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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

SERGIO ABUNDIS, individually and on behalf of
all persons similarly situated,

Plaintiff,

vs.

IMAGE 2000, a California Corporation; and Does
1 through 50, Inclusive,

Defendants.

Case No. 21STCV19193

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

Date: February 9, 2023
Time: 10:00 a.m.

Judge: Hon. Yvette Palazuelos
Dept.: 9

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1 I. INTRODUCTION

2 Plaintiff SERGIO ABUNDIS (hereinafter “Plaintiff”) seeks final approval of the Second
3 Amended Stipulation of Settlement of Class Action Claims and Release of Claims
4 (“Agreement”)¹, which if approved, would provide valuable monetary relief for 188 Settlement
5 Class Members employed by Defendant IMAGE 2000. (hereinafter “Defendant”).

6 In an order dated August 17, 2022, this Court preliminarily approved the Agreement and
7 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On
8 September 15, 2022, the Court-approved Class Notice was mailed to each Class Member via U.S.
9 First Class Mail. Declaration of Madely Nava (“ILYM Dec.”), ¶ 7. *The Class greeted news of*
10 *the Settlement with unanimous approval.*² There are zero opt-outs and zero objections to the
11 Settlement. ILYM Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences the
12 clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 13.

13 An objective evaluation of the proposed settlement of Four Hundred Seventy-Five
14 Thousand Dollars and Zero Cents (\$475,000.00) (“Total Settlement Amount”) confirms that the
15 relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The
16 Settlement is a product of informed, adversarial, and non-collusive negotiations, between
17 experienced counsel, and presided over by Hon. Brian J. Walsh (Ret.), a respected jurist and
18 mediator of wage and hour class and representative actions. After deducting any Court-approved
19 attorneys’ fees and costs, class representative incentive payments, administration costs, and the
20 payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund
21 shall be distributed to the Settlement Class based on the number of Workweeks they worked while
22 employed by Defendant during the Class Period. JCL Dec., ¶ 13.

23 This Settlement provides substantial recovery to Settlement Class Members. Plaintiff
24 estimates that the Settlement, if approved, would result in a Net Settlement Amount of
25 approximately **\$263,166.67**. This will result in an average Individual Settlement Payment of
26 **\$1,426.42**, a high payment of **\$3,318.89**, and a low payment of **\$5.71**. Aggrieved Employees will

27 ¹ The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All
28 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.

² All Notices were deemed deliverable. ILYM Dec. at ¶¶ 10.

1 receive an estimated average gross payment of **\$46.30**, a high payment of **\$66.39**, and a low
2 payment of **\$1.77**. JCL Dec., ¶ 14; ILYM Dec. at ¶ 14.

3 The relief offered by the Settlement is immediate and is particularly impressive when
4 viewed against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see*
5 *infra*). Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have
6 to wait (possibly years) for relief, nor will they have to bear the risks associated with prolonged
7 and uncertain litigation. JCL Dec., ¶ 15.

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

12 **II. OVERVIEW OF THE LITIGATION**

13 Defendant provides printing/imaging services and has been in the office technology
14 industry for 30 years. Defendant is headquartered in Santa Clarita with employees spread across
15 small branch locations in Fresno, Bakersfield, Valencia, Ontario, Lakewood, and Orange County.
16 Plaintiff worked for Defendant as an hourly, non-exempt field service technician between October
17 2012 and October 2020. As a non-exempt field service technician employee, Plaintiff regularly
18 worked long hours servicing business machines, like fax machines, copiers, and printers. At all
19 times during his employment, Plaintiff earned an hourly wage, some incentive compensation, and
20 was entitled to legally compliant meal and rest periods, and minimum, regular, and overtime
21 wages for all hours worked. Throughout his employment, Plaintiff was subject to Defendant's
22 written policies and procedures contained in, among other documents, Defendant's written
23 Employee Handbook. JCL Dec., ¶ 17.

