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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

DAVID EZELL, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

DIAB LEASING, INC., a California
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 34-2021-00305329

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

Date: January 5, 2024

Time: 9:00 a.m.

Judge: Hon. Lauri A. Damrell

Dept.: 28

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1 I. INTRODUCTION

2 Plaintiff DAVID EZELL (hereinafter “Plaintiff”) seeks final approval of the First Amended
3 Stipulation of Settlement of Class Action and Release of Claims (“Amended Agreement”)¹, which
4 if approved, would provide valuable monetary relief for 1,258 Settlement Class Members employed
5 by Defendant DIAB LEASING, INC.; Farouk Diab is also a Defendant (hereinafter, collectively,
6 “Defendants”).

7 In an order dated August 25, 2023, this Court preliminarily approved the Amended
8 Agreement and preliminarily certified the Class.² Declaration of Jean-Claude Lapuyade (“JCL
9 Dec.”), ¶ 4. On October 10, 2023, the Settlement Administrator delivered notice of the proposed
10 settlement to the Class. Declaration of Nicole Bench (“ILYM Dec.”), ¶ 8.

11 *The Class greeted news of the Settlement with unanimous approval as, at the time of the*
12 *filing of this motion, all 1,258 Class Members chose to participate in the Settlement.*³ There are
13 zero opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶ 11-13. The unanimous approval
14 by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec.,
15 ¶ 9.

16 An objective evaluation of the proposed settlement of One Million Six Hundred Thousand
17 Dollars and Zero Cents (\$1,600,000.00) (“Maximum Settlement Amount”) confirms that the relief
18 negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a
19 product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and
20 presided over by Tripper Ortman, an experienced mediator of wage and hour class and
21 representative actions. After deducting any Court-approved Class Counsel Award, Class
22 Representative’s Payment, PAGA Payment, and Settlement Administration Costs, the Net
23 Settlement Amount shall be distributed to the Settlement Class based on the number of Workweeks
24 they worked while employed by Defendants during the Class Period. JCL Dec., ¶ 9.

25
26 ¹ The Amended Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All
27 citations to the Amended Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless
28 indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

² On September 29, 2023, the Court signed the Proposed Order that was initially filed based on the terms of the
Stipulation of Settlement of Class Action Claims and Release of Claims (“Original Agreement”). On October 12, 2023,
Plaintiff filed an Amended Proposed Order based on the terms of the Amended Agreement. As of the filing of this
Motion, Plaintiff has not yet received the signed Amended Order from the Court.

³ As of the filing date of this Motion, 72 Notices were deemed undeliverable.

1 This Settlement provides substantial recovery to Class Members. Plaintiff estimates that the
2 Settlement, if approved, would result in a Net Settlement Amount of approximately **\$934,416.67**.
3 This will result in an average Individual Settlement Payment of **\$742.78**, with the estimated highest
4 gross payment being **\$4,522.41** and the lowest gross payment being **\$16.22**. Aggrieved Employees
5 will receive an estimated average gross payment of **\$25.91**, with the estimated highest gross
6 payment being **\$89.54** and the lowest gross payment being **\$1.44**. JCL Dec., ¶ 10; ILYM Dec., ¶¶
7 17-18.

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

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

17 **II. OVERVIEW OF THE LITIGATION**

18 On May 25, 2021, Plaintiff filed a Notice of Violations with the LWDA and served the same
19 on Defendant Diab Leasing, Inc. On July 30, 2021, Plaintiff filed the class action complaint in this
20 Court, asserting claims for: (1) unfair competition; (2) failure to pay minimum wages; (3) failure to
21 pay overtime wages; (4) failure to provide required meal breaks; (5) failure to provide required rest
22 breaks; (6) failure to provide accurate itemized wage statements; (7) failure to reimburse employees
23 for required expenses; (8) failure to provide wages when due; and (9) violation of the Private
24 Attorneys General Act. JCL Dec., ¶ 13.

