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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

LUCAS DELACRUZ, an individual, on
behalf of himself, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

WAL-MART ASSOCIATES, INC., a
Delaware Corporation; BONOBO, INC., a
Delaware Corporation; and DOES 1 through
50, Inclusive;

Defendants.

Case No. 37-2021-00046421-CU-OE-CTL

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

Date: October 20, 2023

Time: 8:30 a.m.

Judge: Hon. Keri Katz

Dept.: C-74

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I. INTRODUCTION

Plaintiff LUCAS DELACRUZ (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 304 Settlement Class Members employed by Defendant Bonobos, Inc., and Defendant Wal-Mart Associates, Inc. (“Defendants”) during the Class Period. Plaintiff and Class Counsel also seek approval of a payment of Attorneys’ Fees in the amount of **\$165,000.00** comprised of \$150,000.00 (one-third of the Gross Settlement Amount) and Attorneys’ Expenses of up to \$15,000.00 for reimbursement of actually incurred litigation expenses.²

An objective evaluation of the proposed settlement of \$450,000.00 (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, guided by the wisdom and experience of Jeffery A. Ross, Esq., a respected mediator. JCL Dec., ¶ 10. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$242,500.00**, an average Individual Settlement Payment of **\$797.70**, high payment of **\$4,670.80**, and a low payment of **\$4.79**. Aggrieved Employees will receive an estimated average gross payment of **\$37.43**, a high payment of **\$129.01**, and a low payment of **\$0.28**. Declaration of Madely Nava (“Apex Dec.”), ¶¶ 15-16.

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

II. OVERVIEW OF THE LITIGATION

Defendant Bonobos operates an e-commerce clothing retailer, throughout California, including San Diego County where Plaintiff worked. Walmart owned Bonobos during the Class Period. This action asserts claims on behalf of all current and former non-exempt California employees who worked

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

² Currently Class Counsel’s actually incurred litigation expenses are \$17,514.56 Class Counsel will provide an updated total at the time of hearing on this motion.

1 at Defendant Bonobos stores, including Walmart employees who worked at Bonobos stores, at any time
2 during the period beginning November 1, 2017, through March 6, 2023. At all times during his
3 employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and/or rest
4 periods, and minimum, regular and overtime wages for all hours worked. Throughout his employment,
5 Plaintiff was subject to Defendants' written policies and procedures contained in, among other
6 documents, the "Rest Breaks, Meal Periods and Days of Rest Policy" and "Associate Pay Policy." JCL
7 Dec., ¶ 13; Declaration of Lucas Delacruz ("Delacruz Dec.") at ¶¶ 3.

8 On January 20, 2021, Plaintiff filed a class action complaint in the San Diego Superior Court,
9 Case Number 37-2021-00002597-CU-OE-CTL ("Class Action"). The Class Action alleged eleven
10 causes of action against Defendants for violations of the California labor code. JCL Dec., ¶ 14.

11 On December 27, 2021, Plaintiff filed the operative First Amended Complaint, which dismissed
12 the causes of action for failure to pay sick pay at the correct rate (Labor Code § 246) and failure to
13 provide wages when due in violation of California Labor Code §§ 201 - 204. On August 31, 2022,
14 Plaintiff filed a Second Amended Complaint for the purpose of incorporating the claims and factual
15 allegations for an alleged failure to provide seating claim. JCL Dec., ¶ 15.

16 On April 17, 2023, Plaintiff filed a Third Amended Complaint to read the previously dismissed
17 claims for Defendants' failure to provide wages when due, and to add allegations for off-the-clock
18 Covid-19 screenings. JCL Dec., ¶ 16.

19 Generally, Plaintiff claims that Defendants failed to pay overtime at the regular rate of pay, failed
20 to provide meal breaks and rest breaks, failed to reimburse for required business expenses, failed to pay
21 minimum wages, and failed to issue accurate itemized wage statements. Defendants forcefully deny
22 liability for each of Plaintiff's claims. As detailed in the motion for preliminary approval, Defendants
23 asserts that it fully complied with all applicable employment laws and raised several other significant
24 defenses to Plaintiff's claims. JCL Dec., ¶ 17.

