

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

Attorneys for Plaintiffs DEVIN TERRELL, NESHA SHEDD, and SUSAN BUSTOS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

DEVIN TERRELL, NESHA SHEDD AND
SUSAN BUSTOS, individuals, on behalf of
themselves, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

KAISERAIR, INC., a California corporation;
and DOES 1 through 50, Inclusive.

Defendant.

Case No. RG21113701

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

Date: November 17, 2023

Time: 9:00 a.m.

Judge: Hon. Evelio Grillo

Dept.: 21

Reservation ID: 257718508062

TABLE OF CONTENTS

I. INTRODUCTION	1
II. OVERVIEW OF THE LITIGATION	2
III. THE SETTLEMENT BEFORE THE COURT	4
IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	5
V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	7
A. Class Counsel Conducted a Thorough Investigation	7
B. The Parties Settled Following Mediation	8
C. Class Counsel is Experienced in Similar Litigation	8
D. The Class Responded Positively to the Settlement	9
E. The Gross Settlement Amount is Fair and Reasonable	9
F. The Strength of Plaintiff's Case and Risks of Continued Litigation	11
VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE	14
VII. CONCLUSION	15

TABLE OF AUTHORITIES

CASES

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

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

RULES, CODES, AND STATUTES

14	<i>Cal. Bus. & Prof. Code</i> §§ 17200.....	3
15	<i>Cal. Lab. Code</i> § 1194.....	3
16	<i>Cal. Lab. Code</i> § 1197.....	3
17	<i>Cal. Lab. Code</i> § 1197.1.....	3
18	<i>Cal. Lab. Code</i> § 201.....	3
19	<i>Cal. Lab. Code</i> § 202.....	3
20	<i>Cal. Lab. Code</i> § 203.....	3
21	<i>Cal. Lab. Code</i> §§ 2698, <i>et seq.</i>	3
22	<i>Cal. Lab. Code</i> § 2802.....	3
23	<i>Cal. Lab. Code</i> § 226.....	3
24	<i>Cal. Lab. Code</i> § 226.7.....	3
25	<i>Cal. Lab. Code</i> §§ 510 <i>et seq.</i>	3
26	<i>Cal. Lab. Code</i> § 512.....	3
27	<i>Cal. Code of Civ. Proc.</i> § 877.6.....	9

SECONDARY SOURCES

25	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992) §11.41, pp. 11-91	
26		6

1 I. INTRODUCTION

2 Plaintiffs DEVIN TERRELL (“Plaintiff Terrell”), NESHA SHEDD (“Plaintiff Shedd”) and
3 SUSAN BUSTOS (“Plaintiff Bustos”) (hereinafter collectively referred to as “Plaintiffs”) seek final
4 approval of the Amended Class Action and PAGA Settlement Agreement (“Agreement”)¹, which if
5 approved, would provide valuable monetary relief for 337 Participating Class Members employed by
6 Defendant KAISERAIR, INC., (hereinafter, “Defendant”) during the Class Period.

7 In an order dated June 30, 2023, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 6. On August
9 7, 2023, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
10 Declaration of Makenna Snow (“ILYM Dec.”), ¶ 8.

11 *The Class greeted news of the Settlement with nearly unanimous approval.* There are zero
12 objections and only two opt-outs to the Settlement. ILYM Dec., ¶¶ 12-13. The **99.41%** approval by the
13 Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 10.

14 An objective evaluation of the proposed settlement of One Million Two Hundred Thousand
15 Dollars and Zero Cents (\$1,200,000.00) (“Gross Settlement Amount”) confirms that the relief
16 negotiated on behalf of the Participating Class Members is fair, reasonable, and valuable. The
17 Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced
18 counsel, and presided over by Steven J. Rottman, Esq. After deducting any Court-approved attorneys’
19 fees and costs, Class Representative Service Payment, administration costs, and the payments to the
20 Labor & Workforce Development Agency (“LWDA”), the Net Settlement Amount shall be distributed
21 to Participating Class Members based on the number of Workweeks they were employed by Defendant
22 during the Class Period. JCL Dec., ¶ 10.

