

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
Rachel N. Newman (State Bar #350826)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com
rachel@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiff SARINA YUAN JONG LAI

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

SARINA YUAN JONG LAI, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiff,

v.

SUNMERRY CALIFORNIA INC., a California
corporation; SUNMERRY GARDENA LLC, a
California limited liability company;
SUNMERRY MONTEREY PARK LLC, a
California limited liability company;
SUNMERRY SANTA ANITA LLC, a
California limited liability company; and DOES
1 through 50, Inclusive,

Defendants.

Case No. 22STCV12086

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

Date: July 23, 2024

Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice

Dept.: 1

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 At Mediation.	8
	C. Class Counsel is Experienced in Similar Litigation.	9
	D. The Settlement Class Responded Positively to the Settlement.	9
	E. The Gross Settlement Amount is Fair and Reasonable.	9
	F. The Strength of Plaintiff's Case and Risks of Continued Litigation.	12
VI.	THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE	15
VII.	CONCLUSION	16

///

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, 1150-1151.....	5-6
5	<i>Ali v. U.S.A. Cab Ltd.</i>	
6	(2009) 176 Cal.App.4th 1333, 1341.....	13
7	<i>Barcia v. Contain-A-Way, Inc.</i>	
8	2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009).....	14
9	<i>Brinker</i>	
10		13
11	<i>Brown v. Fed Express Corp.</i>	
12	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	13
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.....	13
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).....	12
21	<i>Dunk v. Ford Motor Co.</i>	
22	(1996) 48 Cal.App.4th 1794, 1801.....	6-7
23	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
24	(9th Cir. 2000) 213 F.3d 454, 459.....	11
25	<i>Duran v. U.S. Bank National Association</i>	
26	(2014) 59 Cal.4th 1, 31.....	13-14
27	<i>Fukuchi v. Pizza Hut</i>	
28	Case No. BC302589 (LA. County Super. Ct.).....	11
	<i>Glass v. UBS Fin. Servs.</i>	
	2007 WL221862.....	12
	<i>Gomez v. Amadeus Salon, Inc.</i>	
	Case No. BC392297 (L.A. Super. Ct.).....	12
	<i>Hanlon v. Chrysler Corp.</i>	
	(9th Cir. 1998) 150 F.3d 1011, 1026.....	14
	<i>Hopson v. Hanesbrands Inc.</i>	
	2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009).....	13, 15
	<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.....	9
	<i>In re Newbridge Networks Sec. Litig.</i>	
	(D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2.....	11
	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	15
	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 128-29.....	7, 10
	<i>Laskey v. Int'l Union</i>	
	(6th Cir. 1981) 638 F.2d 954.....	9

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.....	11
3	<i>Lim v. Victoria’s Secret Stores, Inc.</i>	
4	Case No. 04CC00213 (Orange County Super. Ct.).....	12
5	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i>	
6	2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).....	14
7	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
8	(9 th Cir. 2021) 999 F.3d 668.....	12, 14
9	<i>Malibu Outrigger Bd. Of Governors v. Superior Court</i>	
10	(1980) 103 Cal.App.3d 573, 578-579.....	6
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).....	15
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.....	11
21	<i>Rebney v. Wells Fargo Bank</i>	
22	(1990) 220 Cal.App.3d 1117, 1138.....	7
23	<i>Ressler v. Federated Department Stores, Inc.</i>	
24	Case No. BC335018 (L.A. County Super. Ct.).....	12
25	<i>Sorenson v. PetSmart, Inc.</i>	
26	Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.).....	12
27	<i>Stoetzner v. U.S. Steel Corp.</i>	
28	(3d. Cir. 1990) 897 F.2d 115, 118-119.....	9
29	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
30	2015 U.S. Dist. LEXIS 78671.....	10
31	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Associates</i>	
32	38 Cal.3d 488, 499-500 (1985).....	10
33	<i>Tien v. Tenet Healthcare Corp.</i>	
34	(2012) 209 Cal.App.4th 1077, 1088.....	13
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.....	11
37	<i>Wershba v. Apple Computer</i>	
38	(2001) 91 Cal.App.4th 224, 245-46, 250.....	6, 10

