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

LUIS DE JESUS CLAUDIO, an individual,  
on behalf of himself, and on behalf of all  
persons similarly situated,

Plaintiff,

v.

UNI CARE HOME HEALTH INC., a  
California Corporation; and DOES 1 through  
50, Inclusive,

Defendants.

Case No. 37-2022-00003063-CU-OE-CTL

Action Filed: January 25, 2022

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

Date: December 6, 2024  
Time: 9:30 a.m.

Judge: Hon. Wendy M. Behan  
Department: C-66

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1 I. INTRODUCTION

2 Plaintiff LUIS DE JESUS CLAUDIO (hereinafter “Plaintiff”) seeks final approval of the  
3 Stipulation of Settlement of Class and PAGA Action and Release of Claims (“Agreement”)<sup>1</sup>, which if  
4 approved, would provide valuable monetary relief for 152 Settlement Class Members employed by  
5 Defendant UNI CARE HOME HEALTH INC. (“Defendant”) during the Class Period. Plaintiff and  
6 Class Counsel also seek approval of the Class Counsel Award in the amount of **\$153,333.33** comprised  
7 of \$133,333.33 for attorneys’ fees (one-third of the Gross Settlement Amount) and up to \$20,000.00 for  
8 reimbursement of actually incurred litigation expenses<sup>2</sup>.

9 An objective evaluation of the proposed settlement of \$400,000.00 (“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 Louis Marlin, Esq., an experienced wage and hour  
13 class and PAGA action mediator. SOZ Dec., ¶ 10. Plaintiff estimates that the Settlement, if approved,  
14 would result in a Net Class Settlement Amount of approximately \$211,166.67, with an average  
15 Individual Settlement Payment of **\$1,389.25** and a high payment of \$6,232.94, and a Net PAGA  
16 Settlement Amount of approximately \$5,000, with an average Individual Settlement Payment of **\$41.32**  
17 and a high payment of \$150.93. Declaration of Madely Nava (“Apex Dec.”), ¶¶ 15 and 17; SOZ Dec.,  
18 ¶ 11.

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

23 II. OVERVIEW OF THE LITIGATION

24 Defendant offers a full spectrum of home health care, hospice, in-home health and telehealth  
25 services, including in San Diego County where Plaintiff worked. This action asserts claims on behalf  
26

27 <sup>1</sup> The Agreement is attached as Ex “1” to the Declaration of Shani O. Zakay (“SOZ Dec.”) at ¶ 3. All citations to the  
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.

28 <sup>2</sup> Currently Class Counsel’s actually incurred litigation expenses are \$11,360.03. Class Counsel will provide an updated total  
at the time of hearing on this motion.

1 of all employees who are or previously were employed by Defendant who were paid in whole or in part  
2 on a piece-rate basis and performed work in California (“Class Members”) during the period beginning  
3 January 25, 2018 to March 5, 2024 (“Class Period”). Plaintiff worked for Defendant as a non-exempt  
4 employee and earned piece-rate compensation during the Class Period. SOZ Dec., ¶ 14.

5 Among other claims, Plaintiff claims that Defendant failed to pay employees for all time worked,  
6 including overtime, failed to provide them with proper meal and rest breaks, failed to separately  
7 compensate employees for rest breaks and non-productive time, failed to reimburse for required  
8 business expenses, and failed to issue accurate itemized wage statements. Defendant forcefully denies  
9 liability for each of Plaintiff’s claims. SOZ Dec., ¶ 15.

