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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ISAIAH DAVIS, CHARLES HARRELL,
individuals, on behalf of themselves and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

RPM JUICE, INC., a California Corporation;
RPM FOODS, INC., a California Corporation;
and DOES 1-50, Inclusive.

Defendants.

Case No. 21STCV14755

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

Date: November 17, 2023

Time: 10:00 a.m.

Judge: Hon. Lawrence P. Riff

Dept.: 7

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1 I. INTRODUCTION

2 Plaintiffs ISAAH DAVIS and CHARLES HARRELL (hereinafter “Plaintiffs”) seek final
3 approval of the Amended Class Action and PAGA Settlement Agreement and Class Notice
4 (“Agreement”)¹, which if approved, would provide valuable monetary relief for 1,314 Settlement Class
5 Members employed by Defendants RPM Juice, Inc. and RPM Foods Inc. (hereinafter “Defendants”)
6 during the Class Period.

7 In an order dated July 18, 2023, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 5. On August
9 25, 2023, the Court approved the Class Notice to be mailed to each Class Member. JCL Dec., ¶ 6. On
10 September 29, 2023, the Class Notice was mailed to each Class Member via U.S. First Class Mail.
11 Declaration of Tracy Dantema (“ILYM Dec.”), ¶ 7. *As of the filing of this motion, the Class greeted*
12 *news of the Settlement with unanimous approval as, at the time of the filing of this motion, 100% of*
13 *Class Members have chosen to participate in the Settlement.*² There are zero opt-outs and zero
14 objections to the Settlement. ILYM Dec., ¶¶ 10-11. The unanimous approval by the Settlement Class
15 evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 10.

16 An objective evaluation of the proposed settlement of Six Hundred Forty-Six Thousand, Three
17 Hundred Twenty-Five Dollars and Zero Cents (\$646,325.00) (“Gross Settlement Amount”) confirms
18 that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The
19 Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced
20 counsel, and presided over by Steven Rottman, Esq., a highly regarded mediator. After deducting any
21 Court-approved attorneys’ fees and litigation costs, class representative incentive payments, settlement
22 administration fees, background check payments to the Class Members, and the payment to the Labor
23 & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the
24 Settlement Class based on the number of Workweeks they worked while employed by Defendants
25

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

² As of the filing date of this Motion, 246 Notices were deemed undeliverable. ILYM Dec. at ¶ 8. The deadline for Class
Members to opt-out or object is November 13, 2023. ILYM Dec. at ¶¶ 10-11. Class Counsel will provide an updated
declaration from the administrator following the response deadline.

1 during the Class Period. JCL Dec., ¶ 10.

2 This Settlement provides substantial recovery to Settlement Class Members. Plaintiffs estimate
3 that the Settlement, if approved, would result in a Net Settlement Amount of approximately
4 **\$350,583.34**. This will result in an average Individual Class Payment of **\$266.81**, and a high payment
5 of **\$5,997.36**. ILYM Dec. at ¶ 15. Aggrieved Employees will receive an average Individual PAGA
6 Payment of **\$6.85** and a high payment of **\$54.61**. ILYM Dec. at ¶ 15; JCL Dec., ¶ 11.

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

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

16 **II. OVERVIEW OF THE LITIGATION**

17 Defendants own and manage Jamba Juice franchises throughout California, including Los
18 Angeles County where Plaintiffs worked. Plaintiff Isaiah Davis worked for Defendants as a non-exempt
19 employee in California from August of 2019 to October of 2020. JCL Dec., ¶ 14; Declaration of Isaiah
20 Davis (“ID Dec.”), ¶¶ 2-4. Plaintiff Charles Harrell worked for Defendants as a non-exempt employee
21 in California from 2016 to September of 2020. JCL Dec., ¶ 13; Declaration of Charles Harrell (“CH
22 Dec.”), ¶¶ 2-4. At all times during their employment, Plaintiffs earned an hourly wage and were entitled
23 to legally complaint meal and/or rest periods, minimum, regular, and overtime wages. Throughout their
24 employment, Plaintiffs were subject to Defendants’ written policies and procedures. JCL Dec., ¶ 14; ID
25 Dec., ¶¶ 2-4; CH Dec., ¶¶ 2-4.

