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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

DANTE HENDERSON, an individual, on behalf
of himself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

BIZON GROUP, INC. a California corporation;
and DOES 1 through 50, Inclusive;

Defendants.

Case No. HG21115170

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

Date: June 11, 2024
Time: 1:30 p.m.
Reservation ID: 827832649998

Judge: Hon. Noel Wise
Dept.: 21

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1 I. INTRODUCTION

2 Plaintiff DANTE HENDERSON (hereinafter “Plaintiff”) seeks final approval of the Amended
3 Joint Stipulation Re: Class Action and Representative Action Settlement (“Agreement”)¹, which if
4 approved, would provide valuable monetary relief for 263 Participating Class Members employed by
5 Defendant Bizon Group, Inc. (hereinafter collectively “Defendant”) during the Class Period.

6 In an order dated February 1, 2024, this Court preliminarily approved the Agreement and
7 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 5. On March
8 18, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
9 Declaration of Madely Nava (“Apex Dec.”), ¶ 7. *The Class greeted news of the Settlement with*
10 *unanimous approval.*² There are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-
11 13. The unanimous approval by the Class evidences the clear fairness and reasonableness of the
12 Settlement. JCL Dec., ¶ 9.

13 An objective evaluation of the proposed settlement of Three Hundred Eighty-Five Thousand
14 Dollars and Zero Cents (\$385,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated
15 on behalf of the Participating Class Members is fair, reasonable, and valuable. The Settlement is a
16 product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and
17 presided over by Michale Loeb, Esq. After deducting any Court-approved attorneys’ fees and costs,
18 class representative incentive payments, administration costs, and the payments to the Labor &
19 Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to
20 Participating Class Members based on the number of Workweeks they worked while employed by
21 Defendant during the Class Period. JCL Dec., ¶ 9.

22 This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations.
23 Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of
24 approximately \$169,250.00. This will result in an average Individual Settlement Payment of **\$643.54**
25 and high payment of **\$4,486.86**. JCL Dec., ¶ 10; Apex Dec. at ¶ 15.

26
27 ¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the
28 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 Seven (7) Notices were deemed undeliverable. Apex Dec. at ¶¶ 10.

1 The relief offered by the Settlement is immediate and is particularly impressive when viewed
2 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).
3 Indeed, by settling now rather than proceeding to trial, the Class will not have to wait (possibly years)
4 for relief, nor will they have to bear the risks associated with prolonged and uncertain litigation. JCL
5 Dec., ¶ 11.

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

10 **II. OVERVIEW OF THE LITIGATION**

11 Defendant is in the business of manufacturing, marketing, and distributing specialty metal
12 containers. Plaintiff Henderson was employed by Defendant from August of 2020 to approximately
13 February 12, 2021, as a non-exempt employee. Declaration of Dante Henderson at ¶ 4. Plaintiff alleged
14 that he was denied legally compliant meal and rest periods and minimum wages and overtime
15 compensation during his employment, was not furnished with compliant wage statements, and was not
16 timely paid all wages due upon his separation of employment. Throughout his employment, Plaintiff
17 was subject to Defendant's written policies and procedures. JCL Dec., ¶ 13.

18 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
19 compliant meal and rest periods, failed to furnish accurate itemized wage statements, and failed to pay
20 all wages upon separation. Defendant denies liability for each of Plaintiff's claims. Further, Defendant
21 asserts that it fully complied with all applicable employment laws and raised several other significant
22 defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period
23 policies, compliant wage statements, and it timely paid all wages due upon separation of employment.
24 JCL Dec., ¶ 14.

25 On July 29, 2021, Plaintiff served Defendant and the Labor and Workforce Development Agency
26 ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts
27 and theories supporting Defendant's alleged violations of various provisions of the California Labor
28 Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue

1 claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et*
2 *seq* (“PAGA”). JCL Dec., ¶ 15.

3 On October 7, 2021, Plaintiff filed a class action complaint in the Alameda County Superior
4 Court, Case No. HG21115170 (“Action”). The Action alleged ten causes of action against Defendant
5 for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et. seq.*; (2) Failure to Pay
6 Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*, (3) Failure to Pay Minimum Wages in
7 violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (4) Failure to Provide Required Meal Periods in
8 violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide
9 Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage
10 Order; (6) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code § 2802; (7)
11 Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab Code §226; (8) Failure
12 to Pay Wages When Due in violation of Cal. Lab. Code §§ 201, 202, and 203; (9) Failure to Provide
13 Reporting Time Pay in violation of Wage Order No. 5; and (10) Violation of PAGA. JCL Dec., ¶ 16.

14 The Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to
15 informally produce additional documents and data points subject to the mediation privilege, including
16 but not limited to, the Class Members’ time data and certain payroll data points. As discussed *infra*,
17 Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze
18 Defendant’s time and payroll data. JCL Dec., ¶ 17.

