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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

JEAN-LOUIS CHALAYE, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

vs.

PRIDE TRANSPORT, INC., a Corporation; and
DOES 1 through 50, Inclusive,

Defendants.

Case No. STK-CV-UOE-2021-2766

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

Hearing Date: April 20, 2023
Hearing Time: 9:00AM

Judge: Hon. Barbara A. Kronlund
Dept: 10D

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I. INTRODUCTION

Plaintiffs Jean-Louis Chalaye and Scott Balliet (hereinafter “Plaintiffs”) seek final approval of the Class and Collective Action Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for 1,591 Class Members² employed by Defendant Defendant Pride Transport, Inc. (hereinafter “Defendant”).

In an order dated December 16, 2022, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Shani O. Zakay (“Zakay Dec.”), ¶ 20. On January 20, 2023, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Stephen Gomez (“Simpluris Dec.”), ¶ 7. ***The Class greeted news of the Settlement with 99.88% approval.*** There are two opt-outs and zero objections to the Settlement. Simpluris Dec., ¶¶ 14-15. The high approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. Zakay Dec., ¶ 21.

An objective evaluation of the proposed settlement of Three Hundred Fifty Thousand Dollars and Zero Cents (\$350,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Tripper Ortman, Esq., a respected mediator of wage and hour class and representative actions. After deducting any Court-approved attorneys’ fees and costs, class representative service awards, settlement administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendant during the Class Period. Zakay Dec., ¶ 11.

This Settlement provides substantial recovery to Class Members. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$166,295.34**. This will result in an average Individual Settlement Payment of **\$104.65**, a high payment of **\$855.90**,

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

² Despite the sheer number of Class Members, only approximately 10% of their work was performed in California, resulting in a relatively small number of shifts covered by the Settlement, which is more so in line with a class size of 100-200 full-time California employees

1 and a low payment of **\$3.54**. Aggrieved Employees will receive an estimated average gross
2 payment of **\$2.67**. Zakay Dec., ¶ 11; Simpluris Dec. at ¶ 11-12.

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

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

12 **II. OVERVIEW OF THE LITIGATION**

13 Defendant provides transportation services throughout the United States, approximately 10%
14 of which is in California. This action asserts claims on behalf of Defendant's truck drivers who are
15 or previously were employed by Defendant and performed work in California and who received
16 piece-rate (cents per mile) compensation for work performed in California during the Class Period.
17 Plaintiffs worked for Defendant as truck drivers at various times during the Class Period. At all
18 times during their employment, Plaintiffs earned piece-rate compensation based on mileage.
19 Throughout their employment, Plaintiffs were subject to Defendant's written policies and
20 procedures. Zakay Dec., ¶ 14.

21 Generally, Plaintiffs claim that Defendant failed to pay for time spent not driving, issued
22 inaccurate itemized wage statements, failed to reimburse for required business expenses, and failed
23 to pay all wages when due. Defendant forcefully denies liability for each of Plaintiffs' claims.
24 Further, Defendant asserts that it fully complied with all applicable employment laws and raised
25 several other significant defenses to Plaintiffs' claims, including but not limited to, facially
26 compliant policies, compliant wage statements, and reimbursement for all required business
27 expenses. Zakay Dec., ¶ 15.

28 On December 30, 2020, Plaintiff Jean-Louis Chalaye served Defendant and the Labor and

1 Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”).
2 Plaintiff Chalaye’s PAGA Notice set forth the facts and theories supporting Defendant’s alleged
3 violations of various provisions of the California Labor Code and applicable Industrial Welfare
4 Commissions (“IWC”) Wage Order. Zakay Dec., ¶ 16.

5 On March 30, 2021, Plaintiff Chalaye filed a class action complaint in the Superior Court of
6 the State of California, County of San Joaquin for: (1) Unfair Competition in Violation of Bus. and
7 Prof. Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§
8 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code
9 §§ 510 *et seq*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7
10 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and
11 512; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code
12 §226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203;
13 (8) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code §§ 2802;
14 and (9) Violation of the Private Attorneys General Act [Lab. Code §§ 2698, *et seq.*]. Zakay Dec., ¶
15 17.