25 Plaintiff commenced written discovery in February 2022. Before answering Plaintiff's written
26 discovery, the Parties agreed to mediate the action. In anticipation of mediation, the Parties agreed to
27 stay formal discovery and continue deadlines for class certification. JCL Dec., ¶ 18.

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1 To prepare for mediation, the Parties agreed to informally produce additional documents and
2 data points subject to the mediation privilege, including but not limited to, a sampling of the Class
3 Members' time and payroll data, and pertinent written wage and hour policies. Plaintiff's counsel
4 retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and
5 payroll data. JCL Dec., ¶ 19.

6 On March 6, 2023, the Parties participated in a full day mediation with Jeffery A. Ross, Esq., an
7 experienced mediator of class and PAGA actions. After arms-length negotiations and bargaining, the
8 Parties accepted a Mediator's proposal and signed a Memorandum of Understanding. After reaching
9 an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which
10 is the subject of the instant motion. JCL Dec., ¶ 20.

11 On May 18, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶¶ 4, 21.
12 Shortly thereafter, on June 7, 2023, the Settlement Administrator mailed Notice Packets to all 304
13 Settlement Class members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five
14 (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to
15 the Settlement. Agreement, ¶ I(HH). In response, 100% of the Class Members are participating in the
16 Settlement. Apex Dec., ¶ 13.

17 **III. THE SETTLEMENT BEFORE THE COURT**

18 The Court preliminarily approved a Gross Settlement Amount of \$450,000.00. The Gross
19 Settlement Amount is all-in with no reversion to Defendants. Agreement, ¶ III(A)(1). The Net
20 Settlement Amount shall be used for the payment of all Individual Settlement Payments to satisfy all
21 Released Class Claims. The Settlement Administrator will calculate Individual Settlement Payments by
22 adding up the total number of Workweeks for all Class Members. The respective Workweek for each
23 Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment
24 Ratio for each Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by
25 the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment.
26 Agreement, ¶ III(M)(1). The Settlement Administrator estimates the average Individual Settlement
27 Payment is \$797.70, the highest Individual Settlement Payment is \$4,670.80, and the lowest Individual
28 Settlement Payment is \$4.79. Apex Dec., ¶ 15.

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

4 Apex Class Action LLC was appointed as the Settlement Administrator for the class. The
5 Settlement Administration Cost is \$7,500.00. Apex Dec., ¶ 14. These expenses shall be paid from the
6 Gross Settlement Amount. Agreement, ¶ III(M)(12).

7 Subject to Court approval, Class Counsel shall seek Attorneys' Fees and Expenses in the amount
8 of \$165,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount
9 estimated to be at least \$150,000.00 and up to \$15,000.00 for actually incurred litigation expenses.
10 Agreement, ¶ III(M)(10).

11 Subject to Court approval, the Agreement provides for a Service Award in the amount of \$10,000
12 for Plaintiff in consideration of his time, risk, and efforts as the Class Representative on behalf of the
13 Settlement Class. Agreement, ¶¶ I(O), III(M)(9).

14 As set forth in the Agreement, \$25,000 of the Gross Settlement Amount has been allocated for
15 civil penalties under the PAGA ("PAGA Penalties"). Seventy-Five percent of the PAGA Penalties will
16 be paid to the California Labor Workforce and Development Agency ("LWDA Payment"). The
17 Settlement Administrator shall distribute the remaining 25% of the PAGA Penalties to the Aggrieved
18 Employees ("Aggrieved Employee Payment"). Agreement, ¶ III(M)(11).

19 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
20 and should be granted final approval. Given the complexities of this case, the defenses asserted, and the
21 uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed
22 settlement is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 22-23.

