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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

DORETHA JACKSON, on behalf of herself
and on behalf of all persons similarly situated,

Plaintiffs,

vs.

WHITE FIR HOLDINGS, LLC d/b/a MID-
TOWN OAKS POST-ACUTE, a Delaware
Limited Liability Company; PLUM
HEALTHCARE FOUNDATION, a California
Corporation; PLUM HEALTHCARE GROUP,
LLC, a California Limited Liability Company;
GI SIDE FUND PLUM CORP., a Delaware
Corporation; CALIFORNIA OPCO SUB,
LLC, a Delaware Limited Liability Company;
and DOES 1-50, Inclusive.

Defendants.

Case No. 34-2021-00301656

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

Date: October 6, 2023

Time: 9:00 a.m.

Judge: Hon. Lauri A. Damrell

Dept.: 28

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I. INTRODUCTION

Plaintiff DORETHA JACKSON (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 843 Settlement Class Members employed by Defendants WHITE FIR HOLDINGS, LLC d.b.a. MIDTOWN OAKS POST-ACUTE CARE, PLUM HEALTHCARE FOUNDATION, PLUM HEALTHCARE GROUP, LLC, GI SIDE FUND PLUM CORP., and CALIFORNIA OPCO SUB, LLC (hereinafter “Defendants”).

In an order dated June 16, 2023, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On July 10, 2023, the Settlement Administrator delivered notice of the proposed settlement to the Class. Declaration of Nathalie Hernandez (“ILYM Dec.”), ¶ 7.

*The Class greeted news of the Settlement with unanimous approval as, at the time of the filing of this motion, all 843 Class Members chose to participate in the Settlement.*² There are zero opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶ 11-13. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 10.

An objective evaluation of the proposed settlement of Seven Hundred and Fifty Thousand Dollars and Zero Cents (\$750,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Steven J. Rottman, Esq., an experienced mediator of wage and hour class and representative actions. After deducting any Court-approved attorneys’ fees and costs, class representative service awards, settlement administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement amount shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendants

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

² As of the filing date of this Motion, 31 Notices were deemed undeliverable.

1 during the Class Period. JCL Dec., ¶ 10.

2 This Settlement provides substantial recovery to Class Members. Plaintiffs estimate that the
3 Settlement, if approved, would result in a Net Settlement Amount of approximately **\$414,500.00**.
4 This will result in an average Individual Settlement Payment of **\$491.70**, with the estimated highest
5 gross payment being \$4,321.24. PAGA Class Members will receive an estimated average gross
6 payment of \$16.31, with the estimated highest gross payment being \$59.57 and a lowest gross
7 payment being \$0.65. JCL Dec., ¶ 11; ILYM Dec., ¶¶ 14-15.

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

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

17 **II. OVERVIEW OF THE LITIGATION**

18 Defendants operate a short-term rehabilitation and 24-hour skilled nursing facility in
19 Sacramento, California, where Plaintiff worked. This action asserts claims on behalf of Defendants'
20 current and former non-exempt employees employed in California. Plaintiff was employed by
21 Defendants as a non-exempt certified nursing assistant from January 2019 to April 2020. At all
22 times during her employment, Plaintiff earned hourly wages, was entitled to legally compliant meal
23 and/or rest periods, and minimum, regular and overtime wages for all hours worked. Throughout
24 her employment, Plaintiff was subject to Defendants' written policies and procedures. JCL Dec.,
25 ¶ 14.

26 Generally, Plaintiff claims that Defendants failed to pay Plaintiff for all hours worked,
27 including time spent undergoing COVID screenings, failed to provide legally compliant meal and
28 rest periods, and miscalculated the regular rate of pay for purposes of overtime, double time, meal

1 period premiums, and redeemed sick pay, among other claims. Defendants forcefully deny liability
2 for each of Plaintiff’s claims. Further, Defendants assert that they fully complied with all applicable
3 employment laws and raised several other significant defenses to Plaintiffs’ claims, including but
4 not limited to, facially compliant meal and rest period policies and proper payment of all wages.
5 JCL Dec., ¶ 15.

6 On March 24, 2021, Plaintiff served Defendants and the Labor and Workforce Development
7 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiffs’ PAGA Notice set
8 forth the facts and theories supporting Defendants’ alleged violations of various provisions of the
9 California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and
10 of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab.
11 Code Sections 2698 et seq (“PAGA”). JCL Dec., ¶ 16.