25 Plaintiff seeks to represent a putative class of all individuals who are or previously were
26 employed by Defendants in California and classified as a non-exempt employee during the period
27 of July 30, 2017, up to and including December 2, 2022 (the “Class Members”). The Complaint
28 generally alleges the causes of action listed above. The Action seeks unpaid wages, statutory and

1 PAGA penalties, attorneys' fees, and litigation costs. JCL Dec., ¶ 14.

2 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
3 information in connection with the Action. As part of this process, Defendants provided a significant
4 sample of time records and payroll records, as well as other documents and information, to Class
5 Counsel to review and analyze. On July 18, 2022, the Parties participated in an all-day mediation
6 presided over by Tripper Ortman, Esq., a mediator of wage and hour class actions. The mediation
7 concluded without a settlement. The Parties and Mediator Ortman subsequently requested the
8 assistance of Judge Mitchell Goldberg (Ret.), a retired Federal Bankruptcy Judge after Defendants
9 raised an inability to pay defense. Judge Goldberg reviewed Defendants' financial documents,
10 evaluated Defendants' financial standing, and conferred with Mediator Ortman. Subsequently,
11 Mediator Ortman made a mediator's proposal based on Judge Goldberg's evaluation. The Parties
12 agreed to the mediator's proposal. The Parties documented the agreement in the Original
13 Agreement. JCL Dec., ¶ 15.

14 On April 13, 2023, Plaintiff filed his unopposed motion for preliminary approval of Class
15 and PAGA Action Settlement, which was set to be heard on May 5, 2023. Before the May 5, 2023,
16 preliminary approval hearing date, Defendants represented to Class Counsel that it would now be
17 able to pay the entire Maximum Settlement Amount in one lumpsum but would need to negotiate a
18 lesser overall settlement amount. Based on Defendants' representations, the Parties requested, and
19 were granted, a short continuance on Plaintiff's Motion hearing for May 12, 2023. JCL Dec., ¶ 16.

20 Class Counsel sought assistance from Kenneth L. Creal, a Certified Public Accountant, to
21 review the amended terms. Mr. Creal compared the economic differences of the original and
22 amended terms to the putative Class Members and Aggrieved Employees. Based on his review, Mr.
23 Creal determined that the amended Maximum Settlement Amount of \$1,600,000, to be paid within
24 30 days of the Effective Date was substantially more valuable when considering the present value
25 of \$1,700,000 paid in installments over thirty-three (33) months as provided by the Original
26 Agreement. The Parties subsequently negotiated the Amended Agreement, which is the subject of
27 the instant motion. JCL Dec., ¶ 17.

28 On August 25, 2023, this Court preliminarily approved the Settlement. JCL Dec., ¶ 5. On

October 10, 2023, the Settlement Administrator mailed Notice Packets to all 1,258 Class Members. ILYM Dec., ¶ 8. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement was outstanding – 100% of the Class Members are participating in the Settlement. ILYM Dec., ¶¶ 11-13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Maximum Settlement Amount of One Million Six Hundred Thousand Dollars and Zero Cents (\$1,600,000.00) based on a total of an estimated 56,669 workweeks worked by the Class during the Class Period. The Maximum Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative's Payment; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Payment; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 18.

Defendants will fund the Settlement by transferring the Maximum Settlement Amount into a Qualified Settlement Fund within thirty (30) days after the Effective Date. Agreement, ¶ I(M). Individual Settlement Payments and individual shares of the PAGA Payment shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees' last known mailing address no later than fifteen (15) business days after the Maximum Settlement Amount is funded. Amended Agreement, ¶ III(L)(7). The Settlement Administrator will calculate Individual Settlement Payments by adding up the total number of Workweeks for all Class Members. The Settlement Administrator will then divide the respective Workweeks for each Class Member by the total Workweeks for all Class Members, resulting in a Payment Ratio for each Class Member. Each Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement Payment. Amended Agreement, ¶ III(L)(1). The estimated average Individual Settlement Payment is approximately \$742.78. JCL Dec., ¶ 19.

In exchange for the valuable consideration, as of the funding of the Maximum Settlement Amount, the Settlement Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, will release

1 the Released Parties from the Released Class Claims that accrued during the Class Period. The
2 Aggrieved Employees, the LWDA, and the State of California will release the Released Parties
3 from the Released PAGA Claims for the PAGA Period. Agreement at ¶¶ III(B), III(C).

4 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Settlement
5 Administration Costs include those expenses of effectuating and administering the Settlement, i.e.,
6 the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs
7 of administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
8 Administrator approved for reimbursement by the court. The Settlement Administrator costs are
9 \$17,250.00. ILYM Dec., ¶ 19. These expenses shall be paid from the Maximum Settlement Amount.
10 Agreement, ¶ III(L)(12).

