

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

ISAIAH D. HUGHES, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

ASIAN AND PACIFIC ISLANDER
WELLNESS CENTER, INC. (dba SAN
FRANCISCO COMMUNITY HEALTH
CENTER), a California corporation; and DOES
1-50, Inclusive,

Defendants.

Case No. CGC-22-599270

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

Date: March 4, 2024
Time: 9:30 a.m.
Dept.: 302

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I. INTRODUCTION

Plaintiff ISIAAH D. HUGHES (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 158 Settlement Class Members employed by Defendant ASIAN AND PACIFIC ISLANDER WELLNESS CENTER, INC. (dba SAN FRANCISCO COMMUNITY HEALTH CENTER) (hereinafter “Defendant”).

In an order dated November 2, 2023, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On November 27, 2023, the Settlement Administrator delivered notice of the proposed settlement to the Class. Declaration of Madely Nava (“Apex Dec.”), ¶ 7.

*The Class greeted news of the Settlement with 100% approval.*² As of the filing of this motion, there are zero opt-outs 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., ¶ 10.

An objective evaluation of the proposed settlement of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) (“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 Steven J. Rottman, Esq., an experienced mediator of wage and hour class and representative actions. After deducting any Court-approved attorneys’ fees and costs, class representative service awards, settlement administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement amount shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendant during the Class Period. JCL Dec., ¶ 10.

This Settlement provides substantial recovery to Class Members. Plaintiff estimates that the

¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

² As of the filing date of this Motion, 0 Notices were deemed undeliverable.

1 Settlement, if approved, would result in a Net Settlement Amount of approximately **\$115,116.67**.
2 This will result in an average Individual Settlement Payment of **\$778.15**, with the estimated highest
3 gross payment being \$3,362.94. PAGA Members will receive an estimated average gross payment
4 of \$25.25, with the estimated highest gross payment being \$66.17. JCL Dec., ¶ 11; Apex Dec., ¶¶
5 14-15, 17.

6 The relief offered by the Settlement is immediate and is particularly impressive when viewed
7 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).
8 Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait
9 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and
10 uncertain litigation. JCL Dec., ¶ 12.

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

15 **II. OVERVIEW OF THE LITIGATION**

16 Defendant is in the business of providing health care services in San Francisco County, where
17 Plaintiff worked from June of 2017 to June of 2021 as a non-exempt employee. This action asserts
18 claims on behalf of Defendant's current and former non-exempt employees employed in California.
19 At all times during his employment, Plaintiff earned hourly wage, was entitled to legally compliant
20 meal and/or rest periods, and minimum, regular and overtime wages for all hours worked.
21 Throughout his employment, Plaintiff was subject to Defendants' written policies and procedures.
22 JCL Dec., ¶ 14.

23 Generally, Plaintiff claims that Defendant failed to provide compliant meal and rest periods,
24 maintained an unlawful rounding practice, and failed to pay for all hours worked. Defendant
25 forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully
26 complied with all applicable employment laws and raised several other significant defenses to
27 Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies,
28 compliant wage statements and insistence that it has compensated employees for all hours worked.

1 JCL Dec., ¶ 15.

2 On February 14, 2022, Plaintiff served Defendant and the Labor and Workforce
3 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA
4 Notice set forth the facts and theories supporting Defendant’s alleged violations of various
5 provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”)
6 Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys
7 General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). JCL Dec., ¶ 16.

8 On April 21, 2022, Plaintiff filed a class action complaint in the San Francisco County
9 Superior Court (the “Action”). The Action alleged nine causes of action against Defendant for: (1)
10 Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure
11 to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (3) Failure to
12 Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (4) Failure to Provide Required
13 Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512 and the applicable IWC wage order;
14 (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512 and
15 the applicable IWC wage order; (6) Failure to Provide Accurate Itemized Wage Statements in
16 Violation of Cal. Lab. Code § 226; (7) Failure to Pay Wages When Due in Violation of Cal. Lab.
17 Code §§ 201, 202, and 203; (8) Failure to Reimburse Employees for Required Expenses in Violation
18 of Cal. Lab. Code § 2802; and (9) Violation of the Private Attorney General Act [Cal. Lab. Code
19 §§ 2698 *et. seq.*] (“PAGA”). JCL Dec., ¶ 17.

20 The Parties agreed to mediate the Action. To prepare for mediation, the Parties agreed to
21 informally exchange relevant documents and data points subject to the mediation privilege.
22 Pursuant to that agreement, Defendant produced a sample of the Class Members’ time and payroll
23 data along with itemized wage statements and relevant policies applicable to Class Members. As
24 discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group
25 (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 18.