12 On May 27, 2021, Plaintiff filed a class action complaint in this Court (the “Action”). The
13 Action alleged claims for: (1) Unfair Competition in Violation of California Business and
14 Professions Code §§ 17200; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime
15 Wages; (4) Failure to Provide Required Meal Periods; (5) Failure to Provide Required Rest Periods;
16 (6) Failure to Provide Accurate Itemized Wage Statements; (7) Failure to Reimburse Employees
17 for Requires Expenses; (8) Failure to Provide Wages When Due; and (9) Violations of the Private
18 Attorney General Act at Lab. Code §§ 2698 *et. seq.* (“Class Claims”). JCL Dec., ¶ 17.

19 Plaintiff commenced written discovery on October 7, 2021. Thereafter, the Parties agreed to
20 mediate the Action. To prepare for mediation, the Parties agreed to informally exchange relevant
21 documents and data points subject to the mediation privilege. Pursuant to that agreement,
22 Defendants produced a sample of the Class Members’ time and payroll data along with itemized
23 wage statements and relevant policies applicable to Class Members. As discussed *infra*, Plaintiffs’
24 counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze
25 Defendants’ time and payroll data. JCL Dec., ¶ 18.

26 On August 29, 2022, the Parties participated in a full day mediation with highly regarded
27 wage and hour mediator Steven J. Rottman, Esq. After arms-length negotiations and bargaining,
28 the mediation concluded without a settlement. However, the Parties subsequently reached an

1 agreement to settle based on a Mediator's proposal, and signed a Memorandum of Understanding.
2 After reaching an agreement in principle, the Parties negotiated a long-form settlement agreement,
3 which is the subject of the instant motion. JCL Dec., ¶ 19.

4 On June 16, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4.
5 On July 10, 2023, the Settlement Administrator mailed Notice Packets to all 843 Class Members.
6 ILYM Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response
7 Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement.
8 The response from the Settlement Class to the Settlement was outstanding – 100% of the Class
9 Members are participating in the Settlement. ILYM Dec., ¶¶ 11-13.

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

11 The Court preliminarily approved an initial Gross Settlement Amount of Seven Hundred
12 Fifty Thousand Dollars and Zero Cents (\$750,000.00) based on a total of an estimated 26,000
13 workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be
14 used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Service Award; (3) to satisfy
15 the Attorneys' Fees and Attorneys' Expenses; (4) to satisfy the PAGA Settlement; and (5) to satisfy
16 the Administration Costs incurred in this action. JCL Dec., ¶ 20.

17 Defendants will fund the Settlement in six (6) equal Settlement Installment Payments in the
18 amount of One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00), with the
19 first installment to be made thirty (30) calendar days after the Effective Date, and each subsequent
20 installment every thirty (30) calendar days thereafter until complete. Agreement, ¶ III(A)(3), I(M).
21 Individual Settlement Payments and individual shares of the PAGA Class Member Payment shall
22 be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or PAGA Class
23 Members' last known mailing address no later than thirty (30) business days after the Funding Date.
24 Agreement, ¶ III(M)(7). The Settlement Administrator will calculate Individual Settlement
25 Payments by adding up the total number of Workweeks for all Class Members. The Settlement
26 Administrator will then divide the respective Workweeks for each member of the Settlement Class
27 by the total Workweeks for the entire Settlement Class, resulting in a Payment Ratio for each Class
28 Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net Settlement

1 Amount to calculate each estimated Individual Settlement Payment. Agreement, ¶ III(M)(1). The
2 estimated average Individual Settlement Payment is approximately **\$491.70**. JCL Dec., ¶ 21.

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

8 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class.
9 Administration Costs include those expenses of effectuating and administering the Settlement, i.e.,
10 the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs
11 of administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
12 Administrator approved for reimbursement by the court. The Settlement Administrator expenses
13 are \$10,500.00. ILYM Dec., ¶ 16. These expenses shall be paid from the Gross Settlement Amount.
14 Agreement, ¶ III(M)(12).

15 Subject to Court approval, Class Counsel shall seek an award in the amount of \$275,000.00,
16 comprised of Attorneys' Fees equal to one-third of the Gross Settlement Amount estimated to be at
17 least \$250,000.00 and up to \$25,000.00 for actually incurred Attorneys' Fees. Plaintiffs' counsel
18 is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC.
19 Agreement, ¶ I(E). The Agreement also provides for Service Award in the amount of \$10,000.00 in
20 consideration of Plaintiff's time, risk, and efforts as the Class Representative on behalf of the
21 Settlement Class. Agreement, ¶¶ I(HH); III(M)(10).