RULES, CODES, AND STATUTES

24	<i>Cal. Bus. and Prof. Code</i> §§ 17200.....	2
25	<i>Cal. Code of Civ. Proc.</i> § 877.6.....	10
26	<i>Cal. Lab. Code</i> § 201.....	3
27	<i>Cal. Lab. Code</i> § 202.....	3
28	<i>Cal. Lab. Code</i> § 203.....	3
29	<i>Cal. Lab. Code</i> § 226.....	3
30	<i>Cal. Lab. Code</i> § 226.7.....	3
31	<i>Cal. Lab. Code</i> § 510.....	3

1	<i>Cal. Lab. Code</i> § 512.....	3
2	<i>Cal. Lab. Code</i> § 1194.....	3
3	<i>Cal. Lab. Code</i> § 1197.....	3
4	<i>Cal. Lab. Code</i> § 1197.1.....	3
5	<i>Cal. Lab. Code</i> § 2698 et seq.....	3
6	<i>Cal. Lab. Code</i> § 2802.....	3

SECONDARY SOURCES

7	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992) §11.41, pp. 11-91	6
---	--	---

1 I. INTRODUCTION

2 Plaintiff SARINA YUAN JONG LAI (hereinafter “Plaintiff”) seeks final approval of the Class
3 Action and PAGA Settlement Agreement and Class Notice (“Agreement”)¹, which if approved, would
4 provide valuable monetary relief for 513 Settlement Class Members employed by Defendants
5 SUNMERRY CALIFORNIA INC., SUNMERRY GARDENA LLC, SUNMERRY MONTEREY
6 PARK LLC, and SUNMERRY SANTA ANITA LLC (hereinafter “Defendants”) during the Class
7 Period.

8 In an order dated January 22, 2024, this Court preliminarily approved the Agreement and
9 preliminarily certified the Class. Declaration of Jackland K. Hom (“JKH Dec.”), ¶ 4. On February 20,
10 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
11 Declaration of Madely Nava (“Apex Dec.”), ¶ 7. *The Class greeted news of the Settlement with*
12 *unanimous approval as 100% of Class Members have chosen to participate in the Settlement.* There
13 are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-13. The high approval by the
14 Settlement Class evidences the clear fairness and reasonableness of the Settlement. JKH Dec., ¶ 7.

15 An objective evaluation of the proposed settlement of Four Hundred Seventy-Five Thousand
16 Dollars and Zero Cents (\$475,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated
17 on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of
18 informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over
19 by Hon. Peter D. Lichtman (Ret.) a highly regarded judge and mediator. After deducting any Court-
20 approved attorneys’ fees and litigation costs, class representative incentive payments, settlement
21 administration fees, and the payment to the Labor & Workforce Development Agency (“LWDA”), the
22 net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they
23 worked while employed by Defendants during the Class Period. JKH Dec., ¶ 7.

24 This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates
25 that the Settlement, if approved, would result in a Net Settlement Amount of approximately
26

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

1 **\$244,966.67**. This will result in an average Individual Class Payment of **\$477.52**, and a high payment
2 of **\$2,494.89**. Apex Dec. at ¶ 15. Aggrieved Employees will receive an average Individual PAGA
3 Payment of **\$54.42** and a high payment of **\$418.49**. JKH Dec., ¶ 8; Apex Dec. at ¶ 17.

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

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

13 **II. OVERVIEW OF THE LITIGATION**

14 Defendant operates a chain of bakeries in Southern California, including in Los Angeles County.
15 Plaintiff worked for Defendants as a non-exempt employee in California from January 26, 2021, to April
16 12, 2021. At all times during her employment, Plaintiff earned an hourly wage and was entitled to
17 legally complaint meal and/or rest periods, minimum, regular, and overtime wages. Throughout her
18 employment, Plaintiff was subject to Defendants' written policies and procedures. JKH Dec., ¶ 11;
19 Declaration of Sarina Yuan Jong Lai ("SL Dec."), ¶¶ 2-4.

20 Defendants forcefully deny liability for each of Plaintiff's claims. Further, Defendants assert that
21 they fully complied with all applicable employment laws and raised several other significant defenses
22 to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies,
23 compliant wage statements, reimbursement for all required business expenses, and payment of all wages
24 upon separation. JKH Dec., ¶ 12.

25 On April 8, 2022, Plaintiff filed a class action complaint in the Los Angeles Superior Court, Case
26 Number 22STCV12086 (the "Action"). The Action alleged eight causes of action against Defendants
27 for: (1) Unfair Competition in Violation of California Business and Professions 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 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202, and 203; and (8) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802. On June 30, 2022, Plaintiff filed the operative First Amended Complaint, adding a ninth cause of action for Violations of the Private Attorney General Act at Labor Code Sections 2698, *et seq.* (“PAGA”). JKH Dec., ¶ 13.

