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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

KALIYAH MARTIN, an individual, on behalf of
herself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

BLEND LABS, INC. a Delaware Corporation;
BLEND OPERATIONS, INC., a Delaware
Corporation; BLEND TITLE INSURANCE
AGENCY, INC., a Delaware Corporation;
BLEND INSURANCE AGENCY, INC., a
Delaware Corporation; and DOES 1-50,
Inclusive;

Defendants.

Case No.: CGC-22-600420

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

Date: June 4, 2024

Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer, Jr.

Dept.: 302

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE LITIGATION	2
III.	THE SETTLEMENT BEFORE THE COURT	4
IV.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	5
V.	THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	6
	A. Class Counsel Conducted a Thorough Investigation.	7
	B. The Parties Settled Following Mediation.	7
	C. Class Counsel is Experienced in Similar Litigation.	8
	D. The Class Responded Positively to the Settlement.	8
	E. The Gross Settlement Amount is Fair and Reasonable	9
	F. The Strength of Plaintiff's Case and Risks of Continued Litigation	11
VI.	THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE	14
VII.	CONCLUSION	15

///

TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1150-51.....	5-6
5	<i>Ali v. U.S.A. Cab Ltd.</i>	
6	(2009) 176 Cal.App.4th 1333, 1341.....	12
7	<i>Barcia v. Contain-A-Way, Inc.</i>	
8	2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009).....	13
9	<i>Brinker</i>	
10		12
11	<i>Brown v. Fed Express Corp.</i>	
12	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	12
13	<i>Browning v. Yahoo!, Inc.</i>	
14	2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007).....	13
15	<i>Campbell v. Best Buy Stores, L.P.,</i>	
16	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	12
17	<i>Contreras v. United Food Group, LLC</i>	
18	Case No. BC389253 (L.A. County Super. Ct.).....	11
19	<i>Doty v. Costco Wholesale Corp.</i>	
20	Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007).....	11
21	<i>Dunk v. Ford Motor Co.</i>	
22	(1996) 48 Cal.App.4th 1794, 1801.....	5-6
23	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
24	(9th Cir. 2000) 213 F.3d 454, 459.....	10
25	<i>Duran v. U.S. Bank National Association</i>	
26	(2014) 59 Cal.4th 1, 31.....	12, 13
27	<i>Fukuchi v. Pizza Hut</i>	
28	Case No. BC302589 (L.A. County Super. Ct.).....	11
	<i>Glass v. UBS Fin. Servs.</i>	
	2007 WL221862.....	11
	<i>Gomez v. Amadeus Salon, Inc.</i>	
	Case No. BC392297 (L.A. Super. Ct.).....	11
	<i>Hanlon v. Chrysler Corp.</i>	
	(9th Cir. 1998) 150 F.3d 1011, 1026.....	13
	<i>Hopson v. Hanesbrands Inc.</i>	
	No. CV-08-0844 EDL, 2009 WL 928133, at *1, 9, 19-20 (N.D. Cal. Apr. 3, 2009).....	12, 14
	<i>Huens v. Tatum</i>	
	(1997) 52 Cal.App.4th 259, 265.....	5
	<i>In re Austrian & German Bank Holocaust Litigation</i>	
	(S.D.N.Y. 2000)80 F.Supp.2d 164, 175.....	8
	<i>In re Newbridge Networks Sec. Litig.</i>	
	(D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2.....	10
	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	14
	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 128-29.....	7, 9
	<i>Laskey v. Int'l Union</i>	
	(6th Cir. 1981) 638 F.2d 954.....	8

1	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
2	(N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7.....	10
3	<i>Lim v. Victoria's Secret Stores, Inc.</i>	
4	Case No. 04CC00213 (Orange County Super. Ct.).....	11
5	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i>	
6	2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).....	13
7	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
8	(9 th Cir. 2021) 999 F.3d 668.....	11-13
9	<i>Malibu Outrigger Bd. Of Governors v. Superior Court</i>	
10	(1980) 103 Cal.App.3d 573, 578-579.....	5
11	<i>McKenzie v. Fed. Express Corp.</i>	
12	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	14
13	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
14	(2010) 186 Cal.App.4th 399, 408.....	7
15	<i>O'Conner v. Uber Technologies, Inc.</i>	
16	(9 th Cir. 2018) 904 F.3d 1087, 1133.....	12, 13
17	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
18	(9 th Cir. 1982) 688 F. 2d 615, 625.....	6
19	<i>Palencia v. 99 Cents Only Stores</i>	
20	No. 34-2010-00079619.....	10
21	<i>Rebney v. Wells Fargo Bank</i>	
22	(1990) 220 Cal.App.3d 1117, 1138.....	6
23	<i>Ressler v. Federated Department Stores, Inc.</i>	
24	Case No. BC335018 (L.A. County Super. Ct.).....	11
25	<i>Sorenson v. PetSmart, Inc.</i>	
26	Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.).....	11
27	<i>Stoetzner v. U.S. Steel Corp.</i>	
28	(3d. Cir. 1990) 897 F.2d 115, 118-119.....	8
29	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
30	2015 U.S. Dist. LEXIS 78671, at *12.....	9
31	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Associates</i>	
32	38 Cal.3d 488, 499-500 (1985).....	9
33	<i>Tien v. Tenet Healthcare Corp.</i>	
34	(2012) 209 Cal.App.4th 1077, 1088.....	12
35	<i>Viceral v. Mistras Grp., Inc.</i>	
36	(N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7.....	10
37	<i>Wershba v. Apple Computer</i>	
38	(2001) 91 Cal.App.4th 224, 245-46, 250, 2246.....	5-6, 9