10 On January 10, 2022, Plaintiff served Defendant and the Labor and Workforce Development  
11 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). On January 25, 2022, Plaintiff filed  
12 this class action complaint in the San Diego Superior Court (“the Action”). The Action alleged eight  
13 causes of action against Defendant for: (1) Unfair competition in violation of Business and Professions  
14 Code sections 17200 *et seq*; (2) Failure to pay minimum wages in violation of California Labor Code  
15 sections 1194, 1197 & 1197.1; (3) Failure to pay overtime wages in violation of California Labor Code  
16 sections 510 *et seq*; (4) Failure to provide required meal periods in violation of California Labor Code  
17 sections 226.7 and 512 and the applicable IWC wage order; (5) Failure to provide required rest periods  
18 in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (6)  
19 Failure to provide accurate itemized wage statements in violation of California Labor Code section 226;  
20 (7) Failure to provide wages when due in violation of Cal. Lab. Code sections 201, 202 and 203; and (8)  
21 Failure to reimburse employees for required expenses in violation of California Labor Code section  
22 2802. On March 16, 2022, Plaintiff filed the operative First Amended Complaint to include an additional  
23 cause of action for Violations of the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*]. SOZ  
24 Dec., ¶ 16.

25 Plaintiff commenced written discovery in July 2022. In August of 2022, Defendant filed its  
26 Motion to Compel Arbitration (“Defendant’s Motion”), which was set for hearing in February 2023.  
27 While Defendant’s Motion was pending, the Parties agreed to attend private mediation with Louis  
28 Marlin, Esq. on April 12, 2023. As such, the Parties agreed to continue the hearing on Defendant’s

1 Motion until after the Parties' mediation. The Parties' April 12, 2023 mediation was unsuccessful.  
2 Consequently, Defendant's Motion to Compel Arbitration was heard on June 9, 2023, and denied by  
3 the Court. Thereafter, Defendant appealed the Court's denial of its Motion. While Defendant's appeal  
4 was pending and prior to commencement of briefing in the appeal, the Parties continued to engage in  
5 arms-length settlement negotiations with Mr. Marlin's assistance and ultimately accepted a mediator's  
6 settlement proposal. SOZ Dec., ¶ 17.

7 To facilitate settlement negotiations, the Parties agreed to informally produce documents and  
8 data points subject to the mediation privilege, including but not limited to, a sampling of the Class  
9 Members' time and payroll data, and pertinent written wage and hour policies. As discussed *infra*,  
10 Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze  
11 Defendant's time and payroll data. SOZ Dec., ¶ 18.

12 Although the mediation was initially unsuccessful, the Parties ultimately accepted a mediator's  
13 proposal, which was subsequently memorialized in the form of a Memorandum of Understanding.  
14 After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement  
15 agreement, which is the subject of the instant motion. SOZ Dec., ¶ 19.

16 On June 28, 2024, this Court granted preliminary approval of the Settlement. SOZ Dec., ¶ 4.  
17 Shortly thereafter, the Settlement Administrator mailed Notice Packets to all 152 Settlement Class  
18 members. Apex Dec., ¶¶ 4-7. The mailing of the Notice Packets triggered a forty-five (45) day  
19 Response Deadline for the Settlement Class to submit requests for exclusion or objections to the  
20 Settlement. Agreement, ¶ I(JJ). As of the date of the filing of this motion, 100% of the Class Members  
21 are participating in the Settlement. Apex Dec., ¶¶ 13.

### 22 **III. THE SETTLEMENT BEFORE THE COURT**

23 The Court preliminarily approved a Gross Settlement Amount of \$400,000.00. The Gross  
24 Settlement Amount is all-in with no reversion to Defendant. Agreement, ¶ III(A)(1). The Net Class  
25 Settlement Amount shall be used for the payment of all Individual Settlement Payments to satisfy all  
26 Released Claims. The Settlement Administrator will calculate Individual Settlement Payments by  
27 adding up the total number of Workweeks for all Class Members. The respective Workweeks for each  
28 Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment

Ratio for each Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net Class Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment. Agreement, ¶ III(K)(1). The Settlement Administrator estimates the average Individual Settlement Payment is **\$1,389.25** and the highest Individual Settlement Payment is \$6,232.94. Apex Dec., ¶ 15.

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

Apex Class Action, LLC was appointed as the Settlement Administrator for the class. The Settlement Administration Costs are \$5,500. APEX Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ III(K)(12).