11 Subject to Court approval, Class Counsel shall seek an award in the amount of \$558,333.33,
12 comprised of Attorneys' Fees equal to one-third of the Maximum Settlement Amount estimated to
13 be at least \$533,333.33 and up to \$25,000.00 for actually incurred Attorneys' Fees. Plaintiffs'
14 counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group,
15 APLC. Amended Agreement, ¶ I(E). Plaintiff reviewed the terms of the Agreement, including the
16 monetary terms and releases, and executed the Agreement. Declaration of David Ezell ("Ezell
17 Dec.") at ¶12. The Agreement also provides for Class Representative's Payment in the amount of
18 \$10,000.00 in consideration of Plaintiff's time, risk, and efforts as the Class Representative on
19 behalf of the Settlement Class. Agreement, ¶¶ I(I); III(L)(9). As explained in further detail below,
20 the Settlement is fair, adequate, and reasonable to the class and should be granted final approval.
21 This is evidenced by the unanimous approval of the Settlement by the Settlement Class and absence
22 of any objections to the Settlement and the average Individual Settlement Payment of \$742.48.
23 ILYM Dec., ¶ 17; JCL Dec., ¶ 19.

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

26 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52
27 Cal.App.4th 259, 265. In evaluating settlements, the courts have long recognized that compromise
28 is particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven*

1 *Owners for Fair Fran. v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary
2 conciliation and settlement are the preferred means of dispute resolution. This is especially true in
3 complex class action litigation”).

4 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
5 action requires court approval.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
6 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The
7 court must decide whether the proposed settlement falls within the range of reasonable settlements,
8 considering that settlements are compromises between the parties reflecting subjective,
9 unquantifiable judgments concerning the risks and possible outcomes of litigation. *See also*
10 *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to
11 be judged against a hypothetical or speculative measure of what might have been achieved had
12 plaintiffs prevailed at trial.”). In *Wershba*, appellants argued that the settlement was too low given
13 the “clear” liability, however, the Court rejected this argument and held that “the merits of the
14 underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba*,
15 *supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

28 ///

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

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

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

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

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

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

1 Counsel assessed the value of the claims using data and documents provided by Defendants through
2 informal discovery. Class Counsel obtained the class list, distributed a *Belaire-West* notice to the
3 Class Members, and subsequently, reached out to nearly 700 Class Members. Additionally, Class
4 Counsel obtained time, payroll, and policy records, as well as data regarding the number of Class
5 Members, workweeks, and average rate of pay to assess damages before mediation. Class Counsel
6 retained BCG to analyze Defendants' time and payroll data to formulate damage models estimating
7 Defendants' liability exposure. Class Counsel's investigation, research, experience, and damage
8 models informed and guided the mediated negotiations that resulted in this settlement. Accordingly,
9 Class Counsel fully understood the strengths and weaknesses of the class claims before the parties
10 reached a settlement. JCL Dec., ¶ 21-27.

11 **B. The Parties Settled Shortly After Mediation.**

12 On July 18, 2022, the Parties conducted a full-day mediation with Tripper Ortman, an
13 experienced mediator of wage and hour class and representative actions. Mediator Ortman helped
14 to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks
15 to both sides. The Parties made substantial progress with Mediator Ortman's assistance. Namely,
16 the Parties exchanged information regarding their respective claims and defenses, including their
17 respective evaluations of the damages. After arm's length and adversarial negotiations, the
18 mediation concluded without a settlement. Subsequently, The Parties and Mediator Ortman
19 subsequently requested the assistance of Judge Mitchell Goldberg (Ret.), a retired Federal
20 Bankruptcy Judge after Defendants raised an inability to pay defense. Judge Goldberg reviewed
21 Defendants' financial documents, evaluated Defendants' financial standing, and conferred with
22 Mediator Ortman. Subsequently, Mediator Ortman made a mediator's proposal based on Judge
23 Goldberg's evaluation. The Parties agreed to the mediator's proposal, resulting in the Original
24 Agreement. JCL Dec., ¶ 28.

25 As discussed above, the Parties subsequently negotiated the terms of the Amended
26 Agreement based on Defendants' representations and Mr. Creal's evaluation of the economic value
27 of the Maximum Settlement Amount and benefits to the Class. No action would likely have been
28 taken by Class Members individually, and no compensation would have been recovered for them,

1 but for Plaintiff's services on behalf of the Class. JCL Dec., ¶ 29.

