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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

TANYA MARSHALL, MARIA ANDRADE, individually, and on behalf of other members of the general public similarly situated; Plaintiffs, v. WATTS HEALTHCARE CORPORATION, a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. 19STCV27737 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: August 25, 2025 Time: 10:30 a.m. Dept.: 1

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I. INTRODUCTION

Plaintiffs Tanya Marshall and Maria Andrade (hereinafter "Plaintiffs") seek final approval of the Class Action and PAGA Settlement Agreement ("Agreement")[1], which if approved, would provide valuable monetary relief for 653 Settlement Class Members employed by Defendant Watts Healthcare Corporation (hereinafter "Defendant") during the Class Period.

In an order dated February 26, 2025, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade ("JCL Dec."), ¶ 4. On May 15, 2025, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Madely Nava ("Apex Dec."), ¶ 7. ***The Class greeted news of the Settlement with unanimous approval as, at the time of the filing of this motion, <u>all</u> 653 Class Members chose to participate in the Settlement.***[2] There are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

An objective evaluation of the proposed settlement of Two Million Dollars and Zero Cents ($2,000,000.00) ("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 Eve Wagner, Esq. a respected wage and hour class action 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 Defendant during the Class Period. JCL Dec., ¶ 8.

This Settlement provides substantial recovery to Settlement Class Members. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately $1,074,010.00. This will result in an average Individual Class Payment of $1,644.73, a high payment of $5,293.65, and a low payment of $10.94. Apex Dec. at ¶ 16. Aggrieved Employees will receive an

[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] Four (4) Notices were deemed undeliverable. Apex Dec. at ¶ 10.

estimated average gross payment of $200.57, and a high payment of $362.12. Apex Dec. at ¶ 18.

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

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

II. <u>OVERVIEW OF THE LITIGATION</u>

Defendant is a non-profit charitable organization and designated Federally Qualified Health Center that provides medical, social, and behavioral services to the indigent and/or under-served communities in Los Angeles, California. Plaintiff Tanya Marshall worked for Defendant in California from approximately February 2017 to May 2017 as a non-exempt employee, paid on an hourly basis. Plaintiff Maria Andrade worked for Defendant in California from approximately September 2021 to October 2021 as a non-exempt employee, paid on an hourly basis. During their employment, Plaintiffs allege that Defendant failed to provide them with compliant meal and rest periods, pay all wages due, and failed to reimburse business expenses. Throughout their employment, Plaintiffs and other putative class members and aggrieved employees were subject to Defendant's written and non-written operations and employment policies, practices, and procedures. Declaration of Tanya Marshall ("Marshall Dec."), ¶¶ 2-4; Declaration of Maria Andrade ("Andrade Dec."), ¶¶ 2-4. Generally, Plaintiffs claim that Defendant failed to pay for all time worked and all wages due, failed to provide compliant meal and rest periods, failed to reimburse for required business expenses, failed to furnish accurate itemized wage statements, failed to maintain requisite payroll records, and failed to timely pay all wages when due. Defendant denies liability for each of Plaintiffs' claims. Further, Defendant asserts that Plaintiffs and some of the putative class members are subject to collective bargaining agreements that cover the hours of labor, wages, and basic working conditions of Plaintiffs and other putative class members, which include grievance and arbitration procedures that cover the claims asserted in the Action, and that many putative class members have availed themselves of the grievance and arbitration procedures so as to resolve disputes regarding their wages and hours and working conditions. Defendant also asserts that it fully complied with all of its obligations under any collective bargaining agreements and applicable state and federal wage and hour laws, and Defendant had raised several other significant defenses to Plaintiffs' claims. In the course of litigation, Defendant asserted that it intended to file motions (including inter alia, a motion for judgment on the pleadings or motion for summary judgment), seeking to have the Court determine whether the claims asserted in the Action are preempted by section 301(a) of the Labor Management Relations Act and whether Plaintiffs were required to exhaust administrative remedies and/or internal grievance procedures, including the grievance and arbitration remedies provided by the collective bargaining agreements. *See* Declaration of Joanna Ghosh ("JG Dec."), ¶ 2.

