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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

TAMIKA R. THOMAS, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

CENTER FOR ELDER'S INDEPENDENCE,
a California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 22CV024221

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

Date: July 2, 2024
Time: 1:30 p.m.
Reservation ID: 513585335821

Judge: Hon. Noel Wise
Dept.: 21

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1 I. INTRODUCTION

2 Plaintiff Tamika R. Thomas (hereinafter “Plaintiff”) seeks final approval of the Second Amended
3 Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹,
4 which if approved, would provide valuable monetary relief for 485 Settlement Class Members employed
5 by Defendant Center for Elders’ Independence (hereinafter “Defendant”) during the period from
6 December 7, 2019 to September 20, 2023 (“Class Period”).

7 In an order dated February 1, 2024, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class.² Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 5-7. On March
9 1, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
10 Declaration of Madely Nava (“Apex Dec.”), ¶ 7. *The Class greeted news of the Settlement with 100%*
11 *approval*.³ There are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-13. The
12 unanimous approval rate by the Class evidences the clear fairness and reasonableness of the Settlement.
13 JCL Dec., ¶ 10.

14 An objective evaluation of the proposed settlement of Nine Hundred, Seventy Thousand Dollars
15 and Zero Cents (\$970,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on
16 behalf of the Settlement Class Members is fair, reasonable, and valuable. The Settlement is a product
17 of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided
18 over by Honorable Brian C. Walsh (Ret.), a retired judge and experienced mediator of wage and hour
19 class and PAGA actions. After deducting any Court-approved PAGA Penalties, Service Award,
20 Attorneys’ Fees and Expenses, and the Administration Costs, the Net Settlement Amount shall be
21 distributed to Settlement Class Members based on the number of Workweeks they worked while
22 employed by Defendant during the Class Period. JCL Dec., ¶ 10.

23 This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations.
24 Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of
25

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

² Following preliminary approval, the Parties discovered a potential issue with the cy pres recipient, Legal Assistance for
Seniors, Inc. Thus, the Parties amended the Agreement to designate Children’s Advocacy Institute as the new cy pres. JCL
Dec., ¶ 7.

³ Seven (7) Notices were deemed undeliverable. Apex Dec. at ¶ 10.

1 approximately \$559,166.67. This will result in an average Individual Settlement Payment of **\$1,152.92**,
2 a high payment of **\$2,289.58**, and low payment of **\$11.56**. JCL Dec., ¶ 11; Apex Dec., ¶ 15.

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

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

12 **II. OVERVIEW OF THE LITIGATION**

13 Defendant is a California nonprofit corporation that provides in-home care, medical services,
14 nutrition services, social services, family services, logistical services, and transportation services to the
15 elderly. This action asserts claims on behalf of Defendant's current and former non-exempt employees
16 employed in California. Plaintiff worked for Defendant as a non-exempt employee in California
17 between May of 2007 to approximately October of 2021. At all times during her employment, Plaintiff
18 earned hourly wage, including overtime, and performance-based incentive compensation, and was
19 entitled to legally compliant meal and/or rest periods. Throughout her employment, Plaintiff was
20 subject to Defendant's written policies and procedures contained in, among other documents, the
21 "Center for Elders' Independence Employee Handbook." JCL Dec., ¶ 14; Declaration of Tamika R.
22 Thomas ("Thomas Dec.") at ¶ 3-4.

23 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
24 compliant meal and rest periods, failed to pay overtime, meal premiums, and sick pay at the correct
25 regular rate of pay, failed to reimburse for mandatory business expenses, failed to furnish accurate
26 itemized wage statements, and failed to pay all wages when due. Defendant forcefully denies liability
27 for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable
28 employment laws and raised several other significant defenses to Plaintiff's claims, including but not

1 limited to, facially compliant meal and rest period policies, compliant wage statements, and timely
2 payment all wages due upon separation of employment. JCL Dec., ¶ 15.

3 On December 20, 2022, Plaintiff served Defendant and the Labor and Workforce Development
4 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
5 the facts and theories supporting Defendant’s alleged violations of various provisions of the California
6 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to
7 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
8 2698 et seq (“PAGA”). JCL Dec., ¶ 16.

9 On December 20, 2022, Plaintiff filed a class action complaint in the Alameda Superior Court,
10 Case Number 22CV024221 (“Action”). The Action alleged eight causes of action against Defendant
11 for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2)
12 Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (3)
13 Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4) Failure to
14 Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide
15 Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Wages
16 When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; (7) Failure to Provide Accurate Itemized
17 Wage Statements in Violation of Cal. Lab. Code § 226; and (8) Failure to Reimburse Employees for
18 Required Expenses in Violation of Cal. Lab. Code § 2802. JCL Dec., ¶ 17.

