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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

LATISHA SHACONNA ANDERSON,
SARAH BAXLEY, JASON ANDERSON, and
MELODY JAMES, individually, on behalf of all
persons similarly situated,

Plaintiff,

vs.

BARTON MYERS ASSOCIATES, INC., a
California Corporation; BARTON
ASSOCIATES, INC. a California Corporation;
BARTON & ASSOCIATES, INC., which will do
business in California as BARTON MEDICAL,
INC., a Delaware Corporation; and DOES 1
through 50 Inclusive,

Defendants.

Case No. 21STCV43314

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

Date: June 2, 2023
Time: 9:00 AM

Judge: Hon. Elihu M. Berle
Dept.: 6

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1 I. INTRODUCTION

2 Plaintiffs LATISHA SHACONNA ANDERSON, SARAH BAXLEY, JASON ANDERSON,
3 and MELODY JAMES (collectively “Plaintiffs”) seek final approval of the Class Action and PAGA
4 Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for
5 357 Participating Class Members who performed services for Defendant BARTON & ASSOCIATES,
6 INC. (“Defendant Barton”) and Defendant SAFETY MANAGEMENT SYSTEMS, LLC (“Defendant
7 SMS”) (hereinafter collectively “Defendants”) during the Class Period.

8 In an order dated February 2, 2023, this Court preliminarily approved the Agreement and
9 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On March
10 2, 2023, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.²
11 Declaration of Cassandra Polites (“ILYM Dec.”), ¶ 6. *As of the filing of this motion, the Class greeted*
12 *news of the Settlement with near unanimous approval as, at the time of the filing of this motion, 357*
13 *Class Members chose to participate in the Settlement.*³ There is one opt-out and zero objections to the
14 Settlement. ILYM Dec., ¶¶ 10-11. The near-unanimous approval by the Class evidences the clear
15 fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

16 An objective evaluation of the proposed settlement of Nine Hundred Thousand Dollars and Zero
17 Cents (\$900,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the
18 Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-
19 collusive negotiations, between experienced counsel, and presided over by Tripper Ortman, Esq., a
20 highly respected mediator of wage-and-hour class and representative actions. After deducting any
21 Court-approved attorneys’ fees and costs, class representative incentive payments, administration costs,
22 and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund

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

25 ² As of the filing of this Motion, the Response Deadline has not passed. Additional opt-outs may be received prior to the
May 2, 2023, Response Deadline.

26 ³ As of this date, a total of 18 Class Notices were returned to ILYM Group by the Post Office, of which 2 had a forwarding
27 address. For the 16 Class Notices without forwarding addresses, ILYM Group performed an advance address search (i.e. skip
28 trace) to locate an updated address using Accurant. ILYM Group used the Class Member’s name and previous address to
locate an updated address. Through the advance address searches, ILYM Group was able to locate 8 updated addresses.
Ultimately, there were 8 Class Notices that were undeliverable. Altogether, ILYM Group re-mailed 10 Class Notices to either
newfound addresses or forwarding address. ILYM Dec. at ¶¶ 7.

1 shall be distributed to the Participating Class Members based on the number of Workweeks they
2 performed services for Defendants during the Class Period. JCL Dec., ¶ 8.

3 This Settlement provides substantial recovery to Participating Class Members. Plaintiffs estimate
4 that the Settlement, if approved, would result in a Net Settlement Amount of approximately
5 **\$470,000.00**. This will result in an average Individual Class Payment of **\$1,316.58**, and a high payment
6 of **\$3,406.86**. PAGA Settlement Class Members will additionally receive an estimated average gross
7 payment of **\$34.92** and a high payment of **\$78.90**. JCL Dec., ¶ 9; ILYM Dec. at ¶ 15.

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 Participating Class Members will not have to
11 wait (possibly years) for relief, nor will they have to bear the risks associated with prolonged and
12 uncertain litigation. JCL Dec., ¶ 10.

