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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

PERLA GONZALES, an individual, on behalf
of herself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

CM SCHOOL SUPPLY, INC., a California
corporation; and DOES 1 through 50,
Inclusive,

Defendants.

Case No. CIVSB2133207

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

Date: January 14, 2025
Time: 8:30 a.m.

Judge: Hon. Christian Towns
Department: S-26

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1 **I. INTRODUCTION**

2 Plaintiff PERLA GONZALES (hereinafter “Plaintiff”) seeks final approval of the Stipulation of
3 Settlement of Class and PAGA Action and Release of Claims (“Agreement”)¹, which if approved, would
4 provide valuable monetary relief for 176 Settlement Class Members employed by defendant CM
5 SCHOOL SUPPLY, INC. (“Defendant”) during the Class Period. Plaintiff and Class Counsel also seek
6 approval of the Class Counsel award in the amount of **\$120,000.00** comprised of \$100,000.00 for
7 attorneys’ fees (one-third of the Gross Settlement Amount) and *up to* \$20,000.00 for reimbursement of
8 actually incurred litigation expenses².

9 An objective evaluation of the proposed settlement of \$300,000.00 (“Gross Settlement Amount”)
10 confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. The
11 Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced
12 counsel, guided by the wisdom and experience of Steven G. Mehta, Esq., an experienced wage and
13 hour class and PAGA action mediator. SOZ Dec., ¶ 10. Plaintiff estimates that the Settlement, if
14 approved, would result in a Net Settlement Amount of approximately **\$154,500.00**, an average
15 Individual Settlement Payment of **\$877.84** and a high payment of **\$4,210.70**. Declaration of Katherine
16 Rovertoni (“Apex Dec.”), ¶ 15; SOZ Dec., ¶ 11.

17 The relief offered by the Settlement is immediate and is particularly impressive when viewed
18 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*). As
19 discussed below, the proposed Settlement satisfies all criteria for final settlement approval under
20 California law and falls well within the range of reasonableness. SOZ Dec., ¶ 12-13.

21 **II. OVERVIEW OF THE LITIGATION**

22 Defendant sells school supplies in California, including in San Bernadino County, where
23 Plaintiff worked. This action asserts claims on behalf of all current and former non-exempt employees
24

25 ¹ The Agreement is attached as Ex “A” to the Declaration of Shani O. Zakay (“SOZ Dec.”) at ¶ 3. All citations to the
26 Agreement incorporate by this reference a citation to the SOZ Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms
used herein have the same meaning as those defined by the Agreement.

27 ² Currently Class Counsel’s actually incurred litigation expenses are \$22,287.54. Class Counsel will provide an updated total
28 at the time of hearing on this motion. The Settlement Agreement provides that Class Counsel will only seek a reimbursement
for actually incurred expenses of up to \$20,000. (Agreement ¶ I(F).) Despite Class Counsel’s costs exceeding the amount
provided for in the Settlement Agreement, Class Counsel will only seek reimbursement for actually incurred litigation
expenses of up to \$20,000.

1 who worked for Defendant during the Class Period. Plaintiff worked for Defendant as a non-exempt
2 employee during the Class Period. SOZ Dec., ¶ 14.

3 Among other claims, Plaintiff contends that Defendant failed to furnish accurate itemized wage
4 statements, failed to provide compliant meal and rest periods, failed to pay for all time worked, failed
5 to reimburse for required expenses, and failed to pay all wages upon separation. Defendant forcefully
6 denies liability for each of Plaintiff's claims. SOZ Dec., ¶ 15.

7 On September 24, 2021, Plaintiff served Defendant and the Labor and Workforce Development
8 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). On December 1, 2021, Plaintiff
9 filed a class action complaint in the San Bernardino Superior Court, Case Number CIVSB2133207
10 ("Action"). The Action alleged nine causes of action against Defendant for: (1) Unfair Competition in
11 Violation of California Business & Professions Code §§ 17200, *et seq.*; (2) Failure to Pay Overtime
12 Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (3) Failure to Pay Minimum Wages in Violation
13 of California Labor Code §§ 1194, 1197 & 1197.1; (4) Failure to Provide Required Meal Periods in
14 Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to
15 Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC
16 Wage Order; (6) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226;
17 (7) Failure to Reimburse for Required Business Expenses in Violation of Cal. Lab. Code § 2802; (8)
18 Failure to Pay Wages When Due in Violation of Cal. Lab. Code §§ 201, 202, and 203; and (9) Violation
19 of the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*]. SOZ Dec., ¶ 16.