Prior to mediation, the Parties engaged in investigation and the exchange of documents and information in connection with the Action. As part of this process, Defendants provided a significant sample of time and payroll records, as well as other documents and information, to Class Counsel to review and analyze. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data. JKH Dec., ¶ 14.

On February 9, 2023, the Parties participated in an all-day mediation presided over by the Honorable Peter D. Lichtman (Ret.), a respected jurist and mediator of wage and hour class actions. Defendants argued that they have financial limitations that restrict their ability to pay a class settlement, and the Parties agreed to use a forensic accountant’s review of Defendants’ financial records to advise on Defendants’ ability to fund a settlement. Plaintiff subsequently retained Creal & Creal, an accountancy corporation that regularly performs litigation support and forensic accounting services, including providing opinions related to solvency. Defendants sent Kenneth Creal, CPA, of Creal & Creal a number of financial documents including tax returns from recent years, balance sheets, and profit and loss summaries. Kenneth Creal also performed an investigation into the assets owned by Defendants and their owners. Following his review, Kenneth Creal advised Plaintiffs via a written opinion that in his professional opinion, a settlement in an amount of up to \$500,000 would be fair and not destroy Defendants’ business. Thereafter, Judge Lichtman issued a mediator’s proposal. The Parties accepted and reached a settlement based on Judge Lichtman’s mediator’s proposal and executed a binding

Memorandum of Understanding. Thereafter, the Parties documented the agreement in the form of a Settlement Agreement, which was signed by the Parties and is now the subject of the instant motion. JKH Dec., ¶ 15.

On January 22, 2024, this Court granted preliminary approval of the Settlement. JKH Dec., ¶ 4. On February 20, 2024, the Settlement Administrator mailed the Notice Packets to all 513 Settlement Class Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement is outstanding – 100% of the Class Members are participating in the Settlement. Apex Dec., ¶¶ 11-13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Four Hundred Seventy-Five Thousand Dollars and Zero Cents (\$475,000.00) based on a total of an estimated 23,319 Workweeks worked by the Class during the Class Period. JKH Dec., ¶ 17.

The Gross Settlement Amount shall be used: (1) to satisfy Individual Class Payments; (2) to satisfy the Class Representative Service Payment; (3) to satisfy the Class Counsel Fees and Litigation Expenses Payment; (4) to satisfy the PAGA Penalties; and (5) to satisfy the Administration Expenses incurred in this action. JKH Dec., ¶ 18.

Defendants will fund the Settlement by transferring the Gross Settlement Amount into a Qualified Settlement Fund within fourteen (14) calendar days after the Effective Date. Agreement, § 4.3. The Settlement Administrator shall mail the Individual Class Payments and Individual PAGA Payments to the Settlement Class Members and/or Aggrieved Employees no later than fourteen (14) calendar days after Defendants fund the Gross Settlement Amount. Agreement, § 4.4. The Settlement Administrator will calculate 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 multiplying the result by each Settlement Class Member's Workweeks. Agreement, § 3.2.4. The estimated average Individual Class Payment is approximately **\$477.52**. JKH Dec., ¶ 19; Apex Dec., ¶ 15.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,

the Participating Class Members will release the Defendants from the Released Class Claims that accrued during the Class Period. The Aggrieved Employees, the LWDA, and the State of California will release the Defendants from the Released PAGA Claims for the PAGA Period. Agreement at § 5.

Apex Class Action LLC was appointed as the Settlement Administrator for the Class. The Administration Expenses Payment include those expenses of effectuating and administering the Settlement, i.e., the costs incurred to 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 Settlement Administrator approved for reimbursement by the court. The Settlement Administrator expenses are \$11,700.00. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount. Agreement, § 3.2.3.

Subject to Court approval, Class Counsel shall seek payment of Class Counsel's Fees and Litigation Expenses in the amount of \$183,333.33, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be at least \$158,333.33 and up to \$25,000.00 for actually incurred litigation expenses. Plaintiff's counsel is to split the fees equally between the JCL Law Firm, APC and Zakay Law Group, APLC. The Agreement also provides for a Class Representative Service Payment in the amount of \$10,000.00 for Plaintiff, in consideration of her time, risk, and efforts as the Class Representative on behalf of the Settlement Class. Agreement, § 3.2.1.

