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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

OSCAR ALMANZA, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

HOPE OF THE VALLEY RESCUE MISSION,
a California Nonprofit Corporation; and DOES
1-50, Inclusive,

Defendants.

Case No. 22STCV17591

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

Date: September 16, 2024

Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice

Dept.: 1

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I. INTRODUCTION

Plaintiff OSCAR ALMANZA (hereinafter “Plaintiff”) seeks final approval of the Class Action and PAGA Settlement Agreement and Class Notice (“Agreement”)¹, which if approved, would provide valuable monetary relief for 1,189 Participating Class Members employed by Defendant HOPE OF THE VALLEY RESCUE MISSION (hereinafter “Defendant”) during the Class Period.

In an order dated April 15, 2024, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade, Esq., (“JCL Dec.”), ¶ 4. On May 29, 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. There are three requests for exclusion and zero objections to the Settlement. Apex Dec., ¶¶ 11-13. The high approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

An objective evaluation of the proposed settlement of Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Tripper Ortman, Esq., a mediator of wage and hour class and representative actions. After deducting any Court-approved attorneys’ fees and litigation costs, class representative incentive payments, settlement administration fees, and the payment to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendant during the Class Period. *The Class greeted news of the Settlement with a 99.75% approval. There are three (3) opt-outs and zero objections to the Settlement.* JCL Dec., ¶ 8.

This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$254,333.33**. Apex Dec. at ¶ 14. This will result in an average Individual Class Payment of **\$214.09**, and a high payment of **\$1,109.91**. Apex Dec. at ¶ 15. Aggrieved Employees will receive an average

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. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

1 Individual PAGA Payment of **\$8.00** and a high payment of **\$22.90**. JCL Dec., ¶ 8; Apex Dec. at ¶ 17.

2 The relief offered by the Settlement is immediate and is particularly impressive when viewed
3 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).
4 Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
5 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
6 litigation. JCL Dec., ¶ 10.

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

11 **II. OVERVIEW OF THE LITIGATION**

12 Defendant is a nonprofit corporation that owns, operates and manages homeless shelters in the
13 State of California, including in Los Angeles County. Plaintiff worked for Defendant as a non-exempt
14 employee in California from November 2020 to November 2021. At all times during his employment,
15 Plaintiff earned an hourly wage and was entitled to legally complaint meal and/or rest periods, minimum,
16 regular, and overtime wages. Throughout his employment, Plaintiff was subject to Defendant’s written
17 policies and procedures. JCL Dec., ¶ 12; Declaration of Oscar Almanza (“PLA Dec.”), ¶¶ 2-4.

18 Defendant forcefully denies liability for each of Plaintiff’s claims. Further, Defendant asserts that
19 it fully complied with all applicable employment laws and raised several other significant defenses to
20 Plaintiff’s claims, including but not limited to, facially compliant meal and rest period policies,
21 compliant wage statements, reimbursement for all required business expenses, and payment of all wages
22 upon separation. JCL Dec., ¶ 13.

23 On March 22, 2022, Plaintiff filed a Notice of Violations with the LWDA and served the same
24 on Defendant. On May 27, 2022, Plaintiff filed a Class and Representative Action Complaint against
25 Defendant alleging nine (9) causes of action against Defendant for (1) Unfair Competition in Violation
26 of Bus. & Prof. Code sections 17200 et seq; (2) Failure to pay minimum wages in violation of California
27 Labor Code sections 1194, 1197 and 1197.1; (3) Failure to pay overtime wages in violation of California
28

1 Labor Code sections 510 et seq; (4) Failure to provide required meal periods in violation of California
2 Labor Code sections 226.7 and 512 and the applicable IWC wage order; (5) Failure to provide required
3 rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage
4 order; (6) Failure to provide accurate itemized wage statements in violation of California Labor Code
5 section 226; (7) Failure to provide wages when due in violation of California Labor Code sections 201,
6 202 and 203; (8) Failure to reimburse employees for required expenses in violation of California Labor
7 Code section 2802; and (9) Violation of the Private Attorneys General Act [Labor Code §§ 2698 et seq].
8 JCL Dec., ¶ 14.