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 Agreement
16 and entry of the proposed Final Approval Order and Judgment. JCL Dec., ¶ 11.

17 **II. OVERVIEW OF THE LITIGATION**

18 Defendants provided services at a federal Border Crisis Covid-19 emergency response facility in
19 Pomona, California that utilized a workforce of healthcare professionals to assist in emergency intake
20 and medical care of migrant children coming out of United States Customs and Border Protection
21 custody, in Los Angeles County, where Plaintiffs performed services. Plaintiff Latisha Anderson
22 worked for Defendants from June of 2021 to July of 2021. Declaration of Latisha Anderson (“LA Dec.”)
23 at ¶ 4. Plaintiff Melody James worked for Defendants from April of 2021 to July of 2021. Declaration
24 of Melody James (“MJ Dec.”) at ¶ 4. Plaintiff Sarah Baxley worked for Defendants from August of
25 2021 to July of 2021. Declaration of Sarah Baxley (“SB Dec.”). Plaintiff Jason Anderson worked for
26 Defendants from May of 2021 to July of 2021. Declaration of Jason Anderson (“JA Dec.”). Plaintiffs
27 were paid hourly for their services. Plaintiffs allege that they were employees of Defendants and were
28

entitled to legally compliant meal and/or rest periods, minimum, regular, and overtime wages, and legally compliant meal and rest periods. Plaintiffs also allege that they were subject to Defendants' written policies and procedures contained in, among other documents, the "Client Services Agreement." JCL Dec., ¶ 9; LA Dec., at ¶¶ 2-4; MJ Dec., at ¶¶ 2-4; JA Dec., ¶ 2-4; SB Dec., ¶ 2-4.

As detailed in the motion for preliminary approval, Defendants forcefully deny liability for each of Plaintiffs' claims, including arguing that all of the class members were properly classified as independent contractors. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs' claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 13.

On September 20, 2021, Plaintiff Latisha Anderson served Defendant Barton and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Latisha Anderson's PAGA Notice set forth the facts and theories supporting Defendant Barton's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code sections 2698 *et seq* ("PAGA"). JCL Dec., ¶ 14.

As detailed in the motion for preliminary approval, on November 24, 2021, Plaintiff Latisha Anderson filed a class action complaint in the Los Angeles County Superior Court, Case No. 20STCV43314 ("Action"). The Action alleged nine causes of action against Defendant Barton. On January 5, 2022, Defendant Barton filed a notice of removal of the action to the Central District of California. JCL Dec., ¶¶ 16-17.

On January 11, 2022, Plaintiff Baxley filed a class action complaint in the Los Angeles Superior Court ("Baxley Action") alleging six causes of action against Defendant Barton. On February 14, 2022, Defendant Barton filed a notice of removal of the action to the Central District of California. JCL Dec., ¶¶ 19-20.

On February 14, 2022, Plaintiff Jason Anderson filed an Action against Defendants Barton and SMS ("Jason Anderson Action") alleging a single cause of action for violation of PAGA. On May 20,

2022, Barton filed a Demurrer to the Complaint. On July 19, 2022, the Court sustained Barton’s Demurrer with leave to amend. JCL Dec., ¶ 21.

On November 15, 2022, Plaintiffs filed a Second Amended Complaint (the “Operative Complaint”) in the Latisha Anderson Action in the Los Angeles Superior Court to add Plaintiff Jason Anderson, Plaintiff Baxley, and Plaintiff James as named Plaintiffs, add Safety Management Systems, LLC (hereinafter, “SMS”) as a Defendant, and add Plaintiffs’ Jason Anderson’s and Baxley’s claims. JCL Dec., ¶ 22.

The Parties agreed relatively early to mediate the Action. To prepare for mediation, the Parties agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to, all of the Class Members’ time data and certain payroll data points. As discussed *infra*, Class Counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 23.

On July 29, 2022, the Parties participated in a full day mediation with Tripper Ortman, Esq., a highly regarded wage and hour class and representative action mediator. After arms-length negotiations and bargaining, the Parties reached an agreement to settle 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., ¶ 24.