26 Defendants forcefully deny liability for each of Plaintiffs’ claims. Further, Defendants assert that
27 they fully complied with all applicable employment laws and raised several other significant defenses
28

1 to Plaintiffs’ claims, including but not limited to, facially compliant meal and rest period policies,
2 compliant wage statements, reimbursed for all required business expenses, and payment of all wages
3 upon separation. JCL Dec., ¶ 15.

4 On February 8, 2021 and April 23, 2021, Plaintiff Isaish Davis and Plaintiff Charles Harrell,
5 respectively, served Defendants and the Labor and Workforce Development Agency (“LWDA”) with a
6 Notice of Violations (“PAGA Notices”). Plaintiffs’ PAGA Notices set forth the facts and theories
7 supporting Defendants’ alleged violations of various provisions of the California Labor Code and
8 applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to pursue claims
9 under California Labor Code Private Attorneys General Act, Cal. Lab. Code sections 2698 *et seq*
10 (“PAGA”). JCL Dec., ¶ 16.

11 On April 19, 2021, Plaintiff Isaiah Davis filed a class action complaint in the Los Angeles
12 Superior Court, Case Number 21STCV14755 (the “Action”). The Action alleged ten causes of action
13 against Defendants for: (1) Unfair Competition in Violation of California Business and Professions Code
14 §§ 17200 *et seq*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197,
15 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq*.; (4) Failure to
16 Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide
17 Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Reimburse
18 Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide
19 Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (8) Failure to Provide Wages
20 When Due in Violation of Cal. Lab. Code §§ 201, 202, and 203; (9) Unpaid Sick Pay and Failure to
21 Provide Paid Sick Leave Balance in Violation of Cal. Lab. Code §§ 246, *et seq*.; and (10) Violations of
22 the Private Attorney General Act at Lab. Code §§ 2698 *et. seq*. On September 20, 2021, the operative
23 First Amended Complaint was filed, adding Plaintiff Charles Harrell as a plaintiff and adding an
24 eleventh cause of action for Failure to Provide Personnel Files in Violation of Cal. Lab. Code § 1198.5.
25 JCL Dec., ¶ 17.

26 Prior to mediation, the Parties agreed to informally produce additional documents and data points
27 subject to the mediation privilege, including but not limited to, a significant sample of the Class
28

Members’ time data and certain payroll data points. As discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 18.

On December 15, 2022, the Parties participated in a full day mediation with Steven Rottman, Esq., a highly regarded mediator of wage and hour class actions. After arms-length negotiations and bargaining, the Parties reached an agreement to settle based on Mr. Rottman’s recommendation and signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 19.

On July 18, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 5. On September 29, 2023, the Settlement Administrator mailed Notice Packets to all 1,314 Settlement Class Members. ILYM Dec., ¶ 7. 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 has been outstanding – as of the filing of this motion, **100%** of the Class Members are participating in the Settlement. ILYM Dec., ¶¶ 10-13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Six Hundred Forty-Six Thousand, Three Hundred Twenty-Five Dollars and Zero Cents (\$646,325.00) based on a total of an estimated 41,454 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Class Payments; (2) to satisfy the Class Representative Payments; (3) to satisfy the Class Counsel Attorneys’ Fees and Litigation Costs Payment; (4) to satisfy the PAGA Payment; and (5) to satisfy the Settlement Administration Expenses incurred in this action. JCL Dec., ¶ 20.

Defendants will fund the Settlement by transferring the Gross Settlement Amount in four equal installments of \$161,581.25 paid per installment. Defendants shall pay the first installment six (6) months after the Court grants final approval of the Settlement. Defendants shall pay the second installment within one (1) year after the first payment is made. Defendants shall pay the third installment

1 within two (2) years after the first payment is made. Defendants shall pay the fourth and final installment
2 within three (3) years after the first payment is made. Agreement, § 4.3. Within 14 days after
3 Defendants fund the Gross Settlement Amount in an amount sufficient to cover the Individual Class
4 Payments, Individual PAGA Payments, and the Class Representative Service Payments, the
5 Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, and
6 the Class Representative Service Payments. Agreement, § 4.4. The Settlement Administrator will
7 calculate Individual Class Payments by dividing the Net Settlement Amount by the total number of
8 Workweeks worked by all Settlement Class Members during the Class Period and multiplying the result
9 by each Settlement Class Member's Workweeks. Agreement, § 3.2.4. The estimated average Individual
10 Class Payment is approximately **\$266.81**. JCL Dec., ¶ 21; ILYM Dec., ¶ 15.

