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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

LAN HO, and MARLENE BENITEZ, individuals, on behalf of themselves, and on behalf of all persons similarly situated, Plaintiffs, v. MHF MV MANAGER VI LLC a Delaware limited liability company; MHF MV OPERATING VI LLC dba COURTYARD SAN DIEGO MISSION VALLEY/HOTEL CIRCLE, a Delaware limited liability company; MHF MV VI LLC, a Delaware limited liability company; and DOES 1-50, Inclusive, Defendants.	Case No. 37-2024-00023005-CU-OE-CTL **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: June 26, 2026 Time: 9:00 a.m. Judge: Hon. Euketa Oliver Dept.: C-75

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I. INTRODUCTION

Plaintiffs Lan Ho ("Plaintiff Ho") and Marlene Benitez ("Plaintiff Benitez") (collectively, "Plaintiffs") seek final approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (hereinafter the "Agreement")[1], which if approved, would provide valuable monetary relief for approximately 353 Settlement Class Members employed by Defendants MHF MV Manager VI LLC ("Defendant MHF Manager"), MHF MV Operating VI LLC dba Courtyard San Diego Mission Valley/Hotel Circle ("Defendant MHF Operating"), and MHF MV VI LLC ("Defendant MHF") (hereinafter "Defendants") during the Class Period.

In an order dated February 27, 2026, this Court preliminarily approved the Agreement and preliminarily certified the Settlement Class. Declaration of Jean-Claude Lapuyade ("JCL Dec."), ¶ 4.

On April 7, 2026, the Settlement Administrator delivered notice of the proposed settlement to the Settlement Class. Declaration of Katie Tran ("Apex Dec."), ¶ 7.

The Class greeted news of the Settlement with unanimous approval.[2] There were zero objections and zero opt-outs to the Settlement. Apex Dec., ¶¶ 11-12. The 100% 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 $550,000.00 ("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, guided by the wisdom and experience of Monique Ngo-Bonnici, Esq., a respected and experienced mediator of wage and hour class and PAGA actions. After deducting any Court-approved Service Awards, Class Counsel Award, Settlement Administration Costs and the PAGA Payment, the Net Settlement Amount shall be distributed to the Settlement Class Members based on the number of Workweeks they worked while employed by Defendants during the Class Period. JCL Dec., ¶ 8.

This Settlement provides substantial recovery to Class Members. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately **$273,510.00**. This will result in an average Individual Settlement Payment of **$774.82**, with the estimated highest gross

[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, 23 Notices were deemed undeliverable.

payment being **$4,713.93** and the lowest gross payment being **$17.02**. Aggrieved Employees will receive an estimated average gross payment of **$40.91**, with the estimated highest gross payment being **$101.45** and the lowest gross payment being **$1.64.** Apex Dec., ¶¶ 16-17; JCL Dec., ¶ 9.

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., ¶ 10.

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, Class Representatives and Class Counsel respectfully request this Court grant final approval of the Agreement and entry of the proposed Final Approval Order and Judgment. JCL Dec., ¶ 11.

II. OVERVIEW OF THE LITIGATION

Defendants own and operate the Courtyard Marriott Mission Valley hotel in San Diego, California, where Plaintiffs worked. Plaintiff Ho was employed by Defendants from September 2019 through October 2023 as a non-exempt employee. JCL Dec., ¶ 12, Plaintiff Benitez was employed by Defendants from on or about May 30, 2022, through April 17, 2024, as a non-exempt employee. Declaration of Marlene Benitez ("Benitez Dec.") at ¶ 4. Throughout their employment, Plaintiffs were subject to Defendants' policies and procedures. JCL Dec., ¶ 12.

Generally, Plaintiffs claim that Defendants failed to pay for all time worked, failed to properly calculate the regular rate of pay for purposes of overtime, meal period premiums and redeemed sick pay, failed to provide compliant meal and rest periods, failed to reimburse necessary business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation. Defendants deny liability for each of Plaintiffs' claims. Further, Defendants assert they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, asserting that they paid their employees for all hours worked, maintained facially compliant meal and rest period policies, issued compliant wage statements, properly reimbursed all necessary business expenses, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 13.

