date of this filing, Class Counsel has incurred a total of \$10,964.68 litigating this action.
8 All of Class Counsel's out-of-pocket expenses are the types of expenses normally charged to paying
9 clients including the following: filing fees; copying; postage; factual; mediation fees; and expert costs,
10 which were all incurred during, and were necessary for the successful prosecution of, the litigation and,
11 therefore, should be reimbursed. JCL Dec. ¶¶ 7, 77-79; Zakay Dec., ¶¶ 8-9.

12 **D. Plaintiff's Service Award Is Reasonable and Should be Approved**

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

20 Regarding the amount of the requested award, courts frequently approve awards of \$10,000.00
21 or more. *See In re Cellphone*, 186 Cal.App.4th 1380. The amount of the requested Service Award to
22 Plaintiff for \$10,000.00 is reasonable by reference to the amounts that California courts (both federal
23 and state) have repeatedly awarded in similar class action settlements. Further, the unanimous consent
24 by the Class Members favors the Court's approval of the requested Service Award. Equally important,
25 the time, effort, and services provided to the Settlement Class justifies the requested Service Award.
26 The Class Representative performed her duties to the Settlement Class admirably. Plaintiff's work is
27 summarized in her declaration filed concurrently herewith. Plaintiff assumed the serious risk of liability
28 for Defendants' costs and potentially fees if the case was unsuccessful. Nevertheless, Plaintiff

1 knowingly and voluntarily undertook the risk to vindicate the rights of the Settlement Class. Estrada
2 Dec. ¶ 1-12; JCL Dec., ¶ 80-84.

3 **VIII. CONCLUSION**

4 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
5 established in California law and should therefore be finally approved as fair, reasonable, and adequate
6 and requests entry of the Final Approval Order and Judgment submitted herewith. Further, based on the
7 foregoing, Class Counsel respectfully requests approval of the Class Counsel Award payment in the
8 amount of \$90,000.00, comprised of (1) \$75,000.00 as compensation for attorneys' fees (one-third of
9 the Gross Settlement Amount of \$225,000.00) and (2) litigation expenses up to \$15,000.00 as supported
10 by Class Counsel's billing records. Class Counsel and the Class Representative also respectfully request
11 approval of the requested Service Award in the amount of \$10,000 to Plaintiff.

12
13 Dated: June 25, 2024

ZAKAY LAW GROUP, APLC

14 By: 

15 Shani O. Zakay, Esq.
16 Attorneys for Plaintiff
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