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

25 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
26 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
27 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
28 *v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000).

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

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

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

23 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*
24 *Fargo Bank*, 220 Cal.App.3d 1117, 1138 (1990). “The well-recognized factors that the trial court should
25 consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of
26 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of
27 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
28 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. *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.' [Citation omitted.]" *Id.*

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

A. Class Counsel Conducted a Thorough Investigation.

As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel assessed the value of the class claims using data and documents provided by Defendants through formal and informal discovery. Class Counsel obtained time, payroll, and policy records for the Class Members, aggregate workweek and pay period data, and copies of applicable handbooks containing, *inter alia*, compensation, timekeeping, and meal and rest period policies. 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 model informed and guided the mediated negotiations that resulted in this settlement. JCL Dec., ¶ 24-31.

B. The Parties Settled at Mediation.

The Settlement is the product of a mediation session with a respected mediator and subsequent negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arms-length and tempered by the efforts of both sides to serve the interests of their clients. JCL Dec., ¶ 32-33.

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

2 Class Counsel in this matter has extensive class action experience in multiple fields and has
3 represented tens-of-thousands of persons in class actions. Class Counsel’s experience is summarized
4 in their concurrently filed declarations. Class Counsel has concluded the settlement is fair, adequate,
5 and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 9, 34-40; Declaration of Shani O.
6 Zakay (“Zakay Dec.”) ¶ 4.

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

8 The reaction of the Settlement Class unequivocally supports approval of the Settlement. To date,
9 none of the 304 members of the Settlement Class opted-out of the Settlement. Moreover, there are zero
10 objections. Stated differently, 100% of the Settlement Class chose to participate in the Settlement.
11 JCL Dec., ¶ 10; Apex Dec., ¶¶ 11-13.

12 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement
13 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp.
14 2d 164, 175 (S.D.N.Y. 2000) Consequently, Class Counsel respectfully request the Court to follow the
15 unanimous approval of the Settlement Class and grant final approval of the Settlement.

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

18 Although Plaintiff and Class Counsel believe that this case has merit, they recognized the
19 potential risks both sides would face if litigation of this action continued. JCL Dec., ¶ 41-42. As the
20 federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties
21 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.”

26 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
27 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
28 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110

1 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
2 trial court to enter judgement in favor of the employer. Consequently, the uncertainty of obtaining
3 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 43.

4 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes
5 that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair
6 the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
7 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶¶ 44.

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

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

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

22 **The potential complexity and possible duration of trial also weigh in**
23 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
24 of proving damages, recognize the uncertainty of outcome, and believe
25 defendant would appeal in the event of adverse judgment. A post-judgment
26 appeal would require many years to resolve and delay payment to class
27 members. Plaintiffs believe the benefits of a guaranteed recovery today
28 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.

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

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

1 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendants
2 through possible appeals which could take another three years. In arriving at their informed belief that
3 the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk
4 inherent in complex actions such as this one. Class Counsel are also mindful of and recognize the
5 inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
6 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
7 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
8 Plaintiff and Class Counsel believe that the Settlement confers substantial monetary and non-monetary
9 benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have
10 determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair,
11 reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 45.

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

13 The Gross Settlement Amount of \$450,000.00 in this case is fair and well within the range of
14 recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement
15 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the
16 various potential impediments to recovery. Class Counsel developed varied economic damages models
17 measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation.
18 The various models were informed by Class Counsel's investigation, including the analysis of a
19 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
20 process, Class Counsel projected a range of Defendants' liability exposure for the claims asserted on
21 behalf of the Settlement Class. The Gross Settlement Amount represents between approximately 10.5%
22 of Defendants' maximum liability and approximately 16.3% of Defendants' *class-wide* liability
23 exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 46.