On March 11, 2024, Plaintiff Ho served Defendants and the LWDA with a Notice of Violations ("PAGA Notice"). Plaintiff Ho's PAGA Notice set forth the facts and theories supporting Defendants' alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commission ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code §§ 2698, *et seq.* ("PAGA"). JCL Dec., ¶ 14.

On May 17, 2024, Plaintiff Ho filed a class action complaint in the San Diego County Superior Court, Case No. 37-2024-00023005-CU-OE-CTL ("Ho Class Action" or "Lead Case") alleging class claims for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §17200 *et seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure To Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure To Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Accurate Itemized Statements in Violation of Cal. Lab. Code § 226; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (9) Failure to Provide Gratuities in Violation of Cal. Lab. Code § 351. JCL Dec., ¶ 15.

That same day, Plaintiff Ho filed a separate representative action complaint in the San Diego County Superior Court, Case No. 37-2024-00023073-CU-OE-CTL ("Ho PAGA Action") alleging a single cause of action for violations of PAGA. JCL Dec., ¶ 16.

On May 22, 2024, Plaintiff Benitez submitted a Notice of Violations with the LWDA and served the same on Defendants. JCL Dec., ¶ 17.

On June 24, 2024, Plaintiff Benitez filed a representative action complaint in the County of Alameda Superior Court, Case No. 24CV080932 ("Benitez PAGA Action"). On July 31, 2024, Plaintiff Benitez filed a first amended complaint. Per stipulation, the Benitez action was transferred to the San Diego County Superior Court, Case No. 37-2024-00900160-CU-MC-CTL alleging claims under the PAGA for: (1) Failure to Pay Minimum/Regular Wages; (2) Failure to Pay State Overtime; (3) Failure to Pay Wages Timely; (4) Failure to Comply with Meal and Rest Break Laws; (5) Failure to Provide

Accurate Wage Statements; (6) Failure to Maintain Records; (7) Failure to Reimburse Expenses; (8) Sick Pay Violations; and (9) Violations of Various Miscellaneous Provisions of the Labor Code via the PAGA. JCL Dec., ¶ 18.

The Parties subsequently agreed to mediate the case. To prepare for mediation, the Parties agreed to informally exchange additional documents and data points subject to the mediation privilege, including but not limited to, the Class Members' time data and certain payroll data points. As discussed *infra,* Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data. JCL Dec., ¶ 19.

On June 19, 2025, the Parties participated in mediation presided over by Monique Ngo-Bonnici, Esq., an experienced mediator of wage and hour class and PAGA actions. The mediation concluded with a settlement after both sides agreed to a Mediator's proposal, which was subsequently memorialized in the form of a Memorandum of Understanding ("MOU"). 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., ¶ 20.

On February 4, 2026, Plaintiffs filed the Operative Complaint in the *Ho* Class Action, adding Plaintiff Benitez as a named plaintiff, and adding factual allegations, theories, and claims asserted in the *Ho* PAGA Action and the *Benitez* PAGA Action. JCL Dec., ¶ 21.

On February 27, 2026, this Court preliminarily approved the Settlement. JCL Dec., ¶ 22. On April 7, 2026, the Settlement Administrator mailed Notice Packets to all 353 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. <u>THE SETTLEMENT BEFORE THE COURT</u>

The Court preliminarily approved a Gross Settlement Amount of $550,000.00 based on a total of approximately 20,502 Workweeks worked by the Settlement Class during the Class Period. The Gross Settlement Amount shall be used to satisfy: (1) the Individual Settlement Payments; (2) the Service Awards; (3) the PAGA Payment; (4) the Settlement Administration Costs; and (5) the Class Counsel

Award. JCL Dec., ¶ 23.

