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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF BUTTE

JAMAL SHABAZZ and JOSEPH
CASTANEDA, individuals, on behalf of
themselves, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

MANN & COMPANY, INC., a California
Corporation; and DOES 1 through 50, Inclusive,

Defendants.

Case No. 22CV02669

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

Date: January 29, 2025
Time: 9:00 a.m.

Judge: Hon. Tamara Mosbarger
Dept.: 1

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I. INTRODUCTION

Plaintiffs Jamal Shabazz and Joseph Castaneda (hereinafter “Plaintiffs”) seek final approval of the Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for 1,026 Settlement Class Members employed by Defendant Mann & Company, Inc. (hereinafter “Defendant”) during the Class Period.

In an order dated September 25, 2024, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On October 16, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Katherine Rovertoni (“Apex Dec.”), ¶ 7. *The Class greeted news of the Settlement with unanimous approval as, at the time of the filing of this motion, all 1,026 Class Members chose to participate in the Settlement.*² There are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

An objective evaluation of the proposed settlement of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Hon. Brian C. Walsh (Ret.), a respected judge and wage and hour class action mediator. After deducting any Court-approved attorneys’ fees and costs, class representative incentive payments, administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendant during the Class Period. JCL Dec., ¶ 8.

This Settlement provides substantial recovery to Settlement Class Members. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$410,500.00**. This will result in an average Individual Class Payment of **\$400.10**, a high payment of **\$6,713.79**, and a low payment of **\$50.48**. JCL Dec., ¶ 9; Apex Dec. at ¶ 15. Aggrieved Employees will

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

² Thirty-seven (37) Notices were deemed undeliverable. Apex Dec. at ¶ 10.

1 receive an estimated average gross payment of **\$10.85** and a high payment of **\$109.71**. JCL Dec., ¶ 9;
2 Apex Dec. at ¶ 17.

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 Settlement Class will not have to wait
6 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and uncertain
7 litigation. JCL Dec., ¶ 10.

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

12 **II. OVERVIEW OF THE LITIGATION**

13 Defendant owns, operates, and manages a chain of Wingstop franchised restaurants in the state
14 of California, including in Butte County. This action asserts claims on behalf of all persons who are or
15 previously were employed by Defendant and classified as non-exempt employees in California during
16 the period beginning November 14, 2018, to February 15, 2024. At all times during their employment,
17 Plaintiffs were classified by Defendant as non-exempt employees, paid on an hourly basis, and were
18 entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all
19 hours worked. Throughout their employment, Plaintiffs were subject to Defendant's written policies and
20 procedures contained in, among other documents, the "Employee Handbook." JCL Dec., ¶ 12;
21 Declaration of Jamal Shabazz ("Shabazz Dec."), ¶¶ 2-4; Declaration of Joseph Castaneda ("Castaneda
22 Dec."), ¶¶ 2-4.

23 Generally, Plaintiffs claim that Defendant failed to pay employees for all time worked, including
24 overtime, failed to provide them with proper meal and rest breaks, failed to reimburse for required
25 business expenses, and failed to issue accurate itemized wage statements. Defendant forcefully denies
26 liability for each of the Plaintiffs' claims. Further, Defendant asserts that it fully complied with all
27 applicable employment laws and raised several other significant defenses to Plaintiffs' claims,
28 including but not limited to, the existence of facially compliant meal and rest period policies, records of

1 payment of minimum wages and overtime wages, the existence of a policy whereby it reimbursed its
2 employees for business expenses, the existence of compliant wage statements, and the existence of a
3 practice whereby it timely paid all wages due upon separation of employment. JCL Dec., ¶ 13.

4 On September 6, 2022, Plaintiff Jamal Shabazz (“Shabazz”) served Defendant and the Labor
5 and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”).
6 Plaintiff Shabazz’s PAGA Notice set forth the facts and theories supporting Defendant’s alleged
7 violations of various provisions of the California Labor Code and applicable Industrial Welfare
8 Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code
9 Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 14.

10 On November 16, 2022, Plaintiff Shabazz filed a class action complaint in the Butte Superior
11 Court, Case Number 22CV02669 (“Class Action”). The Class Action alleged eight causes of action
12 against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code
13 §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and
14 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4)
15 Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure
16 to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide
17 Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Provide Wages
18 When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (8) Violation of the Private Attorneys
19 General Act [Labor Code §§ 2698 *et seq.*]. JCL Dec., ¶ 15.