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by the Settlement Class, the absence of any objections to the Settlement and the average Individual Class Payment of \$477.52. APEX Dec., ¶¶ 11-13, 15; JKH Dec., ¶ 20.

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

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

1 preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

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

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

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

25 The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford*
26 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *see also Officers for Justice v. Civil Service Com'n* (9th
27 Cir. 1982) 688 F. 2d 615, 625. The purpose of the requirement is "the protection of those class members,
28

1 including the named plaintiffs, whose rights may not have been given due regard by the negotiating
2 parties." *Dunk, supra*, at 1801.

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

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

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

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

22 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
23 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
24 assessed the value of the class claims using data and documents provided by Defendants through
25 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
26 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
27 Class Counsel retained Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data
28

1 to formulate damage models estimating Defendants' liability exposure. Class Counsel's investigation,
2 research, experience, and damage models informed and guided the mediated negotiations that resulted
3 in this settlement. Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the
4 class claims before the parties reached a settlement. JKH Dec., ¶ 21.

5 **B. The Parties Settled after Mediation.**

6 On February 9, 2023, the Parties conducted a full-day mediation with Hon. Peter D. Lichtman
7 (Ret.), a highly regarded judge and mediator. Judge Lichtman helped to manage the Parties'
8 expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties
9 made substantial progress with Judge Lichtman's assistance. Namely, the Parties exchanged information
10 regarding their respective claims and defenses, including their respective evaluations of the damages.
11 However, after a full day of arm's length and adversarial negotiations, the mediation concluded without
12 a settlement. Defendants argued that they have financial limitations that restrict their ability to pay a
13 class settlement, and the Parties agreed to use a forensic accountant's review of Defendants' financial
14 records to advise on Defendants' ability to fund a settlement. Plaintiff subsequently retained Creal &
15 Creal, an accountancy corporation that regularly performs litigation support and forensic accounting
16 services, including providing opinions related to solvency. Defendants sent Kenneth Creal, CPA, of
17 Creal & Creal a number of financial documents including tax returns from recent years, balance sheets,
18 and profit and loss summaries. Kenneth Creal also performed an investigation into the assets owned by
19 Defendants and their owners. Following his review, Kenneth Creal advised Plaintiffs via a written
20 opinion that in his professional opinion, a settlement in an amount of up to \$500,000 would be fair and
21 not destroy Defendants' business. Thereafter, Judge Lichtman issued a mediator's proposal. The Parties
22 accepted and reached a settlement based on Judge Lichtman's mediator's proposal and executed a
23 binding Memorandum of Understanding. Thereafter, the Parties documented the agreement in the form
24 of a Settlement Agreement. No action would likely have been taken by Class Members individually,
25 and no compensation would have been recovered for them, but for Plaintiff's service on behalf of the
26 Class. JKH Dec., ¶ 22.

27 ///

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

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

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

11 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
12 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
13 member with the terms of the Settlement, including the specific estimated Individual Class Payments,
14 zero of the 513 members of the Class opted-out of the Settlement. Moreover, there are zero objections.
15 Stated differently, 100% of the Class have chosen to participate in the Settlement. JKH Dec., ¶ 7; Apex
16 Dec., ¶¶ 11-13.

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

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

27 The Gross Settlement Amount of Four Hundred Seventy-Five Thousand Dollars and Zero Cents
28

1 (\$475,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
2 court acknowledged that “as the court does when it approves a settlement as in good faith under Code
3 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
4 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
5 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

6 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
7 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the
8 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
9 While the Gross Settlement Amount of Four Hundred Seventy-Five Thousand Dollars and Zero Cents
10 (\$475,000.00) represents a discount on Defendants’ potential exposure if Plaintiff established liability
11 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
12 reasonable because (1) the formidable defenses raised by Defendants presented a risk that could award
13 significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may
14 require many more years of litigation, resulting in added fees and costs without any guarantee of
15 recovery for the Class. JKH Dec., ¶ 25.