Defendants shall fully fund the Gross Settlement Amount, and the amounts necessary to fully pay Defendants' share of payroll taxes, by transmitting the funds to the Settlement Administrator no later than 10 days after the Effective Date. The Effective Date is defined as the date this Settlement is approved as provided in the Agreement and the Court's order granting Settlement Approval and entry of Final Judgment becomes final and is no longer appealable. For purposes of this Settlement, "becomes final and is no longer appealable" shall mean the later of: (a) the day after the last date by which a notice of appeal may be filed pursuant to California Rules of Court 8.406 (i.e., 61 days after entry of the Judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Settlement passes, and no further review is requested; or (c) if an appeal is filed and the order approving this Settlement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Settlement is affirmed. Agreement at § I(M), I(N).

Within 15 days after Defendants fund the Gross Settlement Amount, the Settlement Administrator will mail checks for all Individual Class Payments, all Aggrieved Employee Payments, the LWDA Payment, the Settlement Administration Costs, the Service Awards, and the Class Counsel Award. Agreement at § I(M).

The Settlement Administrator will calculate the total number of Workweeks worked by each Class Member during the Class Period. Individual Class Payments will be calculated as follows: Using the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all Class Members. The respective Workweeks for each Class Member will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement Payments. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.). Agreement at § I(M). The estimated average Individual Settlement Payment is approximately **$774.82**. JCL Dec., ¶ 9.

In exchange for the valuable consideration, upon full funding of the Gross Settlement Amount, the Settlement Class Members will release the Released Parties from the Released Class Claims and Plaintiffs, on behalf of themselves, the State of California, and all Aggrieved Employees will release the Released Parties from the Released PAGA Claims as defined in the Agreement. Agreement at §§ III(C); III(D).

Apex Class Action LLC was appointed as the Settlement Administrator for the Class. The Settlement Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the costs incurred by the Settlement Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Settlement Payments, and the fees of the Administrator approved for reimbursement by the court. The Settlement Administration Costs are $6,990.00. Apex Dec., ¶ 19. These expenses shall be paid from the Gross Settlement Amount. Agreement at § I(KK).

Subject to Court approval, Class Counsel shall seek a payment of Class Counsel Award in the amount of not more than $222,500.00, comprised of attorneys' fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount ($192,500.00) and up to $30,000.00 for actually incurred litigation expenses. Attorneys' fees will be divided between Class Counsel in the following percentages: 40% to JCL Law Firm, APC; 40% to Zakay Law Group, APLC; 10% to the Law Office of Thomas D. Rutledge; and 10% to the Larabee Law Firm. Agreement at § I(H). The Agreement also provides for Service Awards in the amount of $10,000.00 to each Plaintiff ($20,000.00 total), in consideration of their time, risk, and efforts as the Class Representatives on behalf of the Class. Agreement at § I(II).

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 Class, the absence of any objections to the Settlement and the average Individual Settlement Payment of **$774.82**. Apex Dec., ¶ 16; JCL Dec., ¶ 24.

IV. <u>GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS</u>

Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259, 265 (1997). 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.*, 85 Cal. App. 4th 1135, 1151 (2000) ("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, taking into account 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*, 91 Cal. App. 4th 224, 246 (2001) ("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.*, 48 Cal. App. 4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). 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*, 220 Cal. App. 3d 1117, 1138 (1990). "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.*, 168 Cal. App. 4th 116, 128 (2008); see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 408 (2010).

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

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

A. <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. Specifically, Class Counsel assessed the value of the class claims using data and documents provided by Defendants in informal discovery. To prepare for mediation, Defendants produced more than 2.2 million unique cells of time and payroll data for the Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of applicable handbooks, policies, and agreements. Class Counsel then retained the statisticians and economists at BCG to evaluate the Class Members' payroll and time 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, Class Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶¶ 25-31.

B. **<u>The Parties Settled at Mediation</u>**

On June 19, 2025, the Parties conducted a full day of mediation with Monique Ngo-Bonnici, Esq. Mediator Ngo-Bonnici helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Ngo-Bonnici's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The mediation concluded with a settlement, after both sides agreed to a Mediator's proposal, which was subsequently memorialized in the MOU. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. Class Counsel submits that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JCL Dec., ¶ 32.