On February 2, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On March 2, 2023, the Settlement Administrator mailed Notice Packets to all 358 Class Members. ILYM Dec., ¶ 6. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Class Members to submit requests for exclusion or objections to the Settlement. The response from the Class to the Settlement was outstanding – as of the filing of this motion, 99.72% of the Class Members are participating in the Settlement. ILYM Dec., ¶ 10.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00) based on a total of an estimated 4,005 Workweeks during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Class Payments; (2)

1 to satisfy the Class Representative Service Payment; (3) to satisfy the Class Counsel Fees and Litigation
2 Expenses Payment; (4) to satisfy the PAGA Penalties; and (5) to satisfy the Administration Expenses
3 Payment incurred in this action. JCL Dec., ¶ 25.

4 Defendants will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
5 Settlement Fund within five (5) business days after the Effective Date. Agreement, § 4.3. The
6 Settlement Administrator shall disburse the Individual Class Payments and Individual PAGA Payment
7 to the Participating Class Members and/or PAGA Settlement Class Members no later than fourteen (14)
8 calendar days after Defendants fund the Gross Settlement Amount. Agreement, § 4.4. The Settlement
9 Administrator will calculate Individual Class Payments by dividing the Net Settlement Amount by the
10 total number of Workweeks worked by all Participating Class Members during the Class Period and
11 multiplying the result by each Participating Class Member's Workweeks. Agreement, § 3.2.4. The
12 estimated average Individual Class Payment is approximately **\$ 1,316.58**. JCL Dec., ¶ 26; ILYM Dec.,
13 ¶ 15.

14 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
15 the Participating Class Members will release the Defendants from the Released Class Claims and
16 Released FLSA Claims that accrued during the Class Period. Agreement at §§ 1.40, 1.42, 5.3. The
17 PAGA Settlement Class Members, the LWDA, and the State of California will release the Defendants
18 from the Released PAGA Claims for the PAGA Period. Agreement at §§ 1.41, 5.4.

19 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Administration
20 Expenses Payment include those expenses of effectuating and administering the Settlement, i.e., the
21 costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
22 administering and disbursing the Individual Class Payments, and the fees of the Settlement
23 Administrator approved for reimbursement by the court. The Settlement Administrator expenses are
24 \$9,980.00. ILYM Dec., ¶ 13. These expenses shall be paid from the Gross Settlement Amount.
25 Agreement, § 3.2.3.

26 Subject to Court approval, Class Counsel shall seek a Class Counsel Fees and Litigation Expenses
27 Payment in the amount of \$ \$330,000.00, comprised of attorneys' fees equal to one-third of the Gross
28

Settlement Amount estimated to be at least \$ \$300,000.00 and up to \$30,000 for actually incurred litigation expenses. Class Counsel is to split the fees 27.5% to JCL Law Firm, APC, 22.5% to Hartounian Law Firm, P.C., 22.5% to Law Offices of Corbett H. Williams, and 27.5% to Zakay Law Group, APLC. Agreement, § 1.6. The Agreement also provides for a Class Representative Service Payment in the amount of \$40,000, with \$10,000 allocated to each Plaintiff, in consideration of their time, risk, and efforts as the Class Representatives on behalf of the Class and, with respect to Plaintiffs James and Baxley, a general release. Agreement, §§ 1.13; 3.2.1; 5.2.

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the near-unanimous approval of the Settlement by the Class, the absence of any objections to the Settlement and the average Individual Class Payment of \$ 1,316.58. ILYM Dec., ¶¶ 10-11; JCL Dec., ¶ 27.

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

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

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

1 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for
2 upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

14 V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

20 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*
21 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial court should
22 consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of
23 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of
24 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
25 completed and the stage of the proceedings, the experience and views of counsel, the presence of a
26 governmental participant, and the reaction of the class members to the proposed settlement.' [Citations.]"
27 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128; *see also Munoz v. BCI Coca-Cola*
28

1 *Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.