16 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
17 reasonable considering the nature and magnitude of the claims being settled and the various potential
18 impediments to recovery. Class Counsel developed an economic damages model measuring Defendants’
19 liability exposure while accounting for the uncertainties of continued litigation. The economic damage
20 model was informed by Class Counsel’s investigation, including the analysis of a significant sample of
21 time and payroll data. As detailed in greater depth during the preliminary approval process, Class
22 Counsel projected a range of Defendants’ liability exposure for the claims asserted on behalf of the
23 Settlement Class. The Gross Settlement Amount represents approximately 27.53% of Defendants’ *class-*
24 *wide* liability exposure as estimated by Class Counsel at the time of mediation. JKH Dec., ¶ 26.

25 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
26 for the Northern District of California granted final approval in a wage and hour misclassification action
27 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
28

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 Plaintiff’s action, the settlement is clearly fair and reasonable².

The calculation methodology used to compensate the Settlement Class for the alleged damages was negotiated at the time of the Settlement. The methodology is fair, objective, and impartial, and 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 multiplying the result by each Settlement Class Member’s Workweeks. This process establishes an objectively fair and reasonable procedure to compensate the Settlement Class. Agreement, § 3.2.4.

The settlement also provides significant relief to the Participating Class Members. After deductions for the Class Counsel’s Attorneys’ Fees and Litigation Expenses, Administration Expenses, the PAGA Penalties, and the Class Representative Service Award, the Net Settlement Amount is currently estimated to be \$244,966.67. Apex Dec., ¶ 14. The average settlement payment is approximately **\$477.52**, and the highest is approximately **\$2,494.89**. Apex Dec., ¶ 15. 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 (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

² *See also Viceria 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.”).

1 \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.)
2 (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241
3 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v.*
4 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately
5 \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average
6 net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A.
7 Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendants must separately fund
8 their share of any employer side payroll taxes. Agreement, § 3.1.

9 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
10 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
11 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
12 JKH Dec., ¶ 27.

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

14 Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore
15 the asserted defenses. If successful on any one of its defenses, Defendants could defend the action or,
16 at least, drastically undercut Plaintiff's claims. JKH Dec., ¶ 28. As the federal court in *Glass v. UBS*
17 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

18 ***In light of the above-referenced uncertainty in the law, the risk, expense,***
19 ***complexity, and likely duration of further litigation likewise favors the***
20 ***settlement.*** Regardless of how this Court might have ruled on the merits of
21 the legal issues, the losing party likely would have appealed, and the parties
22 would have faced the expense and uncertainty of litigating an appeal. The
23 expense and possible duration of the litigation should be considered in
24 evaluating the reasonableness of [a] settlement.

25 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
26 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.*
27 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
28 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir.

2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *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.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *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). 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. JKH Dec., ¶ 29.

The fast-changing landscape of wage and hour litigation can also drastically affect the value of Plaintiff’s claims and, in fact, already has. JKH Dec., ¶ 30.

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

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

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

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

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

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

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

As demonstrated by the decisions in *Magadia*, *supra*, 999 F.3d 668, *O'Conner v. Uber Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendants faced a large adverse judgment, 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. JKH Dec., ¶ 31.

The Class Representative and Class Counsel recognize the expense and length of a trial against Defendants through possible appeals which could take another three years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and

1 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
2 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
3 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
4 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
5 Class, is fair, reasonable, and adequate, and should be granted final approval. JKH Dec., ¶ 32.

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

8 Where settlements “negotiate a good faith amount” for PAGA settlements and “there is no
9 indication that this amount was the result of self-interest at the expense of class members,” such amounts
10 are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
11 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA settlements in
12 the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of
13 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal.
14 Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-
15 02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts
16 approve PAGA claim settlements in the range of zero to two percent of the total settlement).

17 Here, Plaintiff and Defendants negotiated a good faith PAGA Payment in the amount of
18 \$25,000.00 which is 5.26% of the Gross Settlement Amount. As illustrated above, this amount falls
19 well within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA
20 Payment (\$18,750.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five
21 percent (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA
22 Payment approved by courts and should be approved. JKH Dec., ¶ 33.

23 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy
24 of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the
25 LWDA. JKH Dec., ¶¶ 5-6, 34. By not registering an objection with either Class Counsel or the Court,
26 the LWDA has accepted and approved of the proposed PAGA Payment.

27 ///

1 **VII. CONCLUSION**

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

5
6 Dated: June 28, 2024

ZAKAY LAW GROUP, APLC

7 By: 
8 Shani O. Zakay
9 Jackland K. Hom

10 Attorney for Plaintiff
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28