9 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
10 information in connection with the Action. As part of this process, Defendant provided time and payroll
11 records for 276 employees, approximately 25% of the total Class, to Class Counsel to review and
12 analyze. Plaintiff's statistician found this to be sufficient to develop a meaningful damages model. The
13 25% sample is statistically reliable, resulting in a confidence level of 95% with a margin of error of 5%.
14 As discussed *infra*, Plaintiff's counsel retained the forensic consultants at Berger Consulting Group
15 ("BCG") to analyze Defendant's time and payroll data. JCL Dec., ¶ 15.

16 On June 19, 2023, the Parties participated in an all-day mediation presided over by Tripper
17 Ortman, Esq., a mediator of wage and hour class and representative actions. Defendant claimed it is
18 financially unable to pay a class settlement, and the Parties agreed to use a forensic accountant's review
19 of Defendant's financial records to advise on Defendant's ability to fund a settlement. Plaintiff
20 subsequently retained Creal & Creal, an accountancy corporation that regularly performs litigation
21 support and forensic accounting services, including providing opinions related to solvency. Kenneth
22 Creal, CPA, attended the mediation with Plaintiff, and reviewed a number of financial documents.
23 Kenneth Creal also performed an investigation into the assets owned by Defendant, as well as tax
24 returns, balance sheets, and profit and loss statements. The Parties were unable to reach a settlement at
25 mediation, however, the Parties engaged in subsequent settlement negotiations. Following a discussion
26 between Kenneth Creal and Defendant's CFO, presided by Tripper Ortman, the Parties were able to
27 reach a settlement, and executed a binding Memorandum of Understanding. Thereafter, the Parties
28

documented the agreement in the form of a Settlement Agreement, which was signed by the Parties and is now the subject of the instant motion. JCL Dec., ¶ 16.

On April 15, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On May 29, 2024, the Settlement Administrator mailed the Notice Packets to all 1,192 Settlement Class Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement is outstanding – 99.75% of the Class Members are participating in the Settlement. Apex Dec., ¶¶ 11-13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) based on an estimated 55,867.29 Workweeks worked by the Class during the Class Period. JCL Dec., ¶ 17.

The Gross Settlement Amount shall be used: (1) to satisfy Individual Class Payments; (2) to satisfy the Class Representative Service Payment; (3) to satisfy the Class Counsel Fees and Litigation Expenses Payment; (4) to satisfy the PAGA Penalties; and (5) to satisfy the Administration Expenses incurred in this action. JCL Dec., ¶ 18.

After Final Approval and the Judgment becomes final (the “Effective Date,” as defined in the Agreement), Defendant will fund the Gross Settlement Amount in four equal installments of \$125,000 paid per installment. Agreement at § 4.3. Defendant shall pay the first payment 21 days after final approval with the second installment due 90 days thereafter, the third installment 90 days after the second installment, and the fourth installment 90 days after the third installment. Agreement at § 4.3. Within ten (10) days after Defendant funds the third installment, including employer-side payroll taxes, the Administrator will mail on a pro rata basis checks for all Individual Class Payments, all Individual PAGA Payments, the PAGA Payment, the Claims Administration Expenses Payment, the Attorneys' Fees Payment, the Attorneys' Expenses Payment, and the Service Award Payments. Disbursements of the pro rata Attorneys' Fees Payment, the Attorneys' Expenses Payment and the Service Award Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

1 Agreement at § 4.4; JCL Dec., ¶ 19.

2 The Settlement Administrator will calculate Individual Class Payments by dividing the Net
3 Settlement Amount by the total number of Workweeks worked by all Participating Class Members
4 during the Class Period and multiplying the result by each Participating Class Member's Workweeks
5 during the Class Period. Agreement, § 3.2.4. The estimated average Individual Class Payment is
6 approximately **\$214.09**. JCL Dec., ¶ 20; Apex Dec., ¶ 15.

7 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
8 the Participating Class Members will release the Defendant from the Released Class Claims that accrued
9 during the Class Period. The Aggrieved Employees, the LWDA, and the State of California will release
10 the Defendant from the Released PAGA Claims for the PAGA Period. Agreement at § 5.

11 Apex Class Action LLC was appointed as the Settlement Administrator for the Class. The
12 Administration Expenses Payment include those expenses of effectuating and administering the
13 Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class,
14 the costs of administering and disbursing the Individual Settlement Payments, and the fees of the
15 Settlement Administrator approved for reimbursement by the court. The Settlement Administrator
16 expenses are \$14,000.00. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement
17 Amount. Agreement, § 3.2.3.