22 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the
23 class and should be granted final approval. This is evidenced by the unanimous approval of the
24 Settlement by the Settlement Class and absence of any objections to the Settlement and the average
25 Individual Settlement Payment of **\$491.70**. ILYM Dec., ¶ 14; JCL Dec., ¶ 21.

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1 **IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND**
2 **APPROVAL OF CLASS ACTION SETTLEMENTS**

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

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

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

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

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

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

11 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v.*
12 *Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial
13 court should consider in evaluating the reasonableness of a class action settlement agreement
14 include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
15 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
16 the extent of discovery completed and the stage of the proceedings, the experience and views of
17 counsel, the presence of a governmental participant, and the reaction of the class members to the
18 proposed settlement.’ [Citations.]” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
19 128; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
20 408.

21 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
22 Due regard should be given to what is otherwise a private consensual agreement between the parties.
23 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
24 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
25 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
26 *Id.* “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate
27 balancing, gross approximations and rough justice.’ [Citation omitted.]” *Id.* These factors are
28 analyzed seriatim below and all support final approval of the class action settlement before this

1 Court.

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

3 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated
4 the proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class
5 Counsel assessed the value of the claims using data and documents provided by Defendants through
6 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data
7 regarding the number of Class Members, workweeks, and average rate of pay to assess damages
8 before mediation. Class Counsel retained BCG to analyze Defendants' time and payroll data to
9 formulate damage models estimating Defendants' liability exposure. Class Counsel's investigation,
10 research, experience, and damage models informed and guided the mediated negotiations that
11 resulted in this settlement. Accordingly, Class Counsel fully understood the strengths and
12 weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 22-27.

13 **B. The Parties Settled At Mediation.**

14 On August 29, 2022, the Parties conducted a full-day mediation with Steven Rottman, Esq.,
15 an experienced mediator of wage and hour class and representative actions. Mr. Rottman helped to
16 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to
17 both sides. The Parties made substantial progress with Mr. Rottman's assistance. Namely, the
18 Parties exchanged information regarding their respective claims and defenses, including their
19 respective evaluations of the damages. After arm's length and adversarial negotiations, the
20 mediation concluded without a settlement. However, the Parties subsequently accepted a Mediator's
21 proposal. No action would likely have been taken by Class Members individually, and no
22 compensation would have been recovered for them, but for Plaintiff's services on behalf of the
23 Class. JCL Dec., ¶ 28.

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

25 Class Counsel in this matter has extensive class action experience in multiple fields and has
26 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar
27 wage and hour class actions involving similar claims. Class Counsel has been approved as class
28 counsel in similar wage and hour class actions throughout the State of California. As such, courts

1 throughout the California have deemed Class Counsel experienced and knowledgeable in this area
2 of law. Class Counsel has participated in every aspect of the settlement discussions and has
3 concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL
4 Dec., ¶¶ 29-35; Declaration of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3.

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

6 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
7 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
8 member with the terms of the Settlement, including the specific estimated Individual Settlement
9 Payments, none of the 843 members of the Settlement Class has opted-out of the Settlement.
10 Moreover, there are zero objections. Stated differently, 100% of the Settlement Class chose to
11 participate in the Settlement. JCL Dec., ¶ 10; ILYM Dec., ¶¶ 11-13.

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

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

22 The Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars and Zero Cents
23 (\$750,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
24 court acknowledged that “as the court does when it approves a settlement as in good faith under
25 Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement
26 is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-*
27 *Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

28 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement

1 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
2 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
3 Cal.App.4th at 250. While the Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars
4 and Zero Cents (\$750,000.00) represents a discount on Defendants' potential exposure if Plaintiff
5 established liability on all claims and was awarded the full amount of the estimated damages at trial,
6 this compromise is reasonable because (1) the formidable defenses raised by Defendants presented
7 a risk that could award significantly less in damages than Plaintiff's estimate and (2) any theoretical
8 post-trial recovery may require many more years of litigation, resulting in added fees and costs
9 without any guarantee of recovery for the Class. JCL Dec., ¶ 36.