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

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

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

12 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
13 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
14 assessed the value of the class claims using data and documents provided by Defendants through
15 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
16 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
17 Class Counsel retained Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data
18 to formulate damage models estimating Defendants’ liability exposure. Class Counsel’s investigation,
19 research, experience, and damage models informed and guided the mediated negotiations that resulted
20 in this settlement. Accordingly, Class Counsel fully understood the strengths and weaknesses of the
21 class claims before the parties reached a settlement. JCL Dec., ¶ 28-33.

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

23 On July 29, 2022, the Parties conducted a full-day mediation with Tripper Ortman, Esq., a highly
24 regarded wage and hour class and representative action mediator. Mediator Ortman helped to manage
25 the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both sides.
26 The Parties made substantial progress with Mediator Ortman’s assistance. Namely, the Parties
27 exchanged information regarding their respective claims and defenses, including their respective
28

1 evaluations of the damages. After arms-length negotiations and bargaining, the Parties reached an
2 agreement to settle and signed a Memorandum of Understanding. The amount of the service awards
3 was not negotiated until after the parties agreed to the Gross Settlement Amount and many other terms.
4 No action would likely have been taken by Class Members individually, and no compensation would
5 have been recovered for them, but for Plaintiffs' service on behalf of the Class. JCL Dec., ¶ 34.

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

7 Class Counsel in this matter has extensive class action experience in multiple fields and has
8 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
9 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
10 similar wage and hour class actions throughout the State of California. As such, courts throughout
11 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
12 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
13 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 35-41; Declaration
14 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

16 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
17 dissemination of the notice to the Class Members, which provided each Class Member with the terms
18 of the Settlement, including the specific estimated Individual Class Payments. As of the filing of this
19 motion, one of the 358 members of the Class opted-out of the Settlement. Moreover, there are zero
20 objections. Stated differently, 99.72% of the Class chose to participate in the Settlement. JCL Dec., ¶
21 8; ILYM Dec., ¶¶ 12-13.

22 The near-unanimous approval by the Class strongly supports a finding that the Settlement is fair,
23 reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y. 2000) 80
24 F.Supp.2d 164, 175 ("If only a small number of objections are received, that fact can be viewed as
25 indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d
26 115, 118-119 (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
27 *Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed
28

1 settlement should be considered when determining fairness of settlement.). Consequently, Class
2 Counsel respectfully request the Court to follow the near-unanimous approval of the Class and grant
3 final approval of the Settlement.

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

5 The Gross Settlement Amount of Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00)
6 in this case is fair and well within the range of recognized reasonableness. The *Kullar* court
7 acknowledged that “as the court does when it approves a settlement as in good faith under Code of Civil
8 Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the
9 ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
10 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

11 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
12 provides a sizeable recovery to the Class and need not necessarily obtain 100 percent of the damages
13 sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250. While the
14 Gross Settlement Amount of Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00) represents
15 a discount on Defendants’ potential exposure if Plaintiffs established liability on all claims and were
16 awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1)
17 the formidable defenses raised by Defendants presented a risk that could award significantly less in
18 damages than Plaintiffs’ estimate and (2) any theoretical post-trial recovery may require many more
19 years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class.
20 JCL Dec., ¶ 42.

21 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
22 reasonable considering the nature and magnitude of the claims being settled and the various potential
23 impediments to recovery. Class Counsel developed varied economic damages models measuring
24 Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The
25 various models were informed by Class Counsel’s investigation, including the analysis of a significant
26 sample of time and payroll data. As detailed in greater depth during the preliminary approval process,
27 Class Counsel projected a range of Defendants’ liability exposure for the claims asserted on behalf of
28

the Class. The Gross Settlement Amount represents between approximately 13.4% and 27% of Defendants' *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 43.

In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court 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 reasonable⁴.