Subject to Court approval, Class Counsel shall seek a Class Counsel Award in the amount of \$153,333.33 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount (estimated to be at least \$133,333.33) and up to \$20,000.00 for actually incurred litigation expenses. Agreement, ¶ III(K)(10).

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

As set forth in the Agreement, \$20,000.00 of the Gross Settlement Amount has been allocated for civil penalties under the PAGA ("PAGA Payment"). Seventy-five percent (75%) of the PAGA Payment will be paid to the California Labor Workforce and Development Agency ("LWDA Payment"). The Settlement Administrator shall distribute the remaining twenty-five (25%) of the PAGA Settlement to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement, ¶ III(K)(11). The Settlement Administrator estimates the Net PAGA Settlement Amount will be approximately \$5,000, with an average Individual Settlement Payment of **\$41.32** and a high payment of \$150.93. Apex Dec., ¶ 17.

As explained in further detail below, the Settlement is fair, adequate, and reasonable and should

1 be granted final approval. Given the complexities of this case, the defenses asserted, the uncertainty of  
2 class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is  
3 fair, reasonable, and adequate, and should be granted final approval. SOZ Dec., ¶ 20-21.

4 **IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**  
5 **OF CLASS ACTION SETTLEMENTS**

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

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

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

27 The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford*  
28 *Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service Com'n*, 688

1 F. 2d 615, 625 (9th Cir. 1982). The purpose of the requirement is "the protection of those class members,  
2 including the named plaintiffs, whose rights may not have been given due regard by the negotiating  
3 parties." *Dunk, supra*, at 1801.

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

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

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

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

23 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the  
24 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel  
25 assessed the value of the class claims using data and documents provided by Defendant in informal  
26 discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the  
27 number of Class Members, workweeks, pay periods, and average rate of pay in order to assess damages  
28 before mediation. Class Counsel retained Berger Consulting Group to analyze Defendant's time and

1 payroll data to formulate damage models estimating Defendant's liability exposure. Class Counsel's  
2 investigation, research, experience, and damage models informed and guided the mediated negotiations  
3 that resulted in this settlement. SOZ Dec., ¶ 22-29.

4 **B. The Parties Settled Shortly After Mediation.**

5 The Settlement is the product of a mediation session with a respected mediator and negotiations  
6 over the terms of the Settlement. The negotiations were adversarial, conducted at arm's length and  
7 tempered by the efforts of both sides to serve the interests of their clients. SOZ Dec., ¶ 30.

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

9 Class Counsel in this matter have extensive class action experience in multiple fields and have  
10 represented tens-of-thousands of persons in class actions. Class Counsel's experience is summarized  
11 in their concurrently filed declarations. Class Counsel have concluded that the settlement is fair,  
12 adequate, and reasonable and in the best interests of the Class. SOZ Dec., ¶ 31; Declaration of Jean-  
13 Claude Lapuyade, Esq. ("JCL Dec."), filed concurrently herewith, ¶ 3.

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

15 The reaction of the Settlement Class unequivocally supports approval of the Settlement. To date,  
16 none of the 152 members of the Settlement Class opted-out of the Settlement. Moreover, there are zero  
17 objections. Stated differently, 100% of the Settlement Class has chosen to participate in the Settlement.  
18 SOZ Dec., ¶ 10; Apex Dec., ¶¶ 11-13.

19 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement  
20 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp.  
21 2d 164, 175 (S.D.N.Y. 2000). Consequently, Class Counsel respectfully request the Court to follow the  
22 unanimous approval of the Settlement Class and grant final approval of the Settlement.

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

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

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

8           With respect to the most immediate challenge, i.e., class certification, the risks attendant to the  
9           certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176  
10          Cal.App.4<sup>th</sup> 1333, 1341. There, the Court of Appeal affirmed the Trial Court’s denial of class  
11          certification because employees’ declarations attesting to having taken meal and rest breaks  
12          demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*  
13          *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following *Brinker* and denying certification  
14          of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*  
15          *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest  
16          period claims based on the predominance of individual issues). SOZ Dec., ¶ 34.

