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8

9  
10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12 JANICE INSIXIENGMAY, individually and )  
13 on behalf of all other similarly situated )  
14 employees, )

15 Plaintiff, )

16 vs. )

17 HYATT CORPORATION DBA HYATT )  
18 REGENCY SACRAMENTO, a Delaware )  
19 Corporation; and DOES 1 to 100, inclusive, )

20 Defendants. )

**Case No. 2:18-cv-02993-TLN-SCR**

**CLASS ACTION**

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

Date: September 19, 2024  
Time: 2:00 p.m.  
Courtroom: 2, 15th Floor  
Judge: Hon. Troy L. Nunley

Filed: October 4, 2018  
FAC Filed: April 7, 2020  
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Trial Date: None Set

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**I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

1  
2 Plaintiff Janice Insixiengmay (“Plaintiff”) seeks final approval of a wage and hour class action  
3 and Private Attorneys General Act (“PAGA”) settlement in the gross amount of \$295,000. *See*  
4 *generally* Exhibit A (Joint Stipulation Regarding Class Action and PAGA Settlement and Release  
5 [“Agreement”]). Plaintiff brought this class action individually and on behalf of similarly situated  
6 employees who worked for Defendant Hyatt Corporation dba Hyatt Regency Sacramento, (“Defendant”)  
7 (Plaintiff and Defendant sometimes collectively referred to as the “Parties”). *See generally* Exhibit B  
8 (Plaintiff’s Operative Complaint). There are approximately 1,078 Class Members.

9 Plaintiff has alleged that Defendant failed to pay overtime wages, failed to provide meal and  
10 rest periods or premiums in lieu thereof, failed to provide accurate wage statements, failed to timely  
11 pay final wages, failed to pay paid sick time, and engaged in unfair competition. *See generally* Exhibit  
12 B; *see also* Declaration of Justin P. Rodriguez (“Decl. Rodriguez”), ¶¶ 2, 9. Plaintiff has also alleged  
13 Defendant is liable for civil penalties under the PAGA based on these violations. *See id.*; Exhibit C  
14 (Plaintiff’s Ltrs. to the Labor and Workforce Development Agency [“LWDA”] Regarding PAGA  
15 Claims). Defendant has denied all of Plaintiff’s allegations in their entirety and any liability or  
16 wrongdoing of any kind. *See* Decl. Rodriguez, ¶ 5. Defendant has also denied that this case is  
17 appropriate for class certification other than for purposes of settlement. *See id.* However, subject to  
18 Court approval, the Parties have been able to compromise and settle all asserted claims as a result of  
19 extensive investigations, document and data exchanges, depositions, and extended negotiations. *See*  
20 Exhibit A. Plaintiff and Plaintiff’s counsel believe the proposed Agreement is fair, reasonable, and  
21 adequate based on the investigations, discovery, employee data exchanges, negotiations, and a detailed  
22 knowledge of the issues in this case. *See* Decl. Rodriguez, ¶¶ 10, 13; Declaration of Janice  
23 Insixiengmay (“Decl. Insixiengmay”) ¶ 7. The reaction of Class Members to the preliminarily  
24 approved Agreement has also been overwhelmingly positive, giving substantial support to the  
25 Agreement, and all terms and allocations therein, being fair, reasonable, and adequate. Only one Class  
26 Member has opted out of the settlement and there have been zero objections to the Agreement. *See*  
27 Declaration of Kaylie O’Connor (“Decl. O’Connor”), ¶¶ 5-7.

1 It is well within the discretion of this Court to grant final approval of the proposed settlement,  
2 which satisfies all of the criteria for final settlement approval under federal law. Accordingly, Plaintiff  
3 requests that the Court: (1) certify the settlement class; (2) grant final approval of the Agreement; (3)  
4 find that the procedures used to notify Class Members complied with due process; (4) grant Plaintiff's  
5 request for attorney's fees and costs, an Enhancement Payment to the Class Representative, and  
6 Settlement Administrator Costs as set forth in the separately filed motion (Doc. Nos. 79 to 79-6), which  
7 will be heard concurrently with this motion for final approval and is incorporated by reference; and (5)  
8 adopt the implementation schedule contained in the proposed order filed concurrently herewith.