On August 8, 2019, Plaintiff Tanya Marshall filed her complaint against Defendant in Los Angeles County Superior Court, alleging: (1) failure to pay overtime pursuant to California Labor Code sections 510 and 1198; (2) failure to provide compliant meal periods and associated premiums in violation of California Labor Code sections 226.7 and 512(a); (3) failure to provide compliant rest periods and associated premiums in violation of California Labor Code section 226.7; (4) failure to pay minimum wages pursuant to California Labor Code sections 1194, 1197, and 1197.1; (5) failure to timely pay wages upon termination in violation of California Labor Code sections 201 and 202; (6) failure to timely pay wages during employment in violation of California Labor Code section 204; (7) failure to provide accurate and itemized wage statements in violation of California Labor Code section 226(a); (8) failure to keep requisite payroll records in violation of California Labor Code section 1174(d); (9) failure to reimburse business expenses in violation of California Labor Code sections 2800 and 2802; and (10) violations of California Business and Professions Code section 17200, *et seq*. JG Dec., ¶ 3.

On November 12, 2020, Defendant filed a Notice of Related Case, identifying *Sonika Flournoy v. Watts Healthcare Corporation*, Los Angeles County Superior Court Case No. 20STCV08186 ("Flournoy Action"), filed on March 2, 2020, as a related case. On November 23, 2020, the Court entered an order finding that this Action and the Flournoy Action are related under California Rules of

Court, rule 3.300(a) and the Court further deemed this Action as the lead case. Eventually, the Flournoy Action resolved by way of settlement on an individual basis and was dismissed. JG Dec., ¶ 4.

On December 8, 2021, the Parties participated in an all-day mediation presided over by Eve Wagner, Esq., however, the Parties did not reach a settlement at that time and the Action continued to be litigated. On July 31, 2023, the Parties stipulated to an order granting Plaintiff Tanya Marshall leave to file a first amended complaint adding Maria Andrade as a named plaintiff in this Action, and the Court granted leave on August 1, 2023. The First Amended Class Action Complaint for Damages was filed on August 3, 2023. JG Dec., ¶ 5. The Parties continued to engage in settlement negotiations, including Defendant providing documentation and information, on a confidential basis, regarding its business and financial circumstances to further facilitate settlement discussions, with the Mediator's assistance, between approximately December 2021 and June 2024. Specifically, Defendant has contended that it is a non-profit charitable organization and designated Federally Qualified Health Center that provides medical, social, and behavioral services to the indigent and/or under-served communities in Los Angeles, California, and that its operations are primarily funded way of Federal funding, and to some extent State and County special grants and contracts, that are earmarked for particular purposes and use, and that these funds may not be diverted to non-service related issues. Defendant has also contended that it was economically impacted by the COVID-19 pandemic. In the course of litigation and mediation and settlement negotiations, Defendant has provided Plaintiffs' counsel with, on a confidential basis, documentation and information regarding its business and financial condition. JG Dec., ¶ 6.

Based on extensive additional settlement negotiations and the mediator's evaluation, the Parties ultimately reached a settlement by accepting the mediator's proposal and, thereafter, executed a Memorandum of Understanding—Class Action and PAGA Settlement on July 29, 2024, and entered the Class Action and PAGA Settlement Agreement ("Agreement," "Settlement," and "Settlement Agreement") on January 29, 2025. JG Dec., ¶ 7.

On February 26, 2025, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On May 15, 2025, the Administrator mailed Notice Packets to all 653 Settlement Class Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement was outstanding—100% of the Class Members are participating in the Settlement. Apex Dec., ¶ 14.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Two Million Dollars and Zero Cents ($2,000,000.00) based on a total of an estimated 106,344 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Class Payments; (2) to satisfy the Class Representative Service Payments; (3) to satisfy the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (4) to satisfy the PAGA Payment; and (5) to satisfy the Administration Expenses Payment incurred in this action. JCL Dec., ¶ 17.

