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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

MANUEL VILLA, an individual(s), on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

TRILLIUM PUMPS USA, INC., a Delaware
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No.: 22CECG01104

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

Hearing Date: April 11, 2024

Hearing Time: 3:30 p.m.

Judge: Hon. Jonathan M. Skiles

Dept: 403

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I. INTRODUCTION

The parties to this action have reached a Settlement and the Court preliminarily approved the Stipulation and Settlement of Class and PAGA Action Claims and Release of Claims (collectively referred to as the “Agreement”), a true and correct copy of which is attached as Exhibit #2 to the Declaration of Jean Claude Lapuyade (“JCL Decl.”)¹. In accordance with the Preliminary Approval Order dated November 14, 2023 (“Preliminary Approval Order”), the approved Class Notice has been disseminated to the Class². The purpose of this hearing is to determine whether the proposed settlement of the litigation should be finally approved. Plaintiff Manuel Villa (“Plaintiff”) respectfully submits this memorandum in support of the unopposed motion for final approval and the proposed entry of the Final Approval Order and Judgment, submitted herewith. The settlement represents an excellent result for the Class and avoids the delays, risks, and costs of further litigation. After disseminating the notice to the members of the Class, there were no objections and one single request for exclusion, which means that more than 99.5% of the Class has elected to participate in the Settlement. JCL Decl. ¶4; Decl. of Nick Castro (“ILYM Decl.”) ¶ 11). This is a positive response from the Class evidencing their collective approval of the settlement. As a result, Plaintiff respectfully submits that the class settlement should be finally approved for the same reasons that the Court preliminarily approved the settlement as fair, reasonable, and adequate.

II. THE SETTLEMENT BEFORE THE COURT

Plaintiff and Defendant Trillium Pumps, USA, Inc. (“Defendant”) reached a full and final settlement of the above-captioned action, which is embodied in the Agreement filed concurrently with the Court. As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is Six Hundred Fifty Thousand Dollars (\$650,000.00). (Agreement at ¶ I(O).) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the Individual Settlement Payments the Class; (2) Class Counsel Award; (3) Settlement Administration Costs; (4) Class Representative Service Payment to Plaintiff; and (5) the PAGA Settlement

¹ Capitalized terms are defined in the Agreement.

² The “Class” is defined as “all non-exempt employees who are or previously were employed by Defendant and performed work in California during the Class Period.” (Agreement at ¶I(G).) The “Class Period” is defined as the period of time “from April 11, 2018 to December 2, 2022.” See Agreement at ¶I(H).)

1 payment. (Agreement at ¶ III(A)). The Gross Settlement Amount does not include Defendant's share
2 of payroll taxes. (Agreement at ¶ III(A)(4).) The Gross Settlement Amount shall be all-in with no
3 reversion to Defendant. (Agreement at ¶ III(A)(1).)

4 Defendant shall fund the Gross Settlement Amount and the amount necessary to pay Defendant's
5 share of payroll taxes within sixty-five (65) calendar days of the Effective Date. (Agreement at ¶
6 I(N)). The Individual Settlement Payments to Settlement Class Members will be mailed by the
7 Settlement Administrator within fifteen (15) calendar days after the funding of the Gross Settlement
8 Amount. (Agreement at ¶ III(N)(7).)

9 The Net Settlement Amount shall equal the net amount available for payment to the Class after
10 deducting the Court-approved amounts for the Class Representative Service Payment, the Class
11 Counsel Award, the PAGA Settlement, and the Settlement Administration Costs. (Agreement at ¶
12 I(Q).) The Net Settlement Amount will be distributed as the Individual Settlement Payments to the
13 Class Members who do not timely request exclusion ("Settlement Class Members"). (Agreement at
14 ¶¶ I(GG) and III(N)(1).) The Individual Settlement Payments will be calculated as follows: Using
15 the Class Data, the Settlement Administrator shall add up the total number of Workweeks for all
16 Class Members. The respective Workweeks for each Class Member will be divided by the total
17 Workweeks for all Class Members, resulting in the Payment Ratio for each Class Member. Each
18 Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate
19 each Class Member's estimated Individual Settlement Payments. (Agreement at ¶ III(N)(1).)