RULES, CODES, AND STATUTES

39	<i>Cal. Bus. and Prof. Code</i> §§ 17200.....	3
40	<i>Cal. Lab. Code</i> § 201.....	3
41	<i>Cal. Lab. Code</i> § 202.....	3
42	<i>Cal. Lab. Code</i> § 203.....	3
43	<i>Cal. Lab. Code</i> § 226.....	3
44	<i>Cal. Lab. Code</i> § 226.7.....	3
45	<i>Cal. Lab. Code</i> § 1194.....	3
46	<i>Cal. Lab. Code</i> § 1197.....	3
47	<i>Cal. Lab. Code</i> § 1197.1.....	3

1	<i>Cal. Lab. Code</i> §§ 510 et seq.....	3
	<i>Cal. Lab. Code</i> § 512.....	3
2	<i>Cal. Lab. Code</i> §§ 2698 et seq.....	3
	<i>Cal. Lab. Code</i> § 2802.....	3
3	<i>Code of Civ. Proc.</i> § 877.6.....	9

SECONDARY SOURCES

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6		6

I. INTRODUCTION

Plaintiff KALIYAH MARTIN (hereinafter “Plaintiff”) seeks final approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for 124 Settlement Class Members employed by Defendants Blend Labs, Inc., Blend Operations, Inc., Blend Title Insurance Agency, Inc., and Blend Insurance Agency, Inc. (hereinafter “Defendants”) during the period from August 30, 2018 to January 25, 2024 (“Class Period”).

In an order dated January 25, 2024, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On February 28, 2024, 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 100% approval.*² There are zero opt-outs, and zero objections to the Settlement. Apex Dec., ¶¶ 10-12. The unanimous participation rate by the Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

An objective evaluation of the proposed settlement of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class Members is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Steven Rottman, Esq. After deducting any Court-approved PAGA Penalties Amount, Enhancement Award, Attorneys’ Fees and Expenses, and the Settlement Administration Costs, the Net Settlement Amount shall be distributed to 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 for Defendants’ alleged wage and hour violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately \$147,333.33. This will result in an average Individual Settlement Payment of **\$1,188.17**,

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 One (1) Notice was deemed undeliverable. Apex Dec. at ¶ 9.

1 a high payment of **\$3,239.30**, and low payment of **\$24.45**. JCL Dec., ¶ 9; Apex Dec. at ¶ 14.

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

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

11 **II. OVERVIEW OF THE LITIGATION**

12 Defendants design and develop software offering a platform that focuses on mortgages,
13 consumer loans and deposit accounts to its customers in the state of California, including in San
14 Francisco, where Plaintiff worked. JCL Dec., ¶ 12. Plaintiff was employed by Defendants from July
15 of 2020 to September of 2021 as a non-exempt employee. Declaration of Kaliyah Martin at ¶ 4.
16 Plaintiff alleges that she was denied legally compliant meal and rest periods, and minimum wages and
17 overtime compensation at all times during her employment. Throughout her employment, Plaintiff was
18 subject to Defendants' written policies and procedures contained in, among other documents,
19 Defendants' Employee Handbook. JCL Dec., ¶ 12.

20 Generally, Plaintiff claims that Defendants failed to pay for all time worked, failed to provide
21 compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish
22 accurate itemized wage statements, and failed to pay all wages upon separation. Defendants deny
23 liability for each of Plaintiff's claims. Further, Defendants assert that they fully complied with all
24 applicable employment laws and raised several other significant defenses to Plaintiff's claims,
25 including but not limited to, facially compliant meal and rest period policies, compliant wage
26 statements, compliant reimbursement practices, and timely payment of all wages due upon separation
27 of employment. JCL Dec., ¶ 13.

28 On April 21, 2022, Plaintiff served Defendants and the Labor and Workforce Development

Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’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 Commissions (“IWC”) Wage Order and of their intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 14.