## 9 II. PROCEDURAL AND LITIGATION HISTORY

10 Plaintiff filed a class action complaint on approximately October 4, 2018, against Defendant in  
11 state court. Defendant removed the action to federal court on or about November 15, 2018. Plaintiff  
12 exhausted administrative remedies under the PAGA by providing notice of the claims and violations to  
13 the LWDA. *See* Exhibit C; Cal. Lab. Code § 2699.3(a), (c); Decl. Rodriguez, ¶ 3. Thereafter, Plaintiff  
14 filed a First Amended Class Action Complaint on approximately April 7, 2020, to include a PAGA  
15 claim. *See id.* Plaintiff filed a Second Amended Complaint on April 6, 2023, to clarify the correctly  
16 named defendant is Hyatt Corporation dba Hyatt Regency Sacramento and to modify the scope of the  
17 putative class to include all individuals within the scope of data and documents produced by Defendant  
18 through formal and informal discovery and to match the scope of Plaintiff's investigation during this  
19 lawsuit and the ultimate resolution reached by the parties at mediation. *See id.*; Exhibit B. After  
20 reaching a resolution at mediation on March 20, 2023, the parties stipulated to all certification related  
21 deadlines in the Court's Amended Pretrial Scheduling Order and amendment to the Amended Pretrial  
22 Scheduling Order being vacated while they memorialized the agreement in writing and finalized all  
23 terms for the Court's review and approval. *See* Decl. Rodriguez, ¶ 4.

## 24 III. INVESTIGATION AND DISCOVERY CONDUCTED

25 Plaintiff thoroughly investigated issues affecting certification, the merits of the claims, and  
26 potential damages for such claims. *See id.* at ¶¶ 6-13; Decl. Insixiengmay, ¶¶ 3, 5-7. Plaintiff worked  
27 during the time all of Defendant's policies and practices at issue in the Complaint were in effect and  
28 provided information regarding these policies and practices, enabling pre-filing investigations to take

1 place. *See* Decl. Insixiengmay, ¶¶ 2, 5. The Parties engaged in written discovery and depositions,  
2 which involved a substantial amount of time meeting and conferring on discovery disputes as well as  
3 attending informal discovery conferences. *See* Decl. Rodriguez, ¶ 7. The formal discovery, as well as  
4 the informal discovery conducted in connection with mediation, included an exchange of documents,  
5 including an approximately 75% sample of Class Members' wage and hour data, such as timecards,  
6 paystubs, payroll data, and relevant policies for the entirety of the statute of limitations applicable to the  
7 asserted claims. *See id.* Over 10,000 pages of documents were produced in discovery as well as  
8 numerous electronic payroll and time card report excel files, which contained a total of more than  
9 300,000 rows of data. In conducting the merits and damages analysis, Plaintiff had to cross reference  
10 data from 1 to 4 different spreadsheets at a time for more than 50 different pay codes over the course of  
11 the statutory period and compare them to interrogatory and deposition responses. Plaintiff utilized  
12 several experts to help compile and analyze the data as well. The discovery covered all aspects of the  
13 asserted claims, including certification issues, merits issues, damages, the scope and configuration of  
14 Class Members, the content and implementation of the wage and hour policies at issue, issues relating  
15 to manageability concerns at trial, among other relevant areas. *See id.* The information allowed  
16 Plaintiff to determine the extent and frequency of any violations in accordance with Plaintiff's  
17 contentions and create an accurate damages model to assess the reasonableness of any settlement. *See*  
18 Decl. Rodriguez, ¶¶ 9-10.

#### 19 **IV. NEGOTIATION AND PROPOSED SETTLEMENT**

##### 20 **a. Plaintiff and Defendant Engaged in Extensive Arm's Length Negotiations**

21 The final settlement occurred only after extended, arm's length negotiations. Over the course of  
22 nearly five (5) years, Plaintiff has been investigating the claims and discussing with Defendant's  
23 counsel the merits of the claims and issues present in this case. *See id.* at ¶¶ 6-8. The Parties  
24 exchanged substantial amounts of information and legal analysis in connection with these discussions.  
25 *See id.* It was only after these extended discussions, which included a full day mediation with Gig  
26 Kyriacou, Esq., that the Parties were able resolve all claims and enter into the Agreement. *See id.*

##### 27 **b. The Terms of the Agreement**

28 1. Class Members will include all non-exempt employees who are currently or were