11 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
12 the Settlement Class Members will release the Defendants from the Released Class Claims that accrued
13 during the Class Period. The Aggrieved Employees, the LWDA, and the State of California will release
14 the Defendants from the Released PAGA Claims for the PAGA Period. Agreement at § 5.

15 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Settlement
16 Administration Fees include those expenses of effectuating and administering the Settlement, i.e., the
17 costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
18 administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
19 Administrator approved for reimbursement by the court. The Settlement Administrator expenses are
20 **\$4,300**. ILYM Dec., ¶ 16. These expenses shall be paid from the Gross Settlement Amount. Agreement,
21 § 3.2.3.

22 Subject to Court approval, Class Counsel shall seek payment of Class Counsel's Attorneys' Fees
23 and Litigation Costs in the amount of \$235,441.66, comprised of attorneys' fees equal to one-third of
24 the Gross Settlement Amount estimated to be at least \$215,441.66 and up to \$20,000.00 for actually
25 incurred litigation expenses. Plaintiffs' counsel is to split the fees 50% to the JCL Law Firm, APC and
26 50% to the Zakay Law Group, APLC. Agreement, § 1.7. The Agreement also provides for Class
27 Representative Payments in the amount of \$10,000.00 for each Plaintiff, in consideration of their time,
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1 risk, and efforts as the Class Representatives on behalf of the Settlement Class. Agreement, § 3.2.1.

2 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
3 and should be granted final approval. This is evidenced by the high approval of the Settlement by the
4 Settlement Class, the absence of any objections to the Settlement and the average Individual Class
5 Payment of **\$266.81**. ILYM Dec., ¶¶ 10-11; JCL Dec., ¶ 22.

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

8 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
9 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
10 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
11 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the
12 preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

24 In these cases, Courts have repeatedly emphasized that there is a strong initial presumption that
25 the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not substitute
26 their judgment for that of the parties who negotiated the settlement. *Id.* At 246. The presumption of
27 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act
28

1 intelligently; (2) the settlement is reached through arm's-length bargaining; (3) counsel is experienced
2 in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1801, citing
3 Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here, all of these factors
4 support a presumption of fairness.

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

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

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

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

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

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

A. Class Counsel Conducted a Thorough Investigation.

As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel assessed the value of the class claims using data and documents provided by Defendants through informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the number of Class Members, workweeks, and average rate of pay to assess damages before mediation. Class Counsel retained Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data to formulate damage models estimating Defendants' liability exposure. Class Counsel's investigation, research, experience, and damage models informed and guided the mediated negotiations that resulted in this settlement. Accordingly, Plaintiffs' Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 23-28.

B. The Parties Settled At Mediation.

On December 15, 2022, the Parties conducted a full-day mediation with Steven Rottman, Esq., a highly regarded mediator. Mediator Rottman helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Rottman's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluations of the damages. After more than eight hours of arm's length and adversarial negotiations, the mediation concluded with a settlement. The amounts of the service awards were not negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiffs' service on behalf of the Class. JCL Dec., ¶ 29.

///

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

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

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

11 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
12 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
13 member with the terms of the Settlement, including the specific estimated Individual Class Payments.
14 As of the filing of this motion, zero members of the Settlement Class opted-out of the Settlement.
15 Moreover, there are zero objections. Stated differently, 100% of the Settlement Class have chosen to
16 participate in the Settlement. JCL Dec., ¶ 10; ILYM Dec., ¶¶ 10-11.

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

26
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1 **E. The Gross Settlement Amount is Fair and Reasonable.**

2 The Gross Settlement Amount of Six Hundred Forty-Six Thousand, Three Hundred Twenty-Five
3 Dollars and Zero Cents (\$646,325.00) in this case is fair and well within the range of recognized
4 reasonableness. The *Kullar* court acknowledged that “as the court does when it approves a settlement
5 as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that
6 the class settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc.*
7 *v. Woodward-Clyde & 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 Settlement Class and need not necessarily obtain 100 percent of the
10 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
11 While the Gross Settlement Amount of Six Hundred Forty-Six Thousand, Three Hundred Twenty-Five
12 Dollars and Zero Cents (\$646,325.00) represents a discount on Defendants’ potential exposure if
13 Plaintiffs established liability on all claims and was awarded the full amount of the estimated damages
14 at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendants
15 presented a risk that could award significantly less in damages than Plaintiffs’ estimate and (2) any
16 theoretical post-trial recovery may require many more years of litigation, resulting in added fees and
17 costs without any guarantee of recovery for the Class. JCL Dec., ¶ 37.