20 After engaging in extensive written discovery and depositions, the Parties agreed to mediate the
21 Action. To prepare for mediation, the Parties agreed to informally exchange additional documents and
22 data points subject to the mediation privilege, including but not limited to, employee handbooks, the
23 Class Members' payroll and time data, and certain data points. As discussed *infra*, Plaintiff's counsel
24 retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and
25 payroll data. SOZ Dec., ¶ 17.

26 On January 23, 2024, the Parties participated in a full day mediation with mediator Steven G.
27 Mehta, Esq. After arms-length negotiations and bargaining, the Parties reached an agreement and
28 signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted

1 and negotiated a long-form settlement agreement, which is the subject of the instant motion. SOZ Dec.,
2 ¶ 18.

3 On September 10, 2024, this Court granted preliminary approval of the Settlement. SOZ Dec., ¶
4 4. Shortly, thereafter, the Settlement Administrator mailed Notice Packets to all 176 Settlement Class
5 members. Apex Dec., ¶¶ 4-7. 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. Agreement, ¶ I(II). As of the date of the filing of this motion, 100% of the Class Members
8 will be participating in the Settlement and will receive an Individual Settlement Payment. Apex Dec.,
9 ¶¶ 13.

10 **III. THE SETTLEMENT BEFORE THE COURT**

11 The Court preliminarily approved a Gross Settlement Amount of \$300,000.00. The Gross
12 Settlement Amount is all-in with no reversion to Defendant. Agreement, ¶ III(A)(1). The Net Settlement
13 Amount shall be used for the payment of all Individual Settlement Payments to satisfy all Released
14 Claims. The Settlement Administrator will calculate Individual Settlement Payments by adding up the
15 total number of Workweeks for all Class Members. The respective Workweeks for each Class Member
16 will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each
17 Class Member. Each Class Member's Payment Ratio is then multiplied by the Net Settlement Amount
18 to calculate each Class Member's estimated Individual Settlement Payment. Agreement, ¶ III(M)(1).
19 The Settlement Administrator estimates the average Individual Settlement Payment is **\$877.84** and the
20 highest Individual Settlement Payment is **\$4,210.70**. Apex Dec., ¶ 15.

21 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
22 Plaintiff and the Settlement Class Members will release the Released Parties from the Released Class
23 Claims for the Class Period. As of the funding of the Gross Settlement Amount, Plaintiff, the LWDA,
24 and the State of California will release the Released Parties from the Released PAGA Claims for the
25 PAGA Period. Agreement, ¶¶ III(B)-(C).

26 Apex Class Action, LLC was appointed as the Settlement Administrator for the class. The
27 Settlement Administration Costs are **\$5,500.00**. Apex Dec., ¶ 18. These expenses shall be paid from the
28 Gross Settlement Amount. Agreement, ¶ III(M)(12).

1 Subject to Court approval, Class Counsel shall seek a Class Counsel award in the amount of
2 \$120,000.00 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
3 to be at least \$100,000.00 and *up to* \$20,000.00 for actually incurred litigation expenses. Agreement, ¶
4 III(M)(10).

5 Subject to Court approval, the Agreement provides for an Enhancement Award in the amount of
6 \$10,000.00 for Plaintiff in consideration of her time, risk, and efforts as the Class Representative on
7 behalf of the Settlement Class and a broad release of claims, including a waiver of Civil Code section
8 1542. Settlement Agreement, ¶ III(M)(9).