19 On January 24, 2022, Plaintiff filed a Charge of Discrimination with the California Department
20 of Fair Employment and Housing and received a “right to sue” on November 10, 2022, thereby
21 exhausting her administrative remedies. Thomas Dec., ¶ 18.

22 On February 8, 2023, Plaintiff filed a first amended complaint alleging additional causes of
23 action for (9) Discrimination on the Basis of Disability in Violation of California Govt. Code §§ 12940,
24 *et seq.*; (10) Failure to Reasonably Accommodate in Violation of California Govt. Code §§ 12940, *et*
25 *seq.*; (11) Failure to Engage in a Timely, Good Faith Interactive Process in Violation of California
26 Govt. Code §§ 12940, *et seq.*; (12) Work Environment Harassment; (13) Retaliation in Violation of
27 California Govt. Code §§ 12940, *et seq.*; and (14) Failure to Prevent Discrimination and Harassment in
28 Violation of California Govt. Code §§ 12940, *et seq.* (“Plaintiff’s Individual Claims”). JCL Dec., ¶

19.

On March 27, 2023, Plaintiff filed a second amended complaint alleging an additional cause of action for violations of PAGA. JCL Dec., ¶ 20.

Plaintiff propounded written discovery in January of 2023. Prior to responding to written discovery, the Parties agreed to mediate the Action with Hon. Brian C. Walsh (Ret.), a retired judge and experienced wage and hour mediator. In anticipation of mediation, the Parties agreed to stay formal discovery and continue deadlines for class certification in the Action. To prepare for mediation, Defendant agreed to informally produce 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*, Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. JCL Dec., ¶ 21.

On September 20, 2023, the Parties participated in a full day mediation with Judge Walsh. After arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding. Subsequently, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. The Parties now seek approval of the entire Agreement. JCL Dec., ¶ 22.

The Parties also reached an agreement with respect to Plaintiff's Individual Claims. Plaintiff's individual settlement was negotiated the same day as the class and PAGA mediation. However, the settlement of Plaintiff's Individual Claims was negotiated separately and only **after** the class and PAGA settlement was reached. At all times during the mediation and settlement negotiations, Plaintiff prioritized the claims of the class, and did not engage in settlement negotiations of Plaintiff's Individual Claims until the class action was tentatively settled. Moreover, Defendant is not directly paying the settlement to Plaintiff for her Individual Claims, but rather, Defendant's insurance carrier will pay Plaintiff's individual settlement. Plaintiff intends on dismissing her Individual Claims following final approval of the Settlement. JCL Dec., ¶ 23.

On February 1, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 8. On March 1, 2024, the Administrator mailed Notice Packets to all 485 Class Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Class

1 to submit requests for exclusion or objections to the Settlement. The response from the Class to the
2 Settlement was outstanding – 100% of the Class Members are participating in the Settlement. Apex
3 Dec., ¶ 14.

4 **III. THE SETTLEMENT BEFORE THE COURT**

5 The Court preliminarily approved an initial Gross Settlement Amount of Nine Hundred, Seventy
6 Thousand Dollars and Zero Cents (\$970,000.00) based on a total of an estimated 48,554 Workweeks
7 worked by the Class during the Class Period. The Gross Settlement Amount shall be used to satisfy: (1)
8 the Individual Settlement Payments; (2) the Service Award; (3) the Attorneys' Fees and Expenses; (4)
9 the PAGA Penalties; and (5) the Administration Costs incurred in this action. JCL Dec., ¶ 19.

10 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
11 Settlement Fund within sixty (60) calendar days after the Effective Date. Agreement, ¶ I(P). The
12 Administrator shall mail checks for all of the Individual Settlement Payments to the Settlement Class
13 Member no later than thirty (30) days after Defendant fund the Gross Settlement Amount. Agreement,
14 ¶ III(L)(7). The Administrator will calculate Individual Settlement Payments by adding up the total
15 number of Workweeks for all Class Members. The respective Workweeks for each Class Member will
16 then be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each
17 Class Member. Each Class Member's Payment Ratio will then be multiplied by the Net Settlement
18 Amount to calculate each Class Member's estimated Individual Settlement Payments. Agreement, ¶
19 III(L)(1). The estimated average Individual Settlement Payment is approximately **\$1,152.92**. Apex Dec.,
20 ¶ 16.

21 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
22 the Settlement Class Member will release the Released Parties from the Released Class Claims as
23 defined in the Agreement. Agreement, ¶ III(B).

24 Apex Class Action LLC was appointed as the Administrator for the Class. The Administration
25 Costs include those expenses of effectuating and administering the Settlement, i.e., the costs incurred to
26 the Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the
27 Individual Settlement Payments, and the fees of the Administrator approved for reimbursement by the
28 court. The Administrator expenses are \$9,000.00. Apex Dec., ¶ 18. These expenses shall be paid from

1 the Gross Settlement Amount. Agreement, ¶ III(L)(12).