20 On June 26, 2024, Plaintiff Shabazz filed the operative First Amended Complaint for purposes
21 of effectuating the settlement, which added another named Plaintiff, Joseph Castaneda. JCL Dec., ¶ 16.

22 Plaintiff Shabazz commenced written discovery in March of 2023. The Parties later agreed to
23 attend private mediation with the Honorable Brian C. Walsh (Ret.) on February 15, 2024. After arms-
24 length negotiations and bargaining, the Parties reached an agreement to settle and signed a
25 Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and
26 negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶
27 17.

28 On September 25, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶

4. On October 16, 2024, the Administrator mailed Notice Packets to all 1,026 Settlement Class Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement was outstanding – 100% of the Class Members are participating in the Settlement. Apex Dec., ¶ 13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) based on a total of an estimated 9,500 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Class Payments; (2) to satisfy the Service Award; (3) to satisfy the Attorneys' Fees and Litigation Costs; (4) to satisfy the PAGA Payment; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 18.

Assuming there are no objectors, and no appeal is filed, Defendant will fund the \$750,000.00 Gross Settlement Amount in three (3) separate installments. First, Defendant will pay 60% of the Gross Settlement Amount (\$450,000.00), in addition to employer side payroll taxes, to the Administrator within sixty (60) calendar days following the Court's Final Approval Order. Second, Defendant will pay 20% of the Gross Settlement Amount (\$150,000.00) to the Administrator within two hundred forty-three (243) calendar days (8 months) following the Court's Final Approval Order. Defendant will pay the remaining 20% of the Gross Settlement Amount (\$150,000.00) to the Administrator within four hundred twenty-five (425) calendar days (14) months following the Court's Final Approval Order. *See generally* Agreement at I(N). Within fifteen (15) calendar days after Defendant funds the first installment payment, including required payroll taxes, the Administrator will mail checks for all Individual Settlement Payments and all Aggrieved Employee Payments. Agreement, ¶ III(N)(7). Within fifteen (15) calendar days after Defendant funds the second installment payment, including required payroll taxes, the Service Awards shall be paid to Plaintiffs. Agreement, ¶ III(N)(9). The Class Counsel Award, LWDA Payment, and Settlement Administration Costs shall be paid no later than fifteen (15) calendar days after the Gross Settlement Amount is funded in full. Agreement, ¶ III(N)(10)-(12).

The Administrator will calculate Individual Class Payments by dividing the Net Settlement

Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and then multiplying the result by each Participating Class Member's Workweeks worked during the Class Period. Agreement, ¶ III(N)(1). The estimated average Individual Class Payment is approximately **\$400.10**. JCL Dec., ¶ 9; Apex Dec., ¶ 15.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, Plaintiffs and the Settlement Class Members will release the Released Parties from the Released Class Claims for the Class Period. Agreement at ¶ III(B). The Aggrieved Employees will release the Released Parties from the Released PAGA Claims for the PAGA Period. Agreement at ¶ III(C).

Apex Class Action, LLC was appointed as the Administrator for the Class. 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 and disbursing the Individual Class Payments, and the fees of the Administrator (“Settlement Administration Costs”) approved for reimbursement by the court. The Settlement Administration Costs is \$14,500.00. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ III(N)(12).

Subject to Court approval, Class Counsel shall seek Attorneys’ Fees and Litigation Costs in the amount of \$275,000.00 comprised of attorneys’ fees of \$250,000.00 (one-third of the Gross Settlement Amount) and up to \$25,000 for actually incurred litigation expenses. Plaintiffs’ counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC. Agreement, ¶ I(G). Plaintiffs and Class Counsel have in place a written contingency fee agreement wherein Plaintiffs agreed to the split of fees. JCL Dec., ¶ 18; Shabazz Dec., ¶ 16; Castaneda Dec., ¶ 16. The Agreement also provides for a Service Award in the amount of \$10,000 to each Plaintiff, in consideration of their time, risk, and efforts as the Class Representatives on behalf of the Settlement Class and a general release of Plaintiff Castaneda’s claims. Agreement, ¶ I(JJ).

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 \$400.10. Apex Dec., ¶¶ 13, 15; JCL Dec., ¶ 19.

