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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ALISSA WHITNEY, an individual, on behalf of
herself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

FIVE J'S FAMILY ENTERPRISES L.P., a
California Limited Partnership; and Does 1
through 50, Inclusive,

Defendant.

Case No. CIVSB2129063

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

Date: November 1, 2023

Time: 9:00 a.m.

Judge: Hon. David S. Cohn

Dept.: 26

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE LITIGATION	2
III.	THE SETTLEMENT BEFORE THE COURT	4
IV.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	5
V.	THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	6
	A. Class Counsel Conducted a Thorough Investigation	7
	B. The Parties Settled Following Mediation	7
	C. Class Counsel is Experienced in Similar Litigation	8
	D. The Class Responded Positively to the Settlement	8
	E. The Gross Settlement Amount is Fair and Reasonable	9
	F. The Strength of Plaintiff's Case and Risks of Continued Litigation	10
VI.	THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE	14
VII.	CONCLUSION	15

TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1150-51.....	5-6
5	<i>Ali v. U.S.A. Cab Ltd.</i>	
6	(2009) 176 Cal.App.4th 1333, 1341.....	11
7	<i>Barcia v. Contain-A-Way, Inc.</i>	
8	2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009).....	13
9	<i>Brinker Rest. Corp. v. Superior Court of San Diego County</i>	
10		12
11	<i>Brown v. Fed Express Corp.</i>	
12	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	12
13	<i>Browning v. Yahoo!, Inc.</i>	
14	2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007).....	12
15	<i>Campbell v. Best Buy Stores, L.P.,</i>	
16	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	12
17	<i>Dunk v. Ford Motor Co.</i>	
18	(1996) 48 Cal.App.4th 1794, 1801.....	5-7
19	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
20	(9th Cir. 2000) 213 F.3d 454, 459.....	10
21	<i>Duran v. U.S. Bank National Association</i>	
22	(2014) 59 Cal.4th 1, 31, 59.....	11, 13
23	<i>Glass v. UBS Fin. Servs.</i>	
24	2007 WL221862.....	11
25	<i>Hanlon v. Chrysler Corp.</i>	
26	(9th Cir. 1998) 150 F.3d 1011, 1026.....	13
27	<i>Hopson v. Hanesbrands Inc.</i>	
28	No. CV-08-0844 EDL, 2009 WL 928133, at *1, 9, 19-20 (N.D. Cal. Apr. 3, 2009).....	12, 14
	<i>Huens v. Tatum</i>	
	(1997) 52 Cal.App.4th 259, 265.....	5
	<i>In re Austrian & German Bank Holocaust Litigation</i>	
	(S.D.N.Y. 2000)80 F.Supp.2d 164, 175.....	8
	<i>In re Newbridge Networks Sec. Litig.</i>	
	(D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2.....	10
	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	14
	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 128-29.....	6, 9-10
	<i>Laskey v. Int'l Union</i>	
	(6th Cir. 1981) 638 F.2d 954.....	8
	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
	(N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7.....	10
	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i>	
	2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).....	13
	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
	(9 th Cir. 2021) 999 F.3d 668.....	11, 13
	<i>Malibu Outrigger Bd. Of Governors v. Superior Court</i>	
	(1980) 103 Cal.App.3d 573, 578-579.....	5

1	<i>McKenzie v. Fed. Express Corp.</i>	
2	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	14
3	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
4	(2010) 186 Cal.App.4th 399, 408.....	6
5	<i>O’Conner v. Uber Technologies, Inc.</i>	
6	(9 th Cir. 2018) 904 F.3d 1087, 1133.....	11, 13
7	<i>Officers for Justice v. Civil Serv. Comm’n</i>	
8	(9th Cir. 1982) 688 F. 2d 615, 625.....	6
9	<i>Rebney v. Wells Fargo Bank</i>	
10	(1990) 220 Cal.App.3d 1117, 1138.....	6
11	<i>Stoetznner v. U.S. Steel Corp.</i>	
12	(3d. Cir. 1990) 897 F.2d 115, 118-119.....	8
13	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
14	2015 U.S. Dist. LEXIS 78671, at *12.....	10
15	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Associates</i>	
16	38 Cal.3d 488, 499-500 (1985).....	9
17	<i>Tien v. Tenet Healthcare Corp.</i>	
18	(2012) 209 Cal.App.4th 1077, 1088.....	11
19	<i>Viceral v. Mistras Grp., Inc.</i>	
20	(N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7.....	10
21	<i>Wershba v. Apple Computer</i>	
22	(2001) 91 Cal.App.4th 224, 245-46, 250, 2246.....	5-6, 9