1 formerly employed by Defendant at the Hyatt Regency in Sacramento, California, during the Class  
2 Period (*i.e.*, October 4, 2014, through June 1, 2023). Aggrieved Employees will include all non-exempt  
3 employees who are currently or were formerly employed by Defendant at the Hyatt Regency in  
4 Sacramento, California, during the PAGA Claim Period (*i.e.*, October 4, 2017, through June 1, 2023).  
5 *See* Exhibit A, ¶¶ 1.2, 1.5, 1.6, 1.23. The settlement class shall not include any person who submits a  
6 timely and valid request to opt-out as provided in the Agreement. *See id.* at ¶ 4.1. The class size is 1,077  
7 individuals. *See id.* Decl. O'Connor, ¶ 5 (only 1 of the total 1,078 Class Members opted out).

8 2. Defendant will pay the Gross Settlement Amount of \$295,000, which is exclusive of the  
9 employer's share of payroll taxes. *See* Exhibit A, ¶ 5.1. No portion of the Gross Settlement Amount  
10 will revert to Defendant. *See id.* at ¶ 5.6. Aggrieved Employees will still be paid their share of the  
11 PAGA Payment regardless of whether they opt out of being Class Members. *See id.* at ¶¶ 7.5.1, 7.8.3.

12 3. Up to \$10,000 will be paid to Plaintiff as an Enhancement Payment. This amount will  
13 be in addition to any amount Plaintiff may be entitled to as a Class Member and Aggrieved Employee  
14 under the terms of the Agreement. *See id.* at ¶ 5.4.

15 4. The Parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to  
16 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to  
17 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See id.* at ¶ 5.5.  
18 Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts by  
19 Defendant to maintain compliant policies and take corrective action, the presence of what may likely be  
20 deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff believes  
21 the \$10,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring non-  
22 compliance given the facts of this case. *See* Decl. Rodriguez, ¶¶ 6-13; *see also Nordstrom Com.*  
23 *Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims  
24 based on their being disputed and being part of a class settlement which was evaluated based on the  
25 terms of the agreement overall); *Junkersfeld v. Med. Staffing Sols., Inc.*, 2022 WL 2318173, at \*8 n.2  
26 (E.D. Cal. 2022) (collecting cases with PAGA settlement values ranging from .037%-1%); *Jennings v.*  
27 *Open Door Marketing, LLC*, 2018 WL 4773057, \*9 (N.D. Cal. 2018) (approving settlement of PAGA  
28 claims at 0.6% of total estimated value due to risk of no recovery); *Ruch v. AM Retail Grp., Inc.*, 2016



1 WL 5462451, \*7 (N.D. Cal. 2016) (approving \$10,000 PAGA settlement allocation where total PAGA  
2 penalty exposure was approximately \$5.2 million, or 0.2% of total estimated value); *Davis v. Cox*  
3 *Commc 'ns California, LLC*, 2017 U.S. Dist. LEXIS 63514, \*1 (S.D. Cal. 2017) (preliminarily  
4 approving \$4,000 PAGA allocation in \$275,000 settlement); *Moore v. Fitness Int'l, LLC*, 2014 U.S.  
5 Dist. LEXIS 8358, \*5 (S.D. Cal. 2014) (approving \$2,500 PAGA allocation when attorneys' fees award  
6 alone amounted to \$200,000); *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, \*6 (S.D.  
7 Cal. 2011) (approving \$3,000 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson*  
8 *& Co.*, 2010 WL 2196104, \*2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000  
9 settlement); *Hopson v. Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, \*9 (N.D. Cal. 2009)  
10 (approving \$1,500 PAGA allocation in \$1,026,000 settlement); *Syed v. M-I, L.L.C.*, 2017 U.S. Dist.  
11 LEXIS 24880, \*34-35 (E.D. Cal. 2017) (approving \$100,000 PAGA allocation in a \$3,950,000  
12 settlement even though PAGA exposure was calculated at \$53,600,000, or 0.2% of total estimated  
13 value); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at \*7 (E.D. Cal. 2012)  
14 (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v. Ruiz Food Prod., Inc.*,  
15 2012 WL 5941801, at \*14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from \$2,500,000 settlement  
16 fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at \*1 (N.D. Cal. 2011) (approving  
17 PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund settlement).