19 On June 5, 2023, the Parties participated in a full day mediation with wage and hour class and
20 PAGA mediator Michael Loeb, Esq. The mediation concluded with a settlement, which was
21 subsequently memorialized in the form of a Memorandum of Understanding. Subsequently, the Parties
22 drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.
23 JCL Dec., ¶ 18.

24 On February 1, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 5.
25 On March 18, 2024, the Settlement Administrator mailed Notice Packets to all 263 Participating Class
26 Member. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response
27 Deadline for the Class to submit requests for exclusion or objections to the Settlement. The response
28 from the Class to the Settlement was outstanding – 100% of the Class Members are participating in the

Settlement. Apex Dec., ¶¶ 11-13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Three Hundred Eighty-Five Thousand Dollars and Zero Cents (\$385,000.00) based on a total of an estimated 13,375 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used to satisfy: (1) Individual Settlement Payments; (2) the Service Award; (3) the Attorneys' Fees and Litigation Costs; (4) the PAGA Payment; and (5) the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 19.

Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified Settlement Fund on or before September 30, 2024. Agreement, ¶ 11(B). The Settlement Administrator shall disburse the Individual Settlement Payments to the Participating Class Member no later than seven (7) days after Defendant fully funds the Gross Settlement Amount. Agreement, ¶ 11(C). The Settlement Administrator will calculate Individual Settlement Payments by dividing the Participating Class Members' Workweeks worked by the total number of Workweeks for all Class Members. The Settlement Administrator will then multiply the result by the Net Settlement Amount to calculate each estimated Individual Settlement Payment. Agreement, ¶ 10(B). The estimated average Individual Settlement Payment is approximately **\$643.54**. Apex Dec., ¶ 15.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, the Participating Class Member will release the Released Parties from the Class Released Claims that accrued during the Class Period. Agreement, ¶ 7(a).

Apex Class Action LLC was appointed as the Settlement Administrator for the Class. The Settlement Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Settlement Payments, and the fees of the Settlement Administrator approved for reimbursement by the court. The Settlement Administrator expenses are \$6,000. Apex Dec., ¶ 14. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ 8(a).

Subject to Court approval, Class Counsel shall seek a payment of Attorneys' Fees and Litigation

Costs in the amount of \$153,333.33 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be at least \$128,333.33 and up to \$25,000 for actually incurred litigation expenses. Agreement, ¶ 50(b). Plaintiff's counsel is to split the fees one-third to Bibiyan Law Group, PC, one-third to the JCL Law Firm, APC, and one-third to the Zakay Law Group, APLC. JCL Dec., ¶ 20. The Agreement also provides for a Service Award in the amount of \$10,000 for Plaintiff, in consideration of his time, risk, and efforts as the Class Representative on behalf of the Class and a general release. Agreement, ¶ 13.

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 Class, the absence of any objections to the Settlement and the average Individual Settlement Payment of \$643.54. Apex Dec., ¶¶ 12; JCL Dec., ¶ 21.

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

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

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

upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

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

The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.

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

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

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

10 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
11 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
12 assessed the value of the class claims using data and documents provided by Defendant through formal
13 and informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data
14 regarding the number of Class Members, workweeks, and average rate of pay to assess damages before
15 mediation. Class Counsel retained BCG to analyze Defendant’s time and payroll data to formulate
16 damage models estimating Defendant’s liability exposure. Class Counsel’s investigation, research,
17 experience, and damage models informed and guided the mediated negotiations that resulted in this
18 settlement. Accordingly, Plaintiff’s Counsel fully understood the strengths and weaknesses of the class
19 claims before the parties reached a settlement. JCL Dec., ¶ 22-28.

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

21 On June 5, 2023, the Parties conducted a full day mediation with Michael Loeb, Esq., an
22 experienced wage and hour mediator. Mediator Loeb helped to manage the Parties’ expectations and
23 provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
24 progress with Mediator Loeb’s assistance. Namely, the Parties exchanged information regarding their
25 respective claims and defenses, including their respective evaluations of the damages. After more than
26 eight hours of arm’s length and adversarial negotiations, the mediation concluded without a settlement.
27 However, at the conclusion of the mediation, Mediator Loeb’s issued a Mediator’s proposal which the
28 Parties ultimately accepted. The amount of the service awards was not negotiated until after the parties

1 agreed to the Gross Settlement Amount and many other terms. JCL Dec., ¶ 29. No action would likely
2 have been taken by Class Members individually, and no compensation would have been recovered for
3 them, but for Plaintiff's service on behalf of the Class.

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

5 Class Counsel in this matter has extensive class action experience in multiple fields and has
6 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
7 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
8 similar wage and hour class actions throughout the State of California. As such, courts throughout
9 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
10 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
11 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 30-35; Declaration
12 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3; Declaration of David Bibiyan, ¶¶ 2-12.

