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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

NOEMY FLORES and KIMBERLY WUJEK,
individuals, on behalf of themselves, and on behalf
of all persons similarly situated,

Plaintiffs,

vs.

AVEN GROUP, INC., a California corporation;
AVEN CARE PROVIDERS, INC., an entity of
unknown origin; and DOES 1 through 50,
Inclusive,

Defendants.

Case No. 21STCV36642

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

Date: February 11, 2025

Time: 10:00 a.m.

Judge: Hon. Kenneth R. Freeman

Dept.: 14

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I. INTRODUCTION

Plaintiffs NOEMY FLORES and KIMBERLY WUJEK (hereinafter “Plaintiffs”) seek final approval of the Amended Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for 36 Participating Settlement Class Members employed by Defendants Aven Group, Inc. and Aven Care Providers, Inc. (hereinafter “Defendants”) during the Class Period.

In an order dated August 19, 2024, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On October 2, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Katherine Rovertoni (“APEX Dec.”), ¶ 7. *The Class greeted news of the Settlement with zero requests for exclusion and zero objections to the Settlement.*² APEX Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement.

An objective evaluation of the proposed settlement of \$115,000.00 (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by the Hon. James R. Trembath (Ret.), a respected jurist and mediator. After deducting any Court-approved attorneys’ fees and costs, class representative incentive payments, administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendants during the Class Period. There are zero opt-outs and zero objections to the Settlement. JCL Dec., ¶ 8.

Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$33,166.67**. APEX Dec. at ¶ 14. This will result in an average Individual Class Payment of **\$921.30**, a high payment of **\$5,617.17**, and a low payment of **\$18.07**. APEX Dec. at ¶ 15. Aggrieved Employees will receive an estimated average gross payment of **\$89.29** and a high payment of **\$335.77**.

¹ The Agreement is attached as Ex “A” 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 Three (3) Notices were deemed undeliverable. APEX Dec. at ¶ 10.

1 JCL Dec., ¶ 9; APEX Dec. at ¶ 17.

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

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

11 **II. OVERVIEW OF THE LITIGATION**

12 Defendants operate a healthcare staffing agency. Defendants assign their employees to one or
13 more clients for whom they provide care in the client's or the employee's home. This action asserts
14 claims on behalf of all of Defendants' current and former non-exempt employees employed in
15 California at any time during the Class Period. Plaintiff Flores worked for Defendants as a non-exempt
16 employee in California from 2015 to September 2020. Plaintiff Wujek worked for Defendants as a non-
17 exempt employee in California from 2016 to February of 2019. At all times during their employment,
18 Plaintiffs earned an hourly wage. Throughout their employment, Plaintiffs were subject to Defendants'
19 policies and procedures. JCL Dec., ¶ 12; Declaration of Noemy Flores ("Flores Dec."), ¶ 2; Declaration
20 of Kimberly Wujek ("Wujek Dec."), ¶ 2.

21 Generally, Plaintiffs claim that Plaintiffs and other Class Members and Aggrieved Employees
22 employed by Defendants performed manual tasks but were not paid all wages to which they were
23 entitled because of Defendants' systematic policies and practices of failing to correctly record all time
24 worked, including overtime worked. Plaintiffs further claim that Defendants (1) failed to provide
25 compliant meal periods; (2) failed to provide complaint rest periods; (3) failed to timely pay all wages
26 when due; and (4) failed to reimburse employees for the use of their personal cell phones. Defendants
27 forcefully deny liability for each of Plaintiffs' claims. Further, Defendants assert that they fully
28 complied with all applicable employment laws and raised several other significant defenses to

1 Plaintiffs’ claims, including but not limited to, asserting that it paid employees for all hours worked,
2 maintained facially compliant meal and rest period policies, issued compliant wage statements, and
3 timely paid all wages due upon separation of employment. JCL Dec., ¶ 13.