18 5. The Parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount  
19 (\$103,250) will be paid for Plaintiff's attorneys' fees incurred in the litigation of this case. Defendant  
20 will not oppose any application for attorneys' fees so long as it is within this threshold. *See* Exhibit A,  
21 ¶ 5.2. Additionally, the Parties agree that Plaintiff will also be entitled to the actual litigation costs as  
22 approved by the Court in an amount not to exceed \$31,500. *See id.*

23 6. Any allocated amounts under the Agreement for Settlement Administrator Costs, any  
24 Enhancement Payment to the Class Representative, and attorney's fees and costs that are not ultimately  
25 awarded by the Court will remain part of the Net Settlement Amount and be paid out to Participating  
26 Class Members on a pro rata basis as set forth in the Agreement. *See id.* at ¶¶ 5.1-5.5, 5.8. These  
27 amounts will be paid out from the Gross Settlement Amount, not in addition to the Gross Settlement  
28 Amount. *See id.* at ¶¶ 5.1-5.5.

1           7.       Class Members who fail to timely opt-out of this settlement will waive all Released  
2 Class Claims as set forth in the Agreement. *See id.* at ¶¶ 1.13, 1.25, 1.29, 1.31, 6.1. Aggrieved  
3 Employees will waive all Released PAGA Claims as set forth in the Agreement regardless of whether  
4 they opt out of being a Class Member. *See id.* at ¶¶ 1.2, 1.13, 1.30-1.31, 6.2, 7.5.1.

5           8.       For any portion of the Net Settlement Amount or PAGA Payment allocated to  
6 Participating Class Members and/or Aggrieved Employees that is not claimed by them by cashing their  
7 respective settlement checks within 120 calendar days of issuance, that remaining amount shall be  
8 donated equally, *i.e.*, 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the  
9 doctrine of *cy pres*. *See id.* at ¶ 5.6. Because the Agreement provides for all funds such that there is no  
10 residue, the provisions of California Civil Procedure Code section 384 are inapplicable. *See In re*  
11 *Microsoft I-V Cases*, 135 Cal.App.4th 706, 718, 720 (2006). The designated beneficiaries clearly  
12 promote the law consistent with the objectives and purposes underlying the lawsuit as they are non-  
13 profits aimed at assisting employees with wage and hour claims who cannot afford legal representation,  
14 including providing representation for employees in wage claims before the California Labor  
15 Commissioner. *See id.* at 722-724; *see also* Decl. Rodriguez, ¶¶ 24-29.

16           **c. Allocation of Settlement Funds**

17           Payment to Class Members and Aggrieved Employees of their Individual Settlement Amount will  
18 not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting  
19 from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement  
20 Payment to the Class Representative, the Settlement Administrator Costs, and the PAGA Payment. For  
21 payment allocation purposes only, Class Members will be divided into two subclasses: (1) Class Members  
22 who worked between October 4, 2018, and June 2, 2019, and (2) Class Members who worked between  
23 June 3, 2019, and June 1, 2023. Subclass 1 shall be allocated 70% of the Net Settlement Amount and  
24 Subclass 2 shall be allocated 30% of the Net Settlement Amount. Each Class Member's proportionate  
25 share will be determined by dividing their total Qualifying Workweeks worked within their respective  
26 subclass by the total Qualifying Workweeks worked by all Class Members within the subclass. A Class  
27 Member may be part of both subclasses if they worked during the time periods covering Subclass 1 and  
28 Subclass 2. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class

1 Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25%  
2 portion of the PAGA Payment will be determined by dividing their total Qualifying Workweeks within  
3 the PAGA Claim Period by the total Qualifying Workweeks by all Aggrieved Employees within the  
4 PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to  
5 arrive at the Aggrieved Employee's individual share. *See id.* at ¶ 5.8. One third (1/3) of Class Members'  
6 Individual Settlement Amount will be allocated for payment of disputed wages and two thirds (2/3) for  
7 disputed statutory penalties and interest. *See id.* at ¶¶ 5.9.1-5.9.2. 100% of Aggrieved Employees' share  
8 of the 25% portion of the PAGA Payment will be allocated as penalties. *See id.* at ¶ 5.9.3.