24 Generally, Plaintiff claims that Defendant failed to pay him and the Class Members for all
25 hours worked, including overtime at the correct rate of pay, failed to provide compliant meal and
26 rest periods, and failed to reimburse mandatory business expenses³. Defendant asserts that it fully
27

28 ³ Plaintiff also claims that he was wrongfully terminated, a claim that was alleged and independently settled via a
separate and confidential settlement agreement.

1 complied with all applicable employment laws and raised several other significant defenses to
2 Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies,
3 and written policies making the use of personal cell phones optional. JCL Dec., ¶ 18.

4 On February 8, 2021, Plaintiff filed a Notice of Violations ("PAGA Notice") with the
5 Labor and Workforce Development Agency ("LWDA") and served the same on Defendant.
6 Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations
7 of various California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage
8 Order and of his intent to pursue claims under the California Labor Code Private Attorneys
9 General Act, Cal. Lab. Code sections 2698, *et seq.* ("PAGA"). JCL Dec., ¶ 19.

10 On May 20, 2021, Plaintiff filed a class action complaint in the Los Angeles Superior
11 Court, Case Number 21STCV19193 for: (1) Unfair Competition in Violation of California
12 Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of
13 California Labor Code §§ 1194, 1197 and 1197.1.; (3) Failure to Pay Overtime Wages in
14 Violation of California Labor Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods
15 in Violation of Cal. Lab. Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (5) Failure
16 to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512 and the
17 Applicable IWC Wage Order; (6) Failure to Reimburse Employees for Required Expenses in
18 Violation of Cal. Lab. Code § 2802 (7) Failure to Provide Accurate Itemized Wage Statements in
19 Violation of Cal. Lab. Code §226; (8) Failure to Provide Wages When Due in Violation of Cal.
20 Lab. Code §§ 201, 202 and 203; (9) Unpaid Sick Pay and Failure to Provide Paid Sick Leave
21 Balance in Violation of Cal. Lab. Code §S 246, *et seq.*; (10) Retaliation in Violation of Cal. Lab.
22 Code §1102.5; (11) Wrongful Termination in Violation of Public Policy; and (12) Violation of the
23 Private Attorneys General Act [Labor Code §§ 2698 *et seq.*] JCL Dec., ¶ 20.

24 Prior to conducting any formal discovery, the Parties agreed to mediate the Action. To
25 prepare for mediation, Defendant agreed to informally produce certain documents and data points
26 subject to the mediation privilege. Pursuant to that agreement, Defendant produced a sample of
27 the Class Members' time and payroll data along with relevant policies applicable to Class
28 Members. As discussed *infra*, Plaintiff's counsel retained Berger Consulting Group ("BCG"), to

1 analyze Defendant's time and payroll data. JCL Dec., ¶ 21.

2 On November 19, 2021, the Parties participated in a full day mediation with Hon. Brian J.
3 Walsh (Ret.), a respected jurist and mediator of wage and hour class and representative actions.
4 After arms-length negotiations and bargaining, the Parties reached an agreement to settle. The
5 Parties subsequently executed a binding and enforceable Memorandum of Understanding
6 ("MOU"). After reaching an agreement in principle, the Parties drafted and negotiated a long-
7 form settlement which is the subject of the instant motion. JCL Dec., ¶ 22.

8 On August 17, 2022, this Court granted preliminary approval of the Settlement. JCL Dec.,
9 ¶ 6. On September 15, 2022, the Settlement Administrator mailed Notice Packets to all 188 Class
10 Members. ILYM Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day
11 Response Deadline for the Settlement Class to submit requests for exclusion or objections to the
12 Settlement. The response from the Settlement Class to the Settlement was outstanding – 100% of
13 the Class Members are participating in the Settlement. ILYM Dec., ¶ 13.

14 **III. THE SETTLEMENT BEFORE THE COURT**

15 The Court preliminarily approved an initial Total Settlement Amount of Four Hundred
16 Seventy-Five Thousand Dollars and Zero Cent (\$475,000.00) based on a total of an estimated
17 19,500 Workweeks worked by the Class during the Class Period. The Total Settlement Amount
18 shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative
19 Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and
20 (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 23.