4 On July 30, 2021, Plaintiff Flores served Defendant Aven Group, Inc. and the Labor and
5 Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff
6 Flores’ PAGA Notice set forth the facts and theories supporting Defendant Aven Group, Inc.’s alleged
7 violations of various provisions of the California Labor Code and applicable Industrial Welfare
8 Commissions (“IWC”) Wage Order and of her intent to pursue claims under California Labor Code
9 Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq.* (PAGA). JCL Dec., ¶ 14.

10 On October 5, 2021, Plaintiff Flores filed a class action complaint in the Los Angeles Superior
11 Court, Case Number 21STCV36642 (“Action”). The Action alleged ten causes of action against
12 Defendant Aven Group, Inc. for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§
13 17200, *et seq.*; (2) Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (3)
14 Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (4) Failure
15 to Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
16 IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation Of Cal. Lab Code §§ 226.7
17 & 512 and the Applicable IWC Wage Order; (6) Failure to Reimburse Employees for Required
18 Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Statements
19 in Violation Of Cal. Lab. Code § 226; (8) Failure to Provide Paid Sick Days and Sick Leave Balance
20 in Violation of Cal. Lab. Code § 246, *et seq.*; (9) Failure to Provide Wages When Due in Violation Of
21 California Labor Code §§ 201, 202, & 203; and (10) Violation of the Private Attorneys General Act
22 [Labor Code §§ 2698 *et seq.*]. On July 25, 2022, Plaintiff Flores filed an amendment to the Complaint,
23 identifying Defendant Aven Care Providers, Inc. and Doe 1. On November 12, 2021, Plaintiff Flores
24 filed a First Amended Complaint. JCL Dec., ¶ 15.

25 On October 31, 2023, Plaintiffs served Defendants and the Labor and Workforce Development
26 Agency (“LWDA”) with an Amended PAGA Notice, adding Defendant Aven Care Providers, Inc.
27 Plaintiffs’ Amended PAGA Notice set forth the facts and theories supporting Defendants’ violations of
28 various provisions of the California Labor Code and applicable Industrial Welfare Commissions

1 (“IWC”) Wage Order and of their intent to pursue claims under California Labor Code Private
2 Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq.* (PAGA). JCL Dec., ¶ 16.

3 On November 28, 2023, Plaintiff Flores filed the Operative Second Amended Complaint, adding
4 Plaintiff Wujek as a named plaintiff. JCL Dec., ¶ 17.

5 After engaging in significant formal discovery, the Parties agreed to mediate this action. To
6 prepare for mediation, the Parties agreed to informally produce pertinent documents and data points,
7 including but not limited to, employee handbooks, time and payroll data for Plaintiffs, payroll data for
8 the employees, and certain demographic data points. Additionally, in preparation for the August 24,
9 2023, mediation, Plaintiffs’ counsel retained the forensic consultants at Berger Consulting Group
10 (“BCG”) to analyze Defendants’ time and payroll data. Ultimately, based on the information and data
11 Defendants provided, BCG was required to make assumptions based on time records, including
12 necessary assumptions with respect to certain claims. JCL Dec., ¶ 18.

13 On August 24, 2023, the Parties participated in a full day mediation with the Hon. James R.
14 Trembath (Ret.), a respected mediator and jurist. Judge Trembath helped manage the Parties’
15 expectations and provided a useful, neutral analysis of the issues and risks to both sides. After arms-
16 length negotiations and bargaining, the Parties reached an agreement to settle and signed a
17 Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and
18 negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶
19 19.

20 On August 19, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4.
21 On October 2, 2024, the Administrator mailed Notice Packets to all 36 Settlement Class Members.
22 APEX Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) calendar day Response
23 Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. To
24 date, zero opt-outs and zero requests for exclusion from the settlement were received. APEX Dec., ¶¶
25 11-12.

26 **III. THE SETTLEMENT BEFORE THE COURT**

27 The Court preliminarily approved a Gross Settlement Amount of One Hundred and Fifteen
28 Thousand Dollars and Zero Cents (\$115,000.00). The Gross Settlement Amount shall be used: (1) to

1 satisfy Individual Class Payments; (2) to satisfy the Class Representative Payment; (3) to satisfy the
2 Attorneys' Fees and Litigation Costs; (4) to satisfy the PAGA Payment; and (5) to satisfy the
3 Administration Expenses Payment incurred in this action. JCL Dec., ¶ 20.