18 Subject to Court approval, Class Counsel shall seek payment of Class Counsel's Fees and
19 Litigation Expenses in the amount of \$186,666.67, comprised of attorneys' fees equal to one-third of
20 the Gross Settlement Amount estimated to be at least \$166,666.67 and up to \$20,000.00 for actually
21 incurred litigation expenses. Agreement, § 3.2.2. Plaintiff's counsel is to split the fees equally between
22 the JCL Law Firm, APC and Zakay Law Group, APLC. The Agreement also provides for a Class
23 Representative Service Payment in the amount of \$10,000.00 for Plaintiff, in consideration of his time,
24 risk, and efforts as the Class Representative on behalf of the Settlement Class. Agreement, § 3.2.1.

25 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
26 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
27 the Settlement Class, the absence of any objections to the Settlement and the average Individual Class
28

1 Payment of \$214.09. APEX Dec., ¶¶ 11-13, 15; JCL Dec., ¶ 21.

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

4 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
5 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
6 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
7 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the
8 preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

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

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

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

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

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

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

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

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

2 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
3 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
4 assessed the value of the class claims using data and documents provided by Defendant through informal
5 discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the number
6 of Class Members, workweeks, and average rate of pay to assess damages before mediation. Class
7 Counsel retained Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data to
8 formulate damage models estimating Defendant's liability exposure. Class Counsel's investigation,
9 research, experience, and damage models informed and guided the mediated negotiations that resulted
10 in this settlement. Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the
11 class claims before the parties reached a settlement. JCL Dec., ¶ 22.

12 **B. The Parties Settled after Mediation.**

13 On June 19, 2023, the Parties conducted a full-day mediation with Tripper Ortman, Esq., a
14 mediator of wage and hour class and representative actions. Mr. Ortman helped manage the Parties'
15 expectations and provided a useful, neutral analysis of the issues and risks to both sides. Defendant
16 claimed it is financially unable to pay a class settlement, and the Parties agreed to use a forensic
17 accountant's review of Defendant's financial records to advise on Defendant's ability to fund a
18 settlement. Plaintiff subsequently retained Creal & Creal, an accountancy corporation that regularly
19 performs litigation support and forensic accounting services, including providing opinions related to
20 solvency. Kenneth Creal, CPA, attended the mediation with Plaintiff, and reviewed a number of
21 financial documents. Kenneth Creal also performed an investigation into the assets owned by Defendant,
22 as well as tax returns, balance sheets, and profit and loss statements. The Parties made substantial
23 progress with Mr. Ortman's assistance. Namely, the Parties exchanged information regarding their
24 respective claims and defenses, including their respective evaluations of the damages. The Parties were
25 unable to reach a settlement at mediation, however, the Parties engaged in subsequent settlement
26 negotiations. Following a discussion between Kenneth Creal and Defendant's CFO, presided by Tripper
27 Ortman, the Parties were able to reach a settlement, and executed a binding Memorandum of
28

Understanding. Thereafter, the Parties documented the agreement in the form of a Settlement Agreement. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's service on behalf of the Class. JCL Dec., ¶ 23.

C. Class Counsel is Experienced in Similar Litigation.

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar claims. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. Declaration of Shani O. Zakay ("SOZ Dec"), ¶ 3; JCL Dec., ¶¶ 24-30.

D. The Settlement Class Responded Positively to the Settlement.

The reaction of the Settlement Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Settlement Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Class Payments, 3 of the 1,192 members of the Class opted-out of the Settlement. Moreover, there are zero objections. Stated differently, 99.75% of the Class have chosen to participate in the Settlement. JCL Dec., ¶ 31; Apex Dec., ¶¶ 11-13.

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

respectfully requests the Court to follow the high approval of the Settlement Class and grant final approval of the Settlement.

E. The Gross Settlement Amount is Fair and Reasonable.

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

Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250. While the Gross Settlement Amount of Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) represents a discount on Defendant’s potential exposure if Plaintiff established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 32.

As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed an economic damages model measuring Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The economic damage model was informed by Class Counsel’s investigation, including the analysis of a significant sample of time and payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents approximately 28% of Defendant’s *class-*

1 wide liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 33.

2 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
3 for the Northern District of California granted final approval in a wage and hour misclassification action
4 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
5 the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
6 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
7 potential recovery.” Given the amount of the settlement here as compared to potential value of the
8 claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable².