20 Class Members could opt-out of the Settlement by following the directions in the Class Notice.
21 (Agreement at ¶ III(L)(7)). All Class Members who did not "opt out" are deemed Settlement Class
22 Members who will be bound by the Settlement and will be entitled to receive a Settlement Share.
23 Aggrieved Employees who opt out the Settlement will still be paid their allocation of the PAGA
24 Payment, respectively, and will remain bound by the release of the Released PAGA Claims,
25 regardless of their request for exclusion. (Agreement at ¶ III(L)(2)(a)). Finally, the Class Notice
26 also advised the Class Members of their right to object to the Settlement. (Agreement at ¶
27 III(L)(2)(8)), Ex. A.)

28 ///

1 A Settlement Class Member must cash his or her Settlement Share check within 180 days after
2 it is mailed. (Agreement at ¶ III(N)(8).) The Settlement Administrator will send a reminder to
3 Settlement Class Members and/or Aggrieved Employees who have not cashed their checks 90 days
4 before the expiration date. (Agreement at ¶ III(N)(8).) Any settlement checks not cashed within 180
5 days will be voided and any funds from such uncashed checks shall be transmitted to the Controller
6 of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code
7 § 1500 et seq., in the names and corresponding amounts associated with each Class Member and/or
8 Aggrieved Employee whose check(s) are cancelled. (Agreement at ¶ III(N)(8).)

9 ILYM Group Inc., was appointed by the Court as the Settlement Administrator for the
10 Settlement. (Preliminary Approval Order at ¶5.) From the Gross Settlement Amount, the Settlement
11 Administrator shall be paid for the expenses of administering the Settlement in an amount not to
12 exceed \$9,900. (Preliminary Approval Order at ¶5). As set forth in the Declaration of ILYM
13 representative Nick Castro at ¶17, the Settlement Administration Expenses, including fees and costs
14 incurred to-date, as well as anticipated fees and costs for completion of the settlement
15 administration, are \$9,990.00.

16 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
17 to exceed \$216,666.67 as the Class Counsel Fees Payment. (Preliminary Approval Order at ¶3).
18 Class Counsel will also be allowed to apply separately for an award of Class Counsel Litigation
19 Expenses Payment in an amount not to exceed \$11,000. (Preliminary Approval Order at ¶3). Subject
20 to Court approval, the Agreement provides for a payment of no more than \$10,000 to Plaintiff as a
21 Class Representative Service Payment. (Agreement at ¶ III(B)(1).) In support of this separate
22 motion for attorneys' fees, reimbursement of expenses and service awards, Class Counsel is
23 providing evidentiary support, for these requests, including lodestar.

24 The Parties seek approval from the Court for the PAGA Payment of \$40,000 out of the Gross
25 Settlement Amount, which shall be allocated 75% (\$30,000) to the LWDA as the LWDA's share of
26 the PAGA Payment pursuant to PAGA and 25% (\$10,000) will be distributed to the Aggrieved
27 Employees based on their respective pay periods worked during the PAGA Period. (Agreement at
28 ¶ III(N)(11).)

1 All Aggrieved Employees will be sent their share of the PAGA Payment and will be subject to
2 the release of the Released PAGA Claims, whether or not they opt out of the Settlement. (Agreement
3 at ¶ III(L)(2).) As set forth in the accompanying proof of service, the LWDA has been served with
4 this motion and the Agreement. JCL Decl. ¶ 6. The Settlement is fair, adequate and reasonable to
5 the class and should be finally approved for the same reasons the Court granted preliminary
6 approval of the Settlement, agreeing that the settlement is “fair, adequate, and reasonable”.
7 (Preliminary Approval Order at ¶2(b).) In sum, the Settlement valued at \$650,000 is an excellent
8 result for the Class. This result is particularly favorable in light of the fact that liability and class
9 certification in this case were far from certain in light of the defenses asserted by Defendant. Given
10 the complexities of this case, the defenses asserted, the uncertainty of class certification, along with
11 the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable and
12 adequate, and should be finally approved. JCL Decl. ¶¶ 8-9.