4 Assuming there are no objectors, and no appeal is filed, Defendants will fund the \$115,000.00
5 Gross Settlement Amount sixty (60) days after the Final Approval Order. *See generally* Agreement at
6 4.3. The Administrator shall mail the Individual Class Payments, Individual PAGA Payments, the
7 LWDA Payment, the Administration Expenses Payment, Attorneys' Fees and Litigation Costs, and the
8 Class Representative Payment no later than fourteen (14) days after Defendants fund the Gross
9 Settlement Amount. Agreement, ¶ 4.4. Disbursement of the Attorneys' Fees and Litigation Costs and
10 the Class Representative Payment shall not precede disbursement of Individual Class Payments and
11 Individual PAGA Payments. Agreement, ¶ 4.4. The Administrator will calculate Individual Class
12 Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all
13 Participating Class Members during the Class Period and then multiplying the result by each
14 Participating Class Member's Workweeks worked during the Class Period. Agreement, ¶ 3.2.4. The
15 estimated average Individual Class Payment is approximately **\$921.29**. JCL Dec., ¶ 9; APEX Dec., ¶
16 15.

17 In exchange for the valuable consideration, effective on the date when Defendants fully fund the
18 Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the
19 Individual Class Payments, Plaintiffs, Participating Class Members, Aggrieved Employees and the
20 LWDA will release claims against all Released Parties as outlined in the Agreement. Agreement at ¶ 5.

21 Apex Class Action, LLC was appointed as the Administrator for the Class. Administration
22 Expenses Payment include those expenses of effectuating and administering the Settlement, i.e., the
23 costs incurred to the Administrator, the costs of giving notice to the Class, the costs of administering
24 and disbursing the Individual Class Payments, and the fees of the Administrator ("Administration
25 Expenses Payment") approved for reimbursement by the court. The Administration Expenses Payment
26 is \$3,500.00. APEX Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount.
27 Agreement, ¶ 3.2.

28 Subject to Court approval, Class Counsel shall seek Attorneys' Fees and Litigation Costs in the

1 amount of \$53,333.33 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount
2 estimated to be at least \$38,333.33 and up to \$15,000.00 for actually incurred litigation expenses.
3 Plaintiffs' counsel is to split the fees 50% to the JCL Law Firm, APC and 50% to the Zakay Law Group,
4 APLC. Plaintiffs and Class Counsel have in place a contingency fee agreement wherein Plaintiffs agreed
5 to the split of fees. JCL Dec., ¶ 21. The Agreement also provides for a Class Representative Payment
6 in the amount of \$10,000 for each Plaintiff, in consideration of their time, risk, and efforts as the Class
7 Representatives on behalf of the Settlement Class and a general release. Agreement, ¶ 5.1.

8 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
9 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
10 the Settlement Class, the absence of any objections to the Settlement and the average Individual Class
11 Payment of \$921.30. APEX Dec., ¶¶ 11-13, 15; JCL Dec., ¶ 22.

12 **IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
13 **OF CLASS ACTION SETTLEMENTS**

14 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
15 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
16 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
17 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the
18 preferred means of dispute resolution. This is especially true in complex class action litigation").

19 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
20 action requires court approval." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
21 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court
22 must decide whether the proposed settlement falls within the range of reasonable settlements,
23 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
24 judgments concerning the risks and possible outcomes of litigation. *See also Wershba v. Apple*
25 *Computer* (2001) 91 Cal.App.4th 224, 246 (The proposed settlement is not to be judged against a
26 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.").
27 In *Wershba*, appellants argued that the settlement was too low given the "clear" liability, however, the
28 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. Courts should not substitute their judgment for that of the parties who negotiated the settlement. *Id.* At 246. 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.