2 Subject to Court approval, Class Counsel shall seek a payment of Attorneys' Fees and Expenses
3 in the amount of \$348,333.33, comprised of attorneys' fees equal to one-third of the Gross Settlement
4 Amount estimated to be at least \$323,333.33 and up to \$25,000.00 for actually incurred litigation
5 expenses. Agreement, ¶ III(L)(10). Class Counsel is to split the fees 50% to JCL Law Firm, APC, and
6 50% to Zakay Law Group, APLC. Agreement, ¶ I(G). The Agreement also provides for a Service Award
7 in the amount of \$5,000 to Plaintiff, in consideration of her time, risk, and efforts as the Class
8 Representative on behalf of the Class and a general release. Agreement, ¶ I(JJ); III(L)(9).

9 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
10 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
11 the Class, the absence of any objections to the Settlement and the average Individual Settlement Payment
12 of **\$1,152.92**. Apex Dec., ¶¶ 16; JCL Dec., ¶ 25.

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

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

20 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
21 action requires court approval." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
22 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court
23 must decide whether the proposed settlement falls within the range of reasonable settlements,
24 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
25 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*
26 *Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to be judged against a
27 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.).
28 In *Wershba*, appellants argued that the settlement was too low given the "clear" liability, however, the

1 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for
2 upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

14 V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

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

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

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

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

11 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
12 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
13 assessed the value of the class claims using data and documents provided by Defendant through
14 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
15 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
16 Class Counsel retained BCG to analyze Defendant’s time and payroll data to formulate damage models
17 estimating Defendant’s liability exposure. Class Counsel’s investigation, research, experience, and
18 damage models informed and guided the mediated negotiations that resulted in this settlement.
19 Accordingly, Class Counsel fully understood the strengths and weaknesses of the class claims before
20 the parties reached a settlement. JCL Dec., ¶ 26-33.

21 **B. The Parties Settled Following Mediation.**

22 On September 20, 2023, the Parties conducted a full day mediation with Honorable Brian C.
23 Walsh (Ret.), an experienced wage and hour mediator. Judge Walsh helped to manage the Parties’
24 expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties
25 made substantial progress with Judge Walsh’s assistance. Namely, the Parties exchanged information
26 regarding their respective claims and defenses, including their respective evaluations of the damages.
27 After more than eight hours of arm’s length and adversarial negotiations, the mediation concluded a
28 settlement. The amount of the service award was not negotiated until after the parties agreed to the

1 Gross Settlement Amount and many other terms. JCL Dec., ¶ 34. No action would likely have been
2 taken by Class Members individually, and no compensation would have been recovered for them, but
3 for Plaintiff's service on behalf of the Class.

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

5 Class Counsel in this matter has extensive class action experience in multiple fields and has
6 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
7 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
8 similar wage and hour class actions throughout the State of California. As such, courts throughout
9 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
10 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
11 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 35-41; Declaration
12 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

14 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
15 dissemination of the notice to the Class, which provided each Class Member with the terms of the
16 Settlement, including the specific estimated Individual Settlement Payments. To date, none of the 485
17 Class Members opted out of the Settlement. Moreover, there are zero objections. Stated differently,
18 100% of the Class chose to participate in the Settlement. JCL Dec., ¶ 10; Apex Dec., ¶¶ 11-14.

19 The unanimous approval rate by the Class strongly supports a finding that the Settlement is fair,
20 reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y. 2000) 80
21 F.Supp.2d 164, 175 ("If only a small number of objections are received, that fact can be viewed as
22 indicative of the adequacy of the settlement."); *Stoetzner v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d
23 115, 118-119 (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
24 *Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed
25 settlement should be considered when determining fairness of settlement.). Consequently, Class
26 Counsel respectfully requests the Court to follow the unanimous participation rate of the Class and
27 grant final approval of the Settlement.

28 ///

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

2 The Gross Settlement Amount of Nine Hundred, Seventy Thousand Dollars and Zero Cents
3 (\$970,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
4 court acknowledged that “as the court does when it approves a settlement as in good faith under Code
5 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
6 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
7 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

8 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
9 provides a sizeable recovery to the Settlement Class Member and need not necessarily obtain 100 percent
10 of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at
11 250. While the Gross Settlement Amount of Nine Hundred, Seventy Thousand Dollars and Zero Cents
12 (\$970,000.00) represents a discount on Defendant’s potential exposure if Plaintiff established liability
13 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
14 reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award
15 significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may
16 require many more years of litigation, resulting in added fees and costs without any guarantee of
17 recovery for the Class. JCL Dec., ¶ 42.