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

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

21 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
22 action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (*citing*
23 *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980).) The
24 court must decide whether the proposed settlement falls within the range of reasonable settlements,
25 taking into account that settlements are compromises between the parties reflecting subjective,
26 unquantifiable judgments concerning the risks and possible outcomes of litigation. *See Wershba v.*
27 *Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed settlement is not to be judged
28 against a hypothetical or speculative measure of what might have been achieved had plaintiffs

1 prevailed at trial.”) In *Wershba*, appellants argued that the settlement was too low given the “clear”
2 liability, however, the Court rejected this argument and held that “the merits of the underlying class
3 claims are not a basis for upsetting the settlement of a class action.” *Id.*; *see also 7-Eleven, supra*,
4 at 1150.

5 In these cases, courts have repeatedly emphasized that there is a strong initial presumption that
6 the compromise is fair and reasonable. *Wershba*, 91 Cal. App. 4th at 245. Courts should not
7 substitute their judgment for that of the parties who negotiated the settlement. *Id.* at 246. The
8 presumption of fairness exists where: (1) investigation and discovery are sufficient to allow counsel
9 and the court to act intelligently; (2) the settlement is reached through arm's-length bargaining; (3)
10 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48
11 Cal. App. 4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41,
12 pp. 11-91. Here, all of these factors support a presumption of fairness. The essential evaluation is
13 whether, given the risks of litigation and the range of probable results, the settlement, taken as a
14 whole, is fair, reasonable and adequate to all concerned. Here, the facts and circumstances compel
15 the conclusion that the proposed settlement satisfies that standard and should be finally approved.

16 **IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

17 The Court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v.*
18 *Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); *see also Officers for Justice v. Civil Service*
19 *Com'n*, 688 F.2d 615, 625 (9th Cir. 1982). The purpose of the requirement is "the protection of
20 those class members, including the named plaintiffs, whose rights may not have been given due
21 regard by the negotiating parties." *Dunk, supra*, at 1801. The trial court has broad discretion to
22 determine whether the settlement is fair. *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110,
23 1117 (2009). “The well-recognized factors that the trial court should consider in evaluating the
24 reasonableness of a class action settlement agreement include 'the strength of plaintiffs' case, the
25 risk, expense, complexity and likely duration of further litigation, the risk of maintaining class
26 action status through trial, the amount offered in settlement, the extent of discovery completed and
27 the stage of the proceedings, the experience and views of counsel, the presence of a governmental
28 participant, and the reaction of the class members to the proposed settlement.’” *Kullar v. Foot*

1 *Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (internal citations omitted); see also *Munoz*
2 *v. BCI Coca-Cola Bottling Co. of L. A.*, 186 Cal. App. 4th 399, 408 (2010).

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

10 These factors are analyzed seriatim below, and all support final approval of the class action
11 settlement before this Court, consistent with this Court’s Preliminary Approval.

12 **A. The Settlement Satisfies the California Test for Fairness**

13 1. The Investigation and Analysis of Documents are Sufficient to Allow Counsel and 14 the Court to Act Intelligently

15 Over the course of two years, the Parties engaged in the investigation of the claims,
16 including the production of documents, class data, and other information, allowing for the full and
17 complete analysis of liabilities and defenses to the claims in this Action. The procedural history and
18 investigation performed was detailed at length in support of the motion for preliminary approval.
19 The Settlement was the product of one arms-length mediation and contentious negotiations through
20 an all-day mediation presided over by Hon. Brian C. Walsh (Ret.), a respected jurist and
21 experienced mediator of wage and hour class actions. JCL Decl. at ¶10.

22 2. The Settlement was Reached Through Arm’s Length Bargaining

23 This Settlement is the result of extensive and hard-fought litigation as well as negotiations
24 before an experienced and well-respected mediator. Defendant has expressly denied and continues
25 to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff
26 and Class Counsel have determined that it is desirable and beneficial to the Class to resolve the
27 Released Class Claims in accordance with this Settlement. Class Counsel are experienced and
28 qualified to evaluate the class claims, the viability of the defenses asserted, and the risks and benefits

1 of trial and settlement, and Class Counsel are experienced in wage and hour class actions, as Class
2 Counsel has previously litigated and certified similar claims against other employers. JCL Decl.
3 ¶11.