17          Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of  
18          Defendant’s liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*  
19          *Association* (2014) 59 Cal.4<sup>th</sup> 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a  
20          wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4<sup>th</sup> 1077, 1088  
21          (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized  
22          questions of fact not susceptible to class treatment.”). SOZ Dec., ¶ 35.

23          Finally, even if a class is certified and Defendant is found liable for the class claims alleged,  
24          post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and  
25          decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*  
26          *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded  
27          a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and  
28          directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber*  
29          *Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification  
30          action). SOZ Dec., ¶ 36.

31          Collectively, the examples cited above illustrate the uncertain nature of class litigation.

1 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk  
2 factor favoring settlement. SOZ Dec., ¶ 37.

3 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes  
4 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the  
5 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically  
6 affect the value of Plaintiff's claims and, in fact, already has. SOZ Dec., ¶ 38.

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

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

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

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

34 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendant through  
35 possible appeals, which could take another three years. In arriving at their informed belief that the

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

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

11 The Gross Settlement Amount of \$400,000.00 in this case is fair and well within the range of  
12 recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement  
13 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the  
14 various potential impediments to recovery. Class Counsel developed varied economic damages models  
15 measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation.  
16 The various models were informed by Class Counsel's investigation, including the analysis of a  
17 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval  
18 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on  
19 behalf of the Settlement Class. The Gross Settlement Amount represents approximately 17.04% of  
20 Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. SOZ  
21 Dec., ¶ 40.

22 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at \* 12, the District  
23 Court for the Northern District of California granted final approval in a wage and hour misclassification  
24 action and found that the Total Settlement representing 10% of the estimated trial award was within the  
25 "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459  
26 (9th Cir. 2000), the Ninth Circuit approved a settlement representing "roughly one-sixth of the potential  
27 recovery." Given the amount of the settlement here as compared to potential value of the claims,  
28 particularly the strength of Plaintiff's action, the settlement is clearly fair and reasonable.

1 The settlement provides significant relief to the Settlement Class Members. The average Class  
2 Member individual settlement payment is approximately \$1,389.25, and the highest is approximately  
3 \$6,232.94. Apex Dec., ¶ 14. This average net recovery is greater than many wage and hour class action  
4 settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*,  
5 No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80);  
6 *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of  
7 approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super.  
8 Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case  
9 No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90).

10 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.  
11 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between  
12 experienced counsel, the settlement is entitled to final approval. SOZ Dec., ¶ 41.

13 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**  
14 **ARE REASONABLE**

15 Courts routinely approve amounts for PAGA penalties in the range of zero to two percent of the  
16 settlement. *See id.* at \*1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No.  
17 09cv1683 MMA (JMA), 2011 WL 4899942, at \*6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA  
18 payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL  
19 12882124, at \*5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim  
20 settlements in the range of zero to two percent of the total settlement).

21 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of  
22 \$20,000.00 which is 5% of the Gross Settlement Amount. This amount falls well within the range of  
23 approved PAGA Payments. Seventy-Five percent (75%) of the PAGA Settlement (\$15,000.00) will  
24 be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be  
25 distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by  
26 courts and should be approved. SOZ Dec., ¶ 42. The Settlement Administrator estimates the Net  
27 PAGA Settlement Amount will be approximately \$5,000, with an average Individual Settlement  
28 Payment of **\$41.32** and a high payment of \$150.93. Apex Dec., ¶ 17.

1 Further, on June 4, 2024, Class Counsel gave the LWDA notice of this Settlement and proposed  
2 allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with the LWDA.  
3 On November 8, 2024, Plaintiff gave the LWDA notice of this motion seeking final approval of this  
4 settlement. SOZ Dec., ¶¶ 5-6, 43. By not registering an objection with either Class Counsel or the  
5 Court, the LWDA has accepted and approved of the proposed PAGA Payment.