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 Defendants’ 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. As detailed in greater depth during the preliminary approval process, Class
24 Counsel projected a range of Defendants’ liability exposure for the claims asserted on behalf of the
25 Settlement Class. The Gross Settlement Amount represents approximately 18.6% of Defendants’ *class-*
26 *wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 38.

27 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
28

for the Northern District of California granted final approval in a wage and hour misclassification action and found that the Gross Settlement Amount representing 10% of the estimated trial award was within the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the potential recovery.” Given the amount of the settlement here as compared to potential value of the claims, particularly the strength of Plaintiffs’ action, the settlement is clearly fair and reasonable³.

The calculation methodology used to compensate the Settlement Class for the alleged damages was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks each Settlement Class Member worked for Defendants during the Class Period. The number of Workweeks for the Settlement Class Members is established through Defendants’ data and documented compensation records. The Settlement Administrator is responsible for calculating the Individual Class Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and multiplying the result by each Settlement Class Member’s Workweeks. This process establishes an objectively fair and reasonable procedure to compensate the Settlement Class. Agreement, § 3.2.4.

The settlement also provides significant relief to the Settlement Class Members. After deductions for the Class Counsel’s Attorneys’ Fees and Litigation Costs, Settlement Administration Fees, the PAGA Payment, and the Class Representative Awards, the Net Settlement Amount is currently estimated to be **\$350,583.34**. ILYM Dec., ¶ 14. The average settlement payment is approximately **\$266.81**, and the highest is approximately **\$5,997.36**. ILYM Dec., ¶ 15. This average net recovery is on par with many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct)

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 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-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, 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.”).

(average net recovery of 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, Defendants must separately fund their share of any employer side payroll taxes. Agreement, § 3.1.

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., ¶ 39.

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

Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendants could defend the action or, at least, drastically undercut Plaintiffs' claims. JCL Dec., ¶ 40. 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, Inc.*

(9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 41.

Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless recognize that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically affect the value of Plaintiffs’ claims and, in fact, already has. JCL Dec., ¶ 42.

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

Plaintiffs may have a strong case, but the risks inherent in continued litigation are great. Defendants strongly deny liability for Plaintiffs’ principal claim that full-time Service Associates were misclassified as 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 meal periods is an open one, signaling even less certainty for

1 Plaintiffs.....[T]he **Total Settlement amount and the Class Members'**
2 **expected net recovery, after fees and other costs are deducted, appear**
3 **to be a reasonable compromise, in light of the risks of litigation.**

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

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

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

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

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

23 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
24 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
25 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
26 that if Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post
27 a bond and appeal. A post-judgment appeal by Defendants would have required many more years to
28 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
29 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
30 an uncertain result three or more years in the future. JCL Dec., ¶ 43.

31 The Class Representatives and Class Counsel recognize the expense and length of a trial against

1 Defendants 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 mounted, and
6 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
7 Class Representatives and Class Counsel believe that the Settlement confers substantial monetary and
8 non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives 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., ¶ 44.

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

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

22 Here, Plaintiffs and Defendants negotiated a good faith PAGA Payment in the amount of
23 \$36,000.00 which is 5.6% of the Gross Settlement Amount. As illustrated above, this amount falls well
24 within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Payment
25 (\$27,000.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent
26 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA Payment
27 approved by courts and should be approved. JCL Dec., ¶ 45.

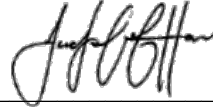
1 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy
2 of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the
3 LWDA. JCL Dec., ¶¶ 7-8, 46. By not registering an objection with either Class Counsel or the Court,
4 the LWDA has accepted and approved of the proposed PAGA Payment.

5 **VII. CONCLUSION**

6 Plaintiffs respectfully submit 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: October 25, 2023

ZAKAY LAW GROUP, APLC

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12 By: 
13 Jackland K. Hom, Esq.

14 Attorney for Plaintiff
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