4 The Parties attended an arms-length mediation session with Hon. Brian C. Walsh (Ret.), a
5 respected jurist and experienced mediator of wage and hour class actions, in order to reach this
6 Settlement. In preparation for the mediation, Defendant provided Class Counsel with necessary
7 information for the members of the Class, including a sampling of time data, payroll data and data
8 concerning the composition of the Class. Plaintiff analyzed the data with the assistance of damages
9 expert, Berger Consulting, and prepared and submitted a mediation brief and damage valuation to
10 the Mediator. At the conclusion of the all-day mediation, the Parties agreed to this Settlement. The
11 final settlement terms were negotiated and set forth in the Agreement now presented for this Court's
12 approval. JCL Decl. ¶12. The fact that the settlement was negotiated with the assistance of an
13 experienced mediator supports approval. *Alberto v. GMRI, Inc.*, 252 F.R.D. 652, 666 (E.D. Cal. Jun
14 24, 2008); *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476; 15 Wage & Hour Cas. 2d (BNA)
15 1330, at *15 (N.D. Cal. 2007) ("The settlement was negotiated and approved by experienced
16 counsel on both sides of the litigation, with the assistance of a well-respected mediator with
17 substantial experience in employment litigation[, and] this factor supports approval of the
18 settlement").

19 From November 2022 through February 2023, the settlement agreement and exhibits thereto
20 were finalized and executed. On September 21, 2023, the Motion for Preliminary Approval was
21 filed. On November 14, 2023, the Court issued its Order granting preliminary approval of the
22 settlement as fair and reasonable to the Class³. JCL Decl. ¶13.

23 3. Class Counsel is Experienced in Similar Litigation

24 Class Counsel in this matter has extensive class action experience and has represented
25 thousands of persons in class actions including employment litigation, wage and hour class actions,

26 ³ The Court's Preliminary Approval Order preliminarily approved Class Counsel Costs in an
27 amount not to exceed \$11,000. (Preliminary Approval Order at ¶ 3). The Preliminary Approval
28 Order also preliminarily approved the Class Administration Costs in an amount not to exceed
\$9,900. (Preliminary Approval Order at ¶ 5). These amounts are reflected in this Motion and in the
accompanying Motion for Class Counsel Award.

1 and complex litigation. Class Counsel has previously litigated wage and hour class actions
2 involving employees and claims similar to this case and have been approved as experienced class
3 counsel in courts throughout California. As such, Class Counsel is experienced and knowledgeable
4 in this area of law. The qualifications of Class Counsel are set forth in the JCL Decl., at ¶2 and
5 Exhibit #1, and in the Declaration of Shani O. Zakay (“SOZ Decl.”) at ¶3-8. Class Counsel have
6 participated in every aspect of the settlement discussions and have concluded the settlement is fair,
7 adequate and reasonable and in the best interests of the Class. JCL Decl. ¶14.

8 4. There Are No Objections and Just One Request for Exclusion

9 The reaction of the Class unequivocally supports approval of the Settlement. On December
10 14, 2023, the Settlement Administrator mailed the Court-approved Class Notice to the Class
11 Members, which provided each class member with the terms of the Settlement, including notice of
12 the claims at issue and the financial terms of the settlement, including the attorneys' fees, costs, and
13 service award that were being sought, how individual settlement awards would be calculated, and
14 the specific, estimated payment amount to that individual. See ILYM Decl.¶7, Ex. A. In
15 disseminating the notice, the Settlement Administrator followed the notice procedures authorized
16 by the Court in its Preliminary Approval Order. Significantly, there have been no objections and
17 one single request to opt-out, submitted by Jennifer Loeffler ILYM Decl. ¶¶ 11-13. As such, over
18 99.55% of the Class will participate in the Settlement and will be sent a settlement check. *See* ILYM
19 Decl. at ¶ 14; JCL Decl. ¶8.

20 The absence of any objector strongly supports the fairness, reasonableness and adequacy of
21 the Settlement. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175
22 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be viewed as
23 indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115, 118-
24 119 (3d. Cir. 1990) (29 objections out of 281 member class “strongly favors settlement”); *Laskey*
25 *v. Int'l Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to
26 the proposed settlement should be considered when determining fairness of settlement). Here,
27 where there are no objections, the approval of the class is evident.