RULES, CODES, AND STATUTES

1	<i>Cal. Bus. & Prof. Code</i> §§ 17200.....	3
2	<i>Cal. Lab. Code</i> § 1182.12.....	3
3	<i>Cal. Lab. Code</i> § 1194.....	3
4	<i>Cal. Lab. Code</i> § 1197.....	3
5	<i>Cal. Lab. Code</i> § 1197.1.....	3
6	<i>Cal. Lab. Code</i> § 1198.....	3
7	<i>Cal. Lab. Code</i> § 201.....	3
8	<i>Cal. Lab. Code</i> § 202.....	3
9	<i>Cal. Lab. Code</i> § 203.....	3
10	<i>Cal. Lab. Code</i> §§ 2698 et seq.....	2-3
11	<i>Cal. Lab. Code</i> § 226.....	3
12	<i>Cal. Lab. Code</i> § 226.7.....	3
13	<i>Cal. Lab. Code</i> §§ 510 et seq.....	3
14	<i>Cal. Lab. Code</i> § 512.....	3
15	<i>Cal. Code of Civ. Proc.</i> § 877.6.....	9
16	<i>Cal. Code of Regulations</i> § 1 1070(14).....	3

SECONDARY SOURCES

1	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992) §11.41, pp. 11-91	
2		6

1 I. INTRODUCTION

2 Plaintiff ALISSA WHITNEY (hereinafter “Plaintiff”) seeks final approval of the Class,
3 Collective, and Representative Action Settlement Agreement (“Agreement”)¹, which if approved, would
4 provide valuable monetary relief for 1,365 Participating Class Members employed by Defendant FIVE
5 J’S FAMILY ENTERPRISES, L.P. (hereinafter, “Defendant”) during the Class Period.

6 In an order dated June 7, 2023, this Court preliminarily approved the Agreement and preliminarily
7 certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On July 13, 2023, the
8 Court-approved Class Notice was mailed, in both English and Spanish, to each Class Member via U.S.
9 First Class Mail. Declaration of Nicole Bench (“ILYM Dec.”), ¶ 8.

10 *The Class greeted news of the Settlement with unanimous approval.* There are zero objections
11 and zero opt-outs to the Settlement. ILYM Dec., ¶¶ 12-13. The 100% approval by the Class evidences
12 the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

13 An objective evaluation of the proposed settlement of Nine Hundred and Fifty Thousand Dollars
14 and Zero Cents (\$950,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on
15 behalf of the Class Members is fair, reasonable, and valuable. The Settlement is a product of informed,
16 adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Hon.
17 Carl West (Ret.). After deducting any Court-approved attorneys’ fees and costs, the Class
18 Representative Service Payment, administration costs, and the payments to the Labor & Workforce
19 Development Agency (“LWDA”), the Net Settlement Amount shall be distributed to Participating
20 Class Members based on the number of Workweeks they worked for Defendant during the Class Period.
21 JCL Dec., ¶ 8.

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 \$529,483.34. This will result in an average Individual Class Payment of **\$387.90** and
25 high payment of **\$2,999.58**. JCL Dec., ¶ 9; ILYM Dec. at ¶ 17.

26 The relief offered by the Settlement is immediate and is particularly impressive when viewed
27

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

1 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).
2 Indeed, by settling now rather than proceeding to trial, the Class will not have to wait (possibly years)
3 for relief, nor will they have to bear the risks associated with prolonged and uncertain litigation. JCL
4 Dec., ¶ 10.

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

9 **II. OVERVIEW OF THE LITIGATION**

10 Defendant is a California Limited Partnership that owns and operates numerous McDonald's
11 franchise restaurants in California. This action asserts claims on behalf of Defendant's non-exempt
12 employees working in California. Plaintiff worked for Defendant as a non-exempt employee in
13 California during 2020. At all times during her employment, Plaintiff earned an hourly wage, including
14 overtime, and was entitled to legally compliant meal and/or rest periods. Throughout her employment,
15 Plaintiff was subject to Defendant's written policies and procedures. JCL Dec., ¶ 12.

16 Generally, Plaintiff claims that Defendant failed to pay for all hours worked, failed to provide
17 compliant meal and rest periods, failed to furnish accurate itemized wage statements, failed to pay all
18 wages when due and failed to reimburse employees for mandatory business expenses. Defendant
19 forcefully denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied
20 with all applicable employment laws and raised several other significant defenses to Plaintiff's claims,
21 including but not limited to, facially compliant meal and rest period policies, compliant wage
22 statements, and timely payment all wages due upon separation of employment. JCL Dec., ¶ 13.