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
12 potential impediments to recovery. Class Counsel developed varied economic damages models
13 measuring Defendants' liability exposure while accounting for the uncertainties of continued
14 litigation. The various models were informed by Class Counsel's investigation, including the
15 analysis of a significant sample of time and payroll data. As detailed in greater depth during the
16 preliminary approval process, Class Counsel projected a range of Defendants' liability exposure for
17 the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents
18 approximately 50.8% of the value of the maximum potential *damages* at issue. Even when
19 including the penalties for Plaintiff's claim for wage statement violations and waiting time penalties
20 under *Labor Code* Sections 203 and 226, the settlement represents up to 9.5% of the maximum
21 potential liability, assuming all of these amounts could be proved at trial. JCL Dec., ¶ 37.

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
24 misclassification action and found that the Gross Settlement Amount representing 10% of the
25 estimated trial award was within the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego*
26 *Fin. Corp. Sec. Litig.)* (9th Cir. 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement
27 representing "roughly one-sixth of the potential recovery." Given the amount of the settlement here
28 as compared to potential value of the claims, particularly the strength of Plaintiffs' action, the

1 settlement is clearly fair and reasonable.³

2 The calculation methodology used to compensate the Settlement Class Members for the
3 alleged damages was negotiated at the time of the Settlement. More importantly, the methodology
4 is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks
5 each Settlement Class Member worked for Defendants during the Class Period. The number of
6 Workweeks for the Settlement Class Members is established through Defendants' data and
7 documented compensation records. The Settlement Administrator is responsible for calculating the
8 Individual Settlement Payments by multiplying the Payment Ratio for each Settlement Class
9 Member by the Net Settlement Amount. The Settlement Administrator will calculate the Payment
10 Ratio by dividing the total number of Workweeks for each Settlement Class Member by the total
11 number of Workweeks for all Settlement Class Members. This process establishes an objectively
12 fair and reasonable procedure to compensate the Settlement Class. Agreement, ¶ III(M)(1).

13 The Settlement also provides significant relief to the Settlement Class Members. After
14 deductions for the Attorneys' Fees and Attorneys' Expenses, Administration Costs, the PAGA
15 Settlement, and the Service Award, the Net Settlement Amount is currently estimated to be
16 **\$414,500.00**. The average settlement payment is approximately **\$491.70**. ILYM Dec., ¶ 14. This
17 average net recovery is on par with many wage and hour class action settlements approved by
18 California state and federal courts. JCL Dec., ¶ 38. Additionally, Defendants must separately fund
19 its share of any employer side payroll taxes. Agreement, ¶ III(A)(3).

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

24
25 ³ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7
26 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or
27 approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-
28 00784) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of
the estimated total liability); see also *In re Newbridge Networks Sec. Litig.* (D.D.C. Oct. 23, 1998) 1998 WL 765724,
at *2 ("Courts have not identified a precise numerical range within which a settlement must fall in order to be deemed
reasonable; but an agreement that secures roughly six to twelve percent of a potential trial recovery, while preventing
further expenditures and delays and eliminating the risk that no recovery at all will be won, seems to be within the
targeted range of reasonableness.").

1 **F. The Strength of Plaintiffs’ Case and Risks of Continued Litigation**

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

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

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

Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 41.

Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 42.

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

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

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

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

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

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

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

7 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber*
8 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014)
9 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little
10 doubt that if Defendants faced a large adverse judgement, Defendants undoubtedly have the
11 resources to post a bond and appeal. A post-judgment appeal by Defendants would have required
12 many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed
13 in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed
14 recovery today outweigh an uncertain result three or more years in the future. JCL Dec., ¶ 43.

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

27
28 ///

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

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

13 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$40,000.00
14 which is approximately 5.3% of the Gross Settlement Amount. As illustrated above, this amount
15 falls well within the range of approved PAGA Settlements. Seventy-five percent (75%) of the
16 PAGA Settlement (\$30,000.00) will be paid to the LWDA (“LWDA Payment”) with the remaining
17 twenty-five percent (25%) to be distributed to the PAGA Class Members, which is within the range
18 of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 45.

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

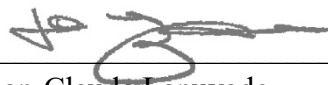
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1 **VII. CONCLUSION**

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
4 adequate and requests entry of the Final Approval Order and Judgment submitted herewith.

5
6 DATED: September 12, 2023

JCL LAW FIRM APC

7
8 By:  _____

Jean-Claude Lapuyade
Attorney for Plaintiffs