The calculation methodology used to compensate the 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 Participating Class Member performed services for Defendants during the Class Period. The number of Workweeks for the Participating 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 services were performed by all Participating Class Members during the Class Period and multiplying the result by each Participating Class Member's Workweeks. This process establishes an objectively fair and reasonable procedure to compensate the Class. Agreement, § 3.2.4.

The settlement also provides significant relief to the Participating Class Members. After deductions for the Class Counsel Fees and Litigation Expenses Payment, Administration Expenses Payment, the PAGA Penalties, and the Class Representative Service Payment, the Net Settlement

⁴ 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.").

Amount is currently estimated to be **\$470,020.00**. ILYM Dec., ¶ 10. The average settlement payment is approximately **\$1,316.58**, and the highest is approximately **\$3,406.86**. 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) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (LA. 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 its 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., ¶ 44.

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 its defenses, Defendants could defend the action or, at least, drastically undercut Plaintiffs' claims. JCL Dec., ¶ 45. 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

1 expense and possible duration of the litigation should be considered in
2 evaluating the reasonableness of [a] settlement.

3 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
4 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.*
5 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
6 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
7 to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir.
8 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S.*
9 *Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage
10 and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he
11 reason, if any, that employees might not take their breaks were predominantly individualized questions
12 of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341
13 (affirming denial of certification because employees’ declarations attesting to having taken meal and
14 rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*
15 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
16 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy);
17 *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver
18 meal and rest period claims based on the predominance of individual issues). Collectively, the examples
19 cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining
20 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 46.

21 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
22 recognize that Defendants have factual and legal defenses that, if successful, would potentially defeat
23 or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
24 drastically affect the value of Plaintiffs’ claims and, in fact, already has. JCL Dec., ¶ 47.

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

28 **Plaintiffs may have a strong case, but the risks inherent in continued**

1 **litigation are great.** Defendants strongly deny liability for Plaintiffs'
2 principal claim that full-time Service Associates were misclassified as
3 exempt. In addition to the uncertainties raised by Defendants at the
4 preliminary stage regarding Plaintiffs' chance of success in this case,
5 Defendants notes that the question of an employer's duty to provide rest and
6 meal periods is an open one, signaling even less certainty for
7 Plaintiffs.....[T]he **Total Settlement amount and the Class Members'**
8 **expected net recovery, after fees and other costs are deducted, appear**
9 **to be a reasonable compromise, in light of the risks of litigation.**

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

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

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

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

25 In sum, while other cases have approved class certification in wage and hour claims, class
26 certification in this action would have been hotly disputed and was by no means a foregone conclusion.
27 Where both sides face significant uncertainty, as here, the attendant risks favor settlement. *Hanlon v.*
28 *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 Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post
a bond and appeal. A post-judgment appeal by Defendants would have required many more years to
resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case

1 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
2 an uncertain result three or more years in the future. JCL Dec., ¶ 48.

3 The Class Representatives and Class Counsel recognize the expense and length of a trial against
4 Defendants through possible appeals which could take another three years. In arriving at their informed
5 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
6 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
7 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
8 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
9 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
10 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
11 non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives and Class
12 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
13 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 49.

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

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

25 Here, Plaintiffs and Defendants negotiated a good faith PAGA Penalties in the amount of \$50,000
26 which is 5.5% of the Gross Settlement Amount. As illustrated above, this amount falls well within the
27 range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Penalties (\$37,500.00)
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1 will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the
2 PAGA Penalties (\$12,500.00) to be distributed to the PAGA Settlement Class Members, which is within
3 the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 50.

4 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy
5 of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the
6 LWDA. JCL Dec., ¶¶ 5-6, 51. By not registering an objection with either Class Counsel or the Court,
7 the LWDA has accepted and approved of the proposed PAGA Penalties.

8 **VII. CONCLUSION**

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

12
13 Dated: April 3, 2023

JCL LAW FIRM, APC

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15 By: 
16 Jean-Claude Lapuyade, Esq.
17 Attorneys for Plaintiffs
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