28 ///

1 5. The Strength of Plaintiff's Case

2 The Action generally alleges that Plaintiff and other Class Members were not properly paid
3 all minimum and overtime wages for hours worked, were not provided meal and rest periods, were
4 not timely paid earned wages, were not paid at the proper regular rate of pay, were not provided
5 reimbursement for required expenses, were not provided accurate itemized wage statements, were
6 not paid all wages at the time of termination. The Action seeks unpaid wages, penalties, attorney
7 fees, litigation costs, and any other equitable or legal relief allegedly due to Plaintiff and the other
8 Class Members by virtue of the foregoing claims. JCL Decl. ¶15.

9 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon*
10 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
11 Defendant present serious threats to the claims of the Plaintiff and the other Class Members.
12 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
13 argued that all work time was paid for and that the regular rate calculation was lawful. Defendant
14 contended that their meal and rest period policies fully complied with California law and that
15 Defendant's timekeeping system recorded meal periods, and was not required to record rest periods.
16 Finally, Defendant could argue that the Supreme Court decision in *Brinker v. Superior Court*, 53
17 Cal. 4th 1004 (2012), weakened Plaintiff's claims, on liability, value, and class certifiability as to
18 the meal and rest period claims. Defendant also argues that based on their facially lawful practices,
19 they acted in good faith and without willfulness, which if accepted would negate the claims for
20 waiting time penalties and/or inaccurate wage statements. In fact, under the current state of the law,
21 it is questionable whether these penalties could be awarded at all based upon the alleged meal and
22 rest period violations. If successful, Defendant's defenses could eliminate or substantially reduce
23 any recovery to the Class. While Plaintiff believes that these defenses could be overcome,
24 Defendant maintains these defenses have merit and therefore present a serious risk to recovery by
25 the Class. JCL Decl. ¶16.

26 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*,
27 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. 2009), explained in approving an overtime class action
28 settlement:

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

10 2009 U.S. Dist. LEXIS 33900 at *19-20 (N.D. Cal. 2009); *see also Browning v. Yahoo!, Inc.*, 2007
11 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) (“In considering the strength of Plaintiff’s case,
12 legal uncertainties at the time of settlement - particularly those which go to fundamental legal issues
13 – favor approval.”). As recognized in a federal decision approving settlement of an overtime wage
14 class action:

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

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

25 There was also a significant risk that, if the Actions were not settled, Plaintiff would be
26 unable to obtain class certification and thereby not recover on behalf of any employees other than
27 themselves. Defendant argued that the individual experience of each putative class member varied
28 with respect to the claims. Defendant could also contest class certification by arguing injury and
good faith were case by case determinations that precluded class certification. Plaintiff is aware of
cases where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43
Cal. App. 5th 885 (2019) (denying certification of meal and rest break claims). Defendant also
contended that individual differences in work experiences not only impacted damages but would
also impact certification. Finally, even if class certification was successful, as demonstrated by the
California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014),
there are significant hurdles to overcome for a class wide recovery even where the class has been

1 certified. While other cases have approved class certification in wage and hour claims, class
2 certification in this action would have been hotly disputed and was by no means a foregone
3 conclusion. JCL Decl. ¶17.

4 In sum, the Settlement is a fair and reasonable result, and provides the Class with a
5 significant recovery, particularly when viewed in light of the fact that the Defendant asserted serious
6 and substantial defenses both to liability and to class certification. Currently, the maximum and
7 average class member allocation are \$4,384.56 and \$1,601.56, respectively. *See* ILYM Decl. ¶16.
8 Given the complexities of this case, the defenses, along with the uncertainties of proof and appeal,
9 the proposed Settlement is fair, reasonable and adequate, and should be finally approved. JCL Decl.
10 at ¶18.

11 6. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

12 As demonstrated by the decision in *Duran*, the complexities and duration of further litigation
13 cannot be overstated. There is little doubt that Defendant would post a bond and appeal in the event
14 of an adverse judgment. A post-judgment appeal by Defendant would have required many more
15 years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total,
16 then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery
17 today outweigh an uncertain result three or more years in the future. JCL Decl. ¶19.

18 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and
19 trying this Action against Defendant through possible appeals which could take several years. Class
20 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in
21 complex class actions such as this Action. Class Counsel is also mindful of and recognizes the
22 inherent problems of proof under, and alleged defenses to, the claims asserted in the Action. Based
23 upon their evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in
24 the Agreement is in the best interest of the Class Members. JCL Decl. ¶20.