23 This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations.
24 Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of
25 approximately \$685,800.00. This will result in an average Individual Settlement Payment of **\$2,047.16**
26 and high payment of **\$5,352.02**. JCL Dec., ¶ 11; ILYM Dec. at ¶ 17.

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

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

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

10 **II. OVERVIEW OF THE LITIGATION**

11 Defendant is a California corporation that provides aircraft management services throughout the
12 State of California, including in Alameda County, where Plaintiffs worked. This action asserts claims
13 on behalf of Defendant's non-exempt employees working in California. Plaintiff Terrell worked for
14 Defendant as a non-exempt employee in California from December 2016 to March 2021. Plaintiff
15 Shedd has worked for Defendant as a non-exempt employee in California since October of 2017.
16 Plaintiff Bustos worked for Defendant as a non-exempt employee in California from August of 2009
17 to March of 2022. At all times during their employment, Plaintiffs earned an hourly wage, including
18 overtime, and were entitled to legally compliant meal and/or rest periods. Throughout their
19 employment, Plaintiffs were subject to Defendant's written policies and procedures. JCL Dec., ¶ 14.

20 Generally, Plaintiffs claim that Defendant failed to provide compliant meal and rest periods,
21 failed to pay overtime and sick pay at the correct regular rate of pay, failed to furnish accurate itemized
22 wage statements, failed to pay all wages when due and failed to reimburse employees for mandatory
23 business expenses. Defendant forcefully denies liability for each of Plaintiffs' claims. Further,
24 Defendant asserts that it fully complied with all applicable employment laws and raised several other
25 significant defenses to Plaintiffs' claims, including but not limited to, facially compliant meal and rest
26 period policies, compliant wage statements, and timely payment all wages due upon separation of
27 employment. JCL Dec., ¶ 15.

28 On July 19, 2021, Plaintiff Terrell filed a Notice of Violations ("PAGA Notice") with the Labor

1 and Workforce Development Agency (“LWDA”) and served the same on Defendant. On December 27,
2 2022, Plaintiffs filed an Amended PAGA Notice with the LWDA and served the same on Defendant.
3 Plaintiffs’ PAGA Notices set forth the facts and theories supporting Defendant’s alleged violations of
4 various California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order
5 and of their intent to pursue claims under the California Labor Code Private Attorneys General Act,
6 Cal. Lab. Code sections 2698, *et seq.* (“PAGA”). JCL Dec., ¶ 16.

7 On September 23, 2021, Plaintiff Terrell filed a class action complaint in the Alameda Superior
8 Court, Case Number RG21113701. The class action complaint alleged ten causes of action against
9 Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§
10 17200; (2) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (3)
11 Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and 1197.1; (4)
12 Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure
13 to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to
14 Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to
15 Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (8) Failure to Pay
16 Sick Pay at the Correct Regular Rate of Pay in Violation of Cal. Lab. Code § 246, *et seq.*; (9) Failure
17 to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203; and (10) Violation
18 of the Private Attorneys General Act [Labor Code §§ 2698 *et seq.*]. On February 10, 2023, Plaintiffs
19 filed the operative First Amended Complaint, adding Plaintiff Shedd and Plaintiff Bustos to the Action.
20 JCL Dec., ¶ 17.

21 Plaintiffs and Defendant agreed to mediate the Action with Steven J. Rottman, Esq., an
22 experienced wage and hour mediator. In anticipation of mediation, the Parties agreed to stay formal
23 discovery and continue deadlines related to class certification in the Action. To prepare for mediation,
24 Defendant agreed to informally produce documents and data points subject to the mediation privilege,
25 including but not limited to, a sample of the Class Members’ time and payroll records. As discussed
26 *infra*, Plaintiffs’ counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to
27 analyze Defendant’s time and payroll data. JCL Dec., ¶ 18.

28 On November 18, 2022, the Parties participated in a full day mediation with Mr. Rottman. After

1 arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a
2 Memorandum of Understanding. Subsequently, the Parties drafted and negotiated a long-form
3 settlement agreement, which is the subject of the instant motion. The Parties now seek approval of the
4 entire Agreement. JCL Dec., ¶ 19.