24 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
25 Court for the Northern District of California granted final approval in a wage and hour misclassification
26 action and found that the total settlement representing 10% of the estimated trial award was within the
27 "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454,
28 459 (9th Cir. 2000), the Ninth Circuit approved a settlement representing "roughly one-sixth of the

1 potential recovery.” Given the amount of the settlement here as compared to potential value of the
2 claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable.

3 The settlement provides significant relief to the Settlement Class Members. The average
4 settlement payment is approximately **\$797.70**, the highest is approximately **\$4,670.80**, and the lowest
5 is approximately **\$4.79**. Apex Dec., ¶ 15. This average net recovery is greater than many wage and
6 hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99*
7 *Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of
8 approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net
9 recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
10 County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department*
11 *Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately
12 \$90).

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 entitled to final approval. JCL Dec., ¶ 47.

16 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE**
17 **REASONABLE**

18 Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of
19 the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*,
20 No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA
21 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL
22 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements
23 in the range of zero to two percent of the total settlement).

24 Here, Plaintiff and Defendants negotiated a good faith PAGA Penalties in the amount of \$25,000
25 which is 5.5% of the Gross Settlement Amount. This amount falls well within the range of approved
26 PAGA Penalties. Seventy-Five percent (75%) of the PAGA Penalties (\$18,750) will be paid to the
27 LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Penalties
28 (\$6,250) to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties

1 approved by courts and should be approved. JCL Dec., ¶ 48.

2 Further, on April 13, 2023, Class Counsel gave the LWDA notice of this Settlement and
3 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with
4 the LWDA. On September 14, 2023, Plaintiff gave the LWDA notice of this motion seeking final
5 approval of this settlement. JCL Dec., ¶¶ 5-6, 49. By not registering an objection with either Class
6 Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Penalties.

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

8 As part of the settlement, the parties agreed to Attorneys’ Fees and Expenses of **\$165,000.00**,
9 comprised of \$150,000.00 for attorneys’ fees (one-third of the Gross Settlement Amount) and up to
10 \$15,000.00 for reimbursement of actually incurred litigation expenses. The requested attorneys’ fee
11 portion of the Attorneys’ Fees and Expenses equal to one-third of the Gross Settlement Amount is fair
12 compensation and, respectfully, should be approved. Class Counsel undertook complex, risky, and
13 time-consuming wage and hour litigation on a contingent basis. Further, the attorneys’ fee portion of
14 the requested Attorneys’ Fees and Expenses are within the historically recognized range attorneys’ fees
15 awarded in common fund class action settlements – between 25% and 50% – and is supported by Class
16 Counsel’s lodestar cross-check with a reasonable 1.05 multiplier. That is well-below the 2.13 multiplier
17 approved by the Supreme Court in *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, with
18 additional work to be performed, and within the recognized multiplier range of between 2 and 4³. Thus,
19 the reasonableness of the requested Attorneys’ Fees and Expenses is confirmed by reference to the
20 lodestar with a reasonable multiplier with significant additional work still to be performed. JCL Dec.,
21 ¶¶ 50-57.

22 **A. Common Fund**

23 Courts have long recognized that when class counsel’s efforts result in the creation of a common
24 fund that benefits plaintiffs and unnamed class members, class counsel have an equitable right to be
25 compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)

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).

1 (“recogniz[ing] consistently that a litigant or a lawyer who recovers a common fund...is entitled to a
2 reasonable attorney’s fee from the fund as a whole”); *Laffitte*, 1 Cal. 5th at 488-89 (common fund
3 doctrine “long recognized” under California law). The common fund doctrine rests on the
4 understanding that attorneys should normally be paid by their clients and that, unless attorneys’ fees
5 are paid out of the common fund, those who benefit from the fund will be “unjustly enriched.” *Boeing*,
6 444 U.S. at 478.