26 On February 2, 2023, the Parties participated in a full day mediation with highly regarded
27 wage and hour mediator, Steven J. Rottman, Esq. After arms-length negotiations and bargaining,
28 the mediation concluded with a settlement, which was subsequently memorialized in the form of a

1 Memorandum of Understanding. After reaching an agreement in principle, the Parties negotiated a
2 long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 19.

3 On November 2, 2023, this Court granted preliminary approval of the Settlement. JCL Dec.,
4 ¶ 6. On November 27, 2023, the Settlement Administrator mailed Notice Packets to all 148 Class
5 Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day
6 Response Deadline for the Settlement Class to submit requests for exclusion or objections to the
7 Settlement. The response from the Settlement Class to the Settlement was outstanding – 100% of
8 the Class Members are participating in the Settlement. Apex Dec., ¶¶ 11-13.

9 **III. THE SETTLEMENT BEFORE THE COURT**

10 The Court preliminarily approved an initial Gross Settlement Amount of Two Hundred Fifty
11 Thousand Dollars and Zero Cents (\$250,000.00) based on a total of an estimated 8,000 Workweeks
12 worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to
13 satisfy Individual Settlement Payments; (2) to satisfy the Service Award; (3) to satisfy the
14 Attorneys' Fees and Attorneys' Expenses; (4) to satisfy the PAGA Payment; and (5) to satisfy the
15 Claims Administration Expenses incurred in this action. JCL Dec., ¶ 20.

16 Defendant will fund the Settlement by transferring the Gross Settlement Amount to the
17 Settlement Administrator on the Funding Date, defined as within thirty (30) calendar days after the
18 Effective Date. Agreement, ¶ III(A)(2). Individual Settlement Payments and PAGA Member
19 Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or
20 PAGA Members' last known mailing address no later than fifteen (15) calendar days after the
21 Funding Date. Agreement, ¶ III(M)(7). The Settlement Administrator will calculate Individual
22 Settlement Payments by adding up the total number of Workweeks for all Class Members. The
23 Settlement Administrator will then divide the respective Workweeks for each member of the
24 Settlement Class by the total Workweeks for the entire Settlement Class, resulting in a Payment
25 Ratio for each Class Member. Each Settlement Class Member's Payment Ratio is then multiplied
26 by the Net Settlement Amount to calculate each estimated Individual Settlement Payment.
27 Agreement, ¶ III(M)(1). The estimated average Individual Settlement Payment is approximately
28 **\$778.15**. JCL Dec., ¶ 21.

1 In exchange for the valuable consideration, as of the funding of the Gross Settlement
2 Amount, the Settlement Class Members will release the Released Parties from the Released Class
3 Claims that accrued during the Class Period. Plaintiff, the LWDA, and the State of California will
4 release the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement at
5 ¶¶ III(B), III(C).

6 Apex Class Action, LLC was appointed as the Settlement Administrator for the Class. Claims
7 Administration Expenses include those expenses of effectuating and administering the Settlement,
8 i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the
9 costs of administering and disbursing the Individual Settlement Payments, and the fees of the
10 Settlement Administrator approved for reimbursement by the court. The Settlement Administrator
11 expenses are \$6,500.00. ILYM Dec., ¶ 18. These expenses shall be paid from the Gross Settlement
12 Amount. Agreement, ¶ III(M)(12).

13 Subject to Court approval, Class Counsel shall seek an award in the amount of \$108,333.33,
14 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be at
15 least \$83,333.33 and up to \$25,000 for actually incurred litigation expenses. Plaintiff's counsel is
16 to split the fees 50% to the JCL Law Firm, APC and 50% to the Zakay Law Group, APLC.
17 Agreement, ¶ I(D). The Agreement also provides for a Service Award in the amount of \$10,000.00
18 paid to Plaintiff in consideration of his time, risk, and efforts as the Class Representative on behalf
19 of the Settlement Class. Agreement, ¶¶ I(GG); III(M)(9).

20 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the
21 class and should be granted final approval. This is evidenced by the high approval of the Settlement
22 by the Settlement Class and absence of any objections to the Settlement and the average Individual
23 Settlement Payment of \$778.15. Apex Dec., ¶ 15; JCL Dec., ¶ 21.

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

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

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

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

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

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

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

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

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

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
19 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
20 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
21 *Id.* “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate
22 balancing, gross 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
27 the proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class
28 Counsel assessed the value of the claims using data and documents provided by Defendants through

informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the number of Class Members, workweeks, and average rate of pay to assess damages before mediation. Class Counsel retained BCG to analyze Defendants' time and payroll data to formulate damage models estimating Defendants' 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., ¶ 22-27.