9 As set forth in the Agreement, \$10,000.00 of the Gross Settlement Amount has been allocated for
10 civil penalties under the PAGA ("PAGA Payment"). Seventy-five percent (75%) of the PAGA Payment
11 will be paid to the California Labor Workforce and Development Agency ("LWDA Payment"). The
12 Settlement Administrator shall distribute the remaining twenty-five percent (25%) of the PAGA
13 Settlement to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement, ¶ III(M)(11).

14 As explained in further detail below, the Settlement is fair, adequate, and reasonable and should
15 be granted final approval. Given the complexities of this case, the defenses asserted, the uncertainty of
16 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is
17 fair, reasonable, and adequate, and should be granted final approval. SOZ Dec., ¶¶ 19-20.

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

20 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
21 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
22 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
23 *v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000).

24 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
25 action requires court approval." *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) *citing*
26 *Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). The
27 court must decide whether the proposed settlement falls within the range of reasonable settlements,
28 taking into account that settlements are compromises between the parties reflecting subjective,

unquantifiable judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple Computer*, 91 Cal.App.4th 224, 246 (2001) In *Wershba*, appellants argued that the settlement was too low given the “clear” liability, however, the Court rejected this argument and held that “the merits of the underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba*, *supra*, at 246; see also *7-Eleven*, *supra*, at 1150. In these cases, Courts have repeatedly emphasized that there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. The presumption of fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm’s-length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal. App. 4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here, all of these factors support a presumption of fairness.

V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

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

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

The list of factors is not exhaustive and should be tailored to each case. *Dunk*, *supra*, at 1801. Due regard should be given to what is otherwise a private consensual agreement between the parties.

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

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

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

9 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
10 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
11 assessed the value of the class claims using data and documents provided by Defendant in informal
12 discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the
13 number of Class Members, workweeks, and average rate of pay in order to assess damages before
14 mediation. Class Counsel retained Berger Consulting Group to analyze Defendant’s time and payroll
15 data to formulate damage models estimating Defendant’s liability exposure. Class Counsel’s
16 investigation, research, experience, and damage models informed and guided the mediated negotiations
17 that resulted in this settlement. SOZ Dec., ¶¶ 21-28.

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

19 The Settlement is the product of a mediation session with a respected mediator and negotiations
20 over the terms of the Settlement. The negotiations were adversarial, conducted at arm’s length and
21 tempered by the efforts of both sides to serve the interests of their clients. SOZ Dec., ¶ 29.

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

23 Class Counsel in this matter have extensive class action experience in multiple fields and have
24 represented tens-of-thousands of persons in class actions. Class Counsel’s experience is summarized
25 in their concurrently filed declarations. Class Counsel have concluded that the settlement is fair,
26 adequate, and reasonable and in the best interests of the Class. SOZ Dec., ¶¶ 31-37; Declaration of
27 Jean-Claude Lapuyade, filed concurrently herewith, ¶ 3.

28 ///

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

2 The reaction of the Settlement Class unequivocally supports approval of the Settlement. To date,
3 none of the 176 members of the Settlement Class opted-out of the Settlement. Moreover, there are zero
4 objections. Stated differently, 100% of the Settlement Class has chosen to participate in the Settlement.
5 SOZ Dec., ¶ 10; Apex Dec., ¶¶ 11-13.

6 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement
7 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp.
8 2d 164, 175 (S.D.N.Y. 2000). Consequently, Class Counsel respectfully request the Court to follow the
9 unanimous approval of the Settlement Class and grant final approval of the Settlement.

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

12 Although Plaintiff and Class Counsel believe that Plaintiff's case has merit, they recognize the
13 potential risks both sides would face if litigation of this action continued. As the federal court in *Glass*
14 *v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
15 litigation:

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

23 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
24 certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176
25 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class
26 certification because employees' declarations attesting to having taken meal and rest breaks
27 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*
28 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification
of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
Express Corp. (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
period claims based on the predominance of individual issues). SOZ Dec., ¶ 33.

1 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of
2 Defendant’s liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*
3 *Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a
4 wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088
5 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized
6 questions of fact not susceptible to class treatment.”). SOZ Dec., ¶ 34.