7 As noted above, in *Laffitte*, the California Supreme Court upheld the trial court’s award of
8 33.33% of the settlement amount of \$19 million dollars with a 2.13 multiplier and affirmed that
9 “empirical studies show the percentage method with a lodestar cross-check is the most prevalent form
10 of fee method in practice.” *Laffitte*, 1 Cal. 5th at 496-97. In fact, courts have historically awarded
11 between 25% and 50% of the common fund as attorneys’ fees class action settlements. *In re Warner*
12 *Communications*, 618 F.Supp. 735, 749-50 (S.D.N.Y 1985).

13 Here, the fairest way to calculate a reasonable fee when contingency-fee litigation has produced
14 a fixed settlement amount for the Settlement Class Members is by awarding Settlement Class Counsel
15 a percentage of the total settlement sum. *See, e.g., In re Bluetooth Headset Products Liab. Litig.*, 654
16 F.3d 935, 942 (9th Cir. 2011). More importantly, a fee award under the common fund method here
17 would achieve the two underlying goals of the common fund doctrine by: (1) equitably requiring the
18 beneficiaries of the common fund to pay their pro rata share of fees incurred in creating the fund; and
19 (2) providing an incentive to attract competent counsel to handle wage and hour class actions, which
20 California courts recognize as a fundamental tool to ensure the effective enforcement of the Labor Code
21 and minimum labor standards. *See, e.g., Gentry v. Super. Ct.*, 42 Cal. 4th 443, 455-56 (2007) (overruled
22 on other grounds by *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014)
23 (emphasizing the indispensable value of private enforcement of California’s wage-and-hour laws
24 through class actions).

25 The Agreement provides for payment of the Attorneys’ Fees and Expenses from the common
26 fund. Accordingly, it is well within the Court’s discretion to award fees to Class Counsel under the
27 common fund doctrine. Class Counsel requests attorneys’ fees in the amount of \$150,000.00
28 representing one-third of the Gross Settlement Amount. Class Counsel’s request is consistent with

many fee awards in similar wage and hour class actions. Moreover, the requested attorneys' fee award is in the middle of historically recognized range of attorneys' fees awarded in common fund settlements. JCL Dec., ¶¶ 58-59.

The attorneys' fee portion of the Attorneys' Fees and Expenses 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 further explained below, the reasonableness of the requested \$150,000.00 attorneys' fee award is further supported by the lodestar cross-check. JCL Dec., ¶ 60.

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

Class Counsel's lodestar to date is \$141,673.97 *exclusive of costs*, with significant work remaining. JCL Dec., ¶¶ 50-52. Thus, Class Counsel's fee request is equal to Class Counsel's lodestar with a 1.05 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).

Because the Settlement in this case is a pure common fund case, and the percentage of the fund is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award based upon the percentage of the common fund. Moreover, Class Counsel's lodestar supports the requested attorneys' fees with a multiplier well within the recognized range reasonableness, and in fact, below what the California Supreme Court approved in *Laffitte*. JCL Dec., ¶ 61.

Although no rigid formula applies, an analysis of each of the following "basic factors" that California courts typically consider further supports the reasonableness of a fee request: (1) the result class counsel obtained; (2) the time and labor required of the attorneys; (3) the contingent nature of the case and the delay in payment to class counsel; (4) the extent to which the nature of the litigation precluded other employment by class counsel; (5) the experience, reputation, and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity and difficulty of the case; and (6) the informed consent of the clients to the fee agreement. *Serrano v. Priest*,