On June 28, 2022, Plaintiff filed a class action complaint in the San Francisco County Superior Court, Case No. CGC-22-600420 (“Action”), alleging a single cause of action for Violation of the Private Attorneys General Act (Labor Code §§ 2698, *et seq.*). On August 30, 2022, Plaintiff filed a separate action in Los Angeles County Superior Court (the “LASC Class Action”), alleging eight causes of action against Defendants 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 Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code §226; (7) Failure to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; (8) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code § 2802. On March 28, 2023, Plaintiff filed the operative First Amended Complaint in this Action, adding the eight causes of action alleged in the LASC Class Action. On April 19, 2023, the LASC Class Action was dismissed in its entirety, without prejudice. JCL Dec., ¶¶ 15-16.

The Parties agreed relatively early to mediate this action. To prepare for mediation, Defendants agreed to informally produce 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*, Plaintiff’s counsel retained the forensic consultants at EconOne Research, Inc. (“Econ One”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 17.

On May 24, 2023, the Parties participated in a full day mediation with Steven Rottman, Esq., an experienced wage and hour and PAGA mediator. The mediation concluded with a settlement, which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the

Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 18.

On January 25, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On February 28, 2024, the Administrator mailed Notice Packets to all 124 Class Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Class to submit requests for exclusion or objections to the Settlement. The response from the Class to the Settlement was outstanding – 100% of the Class Members are participating in the Settlement. Apex Dec., ¶ 12.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00) based on a total of an estimated 13,000 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used to satisfy: (1) the Individual Settlement Payments; (2) the Enhancement Award; (3) the Attorneys' Fees and Expenses; (4) the PAGA Penalties Amount; and (5) the Settlement Administration Costs incurred in this action.

Defendants will fund the Settlement by transferring the Gross Settlement Amount into a Qualified Settlement Fund within thirty (30) days after the Effective Date. Agreement, ¶ I(P). The Administrator shall mail checks for all of the Individual Settlement Payments to the Settlement Class Members no later than fifteen (15) days after Defendants fund the Gross Settlement Amount. Agreement, ¶ III(L)(7). The Administrator will calculate Individual Settlement Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and multiplying the result by each Settlement Class Member's Workweeks. Agreement, ¶ III(L)(1). The estimated average Individual Settlement Payment is approximately **\$S1,188.17**. Apex Dec., ¶ 14.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, the Settlement Class Members will release the Released Parties from the Released Class Claims as defined in the Agreement. Agreement, ¶ I(EE).

Apex Class Action LLC was appointed as the Administrator for the Class. The Settlement Administration Costs 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

1 and disbursing the Individual Settlement Payments, and the fees of the Administrator approved for
2 reimbursement by the court. The Administrator expenses are \$6,000.00. Apex Dec., ¶ 17. These
3 expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ III(L)(12).

4 Subject to Court approval, Class Counsel shall seek a payment of Attorneys' Fees and Expenses
5 in the amount of \$141,666.67, comprised of attorneys' fees equal to one-third of the Gross Settlement
6 Amount estimated to be up to \$116,666.67 and up to \$25,000.00 for actually incurred litigation
7 expenses. Agreement, ¶¶ I(E)-(F). Class Counsel is to split the fees 50% to JCL Law Firm, APC, 50%
8 to Zakay Law Group, APLC. The Agreement also provides for an Enhancement Award in the amount
9 up to \$5,000.00 for Plaintiff, in consideration for her time, risk, and efforts as the Class Representative
10 on behalf of the Class. Agreement, ¶ I(O).

11 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
12 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
13 the Class, the absence of any objections to the Settlement and the average Individual Settlement Payment
14 of **\$1,188.17**. Apex Dec., ¶ 14; JCL Dec., ¶ 19.

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

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

22 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
23 action requires court approval." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
24 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court
25 must decide whether the proposed settlement falls within the range of reasonable settlements,
26 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
27 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*
28 *Computer* (2001) 91 Cal.App.4th 224, 2246 (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.]”

1 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128; see also *Munoz v. BCI Coca-Cola*
2 *Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.

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

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

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

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

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

24 On May 24, 2023, the Parties conducted a full day mediation with Steven Rottman, Esq., an
25 experienced wage and hour mediator. Mediator Rottman helped to manage the Parties’ expectations
26 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
27 progress with Mediator Rottman’s assistance. Namely, the Parties exchanged information regarding
28 their respective claims and defenses, including their respective evaluations of the damages. After more

1 than eight hours of arm's length and adversarial negotiations, the mediation concluded a settlement.
2 The amount of the service award was not negotiated until after the parties agreed to the Gross
3 Settlement Amount and many other terms. No action would likely have been taken by Class Members
4 individually, and no compensation would have been recovered for them, but for Plaintiff's service on
5 behalf of the Class. JCL Dec., ¶ 27.