21 Defendant will fund the Settlement by transferring the Total Settlement Amount into a
22 Qualified Settlement Fund within thirty (30) calendar days after the Effective Date. Agreement, ¶
23 I(N). Individual Settlement Payments and Aggrieved Employee Payments shall be mailed by
24 regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees' last
25 known mailing address no later than fifteen (15) calendar days after the Funding Date.
26 Agreement, ¶ III(L)(7). The Settlement Administrator will calculate Individual Settlement
27 Payments by adding up the total number of Workweeks for all Class Members. The Settlement
28 Administrator will then divide the respective Workweeks for each member of the Settlement

1 Class by the total Workweeks for the entire Settlement Class, resulting in a Payment Ratio for
2 each Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the
3 Net Settlement Amount to calculate each estimated Individual Settlement Payment. Agreement, ¶
4 III(L)(1). The estimated average Individual Settlement Payment is approximately \$1,426.42. JCL
5 Dec., ¶ 24; ILYM Dec., ¶ 14.

6 In exchange for the valuable consideration, as of the funding of the Total Settlement
7 Amount, the Settlement Class Members will release the Released Parties from the Released Class
8 Claims that accrued during the Class Period. The Aggrieved Employees, the LWDA, and the State
9 of California will release the Released Parties from the Released PAGA Claims for the PAGA
10 Period. Agreement at ¶¶ III(B), III(C).

11 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Settlement
12 Administration Costs include those expenses of effectuating and administering the Settlement,
13 i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the
14 costs of administering and disbursing the Individual Settlement Payments, and the fees of the
15 Settlement Administrator approved for reimbursement by the court. The Settlement Administrator
16 expenses are \$8,500. ILYM Dec., ¶ 15. These expenses shall be paid from the Total Settlement
17 Amount. Agreement, ¶ III(L)(12).

18 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
19 \$178,333.33 comprised of attorneys' fees equal to one-third of the Total Settlement Amount
20 estimated to be at least \$158,333.33 and up to \$20,000 for actually incurred litigation expenses.
21 Plaintiff's counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law
22 Group, APLC. Agreement, ¶ I(E). The Agreement also provides for a Class Representative
23 Service Award in the amount of \$5,000 for Plaintiff, in consideration of his time, risk, and efforts
24 as the Class Representative on behalf of the Settlement Class. Agreement, ¶¶ I(I); III(L)(9).

25 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the
26 class and should be granted final approval. This is evidenced by the unanimous approval of the
27 Settlement by the Settlement Class, the absence of any objections to the Settlement and the
28 average Individual Settlement Payment of \$1,426.42. ILYM Dec., ¶¶ 11-14; JCL Dec., ¶ 24.

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

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

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

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

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

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

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

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

21 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at
22 1801. Due regard should be given to what is otherwise a private consensual agreement between
23 the parties. *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment
24 that the agreement is not the product of fraud or overreaching by, or collusion between, the
25 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
26 concerned." *Id.* "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of
27 delicate balancing, gross approximations and rough justice.' [Citation omitted.]" *Id.*

28 These factors are analyzed seriatim below and all support final approval of the class action

1 settlement before this Court.

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

3 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated
4 the proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class
5 Counsel assessed the value of the class claims using data and documents provided by Defendant
6 through informal discovery. Class Counsel obtained time, payroll, and policy records, as well as
7 data regarding the number of Class Members, workweeks, and average rate of pay to assess
8 damages before mediation. Class Counsel retained BCG to analyze Defendant's time and payroll
9 data to formulate damage models estimating Defendant's liability exposure. Class Counsel's
10 investigation, research, experience, and damage models informed and guided the mediated
11 negotiations that resulted in this settlement. Accordingly, Plaintiff's Counsel fully understood the
12 strengths and weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶
13 25-32.