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

7 As part of the settlement, the parties agreed to a Class Counsel Award comprised of \$133,333.33  
8 for attorneys’ fees (one-third of the Gross Settlement Amount) and up to \$20,000.00 for  
9 reimbursement of actually incurred litigation expenses. The requested attorneys’ fee portion of the  
10 Class Counsel Award equal to one-third of the Gross Settlement Amount, is fair compensation and,  
11 respectfully, should be approved. Class Counsel undertook complex, risky, and time-consuming wage  
12 and hour litigation on a contingent basis. The attorneys’ fee portion of the requested Class Counsel  
13 Award is within the historically recognized range attorneys’ fees awarded in common fund class action  
14 settlements – between 25% and 50% – and is supported by Class Counsel’s lodestar cross-check with  
15 a reasonable 1.04 multiplier. That is well-below the 2.13 multiplier approved by the Supreme Court  
16 in *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, with additional work to be  
17 performed, and within the recognized multiplier range of between 2 and 4<sup>3</sup>. Thus, the reasonableness  
18 of the requested Class Counsel Award is confirmed by reference to the lodestar with a reasonable  
19 multiplier with significant additional work still to be performed. SOZ Dec., ¶¶ 44-51.

### 20 **A. Common Fund**

21 Courts have long recognized that when class counsel’s efforts result in the creation of a common  
22 fund that benefits plaintiffs and unnamed class members, class counsel have an equitable right to be  
23 compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)  
24 (“recogniz[ing] consistently that a litigant or a lawyer who recovers a common fund...is entitled to a  
25 reasonable attorney’s fee from the fund as a whole”); *Laffitte*, 1 Cal. 5th at 488-89 (common fund  
26

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27 <sup>3</sup> 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 doctrine “long recognized” under California law). The common fund doctrine rests on the  
2 understanding that attorneys should normally be paid by their clients and that, unless attorneys’ fees  
3 are paid out of the common fund, those who benefit from the fund will be “unjustly enriched.” *Boeing*,  
4 444 U.S. at 478.

5 As noted above, in *Laffitte*, the California Supreme Court upheld the trial court’s award of  
6 33.33% of the settlement amount of \$19 million with a 2.13 multiplier and affirmed that “empirical  
7 studies show the percentage method with a lodestar cross-check is the most prevalent form of fee  
8 method in practice.” *Laffitte*, 1 Cal. 5th at 496-97. In fact, courts have historically awarded between  
9 25% and 50% of the common fund as attorneys’ fees class action settlements. *In re Warner*  
10 *Communications*, 618 F.Supp. 735, 749-50 (S.D.N.Y 1985).

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

23 The Agreement provides for payment of the Class Counsel Award from the common fund.  
24 Accordingly, it is well within the Court’s discretion to award fees to Class Counsel under the common  
25 fund doctrine. Class Counsel request attorneys’ fees in the amount of \$133,333.33 representing one-  
26 third of the Gross Settlement Amount. Class Counsel’s request is consistent with many fee awards in  
27 similar wage and hour class actions. Moreover, the requested attorneys’ fee award is in the middle of  
28 historically recognized range of attorneys’ fees awarded in common fund settlements. SOZ Dec., ¶¶

50-51.

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 \$133,333.33 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 \$127,889 *exclusive of costs*, with significant work remaining. SOZ Dec., ¶¶ 44-46. Thus, Class Counsel's fee request is equal to Class Counsel's lodestar with a 1.04 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*. SOZ Dec., ¶ 51.