9 **V. CAFA SETTLEMENT NOTICE, PRELIMINARY APPROVAL OF CLASS ACTION**  
10 **SETTLEMENT, AND THE SUBSEQUENT CLASS ACTION ADMINISTRATION**

11 Plaintiff filed a motion for preliminary approval on October 10, 2023. *See* Doc. Nos. 73 to 73-6  
12 (Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement). Defendant sent  
13 notice as required under the CAFA on October 24, 2023. *See* Doc. Nos. 76 to 76-1 (Declaration of J.  
14 Scott Carr Regarding 28 U.S.C. § 1715). Although notice was provided later than 10 days after  
15 Plaintiff filed the proposed settlement with the Court, more than 90 days have passed since the notice  
16 was served, which has been deemed sufficient to satisfy CAFA's notice requirements. *See Adoma v.*  
17 *Univ. of Phoenix, Inc.*, 913 F.Supp.2d 964, 973-974 (E.D. Cal. 2012) (collecting cases).

18 Plaintiff's motion for preliminary approval of the class action settlement was approved by the  
19 Court, in its entirety, on March 12, 2024. To comply with the class members' due process rights, the  
20 parties enlisted an exhaustive method to ensure the best practical means possible were used to provide  
21 notice to the class. The parties provided the Settlement Administrator with all information necessary to  
22 effectuate the notice and calculate Class Member's individual shares. *See* Doc. No. 79-4 (Declaration  
23 of Kaylie O'Connor on Behalf of CPT Group, Inc., In Support of Plaintiff's Motion For Attorney's  
24 Fees And Costs, Representative Enhancement, and Settlement Administrator Costs), ¶ 3. The class  
25 action administrator then updated this information by doing an address trace for each individual using  
26 this information. *See id.* at ¶ 4. If a notice was returned as undeliverable, a further investigation was  
27 performed and they were re-mailed using updated information. *See id.* at ¶ 5; Decl. O'Connor, ¶ 4. Of  
28 the 1,078 notices mailed, only 19 were undeliverable after use of these methods. *See* Doc. No. 79-4, ¶

1 4; Decl. O'Connor, ¶ 4. The notices included information regarding the requested attorneys' fees,  
2 costs, payment to the LWDA, administration costs, and tax allocations. *See* Doc. No. 79-4, at pg. 7.  
3 The average distribution to Participating Class Members is approximately \$119.96 with a maximum  
4 distribution of approximately \$538.65. *See* Decl. O'Connor, ¶ 10. There have been zero objections to  
5 the preliminarily approved settlement and only one (1) Class Member opted out. *See id.* at ¶¶ 5-6.

6 It is not required that Class Members be given actual notice of a class settlement; instead, the  
7 best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d  
8 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);  
9 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at \*12-14 (N.D. Cal. 2017); *Wright v.*  
10 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.  
11 1994), the Court rejected a class member's argument that he had not received due process because he  
12 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is  
13 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of  
14 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. ConAgra*  
15 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any undeliverable Notice in this case, the  
16 Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members who did not  
17 receive actual notice due to their mailings being deemed undeliverable were still properly held to be  
18 part of the class settlement because they received the best notice practicable under the circumstances.  
19 *See Rannis v. Recchia*, 380 F. App'x at 650-651.

20 The notice method in *Rannis* is similar to that used in the present case. For example, the notice  
21 contains all information necessary for a Class Member to assess the litigation, the settlement, and  
22 whether they wanted to participate, object, or opt-out. *See generally* Doc. No. 79-4, pgs. 6-10. The  
23 Settlement Administrator utilized a national change of address database, forwarding notices, and skip  
24 tracing in an effort to ensure that all reasonable means were exhausted in attempting to provide Class  
25 Members notice of this settlement. *See* Doc. No. 79-4, ¶¶ 4-5; Decl. O'Connor, ¶ 4. Additionally, the  
26 Settlement, Notice, and approval documents have been made available online on a web page accessible  
27 to all Class Members. *See* <https://www.cptgroupcaseinfo.com/HyattSacramentoSettlement/>  
28

1 **VI. ARGUMENT**

2 **a. Class Action Settlements and PAGA Settlements are Subject to Court Review and**  
 3 **Approval**