14 **B. The Parties Settled At Mediation.**

15 On November 19, 2021, the Parties conducted a full-day mediation with Hon. Brian J.
16 Walsh (Ret.), a respected jurist and mediator of wage and hour class and representative actions.
17 Judge Walsh helped to manage the Parties' expectations and provided a useful, neutral analysis of
18 the issues and risks to both sides. The Parties made substantial progress with Judge Walsh's
19 assistance. Namely, the Parties exchanged information regarding their respective claims and
20 defenses, including their respective evaluations of the damages. After more than eight hours of
21 arm's length and adversarial negotiations, the mediation concluded with a settlement. The
22 amount of the service awards was not negotiated until after the parties agreed to the Total
23 Settlement Amount and many other terms. No action would likely have been taken by Class
24 Members individually, and no compensation would have been recovered for them, but for
25 Plaintiff's service on behalf of the Class. JCL Dec., ¶ 33.

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

27 Class Counsel in this matter has extensive class action experience in multiple fields and has
28 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar

1 wage and hour class actions involving similar claims. Class Counsel has been approved as class
2 counsel in similar wage and hour class actions throughout the State of California. As such, courts
3 throughout the California have deemed Class Counsel experienced and knowledgeable in this area
4 of law. Class Counsel has participated in every aspect of the settlement discussions and has
5 concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class.
6 JCL Dec., ¶¶ 34-40; Declaration of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3.

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

8 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
9 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
10 member with the terms of the Settlement, including the specific estimated Individual Settlement
11 Payments. To date, none of the 188 members of the Settlement Class opted-out of the Settlement.
12 Moreover, there are zero objections. Stated differently, **100%** of the Settlement Class chose to
13 participate in the Settlement. JCL Dec., ¶ 13; ILYM Dec., ¶¶ 12-13.

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

24 **E. The Total Settlement Amount is Fair and Reasonable.**

25 The Total Settlement Amount of Four Hundred Seventy-Five Thousand Dollars
26 (\$475,000.00) in this case is fair and well within the range of recognized reasonableness. The
27 *Kullar* court acknowledged that “as the court does when it approves a settlement as in good faith
28 under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class

1 settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v.*
2 *Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).)

3 Here, the Settlement is clearly within the “ballpark” of reasonableness because the
4 Settlement provides a sizeable recovery to the Settlement Class Members and need not necessarily
5 obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful.
6 *Wershba*, 91 Cal.App.4th at 250. While the Total Settlement Amount of Four Hundred Seventy-
7 Five Thousand Dollars (\$475,000.00) represents a discount on Defendant’s potential exposure if
8 Plaintiff established liability on all claims and was awarded the full amount of the estimated
9 damages at trial, this compromise is reasonable because (1) the formidable defenses raised by
10 Defendant presented a risk that could award significantly less in damages than Plaintiff’s estimate
11 and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in
12 added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 41.

13 As detailed at the time of preliminary approval, the Total Settlement Amount is fair and
14 reasonable considering the nature and magnitude of the claims being settled and the various
15 potential impediments to recovery. Class Counsel developed varied economic damages models
16 measuring Defendant’s liability exposure while accounting for the uncertainties of continued
17 litigation. The various models were informed by Class Counsel’s investigation, including the
18 analysis of a significant sample of time and payroll data. As detailed in greater depth during the
19 preliminary approval process, Class Counsel projected a range of Defendant’s liability exposure
20 for the claims asserted on behalf of the Settlement Class. The Total Settlement Amount represents
21 between approximately 18.41% and 24.65% of Defendant’s *class-wide* liability exposure as
22 estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 42.

23 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the
24 District Court for the Northern District of California granted final approval in a wage and hour
25 misclassification action and found that the Total Settlement Amount representing 10% of the
26 estimated trial award was within the “range of reasonableness.” In *Dunleavy v. Nadler (In re*
27 *Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000) 213 F.3d 454, 459, the Ninth Circuit approved a
28 settlement representing “roughly one-sixth of the potential recovery.” Given the amount of the

1 settlement here as compared to potential value of the claims, particularly the strength of Plaintiff's
2 action, the settlement is clearly fair and reasonable⁴.