20 Cal. 3d 25, 49 (1977); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1810 n.2. Those factors support Class Counsel's request and are addressed in more detail in Counsel's declarations submitted concurrently herewith. In short: **(1)** Considering the issues presented in the case, the Gross Settlement Amount of \$450,000.00 is an excellent result for the Settlement Class, **(2)** Collectively, Class Counsel worked hard on this case and, expended approximately 282.7 hours in the prosecution of this litigation in the nearly two years since it was filed for a total lodestar of \$141,673.97, **(3)** Class Counsel undertook this litigation on a contingent-fee basis, assuming a significant risk that the litigation would yield no recovery after many years of work, **(4)** Class Counsel negotiated a one-third contingency fee arrangement, which is a reasonable arrangement to obtain competent counsel in the marketplace for representation in wage and hour class actions of this nature, and it is only equitable that Settlement Class who share in the excellent results achieved by this Settlement bear their pro rata share of the attorney's fees award to Class Counsel, **(5)** Class Counsel possesses significant experience litigating complex wage and hour class actions and the way this Settlement was achieved is demonstrative of the highly efficient way this litigation was managed and resolved (*See* Class Counsel's declarations for a detailed outline of their skills and experience), and **(6)** Class Counsel's hourly rates are set forth in the concurrently filed declarations of Jean-Claude Lapuyade, Esq., and Shani Zakay, Esq. are well within the range of rates billed by comparable attorneys in this market and reasonably compare with rates approved by other trial courts in wage and hour class action litigation. JCL Dec., ¶¶ 62-76; Zakay Dec., ¶ 5-7.

C. Class Counsel's Costs

Moreover, 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 has incurred a total of \$17,514.56 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; mediation fees; and expert costs,

1 which were all incurred during, and were necessary for the successful prosecution of, the litigation and,
2 therefore, should be reimbursed. JCL Dec. ¶¶ 7, 77-79; Zakay Dec., ¶¶ 7-8.

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

4 Courts routinely approve service awards to compensate named plaintiffs for the services they
5 provide and the risks they incur during the class litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th
6 715, 726 (2004) The factors courts use in determining the amount of service awards include: (1) a
7 comparison between the service awards and the range of monetary recovery available to the class; (2)
8 time and effort put into the litigation; (3) whether the litigation will further the public policy underlying
9 the statutory scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, 175
10 Cal.App.4th 785, 804-805 (2009).

11 Regarding the amount of the requested award, courts frequently approve awards of \$10,000.00
12 or more. *See In re Cellphone*, 186 Cal.App.4th 1380. The amount of the requested Service Award to
13 Plaintiff for \$10,000 is reasonable by reference to the amounts that California courts (both federal and
14 state) have repeatedly awarded in similar class action settlements. Further, the unanimous consent by
15 the Class Members favors the Court's approval of the requested Service Award. Equally important, the
16 time, effort, and services provided to the Settlement Class justifies the requested Service Award. The
17 Class Representative performed his duties to the Settlement Class admirably. Plaintiff's work is
18 summarized in her declaration filed concurrently herewith. Plaintiff assumed the serious risk of liability
19 for Defendants' costs and potentially fees if the case was unsuccessful. Nevertheless, Plaintiff
20 knowingly and voluntarily undertook the risk to vindicate the rights of the Settlement Class. Delacruz
21 Dec. ¶ 1-12; JCL Dec., ¶ 80-84.

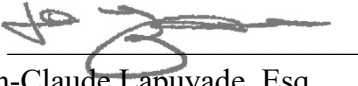
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1 **VIII. CONCLUSION**

2 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
3 established in California law and should therefore be finally approved as fair, reasonable, and adequate
4 and requests entry of the Final Approval Order and Judgment submitted herewith. Further, based on the
5 foregoing, Class Counsel respectfully requests approval of the Attorneys' Fees and Expenses payment
6 in the amount of \$165,000.00, comprised of (1) \$150,000.00 as compensation for attorneys' fees (one-
7 third of the Gross Settlement Amount of \$450,000.00) and (2) litigation expenses up to \$15,000.00 as
8 supported by Class Counsel's billing records. Class Counsel and the Class Representative also
9 respectfully request approval of the requested Service Award in the amount of \$10,000 to Plaintiff.

10 Dated: September 14, 2023

JCL LAW FIRM, APC

11 By: 

12 Jean-Claude Lapuyade, Esq.
13 Attorneys for Plaintiff
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