9 The calculation methodology used to compensate the Settlement Class for the alleged damages
10 was negotiated at the time of the Settlement. The methodology is fair, objective, and impartial, and is
11 based on the number of Workweeks each Settlement Class Member worked for Defendant during the
12 Class Period. The number of Workweeks for the Settlement Class Members is established through
13 Defendant’s data and documented compensation records. The Settlement Administrator is responsible
14 for calculating the Individual Class Payments by dividing the Net Settlement Amount by the total
15 number of Workweeks worked by all Participating Class Members during the Class Period and
16 multiplying the result by each Participating Class Member’s Workweeks. This process establishes an
17 objectively fair and reasonable procedure to compensate the Settlement Class. Agreement, § 3.2.4.

18 The settlement also provides significant relief to the Participating Class Members. After
19 deductions for the Class Counsel’s Attorneys’ Fees and Litigation Expenses, Administration Expenses,
20 the PAGA Penalties, and the Class Representative Service Award, the Net Settlement Amount is
21 currently estimated to be \$254,333.33. Apex Dec., ¶ 14. The average settlement payment is
22 approximately **\$214.09**, and the highest is approximately **\$1,109.91**. Apex Dec., ¶ 15. This average net
23 recovery is on par with many wage and hour class action settlements approved by California state and

24 ² See also *Viceral 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.”).

1 federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County
2 Super. Ct.) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589
3 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food*
4 *Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately
5 \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.)
6 (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241
7 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v.*
8 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately
9 \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average
10 net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A.
11 Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must separately fund
12 their share of any employer side payroll taxes. Agreement, § 3.1.

13 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
14 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
15 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
16 JCL Dec., ¶ 34.

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

18 Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore
19 the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at
20 least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 35. As the federal court in *Glass v. UBS Fin.*
21 *Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

27 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the

1 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.*
2 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
3 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
4 to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir.
5 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S.*
6 *Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage
7 and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he
8 reason, if any, that employees might not take their breaks were predominantly individualized questions
9 of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341
10 (affirming denial of certification because employees’ declarations attesting to having taken meal and
11 rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*
12 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
13 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy);
14 *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver
15 meal and rest period claims based on the predominance of individual issues). Collectively, the examples
16 cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining
17 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 36.

18 The fast-changing landscape of wage and hour litigation can also drastically affect the value of
19 Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 37.

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

23 **Plaintiffs may have a strong case, but the risks inherent in continued**
24 **litigation are great.** Defendants strongly deny liability for Plaintiffs’
25 principal claim that full-time Service Associates were misclassified as
26 exempt. In addition to the uncertainties raised by Defendants at the
27 preliminary stage regarding Plaintiffs’ chance of success in this case,
28 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

1 **to be a reasonable compromise, in light of the risks of litigation.**

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

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

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

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

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

21 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
22 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
23 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
24 that if Defendant faced a large adverse judgement, Defendant undoubtedly have the resources to post a
25 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
26 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
27 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
28 an uncertain result three or more years in the future. JCL Dec., ¶ 38.

 The Class Representative and Class Counsel recognize the expense and length of a trial against
Defendant through possible appeals which could take another three years. In arriving at their informed
belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome

1 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
2 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
3 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
4 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
5 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
6 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
7 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
8 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 39.

9 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE**
10 **REASONABLE**

11 Where settlements “negotiate a good faith amount” for PAGA settlements and “there is no
12 indication that this amount was the result of self-interest at the expense of class members,” such amounts
13 are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
14 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA settlements in
15 the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of
16 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal.
17 Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-
18 02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts
19 approve PAGA claim settlements in the range of zero to two percent of the total settlement).

20 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of
21 \$35,000.00 which is 7% of the Gross Settlement Amount. As illustrated above, this amount falls well
22 within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Payment
23 (\$26,250.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent
24 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA Payment
25 approved by courts and should be approved. JCL Dec., ¶ 40.

26 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy
27 of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the
28

1 LWDA. JCL Dec., ¶¶ 5-6, 41. By not registering an objection with either Class Counsel or the Court,
2 the LWDA has accepted and approved of the proposed PAGA Payment.

3 **VII. 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.

7
8 Dated: August 21, 2024

JCL LAW FIRM, APC

9 By: 
10 Jean-Claude Lapuyade
11 Attorney for Plaintiff
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