25 Although Plaintiff and Class Counsel believe that their case has merit, which Defendant
26 continues to vigorously deny, they recognized the potential risks both sides would face if litigation
27 of the Action continued. As the federal court held in *Glass*, where the parties faced uncertainties
28 similar to those in this litigation:

1 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
2 and likely duration of further litigation likewise favors the settlement. Regardless of
3 how this Court might have ruled on the merits of the legal issues, the losing party
4 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."
See *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir.
2000). Here, the risk of further litigation is substantial.

5 *Id.* at *12.

6 7. The Amount Offered in Settlement

7 The Settlement in this case is fair, reasonable and adequate considering Defendant's
8 defenses to Plaintiff's claims. As set forth in the Declaration of Jean Claude Lapuyade in support
9 of preliminary approval which discussed the value of the class claims in detail, the Gross Settlement
10 Amount compares favorably to the value of the claims. The calculations to compensate for the
11 amount due to the Class Members at the time this Settlement was negotiated were calculated by
12 Plaintiff's expert, Berger Consulting, in advance of mediation. For the individuals whose claims are
13 at issue in this Action, Plaintiff analyzed the data and determined the potential maximum damages
14 for the class claims. For the Class, Plaintiff estimated Defendant's exposure for meal period claims
15 to be \$503,456, the estimated exposure for rest period claims to be \$739,368, the estimated exposure
16 for unpaid wages due to rounding to be \$76,241, the estimated exposure for unreimbursed business
17 expenses to be \$120,000, the estimated exposure for miscalculation of regular rate of pay to be
18 \$55,348, and the estimated exposure for derivative claims for wage statement violations and waiting
19 time penalties to be \$398,400 and \$926,074, respectively. However, these wage statement and
20 waiting time penalties claims potentially have a much smaller value, even if damages were awarded,
21 to the extent that they are only derivative of other claims alleged⁴. In total, Class Counsel projected
22

23
24
25 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
26 226, at mediation, Plaintiff recognized that these claims were subject to various defenses asserted
27 by Defendant, including, but not limited to, a good faith dispute defense as to whether any premium
28 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff
was properly compensated. See *Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010)
("There is no willful failure to pay wages if the employer and employee have a good faith dispute
as to whether and when the wages were due.") As a result, the viability of Plaintiff's claims on these
theories was uncertain.

1 Defendant's liability for exposure for class claims (excluding PAGA Penalties) at \$2,818,887. JCL
2 Decl. ¶21.

3 Consequently, the Gross Settlement Amount represents approximately 23% of Defendant's
4 class-wide liability exposure for damages and statutory penalties, assuming these amounts could all
5 be proven in full at trial⁵. The above maximum calculations should then be adjusted in consideration
6 for both the risk of certification and the risk of establishing class-wide liability on all claims. Given
7 the amount of the Settlement as compared to the potential value of the claims, the Settlement is
8 most certainly fair and reasonable⁶. JCL Decl. ¶22. Clearly, the goal of this litigation has been met.

9 **V. THE PARTIES REQUEST APPROVAL OF THE SETTLEMENT OF THE**
10 **PAGA PAYMENT IS FAIR AND REASONABLE**

11 Labor Code § 2699(l) requires that the Court "shall review and approve any settlement of any
12 civil [PAGA] action filed pursuant to this part. The proposed settlement shall be submitted to the
13 agency at the same time that it is submitted to the court." The proposed Settlement was submitted
14 to the LWDA on September 21, 2023 when the motion for preliminary approval was filed, and was
15 again served on the LWDA at the time of the filing of this motion, as set forth in the accompanying
16 proof of service. The LWDA has expressed no objection or opposition to this Settlement.
17 Consequently, Plaintiff respectfully asks the Court to approve the settlement of the PAGA claims
18 and the PAGA Payment to be paid as part of the proposed settlement.

19 The Parties believe that the PAGA Payment amount is fair and reasonable and therefore
20 "shall" be reviewed and approved. The Labor and Workforce Development Agency has released
21

22 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not include the
23 PAGA claim in this discussion of the Class claim valuation. The PAGA claim is addressed herein
below and in the JCL Decl. at ¶ 34.