7 Finally, even if a class is certified and Defendant is found liable for the class claims alleged,
8 post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and
9 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*
10 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded
11 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and
12 directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber*
13 *Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification
14 action). SOZ Dec., ¶ 35.

15 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
16 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
17 factor favoring settlement. SOZ Dec., ¶ 36.

18 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
19 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
20 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
21 affect the value of Plaintiff’s claims and, in fact, already has. SOZ Dec., ¶ 37.

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

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

1 Plaintiffs.....[T]he Total Settlement amount and the Class Members'
2 expected net recovery, after fees and other costs are deducted, appear
to be a reasonable compromise, in light of the risks of litigation.

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

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

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

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

14 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendant through
15 possible appeals, which could take another three years. In arriving at their informed belief that the
16 present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk
17 inherent in complex actions such as this one. Class Counsel are also mindful of and recognize the
18 inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
19 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
20 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
21 Plaintiff and Class Counsel believe that the Settlement confers substantial monetary and non-monetary
22 benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have
23 determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair,
24 reasonable, and adequate, and should be granted final approval. SOZ Dec., ¶ 38.

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

26 The Gross Settlement Amount of \$300,000.00 in this case is fair and well within the range of
27 recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement
28 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the

1 various potential impediments to recovery. Class Counsel developed varied economic damages models
2 measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation.
3 The various models were informed by Class Counsel's investigation, including the analysis of a
4 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
5 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on
6 behalf of the Settlement Class. The Gross Settlement Amount represents approximately 52.05% of
7 Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. SOZ
8 Dec., ¶ 39.

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

16 The settlement provides significant relief to the Settlement Class Members. The average
17 settlement payment is approximately **\$877.84**, and the highest is approximately **\$4,210.70**. Apex Dec.,
18 ¶ 15. This average net recovery is greater than many wage and hour class action settlements approved
19 by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-
20 00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v.*
21 *Pizza Hut*, Case No. BC302589 (LA. County Super. Ct.) (average net recovery of approximately \$120);
22 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net
23 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018
24 (L.A. County Super. Ct.) (average net recovery of approximately \$90).

25 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
26 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
27 experienced counsel, the settlement is entitled to final approval. SOZ Dec., ¶ 40.

28 ///

1 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**
2 **ARE REASONABLE**

3 Courts routinely approve amounts for PAGA penalties in the range of zero to two percent of the
4 settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No.
5 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
6 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
7 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim
8 settlements in the range of zero to two percent of the total settlement).

9 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of
10 \$10,000.00 which is 3.33% of the Gross Settlement Amount. This amount falls well within the range
11 of approved PAGA Payments. Seventy-five percent (75%) of the PAGA Settlement will be paid to the
12 LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) to be distributed to the
13 Aggrieved Employees, which is within the range of PAGA penalties approved by courts and should
14 be approved. SOZ Dec., ¶ 41.

15 Further, on May 22, 2024, Class Counsel gave the LWDA notice of this Settlement and
16 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with
17 the LWDA. On December 18, 2024, Plaintiff gave the LWDA notice of this motion seeking final
18 approval of this settlement. SOZ Dec., ¶¶ 5-6, 42. By not registering an objection with either Class
19 Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

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

21 As part of the settlement, the parties agreed to a Class Counsel award comprised of \$100,000.00
22 for attorneys’ fees (one-third of the Gross Settlement Amount) and *up to* \$20,000.00 for
23 reimbursement of actually incurred litigation expenses. The requested attorneys’ fee portion of the
24 Class Counsel award equal to one-third of the Gross Settlement Amount, is fair compensation and,
25 respectfully, should be approved. Class Counsel undertook complex, risky, and time-consuming wage
26 and hour litigation on a contingent basis. The attorneys’ fee portion of the requested Class Counsel
27 award is within the historically recognized range attorneys’ fees awarded in common fund class action
28 settlements – between 25% and 50% – and is supported by Class Counsel’s lodestar cross-check with

1 a reasonable negative 0.78 multiplier. That is well-below the 2.13 multiplier approved by the Supreme
2 Court in *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, with additional work to be
3 performed, and within the recognized multiplier range of between 2 and 4³. Thus, the reasonableness
4 of the requested Class Counsel award is confirmed by reference to the lodestar with a reasonable
5 multiplier with significant additional work still to be performed. SOZ Dec., ¶¶ 43-52.