23 On August 3, 2021, Plaintiff filed a Notice of Violations ("PAGA Notice") with the Labor and
24 Workforce Development Agency ("LWDA") and served the same on Defendant. Plaintiff's PAGA
25 Notice set forth the facts and theories supporting Defendant's alleged violations of various California
26 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to
27 pursue claims under the California Labor Code Private Attorneys General Act, Cal. Lab. Code sections
28 2698, *et seq.* ("PAGA"). JCL Dec., ¶ 14.

1 On October 12, 2021, Plaintiff filed a class action complaint in the San Bernardino Superior
2 Court, Case Number CIVSB2129063 (“Action”). The Action alleged nine causes of action against
3 Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§
4 17200 et seq.; (2) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7
5 and 512 and the Applicable IWC Wage Order; (3) Failure to Provide Required Rest Periods in Violation
6 of Cal. Lab. Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (4) Failure to Pay Minimum
7 Wages in Violation of Cal. Lab. Code §§ 1182.12, 1194, 1197 & 1197.1; (5) Failure to Pay Overtime
8 Wages in Violation of Cal. Lab. Code §§ 510, *et seq.*; (6) Failure to Provide Accurate Itemized Wage
9 Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages When Due in Violation
10 of Cal. Lab. Code §§ 201, 202 and 203; (8) Violations of California Labor Code § 1198 and California
11 Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating); and (9) Violation of the
12 Private Attorneys General Act [Labor Code §§ 2698 *et seq.*]. JCL Dec., ¶ 15.

13 Plaintiff and Defendant agreed to mediate the Action with Hon. Carl West (Ret.), an experienced
14 jurist and mediator of wage and hour actions. In anticipation of mediation, the Parties agreed to stay
15 formal discovery. To prepare for mediation, Defendant agreed to informally produce documents and
16 data points subject to the mediation privilege, including but not limited to, a sample of the Class
17 Members’ time and payroll records. As discussed *infra*, Plaintiff’s counsel retained the forensic
18 consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL
19 Dec., ¶ 16.

20 On February 7, 2023, the Parties participated in a full day mediation with Hon. Carl West (Ret.).
21 After arms-length negotiations and bargaining, the Parties reached an agreement to settle.
22 Subsequently, the Parties drafted and negotiated a long-form settlement agreement, which is the subject
23 of the instant motion. The Parties now seek approval of the entire Agreement. JCL Dec., ¶ 17.

24 On June 7, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On
25 July 13, 2023, the Claims Administrator mailed Notice Packets to all 1,365 Class Members. ILYM
26 Dec., ¶ 8. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the
27 Class to submit requests for exclusion or objections to the Settlement. The response from the Class to
28 the Settlement was outstanding – 100% of the Class Members are participating in the Settlement.

1 ILYM Dec., ¶ 15.

2 **III. THE SETTLEMENT BEFORE THE COURT**

3 The Court preliminarily approved an initial Gross Settlement Amount of Nine Hundred and Fifty
4 Thousand Dollars and Zero Cents (\$950,000.00) based on a total of an estimated 47,200 workweeks that
5 the Class were employed during the Class Period. The Gross Settlement Amount shall be used: (1) to
6 satisfy Individual Class Settlement Payments; (2) to satisfy the Class Representative Service Payment;
7 (3) to satisfy Class Counsel’s Attorneys’ Fees and Costs (collectively hereinafter “Class Counsel Fees
8 and Costs”); (4) to satisfy the PAGA Penalties; and (5) to satisfy the Claims Administration Costs
9 incurred in this action. JCL Dec., ¶ 18.

10 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
11 Settlement Fund within ten (10) business days after the Effective Date. Agreement, ¶ 4.3. The Claims
12 Administrator shall disburse the Individual Class Payments to the Participating Class Members within
13 fifteen (15) days after Defendant funds the Gross Settlement Amount. Agreement, ¶ 4.4. The Claims
14 Administrator will calculate Individual Class Payments by adding up the total number of Workweeks
15 for all Class Members. The Claims Administrator will then divide the Net Settlement Amount of the
16 Workweek Total, resulting in a Workweek Value for each Class Member. Each Workweek Value is
17 then multiplied by the number of Workweeks of all Participating Class Members to calculate each
18 estimated Individual Class Payments. Agreement, ¶ 3.2.4. The estimated average Individual Class
19 Settlement Payment is approximately **\$387.90**. ILYM Dec., ¶ 17.