5 On June 30, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 6. On
6 August 7, 2023, the Settlement Administrator mailed Notice Packets to all 337 Class Members. ILYM
7 Dec., ¶ 8. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the
8 Class to submit requests for exclusion or objections to the Settlement. The response from the Class to
9 the Settlement was outstanding – **99.41%** of the Class Members are participating in the Settlement.
10 ILYM Dec., ¶ 15.

11 **III. THE SETTLEMENT BEFORE THE COURT**

12 The Court preliminarily approved an initial Gross Settlement Amount of One Million Two
13 Hundred Thousand Dollars and Zero Cents (\$1,200,000.00) based on a total of an estimated 35,288
14 workweeks that the Class were employed during the Class Period. The Gross Settlement Amount shall
15 be used: (1) Individual Class Payments; (2) Individual PAGA Payments; (3) the LWDA PAGA
16 Payment; (4) Class Counsel Fees Payment; (5) Class Counsel Litigation Expenses; (6) Class
17 Representative Service Payments; and (7) the Administration Expenses Payment. JCL Dec., ¶ 20.

18 Defendant will fund the Settlement by transferring the Gross Settlement Amount to the
19 Administrator no later than fifteen (15) days after the Effective Date. Agreement, ¶ 4.3. Within twenty-
20 five (25) days after the “effective date” of final approval of the settlement, the Administrator will issue
21 checks for the Individual Class Payments and/or Individual PAGA Payments. Agreement, ¶ 4.4. The
22 Administrator will calculate Individual Class Payments by adding up the total number of Workweeks
23 for all Participating Class Members. The Administrator will then divide the Net Settlement Amount of
24 the Workweek Total, resulting in a Workweek Value for each Participating Class Member. Each
25 Workweek Value is then multiplied by the number of Workweeks of all Participating Class Members to
26 calculate each estimated Individual Class Payment. Agreement, ¶ 3.2.4. The estimated average
27 Individual Class Settlement Payment is approximately **\$2,047.16**. ILYM Dec., ¶ 17. Class Members
28 must cash their checks within 180 days after the date of mailing. Agreement, ¶ 4.4.1. For Class Members

1 who do not cash their Individual Class and/or Individual PAGA Payment checks within the check-
2 cashing deadline, the Administrator will transmit the funds from said checks to the Children Advocacy
3 Institute (CAI), a cy pres. Agreement, ¶ 4.4.3. JCL Dec., ¶ 21.

4 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
5 each Participating Class Member will release the Released Parties from the Released Class Claims that
6 accrued during the Class Period. Agreement, ¶ 6.3. In exchange for valuable consideration, as of the
7 funding of the Gross Settlement Amount, Plaintiffs, as agents and proxies of the LWDA, and the LWDA,
8 will release the Released Parties from the Released PAGA Claims that accrued during the PAGA Period.
9 Agreement, ¶ 6.4.

10 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. The
11 Administration Expenses include those expenses of effectuating and administering the Settlement, i.e.,
12 the costs incurred by the Settlement Administrator, the costs of giving notice to the Class, the costs of
13 administering and disbursing the Individual Class Payments, and the fees of the Settlement
14 Administrator approved for reimbursement by the court. The Administrator expenses are \$9,200. ILYM
15 Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ 1.24.

16 Subject to Court approval, Class Counsel shall seek a Class Counsel Fees and Litigation Expenses
17 Payment in the amount of \$425,000.00 comprised of attorneys' fees equal to one-third (33.33%) of the
18 Gross Settlement Amount estimated to be at least \$400,000.00 and up to \$25,000² for actually incurred
19 litigation expenses. Agreement, ¶ 3.2.2. Plaintiffs' counsel is to split the fees 50% to the JCL Law Firm,
20 APC, and 50% to the Zakay Law Group, APLC. Agreement, ¶ 1.8. The Agreement also provides for
21 Class Representative Service Payments in the amount of \$5,000 to Plaintiff Terrell, \$5,000 to Plaintiff
22 Shedd, and \$10,000 to Plaintiff Bustos, in consideration of their time, risk, and efforts as the Class
23 Representatives on behalf of the Class. Agreement, ¶ 3.2.1.