6 **A. Common Fund**

7 Courts have long recognized that when class counsel's efforts result in the creation of a common
8 fund that benefits plaintiffs and unnamed class members, class counsel have an equitable right to be
9 compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)
10 ("recogniz[ing] consistently that a litigant or a lawyer who recovers a common fund...is entitled to a
11 reasonable attorney's fee from the fund as a whole"); *Laffitte*, 1 Cal. 5th at 488-89 (common fund
12 doctrine "long recognized" under California law). The common fund doctrine rests on the
13 understanding that attorneys should normally be paid by their clients and that, unless attorneys' fees
14 are paid out of the common fund, those who benefit from the fund will be "unjustly enriched." *Boeing*,
15 444 U.S. at 478.

16 As noted above, in *Laffitte*, the California Supreme Court upheld the trial court's award of
17 33.33% of the settlement amount of \$19 million with a 2.13 multiplier and affirmed that "empirical
18 studies show the percentage method with a lodestar cross-check is the most prevalent form of fee
19 method in practice." *Laffitte*, 1 Cal. 5th at 496-97. In fact, courts have historically awarded between
20 25% and 50% of the common fund as attorneys' fees class action settlements. *In re Warner*
21 *Communications*, 618 F.Supp. 735, 749-50 (S.D.N.Y 1985).

22 Here, the fairest way to calculate a reasonable fee when contingency-fee litigation has produced
23 a fixed settlement amount for the Settlement Class Members is by awarding Settlement Class Counsel
24 a percentage of the total settlement sum. *See, e.g., In re Bluetooth Headset Products Liab. Litig.*, 654
25 F.3d 935, 942 (9th Cir. 2011). More importantly, a fee award under the common fund method here

27 ³ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with 2 multiplier); *Wershba v. Apple Computer*, 91 Cal.
28 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).

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 (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 request attorneys’ fees in the amount of \$100,000.00 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. SOZ Dec., ¶¶ 57-58.

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., percentage of the fund with a lodestar cross check. As explained below, the reasonableness of the requested \$100,000.00 attorneys’ fee award is further supported by the lodestar cross-check.

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

Class Counsel’s lodestar to date is \$126,904.50 *exclusive of costs*, with significant work remaining. SOZ Dec., ¶¶ 47-51. Thus, Class Counsel’s fee request is equal to Class Counsel’s lodestar with a negative 0.78 multiplier – below the 2.13 multiplier approved in *Laffitte* – is well within the recognized multiplier range between 2 and 4. *See also 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).

1 Because the Settlement in this case is a pure common fund case, and the percentage of the fund
2 is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award based
3 upon the percentage of the common fund. Moreover, Class Counsel's lodestar supports the requested
4 attorneys' fees with a multiplier well within the recognized range reasonableness, and in fact, below
5 what the California Supreme Court approved in *Laffitte*. SOZ Dec., ¶ 50.