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

1 declarations submitted concurrently herewith. In short: **(1)** Considering the issues presented in the  
2 case, the Gross Settlement Amount of \$400,000.00, is an excellent result for the Settlement Class, **(2)**  
3 Collectively, Class Counsel worked hard on this case and expended approximately 221.3 hours in the  
4 prosecution of this litigation in the nearly 3 years since it was filed for a total lodestar of \$127,889, **(3)**  
5 Class Counsel undertook this litigation on a contingent-fee basis, assuming a significant risk that the  
6 litigation would yield no recovery after many years of work, **(4)** Class Counsel negotiated a one-third  
7 contingency fee arrangement, which is a reasonable arrangement to obtain competent counsel in the  
8 marketplace for representation in wage and hour class actions of this nature, and it is only equitable  
9 that Settlement Class who share in the excellent results achieved by this Settlement bear his/her pro  
10 rata share of the attorney's fees award to Class Counsel, **(5)** Class Counsel possesses significant  
11 experience litigating complex wage and hour class actions and the way this Settlement was achieved  
12 is demonstrative of the highly efficient way this litigation was managed and resolved (See Class  
13 Counsel's declarations for a detailed outline of their skills and experience), and **(6)** Settlement Class  
14 Counsel's hourly rates, which are set forth in the concurrently filed declarations of Jean-Claude  
15 Lapuyade, Esq. and Shani Zakay, Esq., are well within the range of rates billed by comparable  
16 attorneys in this market and reasonably compare with rates approved by other trial courts in wage and  
17 hour class action litigation. SOZ Dec., ¶¶ 54-68.

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

19 Common fund fee and expense awards include counsel's incurred expenses because those who  
20 benefit from their effort should share in the cost. *See Rider v. City of San Diego*, 11 Cal. App. 4th  
21 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is whether the  
22 costs are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v.*  
23 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

24 As of the date of this filing, Class Counsel have incurred a total of \$11,360.03 litigating this  
25 action. All of Class Counsel's out-of-pocket expenses are the types of expenses normally charged to  
26 paying clients including the following: filing fees; copying; postage; mediation fees; and expert costs,  
27 which were all incurred during, and were necessary for the successful prosecution of, the litigation  
28 and, therefore, should be reimbursed. SOZ Dec. ¶¶ 7, 69-71; JCL Dec., ¶¶ 19-20.

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

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

9           As a preliminary matter, Plaintiff granted Defendant a broad and general release of all claims  
10 arising from his employment. In exchange, the Class Representative Service Award is, in part,  
11 intended to compensate Plaintiff for executing this general release. This release is far broader than the  
12 release that binds the remainder of the Settlement Class. SOZ Dec., ¶¶ 72-73.

13           Regarding the amount of the requested award, courts frequently approve awards of \$10,000.00  
14 or more. *See In re Cellphone*, 186 Cal.App.4th 1380. The amount of the requested Class  
15 Representative Service Award to Plaintiff for \$10,000.00 is reasonable by reference to the amounts  
16 that California courts (both federal and state) have repeatedly awarded in similar class action  
17 settlements. Further, the unanimous consent by the Class Members favors the Court's approval of the  
18 requested Class Representative Service Award. Equally important, the time, effort, and services  
19 provided to the Settlement Class justifies the requested Service Award. The Class Representative  
20 performed his duties to the Settlement Class admirably. Plaintiff's work is summarized in his  
21 declaration filed concurrently herewith. Plaintiff assumed the serious risk of liability for Defendant's  
22 costs and potentially fees if the case was unsuccessful. Nevertheless, Plaintiff knowingly and  
23 voluntarily undertook the risk to vindicate the rights of the Settlement Class. SOZ Dec., ¶¶ 74-76.

24                           **VIII. CONCLUSION**

25           Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness  
26 established by California law and should therefore be finally approved as fair, reasonable, and adequate  
27 and requests entry of the Final Approval Order and Judgment submitted herewith. Further, based on the  
28 foregoing, Class Counsel respectfully requests approval of the Class Counsel Award in the amount of

1 \$153,333.33, comprised of (1) \$133,333.33 as compensation for attorneys' fees (one-third of the Gross  
2 Settlement Amount of \$400,000.00) and (2) litigation expenses up to \$20,000.00 as supported by Class  
3 Counsel's billing records. Class Counsel and the Class Representative also respectfully request approval  
4 of the requested Class Representative Service Award in the amount of \$10,000.00 to Plaintiff.  
5

6 Dated: November 8, 2024

**JCL LAW FIRM, APC**

7 By: 

8 Jean-Claude Lapuyade, Esq.  
9 Attorneys for Plaintiff  
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