24 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
25 and should be granted final approval. This is evidenced by the nearly unanimous approval of the
26

27 ² The Settlement Agreement provides that Class Counsel is to be reimbursed for actually incurred litigation expenses of up
28 to \$25,000. See Agreement at ¶ 3.2.2. However, the Class Notice informed Class Members that Class Counsel would seek
up to \$20,000 for reimbursement of actually incurred litigation expenses. In light of this discrepancy, the Parties have agreed
that Class Counsel will only seek reimbursement of up to \$20,000 for actually incurred litigation expenses.

Settlement by the Class, the absence of any objections to the Settlement and the average Individual Settlement Payment of \$2,047.16. ILYM Dec., ¶¶ 15, 17; JCL Dec., ¶ 22.

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, 2246 (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 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

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

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

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

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

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

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

1 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
2 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
3 assessed the value of the class claims using data and documents provided by Defendant through
4 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
5 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
6 Class Counsel retained BCG to analyze Defendant's time and payroll data to formulate damage models
7 estimating Defendant's liability exposure. Class Counsel's investigation, research, experience, and
8 damage models informed and guided the mediated negotiations that resulted in this settlement.
9 Accordingly, Plaintiffs' Counsel fully understood the strengths and weaknesses of the class claims
10 before the parties reached a settlement. JCL Dec., ¶ 23-30.

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

12 On November 18, 2022, the Parties conducted a full day mediation with Steven J. Rottman, Esq.,
13 an experienced wage and hour mediator. Mediator Rottman helped to manage the Parties' expectations
14 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
15 progress with Mediator Rottman's assistance. Namely, the Parties exchanged information regarding
16 their respective claims and defenses, including their respective evaluations of the damages. After more
17 than eight hours of arm's length and adversarial negotiations, the mediation concluded with a
18 settlement. The amount of the Class Representative Service Payment was not negotiated until after the
19 parties agreed to the Gross Settlement Amount and many other terms. JCL Dec., ¶ 31. No action would
20 likely have been taken by Class Members individually, and no compensation would have been
21 recovered for them, but for Plaintiffs' service on behalf of the Class.

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

23 Class Counsel in this matter has extensive class action experience in multiple fields and has
24 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
25 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
26 similar wage and hour class actions throughout the State of California. As such, courts throughout
27 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
28 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement

1 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 32-38; Declaration
2 of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3.

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

4 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
5 dissemination of the notice to the Class, which provided each class member with the terms of the
6 Settlement, including the specific estimated Individual Class Settlement Payments. To date, only two
7 of the 337 members of the Class opted out of the Settlement. Moreover, there are zero objections.
8 Stated differently, 99.41% of the Class chose to participate in the Settlement. JCL Dec., ¶ 10; ILYM
9 Dec., ¶¶ 11-15.

10 The nearly unanimous approval by the Class strongly supports a finding that the Settlement is
11 fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y.
12 2000)80 F.Supp.2d 164, 175 (“If only a small number of objections are received, that fact can be viewed
13 as indicative of the adequacy of the settlement.”); *Stoetznier v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d
14 115, 118-119 (29 objections out of 281 member class “strongly favors settlement”); *Laskey v. Int’l*
15 *Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed
16 settlement should be considered when determining fairness of settlement.). Consequently, Class
17 Counsel respectfully requests the Court to follow the nearly unanimous approval of the Class and grant
18 final approval of the Settlement.

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

20 The Gross Settlement Amount of One Million Two Hundred Thousand Dollars and Zero Cents
21 (\$1,200,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
22 court acknowledged that “as the court does when it approves a settlement as in good faith under Code
23 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
24 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
25 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

26 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
27 provides a sizeable recovery to the Participating Class Members and need not necessarily obtain 100
28 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91

Cal.App.4th at 250. While the Gross Settlement Amount of One Million Two Hundred Thousand Dollars and Zero Cents (\$1,200,000.00) represents a discount on Defendant's potential exposure if Plaintiffs established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award significantly less in damages than Plaintiffs' estimate and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 39.