20 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
21 the Participating Class Member will release the Released Parties from the Released Class Claims that
22 accrued during the Class Period. Agreement, ¶ 5.2.

23 ILYM Group, Inc. was appointed as the Claims Administrator for the Class. The Claims
24 Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the
25 costs incurred by the Claims Administrator, the costs of giving notice to the Class, the costs of
26 administering and disbursing the Individual Class Payments, and the fees of the Claims Administrator
27 approved for reimbursement by the court. The Claims Administrator expenses are \$18,850. ILYM Dec.,
28 ¶ 19. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ 3.2.3.

1 Subject to Court approval, Class Counsel shall seek Attorneys' Fees and Costs in the amount of
2 \$341,666.66 comprised of attorneys' fees equal to one-third (33.33%) of the Gross Settlement Amount
3 estimated to be at least \$316,666.66 and up to \$25,000 for actually incurred litigation expenses.
4 Agreement, ¶ 3.2.2. Plaintiff's counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to
5 the Zakay Law Group, APLC. The Agreement also provides for an Class Representative Service
6 Payment in the amount of \$10,000 for Plaintiff, in consideration of her time, risk, and efforts as the
7 Class Representative on behalf of the Class. Agreement, ¶ 3.2.1.

8 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
9 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
10 the Class, the absence of any objections to the Settlement and the average Individual Class Payment of
11 \$387.90. ILYM Dec., ¶¶ 15, 17; JCL Dec., ¶ 19.

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

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

19 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
20 action requires court approval." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
21 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court
22 must decide whether the proposed settlement falls within the range of reasonable settlements,
23 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
24 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*
25 *Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to be judged against a
26 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.").
27 In *Wershba*, appellants argued that the settlement was too low given the "clear" liability, however, the
28 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
13 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
14 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
15 Class Counsel retained BCG to analyze Defendant’s time and payroll data to formulate damage models
16 estimating Defendant’s liability exposure. Class Counsel’s investigation, research, experience, and
17 damage models informed and guided the mediated negotiations that resulted in this settlement.
18 Accordingly, Plaintiff’s Counsel fully understood the strengths and weaknesses of the class claims
19 before the parties reached a settlement. JCL Dec., ¶ 20-27.

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

21 On February 7, 2023, the Parties conducted a full day mediation with Hon. Carl West (Ret.), a
22 jurist and an experienced wage and hour mediator. Judge West helped to manage the Parties’
23 expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties
24 made substantial progress with Judge West’s assistance. Namely, the Parties exchanged information
25 regarding their respective claims and defenses, including their respective evaluations of the damages.
26 After more than eight hours of arm’s length and adversarial negotiations, the mediation concluded with
27 a settlement. The amount of the Class Representative Service Payment was not negotiated until after
28 the parties agreed to the Gross Settlement Amount and many other terms. JCL Dec., ¶ 28. No action

would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's service on behalf of the Class.

C. Class Counsel is Experienced in Similar Litigation.

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar claims. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 29-35; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

D. The Class Responded Positively to the Settlement.

The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Class Settlement Payments. To date, none of the 1,365 members of the Class opted out of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Class chose to participate in the Settlement. JCL Dec., ¶ 8; ILYM Dec., ¶¶ 13-15.

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

///

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

2 The Gross Settlement Amount of Nine Hundred and Fifty Thousand Dollars and Zero Cents
3 (\$950,000.00) 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 Members 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 Nine Hundred and Fifty Thousand Dollars
12 and Zero Cents (\$950,000.00) represents a discount on Defendant’s potential exposure if Plaintiff
13 established liability on all claims and was awarded the full amount of the estimated damages at trial, this
14 compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that
15 could award significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial
16 recovery may require many more years of litigation, resulting in added fees and costs without any
17 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 between 15.91% and 32.08%
26 of Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of mediation.
27 JCL Dec., ¶ 37.