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

15 The settlement also provides significant relief to the Settlement Class Members. After
16 deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement,
17 and the Class Representative Service Award, the Net Settlement Amount is currently estimated to
18 be \$263,166.67 ILYM Dec., ¶14. The average settlement payment is approximately \$1,426.42 the
19 highest is approximately \$3,318.89, and the lowest payment is approximately \$5.71. ILYM Dec.,
20 ¶ 14. This average net recovery is on par with many wage and hour class action settlements
21 approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No.
22 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80);
23 *Fukuchi v. Pizza Hut*, Case No. BC302589 (LA. County Super. Ct.) (average net recovery of

24 ⁴ *See also Vicer v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7
25 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or
26 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
28 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 approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County
2 Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department*
3 *Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of
4 approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D.
5 Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*,
6 Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60);
7 *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average
8 net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297
9 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must
10 separately fund its share of any employer side payroll taxes. Agreement, ¶ I(O).

11 Clearly the goal of this litigation to obtain redress for the class has been met by this
12 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length
13 negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore
14 entitled to final approval. JCL Dec., ¶ 43.

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

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

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

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

1 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and
2 remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying
3 overtime, and directed the trial court to enter judgement in favor of the employer. *See also*
4 *O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and
5 hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59
6 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v.*
7 *Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees
8 might not take their breaks were predominantly individualized questions of fact not susceptible to
9 class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of
10 certification because employees’ declarations attesting to having taken meal and rest breaks
11 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy*
12 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
13 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform
14 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
15 certification of driver meal and rest period claims based on the predominance of individual
16 issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation.
17 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
18 risk factor favoring settlement. JCL Dec., ¶ 45.

19 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless
20 recognizes that Defendant has factual and legal defenses that, if successful, would potentially
21 defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour
22 litigation can drastically affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec.,
23 ¶ 46.

24 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*,
25 2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009), granted approval of an overtime class
26 action settlement and explained:

27 **Plaintiffs may have a strong case, but the risks inherent in**
28 **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 Plaintiffs.....**[T]he Total Settlement amount and the Class Members' expected net recovery, after fees and other costs are deducted, appear to be a reasonable compromise, in light of the risks of litigation.**

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

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

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

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

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

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

1 guaranteed recovery today outweigh an uncertain result three or more years in the future. JCL
2 Dec., ¶ 47.

3 Class Representative and Class Counsel recognize the expense and length of a trial against
4 Defendant through possible appeals which could take another three years. In arriving at their
5 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the
6 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also
7 mindful of and recognize the inherent problems of proof under, and alleged defenses to, the
8 claims asserted in the litigation. Moreover, post-trial motions and appeals would have been
9 inevitable. Costs would have mounted, and recovery would have been delayed if not denied,
10 thereby reducing the benefits of an ultimate victory. Class Representative and Class Counsel
11 believe that the Settlement confers substantial monetary and non-monetary benefits upon the
12 Class. Based upon their evaluation, Class Representative and Class Counsel have determined that
13 the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable,
14 and adequate, and should be granted final approval. JCL Dec., ¶ 48.

15 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF**
16 **2004 ARE REASONABLE**

17 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
18 indication that this amount was the result of self-interest at the expense of class members,” such
19 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844
20 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for
21 PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a
22 PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL
23 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v.*
24 *Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan.
25 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two
26 percent of the total settlement).

27 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$20,000 which
28 is 4.2% of the Total Settlement Amount. As illustrated above, this amount falls well within the

1 range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement
2 (\$15,000) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent
3 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties
4 approved by courts and should be approved. JCL Dec., ¶ 49.

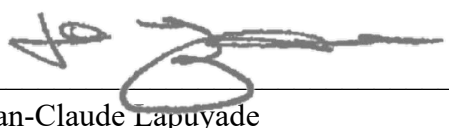
5 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
6 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final
7 approval with the LWDA. JCL Dec., ¶¶ 5-6, 48. By not registering an objection with either Class
8 Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

9 **VII. CONCLUSION**

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

13
14 DATED: January 17, 2023

JCL LAW FIRM APC

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17 By: 

18 Jean-Claude Lapuyade
19 Attorney for Plaintiff
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