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

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.* (1996) 48 Cal.App.4th 1794, 1801; *see also Officers for Justice v. Civil Service Com'n* (9th Cir. 1982) 688 F. 2d 615, 625. 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* (1990) 220 Cal.App.3d 1117, 1138. “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.* (2008) 168 Cal.App.4th 116, 128; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.

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 and payroll. Class Counsel retained Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data to formulate damage models estimating Defendants’ liability exposure. Class Counsel’s investigation, research, experience, and damage models informed and guided the mediated negotiations that resulted in this settlement. Accordingly, Plaintiffs’ Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 23.

B. The Parties Settled At Mediation.

On August 24, 2023, the Parties conducted a mediation with the Hon. James R. Trembath (Ret.), a well-respected jurist and mediator. Judge Trembath helped to manage the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. In preparation for the August 24, 2023, mediation, Plaintiffs’ counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data. Judge Trembath helped manage the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides. After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶

24.

C. Class Counsel is Experienced in Similar Litigation.

Class Counsel in this matter has extensive class action experience in multiple fields and have represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar claims. Class Counsel have been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel have participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 25-31; Declaration of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3.

D. The Settlement Class Responded Positively to the Settlement.

The reaction of the Settlement Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Settlement Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Class Payments, there are zero opt-outs and zero objections. All 36 of the Settlement Class chose to participate in the Settlement. JCL Dec., ¶ 8; APEX Dec., ¶¶ 11-13.

The 100% approval by the Settlement Class strongly supports a finding that the Settlement is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y. 2000)80 F.Supp.2d 164, 175 (“If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.”); *Stoetznner v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d 115, 118-119 (29 objections out of 281 member class “strongly favors settlement”); *Laskey v. Int’l Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed settlement should be considered when determining fairness of settlement.). Consequently, Class Counsel respectfully requests the Court to follow the unanimous approval of the Settlement Class and grant final approval of the Settlement.

E. The Gross Settlement Amount is Fair and Reasonable.

The Gross Settlement Amount of \$115,000.00 in this case is fair and well within the range of recognized reasonableness. The *Kullar* court acknowledged that “as the court does when it approves a

1 settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy
2 itself that the class settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See*
3 *Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).)

4 While the Gross Settlement Amount of \$115,000.00 represents a discount on Defendants’
5 potential exposure if Plaintiffs established liability on all claims and were awarded the full amount of
6 the estimated damages at trial, this compromise is reasonable because (1) the formidable defenses raised
7 by Defendants presented a risk that could award significantly less in damages than Plaintiffs’ estimate
8 and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added
9 fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 32.

10 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
11 reasonable considering the nature and magnitude of the claims being settled and the various potential
12 impediments to recovery. Class Counsel developed varied economic damage models measuring
13 Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The
14 various models were informed by Class Counsel’s investigation, including the analysis of time and
15 payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel
16 projected a range of Defendants’ liability exposure for the claims asserted on behalf of the Settlement
17 Class. The Gross Settlement Amount represents approximately 40.40% of Defendants’ *class-wide*
18 liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 33.

19 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
20 for the Northern District of California granted final approval in a wage and hour misclassification action
21 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
22 the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
23 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
24 potential recovery.” Given the amount of the settlement here as compared to potential value of the
25 claims, particularly the strength of Plaintiffs’ action, the settlement is clearly fair and reasonable³.

26 ³ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving
27 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
28 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
*7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); see also
In re Newbridge Networks Sec. Litig. (D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2 (“Courts have not identified a precise

Furthermore, there are approximately 36 Class Members that worked 1,468.60 workweeks during the Class Period (October 5, 2017, through August 24, 2023). JCL Dec., ¶ 34; APEX Dec., ¶ 14.

The calculation methodology used to compensate the Settlement Class for the alleged damages was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks each Settlement Class Member worked for Defendants during the Class Period. The number of Workweeks for the Settlement Class Members is established through Defendants' data and documented compensation records. The Administrator is responsible for calculating the Individual Class Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and then multiplying the result by each Participating Class Member's Workweeks worked during the Class Period. Agreement, ¶ 3.2.4. This process establishes an objectively fair and reasonable procedure to compensate the Settlement Class.