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

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

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

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

27 The essential evaluation is whether, given the risks of litigation and the range of probable results,
28 the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. Here, the facts and

1 circumstances compel the conclusion that the proposed settlement satisfies that standard.

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

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

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

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

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

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

27 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
28 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel

1 assessed the value of the class claims using data and documents provided by Defendant through
2 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
3 the number of Class Members, aggregate workweeks and pay periods data for the Class, full and
4 complete copies of applicable handbooks containing, *inter alia*, compensation, timekeeping, and meal
5 and rest period policies. Class Counsel retained Berger Consulting Group (“BCG”) to analyze
6 Defendant’s time and payroll data to formulate damage models estimating Defendant’s liability
7 exposure. Class Counsel’s investigation, research, experience, and damage models informed and
8 guided the mediated negotiations that resulted in this settlement. Accordingly, Plaintiffs’ Counsel fully
9 understood the strengths and weaknesses of the class claims before the parties reached a settlement.
10 JCL Dec., ¶ 20-27.

11 **B. The Parties Settled At Mediation.**

12 On February 15, 2024, the Parties attended a full-day mediation with the Hon. Brian C. Walsh
13 (Ret.), a well-respected jurist and mediator of wage and hour class and representative actions. Judge
14 Walsh helped to manage the Parties’ expectations and provided a useful, neutral analysis of the issues
15 and risks to both sides. The Parties made substantial progress with Judge Walsh’s assistance. Namely,
16 the Parties exchanged information regarding their respective claims and defenses, including their
17 respective evaluations of the damages. The mediation concluded with a settlement, the complete and
18 final terms of which are now set forth in the Agreement. The amount of the Service Award was not
19 negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No
20 action would likely have been taken by Class Members individually, and no compensation would have
21 been recovered for them, but for Plaintiffs’ service on behalf of the Class. JCL Dec., ¶ 28.

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

23 Class Counsel in this matter has extensive class action experience in multiple fields and has
24 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
25 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
26 similar wage and hour class actions throughout the State of California. As such, courts throughout
27 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
28 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement

1 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 29-35; Declaration
2 of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3.

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

4 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
5 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
6 member with the terms of the Settlement, including the specific estimated Individual Class Payments.
7 As of the filing of this motion, none of the 1,026 members of the Settlement Class opted-out of the
8 Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement Class
9 chose to participate in the Settlement. JCL Dec., ¶ 8; Apex Dec., ¶¶ 11-13.

10 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement
11 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y.
12 2000) 80 F.Supp.2d 164, 175 (“If only a small number of objections are received, that fact can be
13 viewed as indicative of the adequacy of the settlement.”); *Stoetznner v. U.S. Steel Corp.* (3d. Cir. 1990)
14 897 F.2d 115, 118-119 (29 objections out of 281 member class “strongly favors settlement”); *Laskey*
15 *v. Int’l Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the
16 proposed settlement should be considered when determining fairness of settlement.). Consequently,
17 Class Counsel respectfully request the Court to follow the unanimous approval of the Settlement Class
18 and grant final approval of the Settlement.

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

20 The Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars and Zero Cents
21 (\$750,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
22 court acknowledged that “as the court does when it approves a settlement as in good faith under Code
23 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
24 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
25 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

26 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
27 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the
28 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.

1 While the Gross Settlement Amount represents a discount on Defendant’s potential exposure if Plaintiffs
2 established liability on all claims and were awarded the full amount of the estimated damages at trial,
3 this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk
4 that could award significantly less in damages than Plaintiffs’ estimate and (2) any theoretical post-trial
5 recovery may require many more years of litigation, resulting in added fees and costs without any
6 guarantee of recovery for the Class. JCL Dec., ¶ 36.

7 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
8 reasonable considering the nature and magnitude of the claims being settled and the various potential
9 impediments to recovery. Class Counsel developed varied economic damages models measuring
10 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
11 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
12 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
13 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the
14 Settlement Class. The Gross Settlement Amount represents between approximately 50.6% of
15 Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL
16 Dec., ¶ 37.

17 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
18 for the Northern District of California granted final approval in a wage and hour misclassification action
19 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
20 the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
21 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
22 potential recovery.” Given the amount of the settlement here as compared to potential value of the
23 claims, particularly the strength of Plaintiffs’ action, the settlement is clearly fair and reasonable³.

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.”).