B. The Parties Settled At Mediation.

On February 2, 2023, the Parties conducted a full-day mediation with Steven J. Rottman, Esq., a respected and experienced mediator of wage and hour class and representative actions. Mediator Rottman 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 Mediator Rottman's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluations of the damages. After more than eight hours of arm's length and adversarial negotiations, the mediation concluded with a settlement. The amount of the service award was not negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class. JCL Dec., ¶ 28.

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 the 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. JCL Dec., ¶¶ 29-35; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

2 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
3 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
4 member with the terms of the Settlement, including the specific estimated Individual Settlement
5 Payments. To date, **none** of the 148 members of the Settlement Class has opted-out of the
6 Settlement. Moreover, there are **zero** objections. Stated differently, **100%** of the Settlement Class
7 chose to participate in the Settlement. JCL Dec., ¶ 10; Apex Dec., ¶¶ 11-13.

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

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

18 The Gross Settlement Amount of Two Hundred Fifty Thousand Dollars and Zero Cents
19 (\$250,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
20 court acknowledged that “as the court does when it approves a settlement as in good faith under
21 Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement
22 is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-*
23 *Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

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

1 established liability on all claims and were awarded the full amount of the estimated damages at
2 trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant
3 presented a risk that could award significantly less in damages than Plaintiff's estimate and (2) any
4 theoretical post-trial recovery may require many more years of litigation, resulting in added fees
5 and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 36.

6 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
7 reasonable considering the nature and magnitude of the claims being settled and the various
8 potential impediments to recovery. Class Counsel developed varied economic damages models
9 measuring Defendant's liability exposure while accounting for the uncertainties of continued
10 litigation. The various models were informed by Class Counsel's investigation, including the
11 analysis of a significant sample of time and payroll data. As detailed in greater depth during the
12 preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for
13 the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents a
14 recovery of between 15-22% of the value of the maximum potential *damages* at issue, assuming all
15 amounts could be proved at trial. JCL Dec., ¶ 37.

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

24
25 ³ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7
26 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or
27 approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-
28 00784) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of
the estimated total liability); see also *In re Newbridge Networks Sec. Litig.* (D.D.C. Oct. 23, 1998) 1998 WL 765724,
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 The calculation methodology used to compensate the Settlement Class Members for the
2 alleged damages was negotiated at the time of the Settlement. More importantly, the methodology
3 is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks
4 each Settlement Class Member worked for Defendant during the Class Period. The number of
5 Workweeks for the Settlement Class Members is established through Defendant's data and
6 documented compensation records. The Settlement Administrator is responsible for calculating the
7 Individual Settlement Payments by multiplying the Payment Ratio for each Settlement Class
8 Member by the Net Settlement Amount. The Settlement Administrator will calculate the Payment
9 Ratio by dividing the total number of Workweeks for each Settlement Class Member by the total
10 number of Workweeks for all Settlement Class Members. This process establishes an objectively
11 fair and reasonable procedure to compensate the Settlement Class. Agreement, ¶ III(M)(1).

12 The Settlement also provides significant relief to the Settlement Class Members. After
13 deductions for the Attorneys' Fees and Expenses, Claims Administration Expenses, the PAGA
14 Payment, and the Service Award, the Net Settlement Amount is currently estimated to be
15 **\$115,116.67**. The average settlement payment is approximately **\$778.15**. Apex Dec., ¶¶ 14-15. This
16 average net recovery is on par with many wage and hour class action settlements approved by
17 California state and federal courts. JCL Dec., ¶ 38. Additionally, Defendant must separately fund
18 its share of any employer side payroll taxes. Agreement, ¶ III(A)(4).

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

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

24 Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to
25 ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the
26 action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 40. As the federal court in
27 *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to
28 those in this litigation:

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

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

 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless
recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat
or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation

1 can drastically affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 42.

2 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*,
3 2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009), granted approval of an overtime class
4 action settlement and explained:

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

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

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

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

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

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

35 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber*

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

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

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

21 **ARE REASONABLE**

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

1 *Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)
2 (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of
3 the total settlement).

4 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$10,000.00 which
5 is 4% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range
6 of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement (\$7,500.00)
7 will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) to be
8 distributed to the PAGA Members, which is within the range of PAGA penalties approved by courts
9 and should be approved. JCL Dec., ¶ 45.

10 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
11 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
12 with the LWDA. JCL Dec., ¶¶ 5-6, 46. By not registering an objection with either Class Counsel
13 or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

14 **VII. CONCLUSION**

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

18
19 DATED: February 6, 2024

JCL LAW FIRM, APC

20
21 By:  _____

22 Jean-Claude Lapuyade, Esq.
23 Attorney for Plaintiffs
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