4 A class action may not be dismissed, compromised, or settled without Court approval and the  
 5 decision to approve or reject a settlement is committed to the Court’s sound discretion. *See* Fed. R. Civ.  
 6 Proc. 23(e). Similarly, settlements under the PAGA require Court review and approval. *See* Cal. Lab.  
 7 Code § 2699(l). “Approval under Rule 23(e) involves a two-step process in which the Court first  
 8 determines whether a proposed class action settlement deserves preliminarily approval and then, after  
 9 notice is given to class members, whether final approval is warranted.” *Martinez v. Knight*  
 10 *Transportation, Inc.*, 2023 WL 2655541 at \*6 (E.D. Cal. 2023). The primary inquiry at the final  
 11 approval stage is whether the settlement is fair, reasonable, and adequate. *See Lane v. Facebook, Inc.*,  
 12 696 F.3d 811, 818 (9th Cir. 2012). However, final Court approval of a class settlement also requires that  
 13 adequate notice of the proposed settlement has been provided to class members. *See Garcia v. City of*  
 14 *King City*, 2017 WL 363257, \*4-\*5 (N.D. Cal. 2017).

15 Where the class settlement is reached prior to class certification “courts must peruse the  
 16 proposed compromise to ratify both the propriety of the certification and the fairness of the settlement.”  
 17 *See Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 252 (N.D. Cal. 2015). However, courts  
 18 should give “proper deference to the private consensual decision of the parties,” since “the court’s  
 19 intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a  
 20 lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not  
 21 the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the  
 22 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon v. Chrysler*  
 23 *Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *see also Lane*, 696 F.3d at 819; *Boyd v. Bechtel Corp.*, 485  
 24 F.Supp. 610, 617 (N.D. Cal. 1979). There is a “strong judicial policy that favors settlement, particularly  
 25 where complex class action litigation is concerned.” *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir.  
 26 2015); .

27 //

28 //

1           **b. Certification of the Settlement Class is Appropriate**

2           The Court preliminarily certified the settlement class on March 12, 2024. The only relevant  
3 change in the facts of this case since that time is that one (1) Class Member opted out of the settlement.  
4 *See* Decl. O’Connor, ¶ 5. There are still 1,077 individuals falling with the definition of Class Member,  
5 which is sufficient to satisfy numerosity. *See Romero v. Producers Dairy Foods, Inc.*, 235 F.R.D. 474,  
6 485 (E.D. Cal. 2006); *In re Scorpion Techs., Inc. Sec. Litig.*, 1994 U.S. Dist. LEXIS 21413, \*10 (N.D.  
7 Cal. 1994). There have been zero objections to any aspect of the settlement, let alone the certification of  
8 a settlement class. *See* Decl. O’Connor, ¶ 6. As such, there is nothing that would merit any change to  
9 the Court’s decision at preliminary approval to certify the class for purposes of settlement. *See Garcia*,  
10 2017 WL 363257, \*4; *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, \*4 (N.D. Cal. 2017).

11           **c. Adequate Notice Was Provided**

12           As set forth in Section V, *supra*, the parties provided the best notice practicable under the  
13 circumstances utilizing notice methods that have been deemed sufficient in numerous other cases.  
14 Class Members’ contact information was checked against the United States Postal Service’s National  
15 Change of Address Database for more recent addresses to mail the Court approved Notice of Settlement  
16 to and any returned mailings were remailed to any forwarding address provided. *See* Doc. 79-4, ¶¶ 4-5;  
17 Decl. O’Connor, ¶ 4. For those notices returned without any forwarding address, advanced searches,  
18 skip traces, were used to find any updated mailing addresses. *See* Doc. 79-4, ¶ 5; Decl. O’Connor, ¶ 4.  
19 The Notice of Settlement and documents relevant to settlement approval have also been made available  
20 online at a web address provided in the Notice of Settlement. *See* Doc. 79-4, pg. 9 (Under Section VI,  
21 identifying <https://www.cptgroupcaseinfo.com/HyattSacramentoSettlement/>). The notice provided is  
22 similar to the procedures utilized in other cases, which have been found to be sufficient even for any  
23 class members whose notices were deemed undeliverable. *See Silber*, 18 F.3d at 1453; *Briseno*, 844  
24 F.3d at 1129; *Rannis*, 380 F.App’x 646. Thus, adequate notice has been provided.

25           **d. The Agreement Should Be Given Final Approval Because It Is Fair, Reasonable and**  
26           **Adequate**

27           To determine whether a settlement is fair, reasonable, and adequate, a Court will consider “(1)  
28 the strength of the plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further

1 litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in  
2 settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience  
3 and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class  
4 members to the proposed settlement.” *See Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 575 (9th Cir.  
5 2004).