Assuming there are no objectors, and no appeal is filed, Defendant will fund the $2,000,000.00 Gross Settlement Amount in three (3) installments. Defendant made the first payment in the amount of $666,667.00 on June 18, 2025 ("First Installment"). Apex Dec., ¶ 19. Defendant will make the second payment in the amount of $666,667.00 by June 19, 2026 ("Second Installment"). Defendant will make the third payment in the amount of $666,667.00 by June 19, 2027 ("Final Payment").[3] Agreement at § 4.3. Within 14 days after Defendant makes the Second Payment, the Administrator will mail checks for all Individual Class Payments and all Individual PAGA Payments. Within 14 days after Defendant makes the Final Payment and fully funds the Gross Settlement Amount, the Administrator will mail checks for the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments shall not precede disbursement of Individual

[3] The Parties believe that the structure and amount of the Settlement are fair and reasonable in light of Defendant Watts Healthcare Corporation's financial condition. WHCC is a non-profit Federally Qualified Health Center that operates at a consistent operational deficit due to its mission of providing essential medical and social services to underserved communities in Los Angeles, regardless of patients' ability to pay. The vast majority of WHCC's funding is strictly earmarked for providing community services and cannot legally or practically be diverted to litigation settlements. *See generally* Declaration of Defendant's CEO Barrett Hatches in Support of Plaintiffs' Motion for Preliminary Approval. The negotiated three-year payment plan reflects WHCC's limited financial means and ensures that the Settlement does not jeopardize its public health mission. As discussed in detail below, this financial reality further supports the conclusion that the Settlement is within the range of reasonableness and warrants final approval.

Class Payments and Individual PAGA Payments. Agreement at § 4.3.

The Administrator will calculate 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 multiplying the result by each Participating Class Member's Workweeks. Agreement at § 3.2.4. The estimated average Individual Class Payment is approximately $1,644.73. Apex Dec., ¶ 16.

In exchange for the valuable consideration, as of the full funding of the Gross Settlement Amount, Plaintiffs and the Participating Class Members will agree to release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement at §§ 1.39; 5.2. Plaintiff, acting as the representative of the State of California, on behalf of the Aggrieved Employees, will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. Agreement at §§ 1.40; 5.3.

Apex Class Action, LLC was appointed as the Administrator for the Class. Administration Expenses Payment include those expenses of effectuating and administering the Settlement, *i.e*., the costs incurred to the Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Class Payments, and the fees of the Administrator ("Administration Expenses Payment") approved for reimbursement by the court. The Administration Expenses Payment is $14,990.00. Apex Dec., ¶ 20. These expenses shall be paid from the Gross Settlement Amount. Agreement, § 3.2.3.

Subject to Court approval, Class Counsel shall seek a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment in the amount of $696,000.00, comprised of attorneys' fees equal to 33.3% of the Gross Settlement Amount estimated to be Six Hundred Sixty-Six Thousand Dollars and Zero Cents ($666,000.00) and up to Thirty Thousand Dollars and Zero Cents ($30,000.00) for actually incurred litigation expenses. Plaintiffs' counsel is to split the fees as follows: 85% to Lawyers for Justice, PC, 7.5% to the JCL Law Firm, APC, and 7.5% the Zakay Law Group, APLC. Plaintiffs have consented to the fee sharing in writing. JCL Dec., ¶ 12. The Preliminary Approval Order also provides for a Class Representative Payment in the amount of $7,500 for each Plaintiff, in consideration of their time, risk, and efforts as the Class Representatives on behalf of the Settlement Class and a general release.

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by the Settlement Class, the absence of any objections to the Settlement and the average Individual Class Payment of $1,644.73. Apex Dec., ¶¶ 12;16.

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

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

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

In these cases, courts have repeatedly emphasized that there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. 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. <u>Class Counsel Conducted a Thorough Investigation.</u>

As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the proposed Class Members' claims, applicable law, and potential defenses. This matter involved extensive investigations and research into legal and factual issues, and extensive formal and informal discovery. Class Counsel obtained class contact information from Defendant as well as other information from Plaintiffs and percipient witnesses. Class Counsel reviewed and analyzed a volume of information, documents, and data obtained from Plaintiffs, Defendant, and other sources, researched applicable law, and undertook analyses and calculations of the value of claims, damages, and penalties exposure. Class Counsel also met and conferred with Defendant's counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, contemplated motion practice, formal and informal discovery, production of information, documents, and data in the course of litigation and mediation and settlement negotiations, and the mediation and settlement negotiations. Other work that Class Counsel has performed and/or will perform include, *inter alia*, case strategy and analysis; drafting, reviewing, and revising the pleadings, motion-related papers, and settlement-related papers; case management; and preparing for, participating in, and/or attending court proceedings and the mediation and settlement negotiations. JG Dec., ¶ 8. Class Counsel's investigation, research, experience, and damage models informed and guided the mediated negotiations that resulted in this settlement. Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement.