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

7 Class Counsel in this matter has extensive class action experience in multiple fields and has
8 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
9 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
10 similar wage and hour class actions throughout the State of California. As such, courts throughout
11 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
12 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
13 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 28-34; Declaration
14 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

16 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
17 dissemination of the notice to the Class, which provided each Class Member with the terms of the
18 Settlement, including the specific estimated Individual Settlement Payments. To date, none of the 124
19 Class Members opted out of the Settlement. Moreover, there are zero objections. Stated differently,
20 100% of the Class chose to participate in the Settlement. Apex Dec., ¶¶ 10-12.

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

1 approval of the Settlement.

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

3 The Gross Settlement Amount of Three Hundred Fifty Thousand Dollars and Zero Cents
4 (\$350,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
5 court acknowledged that “as the court does when it approves a settlement as in good faith under Code
6 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
7 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
8 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

9 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
10 provides a sizeable recovery to the Settlement Class Member and need not necessarily obtain 100 percent
11 of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at
12 250. While the Gross Settlement Amount of Three Hundred Fifty Thousand Dollars and Zero Cents
13 (\$350,000.00) represents a discount on Defendants’ potential exposure if Plaintiff established liability
14 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
15 reasonable because (1) the formidable defenses raised by Defendants presented a risk that could award
16 significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may
17 require many more years of litigation, resulting in added fees and costs without any guarantee of
18 recovery for the Class. JCL Dec., ¶ 35.

19 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
20 reasonable considering the nature and magnitude of the claims being settled and the various potential
21 impediments to recovery. Class Counsel developed varied economic damages models measuring
22 Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The various
23 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
24 of time and payroll data. Detailed in greater depth during the preliminary approval process, Class
25 Counsel estimated Defendants’ liability exposure for the claims asserted on behalf of the Class. The
26 Gross Settlement Amount represents approximately 43.46% of Defendants’ *class-wide* liability
27 exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 36.

28 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District

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

7 The calculation methodology used to compensate the Settlement Class Members for the alleged
8 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
9 objective, and impartial. The calculation methodology is based on the number of Workweeks each
10 Settlement Class Member worked for Defendants during the Class Period. The number of Workweeks
11 for the Settlement Class Members is established through Defendants’ data and documented
12 compensation records. The Administrator is responsible for calculating the Individual Settlement
13 Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all
14 Settlement Class Members during the Class Period and multiplying the result by each Settlement Class
15 Member’s Workweeks. Agreement, ¶ III(L)(1). This process establishes an objectively fair and
16 reasonable procedure to compensate the Class. JCL Dec., ¶ 37.

17 The settlement also provides significant relief to the Settlement Class Members. After deductions
18 for the Attorneys’ Fees and Expenses, Settlement Administration Costs, the PAGA Penalties Amount,
19 and the Enhancement Award, the Net Settlement Amount is currently estimated to be \$147,333.33. Apex
20 Dec., ¶ 13. The average settlement payment is approximately \$1,188.17, and the highest is
21 approximately \$3,239.30. Apex Dec., ¶ 14. This average net recovery is on par with many wage and
22 hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99*
23 *Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of
24

25 ³ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (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.”).

approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. 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, Defendants 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., ¶ 38.

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, Defendants could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 39. 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., ¶ 40.

18 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
19 that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair
20 the 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., ¶ 41.

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

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

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

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

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

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

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

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

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 Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post
28 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., ¶ 42.

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

1 Defendants 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 The Class Representative and Class Counsel believe that the Settlement confers substantial monetary
8 and non-monetary benefits upon the Class. Based upon their evaluation, the Class Representative and
9 Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of
10 the Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 43.

11 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**
12 **ARE 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 Defendants negotiated a good faith PAGA Settlement Amount in the amount
23 of \$50,000.00 which is 14.3% of the Gross Settlement Amount. As illustrated above, this amount falls
24 well within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA
25 Settlement Amount (\$37,500.00) will be paid to the LWDA (“LWDA PAGA Payment”) with the
26 remaining twenty-five percent (25%) of the PAGA Settlement Amount (\$12,500.00) to be distributed
27 to the Aggrieved Employees (“Aggrieved Employee Payment”), which is within the range of PAGA
28 penalties approved by courts and should be approved. JCL Dec., ¶ 45.

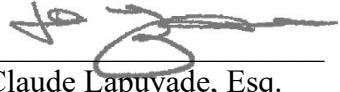
1 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
2 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
3 with the LWDA. JCL Dec., ¶¶ 4-5, 45. By not registering an objection with either Class Counsel or
4 the Court, the LWDA has accepted and approved of the proposed PAGA Settlement Amount.

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: May 9, 2024

JCL LAW FIRM, APC

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