18 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
19 reasonable considering the nature and magnitude of the claims being settled and the various potential
20 impediments to recovery. Class Counsel developed varied economic damages models measuring
21 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
22 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
23 of time and payroll data. Detailed in greater depth during the preliminary approval process, Class
24 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the
25 Class. The Gross Settlement Amount represents between 12.65% and 37.18% of Defendant’s *class-wide*
26 liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 43.

27 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
28 Court for the Northern District of California granted final approval in a wage and hour misclassification

1 action and found that the Total Settlement Amount representing 10% of the estimated trial award was
2 within the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir.
3 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
4 potential recovery.” Given the amount of the settlement here as compared to potential value of the
5 claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable.⁴

6 The calculation methodology used to compensate the Settlement Class Members for the alleged
7 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
8 objective, and impartial. The calculation methodology is based on the number of Workweeks each
9 Settlement Class Member worked for Defendant during the Class Period. The number of Workweeks
10 for the Settlement Class Member is established through Defendant’s data and documented compensation
11 records. The Administrator is responsible for calculating the Individual Settlement Payments by adding
12 up the total number of Workweeks for all Class Members. The respective Workweeks for each Class
13 Member will then be divided by the total Workweeks for all Class Members, resulting in the Payment
14 Ratio for each Class Member. Each Class Member’s Payment Ratio will then be multiplied by the Net
15 Settlement Amount to calculate each Class Member’s estimated Individual Settlement Payments.
16 Agreement, ¶ III(L)(1). This process establishes an objectively fair and reasonable procedure to
17 compensate the Class. JCL Dec., ¶ 44.

18 The settlement also provides significant relief to the Settlement Class Members. After deductions
19 for the Attorneys’ Fees and Expenses, Administration Costs, the PAGA Penalties, and the Service
20 Award, the Net Settlement Amount is currently estimated to be \$559,166.67. Apex Dec., ¶ 15. The
21 average settlement payment is approximately \$1,152.92, and the highest is approximately \$2,289.58.
22 Apex Dec., ¶ 16. This average net recovery is on par with many wage and hour class action settlements
23 approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-
24

25 ⁴ *See also Vicer v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving
26 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
27 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
28 *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.”).

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, ¶ III(A)(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., ¶ 45.

F. The Strength of Plaintiff's Case and Risks of Continued Litigation

Although Class Counsel believes strongly in Plaintiff's 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 Plaintiff's claims. JCL Dec., ¶ 46. 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 *Magadia v. Wal-Mart Associates*,

1 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
2 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
3 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
4 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
5 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
6 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
7 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
8 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
9 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
10 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
11 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
12 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
13 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
14 certification of driver meal and rest period claims based on the predominance of individual issues).
15 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
16 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
17 settlement. JCL Dec., ¶ 47.

18 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
19 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
20 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
21 affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 48.

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

25 **Plaintiffs may have a strong case, but the risks inherent in continued**
26 **litigation are great.** Defendants strongly deny liability for Plaintiffs’
27 principal claim that full-time Service Associates were misclassified as
28 exempt. In addition to the uncertainties raised by Defendants at the
preliminary stage regarding Plaintiffs’ chance of success in this case,
Defendants notes that the question of an employer’s duty to provide rest and

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

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

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

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

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

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

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

Class Representative and Class Counsel recognize the expense and length of a trial against

1 Defendant through possible appeals which could take another three years. In arriving at their informed
2 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
3 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognizes
4 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
5 Moreover, post-trial motions and appeals would have been inevitable. Costs would have increased, and
6 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
7 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
8 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
9 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
10 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 50.

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

13 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
14 indication that this amount was the result of self-interest at the expense of class members,” such
15 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
16 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
17 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
18 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at
19 *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*,
20 No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging
21 that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

22 Here, Plaintiff and Defendant negotiated a good faith PAGA Penalties in the amount of
23 \$48,500.00 which is 5% of the Gross Settlement Amount. As illustrated above, this amount falls well
24 within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA Penalties
25 (\$36,375.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent
26 (25%) of the PAGA Penalties (\$12,125.00) to be distributed to the Aggrieved Employees (“Aggrieved
27 Employee Payments”), which is within the range of PAGA penalties approved by courts and should
28 be approved. JCL Dec., ¶ 51.

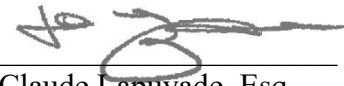
1 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
2 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
3 with the LWDA. JCL Dec., ¶¶ 6-7, 52. By not registering an objection with either Class Counsel or
4 the Court, the LWDA has accepted and approved of the proposed PAGA Penalties.

5 **VII. CONCLUSION**

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

9
10 Dated: June 7, 2024

JCL LAW FIRM, APC

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12 By: 
13 Jean-Claude Lapuyade, Esq.
14 Attorneys for Plaintiff
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