6 **i. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff’s Case**  
7 **and the Risks, Costs, Complexity and Likely Duration of Further Litigation**

8 A review of the Agreement’s terms in light of potential risks, costs, and delays does not give  
9 rise to any doubts about its fairness. Plaintiff’s counsel carefully took into consideration risks involved  
10 with each of the claims, including but not limited to whether Plaintiff would be successful in proving  
11 certain premium pay should have been incorporated into the regular rate of pay, whether recovery of  
12 wage statement and waiting time penalties may be precluded by a good faith defense by Defendant, and  
13 the Court’s discretion to reduce any PAGA penalties. *See Decl. Rodriguez*, ¶¶ 9-10. Plaintiff’s counsel  
14 also carefully evaluated the prospect of potential class certification issues, the difficulties of complex  
15 litigation, the lengthy process of establishing specific damages and various possible delays and appeals  
16 in agreeing to the proposed settlement, and the potential PAGA manageability issues. *See id.* at ¶¶ 6-7,  
17 9. Moreover, because the overtime, paid sick time, and meal and rest premiums claims (post June  
18 2019) relied on Plaintiff proving that the value of free meals should have been included in Defendant’s  
19 regular rate of pay calculation, there was a substantial risk of receiving no recovery for those claims.  
20 *See id.* at ¶¶ 9-10. Based on the records and facts of this case, Plaintiff has secured a gross recovery of  
21 approximately 10.8% to 24.9% and a net recovery of approximately 4.8% to 10.9% of the claims’  
22 maximum value. *See Decl. Rodriguez*, ¶¶ 9-10. Additionally, on average class members will receive a  
23 net award of approximately \$119.96, which is 460% higher than the average net recovery in a prior  
24 related case against Defendant. *See id.* at ¶¶ 12-13. This settlement is a reasonable compromise of the  
25 claims and is within the percentile ranges of the total available damages that have been approved in  
26 other class settlements. *See Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 628 (9th Cir.  
27 1982); *see also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that  
28 certainty of recovery in settlement of 6% of maximum potential recovery after reduction for attorney’s

1 fees was higher than median percentage for recoveries in shareholder class action settlements,  
2 averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS  
3 77714 (C.D. Cal. 2017) (approving a settlement where the net recovery to class members was  
4 approximately 7.5% of the projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*,  
5 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017) (approving a settlement with a gross recovery of 11%  
6 of the projected maximum damages available and a net recovery of approximately 6.7% of the  
7 projected maximum recovery); *Bellinghausen*, 306 F.R.D. 245 (approving a settlement where the gross  
8 recovery was approximately 8.5% of the projected maximum recovery); *Schiller v. David's Bridal,*  
9 *Inc.*, 2012 U.S. Dist. LEXIS 80776, \*48 (E.D. Cal. 2012) (“Class Members will receive an average of  
10 approximately \$198.70, with the highest payment to a Class Member being \$695.78 . . . Overall, the  
11 Court finds that the results achieved are good, which is highlighted by the fact that there was no  
12 objection to the settlement amount or the attorneys’ fees requested.”); *Gardner v. GC Servs., LP*, 2012  
13 U.S. Dist. LEXIS 47043, \*18 (S.D. Cal. 2012) (“the results achieved in this case were very favorable.  
14 Class members are provided with immediate monetary relief, with an average award of around several  
15 hundred dollars and a minimum award of \$50”).

16 **ii. Risk of Maintaining Class Action Status Through Trial**

17 Defendant has continually disputed the propriety of certification of Plaintiff’s claims outside of  
18 this proposed settlement. *See* Decl. Rodriguez, ¶¶ 5, 9. Although Plaintiff feels strongly that she would  
19 be able to obtain certification outside of a settlement context and maintain certification through trial, this  
20 is not a certainty as the settlement has taken place before any rulings on certification have been made.  
21 Thus, there is a clear risk that must be accounted for in evaluating the adequacy of the settlement. *See*  
22 *id.* Additionally, any potential certification would be subject to later appeal and potential reversal.