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

3 Class Counsel in this matter has extensive class action experience in multiple fields and has
4 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar
5 wage and hour class actions involving similar claims. Class Counsel has been approved as class
6 counsel in similar wage and hour class actions throughout the State of California. As such, courts
7 throughout California have deemed Class Counsel experienced and knowledgeable in this area of
8 law. Class Counsel has participated in every aspect of the settlement discussions and has concluded
9 the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶
10 30-36; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

12 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
13 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
14 member with the terms of the Settlement, including the specific estimated Individual Settlement
15 Payments, none of the 1,258 members of the Settlement Class has opted-out of the Settlement.
16 Moreover, there are zero objections. Stated differently, 100% of the Settlement Class chose to
17 participate in the Settlement. JCL Dec., ¶ 9; ILYM Dec., ¶¶ 12-14.

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

27 **E. The Maximum Settlement Amount is Fair and Reasonable.**

28 The Maximum Settlement Amount of One Million Six Hundred Thousand Dollars and Zero

1 Cents (\$1,600,000.00) in this case is fair and well within the range of recognized reasonableness.
2 The *Kullar* court acknowledged that “as the court does when it approves a settlement as in good
3 faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class
4 settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v.*
5 *Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

6 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
7 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
8 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
9 Cal.App.4th at 250. While the Maximum Settlement Amount of One Million Six Hundred
10 Thousand Dollars and Zero Cents (\$1,600,000.00) represents a discount on Defendants’ potential
11 exposure if Plaintiff established liability on all claims and was awarded the full amount of the
12 estimated damages at trial, this compromise is reasonable because (1) the formidable defenses
13 raised by Defendants presented a risk that could award significantly less in damages than Plaintiff’s
14 estimate and (2) any theoretical post-trial recovery may require many more years of litigation,
15 resulting in added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 37.

16 As detailed at the time of preliminary approval, the Maximum Settlement Amount is fair and
17 reasonable considering the nature and magnitude of the claims being settled and the various
18 potential impediments to recovery. Class Counsel developed varied economic damages models
19 measuring Defendants’ liability exposure while accounting for the uncertainties of continued
20 litigation. The various models were informed by Class Counsel’s investigation, including the
21 analysis of a significant sample of time and payroll data. As detailed in greater depth during the
22 preliminary approval process, Class Counsel projected a range of Defendants’ liability exposure for
23 the claims asserted on behalf of the Settlement Class. The Maximum Settlement Amount represents
24 approximately 39.7% of the maximum estimated *damages*, and 23.3% of the maximum
25 combination of damages and penalties to the Class. JCL Dec., ¶ 38.

26 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
27 Court for the Northern District of California granted final approval in a wage and hour
28 misclassification action and found that the Gross Settlement Amount representing 10% of the

1 estimated trial award was within the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego*
2 *Fin. Corp. Sec. Litig.)* (9th Cir. 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement
3 representing “roughly one-sixth of the potential recovery.” Given the amount of the settlement here
4 as compared to potential value of the claims, particularly the strength of Plaintiffs’ action, the
5 settlement is clearly fair and reasonable.⁴

6 The calculation methodology used to compensate the Settlement Class Members for the
7 alleged damages was negotiated at the time of the Settlement. More importantly, the methodology
8 is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks
9 each Settlement Class Member worked for Defendants during the Class Period. The number of
10 Workweeks for the Settlement Class Members is established through Defendants’ data and
11 documented compensation records. The Settlement Administrator is responsible for calculating the
12 Individual Settlement Payments by multiplying the Payment Ratio for each Class Member by the
13 Net Settlement Amount. The Settlement Administrator will calculate the Payment Ratio by
14 dividing the total number of Workweeks for each Class Member by the total number of Workweeks
15 for all Class Members. This process establishes an objectively fair and reasonable procedure to
16 compensate the Settlement Class. Agreement, ¶ III(L)(1).

17 The Settlement also provides significant relief to the Settlement Class Members. After
18 deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Payment,
19 and the Class Representative’s Payment, the Net Settlement Amount is currently estimated to be
20 **\$934,416.67**. The average settlement payment is approximately **\$742.78**. ILYM Dec., ¶ 16-17. This
21 average net recovery is on par with many wage and hour class action settlements approved by
22 California state and federal courts. JCL Dec., ¶ 41. Additionally, Defendants must separately fund
23 its share of any employer side payroll taxes. Agreement, ¶ III(L).

24 Clearly the goal of this litigation to obtain redress for the class has been met by this

25 ⁴ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7
26 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or
approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-
27 00784) 2017 WL 2797811, at *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,
28 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 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length
2 negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore
3 entitled to final approval. JCL Dec., ¶ 42.