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1 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
2 Court for the Northern District of California granted final approval in a wage and hour misclassification
3 action and found that the Gross Settlement Amount representing 10% of the estimated trial award was
4 within the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir.
5 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
6 potential recovery.” Given the amount of the settlement here as compared to potential value of the
7 claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable.²

8 The calculation methodology used to compensate the Participating Class Members for the alleged
9 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
10 objective, and impartial. The calculation methodology is based on the number of Workweeks each
11 Participating Class Member worked for Defendant during the Class Period. The number of Workweeks
12 for the Participating Class Member is established through Defendant’s data and documented
13 compensation records. The Claims Administrator is responsible for calculating the Individual Class
14 Payments by multiplying the Workweek Value for each Participating Class Member by the Net
15 Settlement Amount. The Claims Administrator will calculate the payment ratio by dividing the total
16 number of Workweeks for each Participating Class Member by the total number of Workweeks for all
17 Participating Class Members. This process establishes an objectively fair and reasonable procedure to
18 compensate the Class. Agreement, ¶ 3.2.4.

19 The settlement also provides significant relief to the Participating Class Members. After
20 deductions for the Class Counsel Attorneys’ Fees and Costs, Claims Administration Costs, the PAGA
21 Penalties, and the Class Representative Service Payment, the Net Settlement Amount is currently
22 estimated to be \$529,483.34. ILYM Dec., ¶ 16. The average settlement payment is approximately
23 \$387.90, and the highest is approximately \$2,999.58. ILYM Dec., ¶ 17. Additionally, Defendant must
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25 ² See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving
26 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
27 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
28 *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); see also
In re Newbridge Networks Sec. Litig. (D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2 (“Courts have not identified a precise
numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures roughly
six to twelve percent of a potential trial recovery, while preventing further expenditures and delays and eliminating the risk
that no recovery at all will be won, seems to be within the targeted range of reasonableness.”).

1 separately fund its share of any employer side payroll taxes. Agreement, ¶ 4.3.

2 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
3 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
4 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
5 JCL Dec., ¶ 41.

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

7 Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore
8 the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or,
9 at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 43. As the federal court in *Glass v. UBS*
10 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
11 litigation:

12 ***In light of the above-referenced uncertainty in the law, the risk, expense,***
13 ***complexity, and likely duration of further litigation likewise favors the***
14 ***settlement.*** Regardless of how this Court might have ruled on the merits of
15 the legal issues, the losing party likely would have appealed, and the parties
16 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.

17 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
18 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
19 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
20 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
21 trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.*
22 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
23 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
24 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
25 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
26 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
27 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to
28 having taken meal and rest breaks demonstrated that individualized inquiries were required to show

1 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
2 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
3 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
4 certification of driver meal and rest period claims based on the predominance of individual issues).
5 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
6 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
7 settlement. JCL Dec., ¶ 42.

8 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
9 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
10 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
11 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 43.

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

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

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

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

29 **The potential complexity and possible duration of trial also weigh in**
30 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
31 of proving damages, recognize the uncertainty of outcome, and believe
32 defendant would appeal in the event of adverse judgment. A post-judgment
33 appeal would require many years to resolve and delay payment to class
34 members. Plaintiffs believe the benefits of a guaranteed recovery today

1 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the
2 Court agrees, the actual recovery confers substantial benefits on the class
that outweigh the potential recovery through full adjudication.

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

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

9 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber*
10 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
11 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
12 that if Defendant faced a large adverse judgement, Defendant undoubtedly have the resources to post a
13 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
14 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
15 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
16 an uncertain result three or more years in the future. JCL Dec., ¶ 44.

17 Class Representative and Class Counsel recognize the expense and length of a trial against
18 Defendant through possible appeals which could take another three years. In arriving at their informed
19 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
20 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
21 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
22 Moreover, post-trial motions and appeals would have been inevitable. Costs would have increased, and
23 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
24 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
25 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
26 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
27 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 45.

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

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

12 Here, Plaintiff and Defendant negotiated good faith PAGA Penalties in the amount of \$50,000
13 which is 5.26% of the Gross Settlement Amount. As illustrated above, this amount falls well within
14 the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA Civil Penalty
15 Payment (\$37,500) will be paid to the LWDA (“LWDA PAGA Payment”) with the remaining twenty-
16 five percent (25%) of the PAGA Civil Penalty Payment (\$12,500) to be distributed to the Aggrieved
17 Employees (“Individual PAGA Payment”), which is within the range of PAGA penalties approved by
18 courts and should be approved. JCL Dec., ¶ 46.

19 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
20 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
21 with the LWDA. JCL Dec., ¶¶ 5-6. By not registering an objection with either Class Counsel or the
22 Court, the LWDA has accepted and approved of the proposed PAGA Civil Penalty Payment.

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1 **VII. CONCLUSION**

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

5
6 Dated: October 9, 2023

JCL LAW FIRM, APC

7 By: _____
8 Jean-Claude Lapuyade, Esq.

9 Attorney for Plaintiff
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