23 **iii. The Amount Offered In Settlement**

24 As noted above, Plaintiff has secured a gross recovery of approximately 10.8% to 24.9% and a  
25 net recovery of approximately 4.8% to 10.9% of the claims’ maximum value. *See* Decl. Rodriguez, ¶  
26 10. On average, Class Members will receive a net award of approximately \$119.96, which is 460%  
27 higher than the average net recovery in a prior related case against Defendant. *See id.* at ¶¶ 12-13. The  
28 fact that the proposed settlement is a fraction of the total amount that may possibly be recovered does



1 not render it inadequate. *See Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998);  
2 *Lane*, 696 F.3d at 823. Plaintiff has provided a detailed exposure analysis demonstrating why the  
3 settlement offered in this case is appropriate based on a realistic view of the strengths and weaknesses of  
4 this case. *See Decl. Rodriguez*, ¶¶ 9-10. Considering the percentage of recovery in this case compared  
5 to other, similar cases, also support the amount offered in settlement in this case being fair, reasonable,  
6 and adequate. *See Section VI.d.i, supra*; *Decl. Rodriguez*, ¶¶ 9-10, 13.

7 **iv. The Extent of Investigation and Discovery Completed Provided Ample**  
8 **Information to Enter Into an Informed and Reasonable Settlement**

9 The parties were in possession of all necessary information during the negotiations and  
10 mediation. Plaintiff's counsel conducted investigations and engaged in discovery, including an  
11 exchange of documents, records, and company policies that covered all aspects of the class claims and  
12 sought information regarding the class members to ensure that Plaintiff could determine liability and  
13 create an accurate damages model. *See Decl. Rodriguez* ¶¶ 6-13. As a result, Plaintiff was able to make  
14 a reasonable estimation of Defendant's potential liability against which the results of any settlement  
15 could be compared. *See id.* For these reasons, the settlement now before the Court was reached at a  
16 stage where the parties had a clear view of the strengths and weaknesses of claims and defenses at issue  
17 sufficient to support the settlement. There was also no collusion in reaching the proposed class  
18 settlement as the negotiations were adversarial and contentious, although still professional in nature, at  
19 all times. *See Decl. Rodriguez* ¶ 8.

20 **v. The Views and Experience of Plaintiff's Counsel**

21 Plaintiff's counsel have considerable experience in class actions and wage and hour litigation.  
22 Plaintiff's counsel have brought and are currently bringing several class actions involving employment  
23 law generally and wage and hour issues specifically, having also been approved as class counsel by  
24 numerous Courts. Thus, Plaintiff's counsel are qualified to evaluate the class claims, value of settlement  
25 versus moving for certification and going to trial, and viability of possible affirmative defenses. *See*  
26 *Decl. Rodriguez* ¶¶ 16-22; *Boyd*, 485 F.Supp. at 622 ("The recommendations of plaintiffs' counsel  
27 should be given a presumption of reasonableness"). Plaintiff's counsel believe that the settlement is fair  
28 and reasonable in light of the complexities of the case, the uncertainties of class certification and

1 litigation, and the secured benefit to the class. *See* Decl. Rodriguez at ¶ 10.

2 **vi. The Presence of A Governmental Participant and the Reaction of Class Members**

3 There are no governmental participants in this litigation. However, the reaction of Class  
4 Members provides overwhelming support for the settlement as there are zero objections and only one  
5 (1) individual has opted out. *See* Decl. O'Connor, ¶¶ 5-8; Decl. Insixiengmay, ¶ 7. This provides  
6 strong evidence that the Settlement is fair, reasonable, and adequate, and should be given final  
7 approval.

8 **VII. CONCLUSION**

9 For all of the foregoing reasons, Plaintiff respectfully request that this Court certify the  
10 settlement class, grant final approval of the Agreement, determine that the notice procedures have  
11 complied with Class Members' due process rights, grant Plaintiff's request for attorney's fees and costs,  
12 representative enhancement, and Settlement Administrator costs as forth in the fee motion being heard  
13 concurrently herewith, and adopt the implementation schedule contained in the proposed order filed  
14 concurrently herewith.

15  
16  
17 **Shimoda & Rodriguez Law, PC**

18  
19 Dated: August 15, 2024

20 By: /s/ Justin P. Rodriguez  
21 Galen T. Shimoda  
22 Justin P. Rodriguez  
23 Renald Konini  
24 Attorneys for Plaintiff  
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