The settlement provides relief, that may otherwise not have been obtained, to the Settlement Class Members. After deductions for the Attorneys' Fees and Litigation Costs, Administration Expenses Payment, the PAGA Payment, and the Class Representative Payment, the Net Settlement Amount is currently estimated to be \$33,166.67. APEX Dec., ¶14. The average Individual Class Payment is approximately \$921.30, the highest is approximately \$5,617.17, and the lowest payment is approximately \$18.07. APEX Dec., ¶ 15. This average net recovery is on par with many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (LA. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD

numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures roughly six to twelve percent of a potential trial recovery, while preventing further expenditures and delays and eliminating the risk that no recovery at all will be won, seems to be within the targeted range of reasonableness.”).

(ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendants must separately fund their share of any employer side payroll taxes. Agreement, ¶ 3.1.

Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is fair and reasonable and is therefore entitled to final approval. JCL Dec., ¶ 35.

F. The Strength of Plaintiffs' Case and Risks of Continued Litigation.

Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendants could defend the action or, at least, drastically undercut Plaintiffs' claims. JCL Dec., ¶ 36. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy 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). JCL Dec., ¶ 37.

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."). JCL Dec., ¶ 38.

7 Finally, even if a class is certified and Defendants are found liable for the class claims alleged,
8 post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs 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). JCL Dec., ¶ 39.

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. JCL Dec., ¶ 40.

18 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
19 recognize that Defendants have factual and legal defenses that, if successful, would potentially defeat
20 or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
21 drastically affect the value of Plaintiffs' claims and, in fact, already has. JCL Dec., ¶ 41.

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

1 meal periods is an open one, signaling even less certainty for
2 Plaintiffs.....[T]he **Total Settlement amount and the Class Members'**
3 **expected net recovery, after fees and other costs are deducted, appear**
4 **to be a reasonable compromise, in light of the risks of litigation.**

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

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

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

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

20 In sum, while other cases have approved class certification in wage and hour claims, class
21 certification in this action would have been hotly disputed and was by no means a foregone conclusion.
22 Where both sides face significant uncertainty, as here, the attendant risks favor settlement. *Hanlon v.*
23 *Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026.) The benefits of a guaranteed recovery today
24 outweigh an uncertain result three or more years in the future. JCL Dec., ¶ 42.

25 The Class Representatives and Class Counsel recognize the expense and length of a trial against
26 Defendants through possible appeals which could take another three years. In arriving at their informed
27 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
28 and risk inherent in complex actions such as this one. Class Counsel are also mindful of and recognize
the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
Moreover, there was a serious concern regarding Defendants’ ability to pay any settlement. Costs would
have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an
ultimate victory. Class Representatives and Class Counsel believe that the Settlement confers monetary

1 and non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives and
2 Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of
3 the Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 43.

4 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE**
5 **REASONABLE**

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

15 Here, Plaintiffs and Defendants negotiated a good faith PAGA Payment in the amount of
16 \$5,000, which is 4.34% of the Gross Settlement Amount. As illustrated above, this amount falls well
17 within the range of approved PAGA Payments. Seventy-five percent (75%) of the PAGA Payment
18 (\$3,750) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%)
19 of the PAGA Payment (\$1,250) to be distributed to the Aggrieved Employees (the “Individual PAGA
20 Payment”), which is within the range of PAGA penalties approved by courts and should be approved.
21 JCL Dec., ¶ 44.

22 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
23 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
24 with the LWDA. JCL Dec., ¶¶ 5-6, 45. By not registering an objection with either Class Counsel or
25 the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

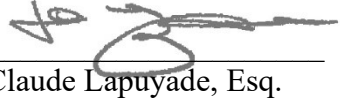
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1 **VII. CONCLUSION**

2 Plaintiffs respectfully submit 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.
5

6 Dated: January 16, 2025

JCL LAW FIRM, APC

7 By: 
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9 Attorneys for Plaintiff
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