6 Although no rigid formula applies, an analysis of each of the following "basic factors" that
7 California courts typically consider further supports the reasonableness of a fee request: **(1)** the result
8 class counsel obtained; **(2)** the time and labor required of the attorneys; **(3)** the contingent nature of
9 the case and the delay in payment to class counsel; **(4)** the extent to which the nature of the litigation
10 precluded other employment by class counsel; **(5)** the experience, reputation, and ability of the
11 attorneys who performed the services, the skill they displayed in the litigation, and the novelty,
12 complexity and difficulty of the case; and **(6)** the informed consent of the clients to the fee agreement.
13 *Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1810 n.2.
14 Those factors support Class Counsel's request and are addressed in more detail in Counsel's
15 declarations submitted concurrently herewith. In short: **(1)** Considering the issues presented in the
16 case, the Gross Settlement Amount of \$300,000.00, is an excellent result for the Settlement Class, **(2)**
17 Collectively, Class Counsel worked hard on this case and expended approximately 236.7 hours in the
18 prosecution of this litigation in the over 3 years since it was filed for a total lodestar of \$126,904.50,
19 **(3)** Class Counsel undertook this litigation on a contingent-fee basis, assuming a significant risk that
20 the litigation would yield no recovery after many years of work, **(4)** Class Counsel negotiated a one-
21 third contingency fee arrangement, which is a reasonable arrangement to obtain competent counsel in
22 the marketplace for representation in wage and hour class actions of this nature, and it is only equitable
23 that Settlement Class who share in the excellent results achieved by this Settlement bear their pro rata
24 share of the attorney's fees award to Class Counsel, **(5)** Class Counsel possesses significant experience
25 litigating complex wage and hour class actions and the way this Settlement was achieved is
26 demonstrative of the highly efficient way this litigation was managed and resolved (See Class
27 Counsel's declarations for a detailed outline of their skills and experience), and **(6)** Settlement Class
28 Counsel's hourly rates, which are set forth in the concurrently filed declarations of Shani O. Zakay,

Esq. and Jean-Claude Lapuyade, 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. SOZ Dec., ¶¶ 53-67.

C. Class Counsel's Costs

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

As of the date of this filing, Class Counsel have incurred a total of \$22,287.54 litigating this action. All of Class Counsel's out-of-pocket expenses are the types of expenses normally charged to paying clients including the following: filing fees; copying; postage; factual and legal research charges; mediation fees; and expert costs, which were all incurred during, and were necessary for the successful prosecution of, the litigation and, therefore, should be reimbursed. SOZ Dec. ¶¶ 7, 68-70; JCL Dec., ¶¶ 4, 19.

D. Plaintiff's Enhancement Award Is Reasonable and Should be Approved

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

As a preliminary matter, Plaintiff granted Defendant a broad and general release of all claims arising from her employment. In exchange, the Plaintiff's Enhancement Award is, in part, intended to compensate Plaintiff for executing this general release. This release is far broader than the release that binds the remainder of the Settlement Class. SOZ Dec., ¶ 71.

Regarding the amount of the requested award, courts frequently approve awards of \$10,000.00

1 or more. *See In re Cellphone*, 186 Cal.App.4th 1380. The amount of the requested Enhancement
2 Award to Plaintiff for \$10,000.00 is reasonable by reference to the amounts that California courts
3 (both federal and state) have repeatedly awarded in similar class action settlements. Further, the
4 unanimous consent by the Class Members favors the Court's approval of the requested Enhancement
5 Award. Equally important, the time, effort, and services provided to the Settlement Class justifies the
6 requested Enhancement Award. The Class Representative performed her duties to the Settlement
7 Class admirably. Plaintiff's work is summarized in her declaration filed concurrently herewith.
8 Plaintiff assumed the serious risk of liability for Defendant's costs and potentially fees if the case was
9 unsuccessful. Nevertheless, Plaintiff knowingly and voluntarily undertook the risk to vindicate the
10 rights of the Settlement Class. SOZ Dec., ¶¶ 71-75.

11 **VIII. CONCLUSION**

12 Plaintiff respectfully submits that the proposed settlement satisfies the standards of fairness
13 established by California law and should therefore be finally approved as fair, reasonable, and adequate
14 and requests entry of the Final Approval Order and Judgment submitted herewith. Further, based on the
15 foregoing, Class Counsel respectfully requests approval of the Class Counsel award in the amount of
16 \$120,000.00, comprised of (1) \$100,000.00 as compensation for attorneys' fees (one-third of the Gross
17 Settlement Amount of \$300,000.00) and (2) litigation expenses *up to* \$20,000.00 as supported by Class
18 Counsel's billing records. Class Counsel and the Class Representative also respectfully request approval
19 of the requested Enhancement Award in the amount of \$10,000.00 to Plaintiff.

20
21 Dated: December 18, 2024

ZAKAY LAW GROUP, APLC

22 By: 

23 Shani O. Zakay, Esq.
24 Attorneys for Plaintiff
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