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. JCL Dec., ¶¶ 33-39; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3; Declaration of Thomas D. Rutledge, ¶¶ 1-22; Declaration of Joel Larabee, ¶¶ 1-10.

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

The reaction of the Settlement Class unequivocally supports approval of the Settlement. The notice sent to the Settlement Class provided each class member with the terms of the Settlement, including the specific estimated Individual Settlement Payments. To date, ***<u>none</u>*** of the 353 Class

Members opted out of the Settlement. Moreover, there are ***zero*** objections. Stated differently, 100% of the Class chose to participate in the Settlement. JCL Dec., ¶ 8; Apex Dec., ¶ 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*, 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) ("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.*, 897 F.2d 115, 118-119 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union*, 638 F.2d 954 (6th Cir. 1981) (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. The Gross Settlement Amount is Fair and Reasonable

The Gross Settlement Amount of Five Hundred Fifty Thousand Dollars and Zero Cents ($550,000.00) 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 Defendants' potential exposure if Plaintiffs 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 Defendants 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., ¶ 40.

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 Defendants' 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. As detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendants' liability exposure for the claims asserted on behalf of the Class. The Gross Settlement Amount represents between 23.03% and 37.04% of Defendants' *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 41.

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

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 Settlement Administrator is responsible for calculating the Individual Class Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and then multiplying the result by each Settlement Class Member's Workweeks

[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 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately $29 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 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.").

worked during the Class Period. Agreement at § III(M)(1). 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 Service Awards, Class Counsel Award, Settlement Administration Costs and the PAGA Payment, the Net Settlement Amount is currently estimated to be $273,510.00. Apex Dec., ¶ 15. The average Individual Class Payment is approximately $774.82, the highest is approximately $4,713.93, and the lowest payment is approximately $17.02. 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 (E.D. 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 its share of any employer side payroll taxes. Agreement at § III(A)(4).

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., ¶ 42.

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

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., ¶ 43. As the federal court in *Glass v. UBS Fin.*

Servs., 2007 WL 221862 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., ¶ 44.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendants' 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 of 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."). JCL Dec., ¶ 45.

Finally, even if a class is certified and Defendants are 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 judgment against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgment in favor of the employer. *See also O'Connor v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action). JCL

Dec., ¶ 46.

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., ¶ 47.

Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless recognize 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 Plaintiffs' claims and, in fact, already has. JCL Dec., ¶ 48.

In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133 (N.D. Cal. Apr. 3, 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., No. C04-01463 HRL, 2007 WL 4105971, at *10 (N.D. Cal. Nov. 16, 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., No. 07CV938-IEG-JMA, 2009 WL 587844, at *3 (S.D. Cal. Mar.*

6, 2009); see also Louie v. Kaiser Found. Health Plan, Inc., No. 08CV0795 IEG RBB, 2008 WL 4473183 (S.D. Cal. Oct. 6, 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.*, 150 F.3d 1011, 1026 (9th Cir. 1998).)

As demonstrated by the decisions in *Magadia, supra,* 999 F.3d 668 and *O'Connor v. Uber Technologies*, 82 F. Supp. 3d 1133 (N.D. Cal. 2018) and *Duran v. U.S. Bank National Assn.,* 59 Cal. 4th 1 (2014), the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post a bond and appeal. A post-judgment appeal by Defendants 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., ¶ 49.

Class Representatives and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives 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., ¶ 50.

VI. <u>THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE</u>

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 Defendants negotiated a good faith PAGA Payment in the amount of $27,000.00, which is nearly 5% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Payments. Seventy-five percent (75%) of the PAGA Payment ($20,250.00) will be paid to the LWDA ("LWDA Payment") and the remaining twenty-five percent (25%) of the PAGA Payment ($6,750.00) will be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"), which is within the range of PAGA Payments approved by courts and should be approved. JCL Dec., ¶ 51.

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. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment. JCL Dec., ¶ 52.

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 Plaintiffs respectfully request entry of the Final Approval Order and Judgment submitted herewith.

Dated: May 29, 2026

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