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

14 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
15 dissemination of the notice to the Class, which provided each class member with the terms of the
16 Settlement, including the specific estimated Individual Settlement Payments. To date, none of the 263
17 members of the Class opted out of the Settlement. Moreover, there are zero objections. Stated
18 differently, 100% of the Class chose to participate in the Settlement. JCL Dec., ¶ 9; Apex Dec., ¶¶ 11-
19 13.

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

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

2 The Gross Settlement Amount of Three Hundred Eighty-Five Thousand Dollars and Zero Cents
3 (\$385,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
4 court acknowledged that “as the court does when it approves a settlement as in good faith under Code
5 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
6 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
7 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

8 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
9 provides a sizeable recovery to the Participating Class Member and need not necessarily obtain 100
10 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
11 Cal.App.4th at 250. While the Gross Settlement Amount of Three Hundred Eighty-Five Thousand
12 Dollars and Zero Cents (\$385,000.00) represents a discount on Defendant’s potential exposure if
13 Plaintiff established liability on all claims and was awarded the full amount of the estimated damages at
14 trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant presented
15 a risk that could award significantly less in damages than Plaintiff’s estimate and (2) any theoretical
16 post-trial recovery may require many more years of litigation, resulting in added fees and costs without
17 any guarantee of recovery for the Class. JCL Dec., ¶ 36.

18 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
19 reasonable considering the nature and magnitude of the claims being settled and the various potential
20 impediments to recovery. Class Counsel developed varied economic damages models measuring
21 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
22 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
23 of time and payroll data. Detailed in greater depth during the preliminary approval process, Class
24 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the
25 Class. The Gross Settlement Amount represents between approximately 14.2% and 43.5% of
26 Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL
27 Dec., ¶ 37.

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

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

7 The calculation methodology used to compensate the Participating Class Member for the alleged
8 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
9 objective, and impartial. The calculation methodology is based on the number of Workweeks each
10 Participating Class Member worked for Defendant during the Class Period. The number of Workweeks
11 for the Participating Class Member is established through Defendant’s data and documented
12 compensation records. The Settlement Administrator is responsible for calculating the Individual
13 Settlement Payments by dividing the Participating Class Members’ Workweeks worked by the total
14 number of Workweeks for all Class Members. The Settlement Administrator will then multiply the result
15 by the Net Settlement Amount to calculate each estimated Individual Settlement Payment. Agreement,
16 ¶ 10(B).

17 The settlement also provides significant relief to the Participating Class Members. After
18 deductions for the Attorneys’ Fees and Litigation Costs, Settlement Administration Costs, the PAGA
19 Payment, and the Service Award, the Net Settlement Amount is currently estimated to be \$169,250.00.
20 Apex Dec., ¶ 14. The average settlement payment is approximately \$643.54, and the highest is
21 approximately \$4,486.86. Apex Dec., ¶ 15. This average net recovery is on par with many wage and
22 hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99*
23 *Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of
24

25 ³ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving
26 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
27 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
28 *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); see also
In re Newbridge Networks Sec. Litig. (D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2 (“Courts have not identified a precise
numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures roughly
six to twelve percent of a potential trial recovery, while preventing further expenditures and delays and eliminating the risk
that no recovery at all will be won, seems to be within the targeted range of reasonableness.”).

approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, ¶ 14(c).

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

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

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 39. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates*,

1 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
2 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
3 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
4 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
5 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
6 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
7 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
8 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
9 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
10 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
11 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
12 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
13 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
14 certification of driver meal and rest period claims based on the predominance of individual issues).
15 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
16 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
17 settlement. JCL Dec., ¶ 40.

18 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes
19 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
20 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
21 affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 41.

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

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

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

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

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

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

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

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

24 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
25 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
26 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
27 that if Defendant faced a large adverse judgement, Defendant undoubtedly have the resources to post a
28 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
an uncertain result three or more years in the future. JCL Dec., ¶ 42.

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

1 Defendant through possible appeals which could take another three years. In arriving at their informed
2 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
3 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
4 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
5 Moreover, post-trial motions and appeals would have been inevitable. Costs would have increased, and
6 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
7 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
8 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
9 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
10 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 43.

11 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**
12 **ARE REASONABLE**

13 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
14 indication that this amount was the result of self-interest at the expense of class members,” such
15 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
16 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
17 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
18 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at
19 *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*,
20 No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging
21 that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

22 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of \$40,000
23 which is 10% of the Gross Settlement Amount. As illustrated above, this amount falls well within the
24 range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA Payment (\$30,000)
25 will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the
26 PAGA Payment (\$10,000) to be distributed to the Aggrieved Employees (“Individual PAGA
27 Payment”), which is within the range of PAGA penalties approved by courts and should be approved.
28 JCL Dec., ¶ 44.

1 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
2 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
3 with the LWDA. JCL Dec., ¶¶ 6-7; 45. By not registering an objection with either Class Counsel or
4 the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

5 **II. CONCLUSION**

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

9
10 Dated: May 17, 2024

JCL LAW FIRM, APC

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