1 The calculation methodology used to compensate the Settlement Class for the alleged damages
2 was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
3 impartial. The calculation methodology is based on the number of Workweeks each Settlement Class
4 Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement
5 Class Members is established through Defendant's data and documented compensation records. The
6 Administrator is responsible for calculating the Individual Class Payments by dividing the Net
7 Settlement Amount by the total number of Workweeks worked by all Participating Class Members
8 during the Class Period and then multiplying the result by each Participating Class Member's
9 Workweeks worked during the Class Period. Agreement, ¶ III(N)(1). This process establishes an
10 objectively fair and reasonable procedure to compensate the Settlement Class.

11 The settlement also provides significant relief to the Settlement Class Members. After deductions
12 for the Attorneys' Fees and Litigation Costs, Settlement Administration Costs, the PAGA Payment, and
13 the Service Award, the Net Settlement Amount is currently estimated to be \$410,500.00. Apex Dec.,
14 ¶14. The average Individual Class Payment is approximately \$400.10, the highest is approximately
15 \$6,713.79, and the lowest payment is approximately \$50.48. Apex Dec., ¶ 15. This average net recovery
16 is on par with many wage and hour class action settlements approved by California state and federal
17 courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super.
18 Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (LA.
19 County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group,*
20 *LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120);
21 *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average
22 net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx
23 (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case
24 No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v.*
25 *Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery
26 of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.)
27 (average net recovery of approximately \$20). Additionally, Defendant must separately fund its share of
28 any employer side payroll taxes. Agreement, ¶ II(A)(4).

Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval. JCL Dec., ¶ 38.

F. The Strength of Plaintiffs' Case and Risks of Continued Litigation

Although Class Counsel believe strongly in Plaintiffs' claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiffs' claims. 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 *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court's denial of class certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). JCL Dec., ¶ 40.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendant's liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088

1 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized
2 questions of fact not susceptible to class treatment.”). JCL Dec., ¶ 41.

3 Finally, even if a class is certified and Defendant is found liable for the class claims alleged,
4 post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs and
5 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*
6 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded
7 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and
8 directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber*
9 *Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification
10 action). JCL Dec., ¶ 42.

11 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
12 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
13 factor favoring settlement. JCL Dec., ¶ 43.

14 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
15 recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat or
16 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
17 drastically affect the value of Plaintiffs’ claims and, in fact, already has. JCL Dec., ¶ 44.

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

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

1 those which go to fundamental legal issues - favor approval.”).

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

3 **The potential complexity and possible duration of trial also weigh in**
4 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
5 of proving damages, recognize the uncertainty of outcome, and believe
6 defendant would appeal in the event of adverse judgment. A post-judgment
7 appeal would require many years to resolve and delay payment to class
8 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.

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

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

15 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
16 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
17 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. Plaintiffs fully expect
18 that Defendant would appeal any favorable judgment. A post-judgment appeal by Defendant would
19 have required many more years to resolve, assuming the judgment was affirmed. If the judgment was
20 not affirmed in total, then the case could have dragged on for years after the appeal. The benefits of a
21 guaranteed recovery today outweigh an uncertain result three or more years in the future. JCL Dec., ¶
22 45.

23 The Class Representatives and Class Counsel believe that the Settlement confers substantial
24 monetary and non-monetary benefits upon the Class. Based upon their evaluation, the Class
25 Representatives and Class Counsel have determined that the Settlement set forth in the Agreement is
26 in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval.
27 JCL Dec., ¶ 46.

28 ///

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

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

12 Here, Plaintiffs and Defendant negotiated a good faith PAGA Payment in the amount of
13 \$30,000, which is 4% of the Gross Settlement Amount. As illustrated above, this amount falls well
14 within the range of approved PAGA Payments. Seventy-five percent (75%) of the PAGA Payment
15 (\$22,500.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent
16 (25%) of the PAGA Payment (\$7,500.00) to be distributed to the Aggrieved Employees (“Individual
17 PAGA Payments”), which is within the range of PAGA penalties approved by courts and should be
18 approved. JCL Dec., ¶ 47.

19 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
20 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
21 with the LWDA. JCL Dec., ¶¶ 4-6, 48. By not registering an objection with either Class Counsel or
22 the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

23 **VII. CONCLUSION**

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

27 Dated: January 3, 2025

JCL LAW FIRM, APC

28 By: 
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