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

5 Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to
6 ignore the asserted defenses. If successful on any one of its defenses, Defendants could defend the
7 action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 44. As the federal court in
8 *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to
9 those in this litigation:

10 ***In light of the above-referenced uncertainty in the law, the risk,***
11 ***expense, complexity, and likely duration of further litigation***
12 ***likewise favors the settlement.*** Regardless of how this Court might
13 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.

14 With respect to the most immediate challenge, i.e., class certification, the risks attendant to
15 the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*
16 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated, reversed, and
17 remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying
18 overtime, and directed the trial court to enter judgement in favor of the employer. *See also*
19 *O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and
20 hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th
21 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet*
22 *Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might
23 not take their breaks were predominantly individualized questions of fact not susceptible to class
24 treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of
25 certification because employees' declarations attesting to having taken meal and rest breaks
26 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy*
27 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
28 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform

1 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
2 certification of driver meal and rest period claims based on the predominance of individual issues).
3 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
4 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
5 risk factor favoring settlement. JCL Dec., ¶ 43.

6 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless
7 recognizes that Defendants have factual and legal defenses that, if successful, would potentially
8 defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour
9 litigation can drastically affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶
10 44.

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

14 **Plaintiffs may have a strong case, but the risks inherent in**
15 **continued litigation are great.** Defendants strongly deny liability for
16 Plaintiffs' principal claim that full-time Service Associates were
17 misclassified as exempt. In addition to the uncertainties raised by
18 Defendants at the preliminary stage regarding Plaintiffs' chance of
19 success in this case, Defendants notes that the question of an
20 employer's duty to provide rest and meal periods is an open one,
21 signaling even less certainty for Plaintiffs.....[T]he **Total Settlement**
22 **amount and the Class Members' expected net recovery, after fees**
23 **and other costs are deducted, appear to be a reasonable**
24 **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**
30 **in favor of granting final approval.** Plaintiffs acknowledge the
31 difficulties of proving damages, recognize the uncertainty of outcome,
32 and believe defendant would appeal in the event of adverse judgment.
33 A post-judgment appeal would require many years to resolve and
34 delay payment to class members. Plaintiffs believe the benefits of a
35 guaranteed recovery today outweigh an uncertain future result.
36 Accordingly, plaintiffs argue, and the Court agrees, the actual
37 recovery confers substantial benefits on the class that outweigh the
38 potential recovery through full adjudication.

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

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

7 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber*
8 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014)
9 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little
10 doubt that if Defendants faced a large adverse judgement, Defendants undoubtedly have the
11 resources to post a bond and appeal. A post-judgment appeal by Defendants would have required
12 many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed
13 in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed
14 recovery today outweigh an uncertain result three or more years in the future. JCL Dec., ¶ 45.

15 Class Representative and Class Counsel recognize the expense and length of a trial against
16 Defendants through possible appeals which could take another three years. In arriving at their
17 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the
18 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also
19 mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims
20 asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable.
21 Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing
22 the benefits of an ultimate victory. Class Representative and Class Counsel believe that the
23 Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon
24 their evaluation, Class Representative and Class Counsel have determined that the Settlement set
25 forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and
26 should be granted final approval. JCL Dec., ¶ 46.

27
28 ///

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,
9 at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express*
10 *Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)
11 (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of
12 the total settlement).

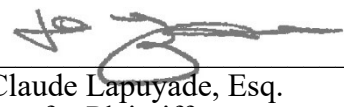
13 Here, the Parties negotiated a good faith PAGA Payment in the amount of \$80,000.00 which
14 is approximately 5% of the Maximum Settlement Amount. As illustrated above, this amount falls
15 well within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA
16 Payment (\$60,000.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-
17 five percent (25%) of the PAGA Payment (\$20,000.00) to be distributed to the Aggrieved
18 Employees, which is within the range of PAGA penalties approved by courts and should be
19 approved. JCL Dec., ¶ 47.

20 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
21 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
22 with the LWDA. JCL Dec., ¶¶ 6-7, 48. By not registering an objection with either Class Counsel
23 or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

24 **VII. CONCLUSION**

25 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
26 established in California law and should therefore be finally approved as fair, reasonable, and
27 adequate and requests entry of the Final Approval Order and Judgment submitted herewith.
28 DATED: December 12, 2023

JCL LAW FIRM APC

By: 
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