As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. Detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on behalf of the Class. The Gross Settlement Amount represents between approximately 15.2% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 40.

In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, 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 reasonable.³

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.").

1 The calculation methodology used to compensate the Participating Class Members for the alleged
2 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
3 objective, and impartial. The calculation methodology is based on the number of Workweeks each
4 Participating Class Member was employed for Defendant during the Class Period. The number of
5 Workweeks for the Participating Class Member is established through Defendant's data and documented
6 compensation records. The Settlement Administrator is responsible for calculating the Individual Class
7 Payments by multiplying the Workweek Value for each Participating Class Member by the Net
8 Settlement Amount. The Settlement Administrator will calculate the payment ratio by dividing the total
9 number of Workweeks for each Participating Class Member by the total number of Workweeks for all
10 Participating Class Members. This process establishes an objectively fair and reasonable procedure to
11 compensate the Class. Agreement at ¶ 3.2.4. JCL Dec., ¶ 42.

12 The settlement also provides significant relief to the Participating Class Members. After
13 deductions for the Class Counsel Attorneys' Fees and Litigation Expenses Payment, Administration
14 Expenses, Individual PAGA Payments, the LWDA PAGA Payment, and the Class Representative
15 Service Awards, the Net Settlement Amount is currently estimated to be \$685,800. ILYM Dec., ¶ 15.
16 The average settlement payment is approximately **\$2,047.16** and the highest is approximately **\$5,352.02**.
17 ILYM Dec., ¶ 17. Additionally, Defendant must separately fund its share of any employer side payroll
18 taxes. Agreement, ¶ 4.3. JCL Dec., ¶ 43.

19 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
20 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
21 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
22 JCL Dec., ¶ 44.

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

24 Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to ignore
25 the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or,
26 at least, drastically undercut Plaintiffs' claims. JCL Dec., ¶ 46. As the federal court in *Glass v. UBS*
27 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
28 litigation:

1 ***In light of the above-referenced uncertainty in the law, the risk, expense,***
2 ***complexity, and likely duration of further litigation likewise favors the***
3 ***settlement.*** Regardless of how this Court might have ruled on the merits of
4 the legal issues, the losing party likely would have appealed, and the parties
5 would have faced the expense and uncertainty of litigating an appeal. The
6 expense and possible duration of the litigation should be considered in
7 evaluating the reasonableness of [a] settlement.

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

27 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
28 recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat or
29 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
30 drastically affect the value of Plaintiffs’ claims and, in fact, already has. JCL Dec., ¶ 46.

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

4 **Plaintiffs may have a strong case, but the risks inherent in continued**
5 **litigation are great.** Defendants strongly deny liability for Plaintiffs'
6 principal claim that full-time Service Associates were misclassified as
7 exempt. In addition to the uncertainties raised by Defendants at the
8 preliminary stage regarding Plaintiffs' chance of success in this case,
9 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.

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
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.

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

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

26 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber*
27 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
28

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

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

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

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

1 Here, Plaintiffs and Defendant negotiated a good faith PAGA Penalties in the amount of
2 \$60,000 which is 5% of the Gross Settlement Amount. As illustrated above, this amount falls well
3 within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA Penalties
4 (\$45,000) will be paid to the LWDA ("LWDA PAGA Payment") with the remaining twenty-five
5 percent (25%) of the PAGA Penalties (\$15,000) to be distributed to the Aggrieved Employees
6 ("Aggrieved Employees Payment"), which is within the range of PAGA penalties approved by courts
7 and should be approved. JCL Dec., ¶ 49.

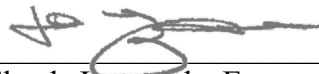
8 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
9 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
10 with the LWDA. JCL Dec., ¶¶ 5-6. By not registering an objection with either Class Counsel or the
11 Court,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

12 VII. CONCLUSION

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

16
17 Dated: October 25, 2023

JCL LAW FIRM, APC

18 By: 
19 Jean-Claude Lapuyade, Esq.

20 Attorney for Plaintiff
21
22
23
24
25
26
27
28