24 ⁶ See e.g. *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 (approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-*
26 *Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting
27 final approval where "the proposed Total Settlement Amount represents approximately 10% of
28 what class might have been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*,
2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action settlement amounting
to 8.1% of full verdict value); *Ma v. Covidien Holding, Inc.*, 2014 WL 2472316, (C.D. Cal. 2014)
(approving wage and hour class action settlement worth "somewhere between 9% and 18%" of full
verdict value).

1 data on PAGA settlement amounts. After removing the outliers at the low and high end, the average,
2 total settlement amount of PAGA claims is approximately \$10,000.

3 This PAGA Payment amount compares favorably to the estimated amount of PAGA
4 penalties. With the assistance of an expert, Plaintiff estimated Defendant's potential PAGA
5 exposure to be \$1,155,100 if successful at trial. Importantly, however, these calculations were
6 performed at the maximum statutory rate for the penalties, when in fact, it is likely that any penalties
7 awarded would be at a lower rate. California Labor Code Section 2699(e)(1) permits a Court to
8 award a lesser amount than the maximum civil penalty if based on the facts and circumstances to
9 do otherwise would result in an award that is "unjust, arbitrary and oppressive or
10 confiscatory."⁷ JCL Decl., ¶36.

11 In *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), the Court of Appeal affirmed
12 a judgment after trial which only provided for a PAGA penalty of \$5 per pay period. Even if we
13 assume that violations for all 4,569 pay periods were established, using the valuation from
14 *Carrington* results in a more realistic recovery of \$22,845 under PAGA. This means that the
15 \$40,000 PAGA allocation is a reasonable percentage of this potential PAGA recovery. The PAGA
16 claim was disputed by Defendant, and therefore this Settlement represents a genuine and
17 meaningful recovery as to this dispute claim. Defendant maintains that Plaintiff and the Aggrieved
18 Employees were properly compensated, and that they did not violate the Labor Code. Accordingly,
19 Defendant disputes and denies Plaintiff's allegations and claims asserted in the complaint which are
20 resolved by the Settlement Agreement. Defendant asserted additional defenses to the PAGA claim,

21
22 ⁷ Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v.*
23 *Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties
24 from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties
25 "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded
26 no civil penalties, even when Labor Code violations are established. See *Makabi v. Gedalia*, 2016
27 Cal. App. Unpub. 1489, *5-7 (2nd Dist. Ct. of App. Mar. 6, 2016) (no PAGA penalties were
28 awarded by the Los Angeles County Superior Court) (unpublished decision); *In re Taco Bell Wage
& Hour Actions* 2016 U.S. Dist. LEXIS 48557, *40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties
denied after trial). In order to recover any PAGA penalties, Plaintiff would be required at trial to
prove each of the underlying Labor Code violations. See *Cardenas v. McLane Foodservice, Inc.*,
2011 U.S. Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a
plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a
violation of the Labor Code by the defendant.").¹⁴

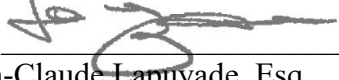
1 not only as to liability but also as to the amount of the penalties. Defendant could argue that no
2 penalties prior to the PAGA notification should be awarded because the violations were not
3 intentional, and at least one Court has so ruled. These defenses present a risk to the PAGA claims
4 and the potential that some or all of the PAGA penalties sought may not be awarded. JCL Decl.,
5 ¶37. Finally, the significant Class recovery satisfies the purposes of PAGA.⁸

6 VI. CONCLUSION

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

10 Dated: March 18, 2023

JCL LAW FIRM, APC

11 By: 
12 Jean-Claude Lapuyade, Esq.
13 Attorneys for Plaintiff
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25 ⁸ The decision in *O'Connor v. Uber*, 201 F.Supp.3d 1110, 1133 (N.D. Cal. 2016), and the LWDA's
26 Response therein is illustrative. The LWDA explained that "The LWDA recognizes that this Court
27 does not review the PAGA allocation in isolation, but rather reviews the settlement as a whole, to
28 determine whether it is fundamentally fair, reasonable and adequate, with primary consideration for
the interests of absent class members." (LWDA Response at p.4). Accordingly, the interests of
PAGA are also served by the Class recovery under the reasoning of the LWDA in *O'Connor v.*
Uber.