B. The Parties Settled After Mediation and Extensive Post-Mediation Settlement Negotiations.

On December 8, 2021, the Parties participated in an all-day mediation presided over by Eve Wagner, Esq., however the Parties did not reach a settlement at that time and the Action continued to be litigated. On July 31, 2023, the Parties stipulated to an order granting Plaintiff Tanya Marshall leave to file a first amended complaint adding Maria Andrade as a named plaintiff in this Action, and the Court granted leave on August 1, 2023. The First Amended Class Action Complaint for Damages was filed on August 3, 2023. The Parties continued to engage in settlement negotiations, including

Defendant providing confidential financial information to further facilitate settlement discussions, with the mediator's assistance between December 2021 and June 2024. Based on the mediator's evaluation, the Parties ultimately reached a settlement by accepting the mediator's proposal and executed a Memorandum of Understanding—Class Action and PAGA Settlement on July 29, 2024. JG Dec. ¶ 7. The Parties first negotiated and agreed to the Gross Settlement Amount and many other terms, and eventually, also the amount of the Class Representative Service Payments. JG Dec. ¶ 9. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's service on behalf of the Class.

C. <u>Class Counsel is Experienced in Similar Litigation.</u>

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar claims. Class Counsel has 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 has 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. JG Dec., ¶¶ 29 - 32; JCL Dec., ¶¶ 13-19; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

D. <u>The Settlement Class Responded Positively to the Settlement.</u>

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. As of the filing of this motion, <u>none</u> of the 653 members of the Settlement Class opted-out of the Settlement. Moreover, there are <u>***zero***</u> objections. Stated differently, <u>**100%**</u> of the Settlement Class chose to participate in the Settlement. JCL Dec., ¶ 8; Apex Dec., ¶¶ 11-14.

The unanimous 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."); *Stoetzner 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 request the Court to follow the unanimous approval of the Settlement Class and grant final approval of the Settlement.

E. <u>The Gross Settlement Amount is Fair and Reasonable.</u>

The Gross Settlement Amount of Two Million Dollars and Zero Cents ($2,000,000.00) 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 settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." *Kullar*, *supra,* at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).)

Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250. While the Gross Settlement Amount represents a discount on Defendant's potential exposure if Plaintiff established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award significantly less in damages than Plaintiffs' estimate and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 20.

As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. 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 Defendant during the Class Period. The number of Workweeks for the Settlement Class Members is established through Defendant's 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 also provides significant relief to the Settlement Class Members. After deductions for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Administration Expenses Payment, the PAGA Payment, and the Class Representative Service Payments, the Net Settlement Amount is currently estimated to be $1,074,010.00. Apex Dec., ¶15. The average Individual Class Payment is approximately $1,644.73, the highest is approximately $5,293.65, and the lowest payment is approximately $10.94. Apex Dec., ¶ 16. 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 (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, Defendant must separately fund its 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 amount of the Settlement, 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., ¶ 21.

F. <u>The Strength of Plaintiff's Case and Risks of Continued Litigation</u>

Although Class Counsel believe strongly in Plaintiffs' claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiffs' claims. 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).

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

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

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.

Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless recognize that Defendant has 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.

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.

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

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

As demonstrated by the decisions in *Magadia, supra,* 999 F.3d 668, *O'Conner v. Uber Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. Plaintiffs fully expect that Defendant would appeal any favorable judgment. A post-judgment appeal by Defendant would have required many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh an uncertain result three or more years in the future. JCL Dec., ¶ 22.

Class Representative and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 23.

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

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

Here, Plaintiffs and Defendant negotiated a good faith PAGA Payment in the amount of $200,000 which is 10% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range of approved PAGA Payments. Sixty-five percent (65%) of the PAGA Payment ($130,000.00) will be paid to the LWDA ("LWDA Payment") with the remaining thirty-five percent (35%) of the PAGA Payment ($70,000) to be distributed to the Aggrieved Employees ("Individual PAGA Payments"), which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 24.

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

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VII. CONCLUSION

Plaintiffs respectfully submit that the proposed settlement satisfies the standard of fairness established in California law and should therefore be finally approved as fair, reasonable, and adequate and requests entry of the Final Approval Order and Judgment submitted herewith.

Dated: July 31, 2025

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