16 On May 13, 2021, Defendant removed the Class Action to the Federal District Court for the
17 Eastern District of California, the Federal Class Action, Case No. 2:21-cv-00881-KJM-JDP. On
18 June 10, 2021, the Parties filed a stipulation to remand the Action back to State Court and for leave
19 to allow Plaintiff to file an amended complaint, which was filed concurrently with the stipulation.
20 On July 7, 2021, the Parties’ Joint Stipulation and Motion for Leave to File First Amended
21 Complaint and Joint Stipulation and Motion to Remand Action to State Court were granted and the
22 First Amended Class Action Complaint was deemed filed. Consequently, the Federal Class Action
23 was remanded to the San Joaquin County Superior Court. Zakay Dec., ¶ 17.

24 Subsequently, the Parties agreed to mediate the Action. In anticipation of mediation, the
25 Parties agreed to stay formal discovery. To prepare for mediation, the Parties agreed to informally
26 exchange relevant documents and data points subject to the mediation privilege. Pursuant to that
27 agreement, Defendant produced a sample of the Class Members’ time and payroll data along with
28 itemized wage statements and relevant policies applicable to Class Members. As discussed *infra*,

1 Plaintiffs’ counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze
2 Defendant’s time and payroll data. Zakay Dec., ¶ 18.

3 On February 1, 2022, the Parties participated in a full day mediation with Tripper Ortman,
4 Esq., an experienced and reputable mediator of wage and hour actions. After arms-length
5 negotiations and bargaining, the Parties reached an agreement to settle based on Mr. Ortman
6 proposal, and signed a Memorandum of Understanding. After reaching an agreement in principle,
7 the Parties negotiated a long-form settlement agreement, which is the subject of the instant motion.
8 Zakay Dec., ¶ 19.

9 On December 16, 2022, this Court granted preliminary approval of the Settlement. Zakay
10 Dec., ¶ 20. On January 20, 2023, the Settlement Administrator mailed Notice Packets to all 1,591
11 Class Members. Simpluris Dec., ¶ 8. The mailing of the Notice Packets triggered a forty-five (45)
12 day Response Deadline for the Settlement Class to submit requests for exclusion or objections to
13 the Settlement. The response from the Settlement Class to the Settlement was outstanding – 98.88%
14 of the Class Members are participating in the Settlement. Simpluris Dec., ¶ 14-15.

15 **III. THE SETTLEMENT BEFORE THE COURT**

16 The Court preliminarily approved an initial Gross Settlement Amount of Three Hundred Fifty
17 Thousand Dollars and Zero Cents (\$350,000.00). The Gross Settlement Amount shall be used: (1)
18 to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Awards;
19 (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the
20 Settlement Administration Costs incurred in this action. Zakay Dec., ¶ 20.

21 Defendant will fund the Gross Settlement Amount within ten (10) calendar days after the
22 Effective Date. Agreement, ¶ III(E)(9). Individual Settlement Payments and Aggrieved Employee
23 Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members’ and/or
24 Aggrieved Employees’ last known mailing address no later than fifteen (15) calendar days after
25 Defendant funds the Gross Settlement Amount. Agreement, ¶ III(E)(9). The Settlement
26 Administrator will calculate Individual Settlement Payments by adding up the total number of
27 Workweeks for all Class Members. The Settlement Administrator will then divide the respective
28 Workweeks for each member of the Settlement Class by the total Workweeks for the entire

1 Settlement Class, resulting in a Payment Ratio for each Class Member. Each Settlement Class
2 Member's Payment Ratio is then multiplied by the Net Settlement Amount to calculate each
3 estimated Individual Settlement Payment. Agreement, ¶ III(C)(2). The estimated average
4 Individual Settlement Payment is approximately **\$104.65**. Zakay Dec., ¶ 21.

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

10 Simpluris was appointed as the Settlement Administrator for the Class. Settlement
11 Administration Costs include those expenses of effectuating and administering the Settlement, i.e.,
12 the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs
13 of administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
14 Administrator approved for reimbursement by the court. The Settlement Administrator expenses
15 are \$15,038. Simpluris Dec., ¶ 17. These expenses shall be paid from the Gross Settlement Amount.
16 Agreement, ¶ III(B)(4).

17 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
18 \$136,666.66, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount
19 estimated to be at least \$116,666.66 and up to \$20,000 for actually incurred litigation expenses.
20 Plaintiffs' counsel is to split the fees 30% to Blumenthal Nordrehaug Bhowmik De Blouw LLP,
21 and 70% to the Zakay Law Group, APLC. Agreement, ¶ I(D). The Agreement also provides for
22 Class Representative Service Awards in the amount of \$20,000, with \$10,000 allocated to each
23 Plaintiff in consideration of their time, risk, and efforts as the Class Representatives on behalf of
24 the Settlement Class. Agreement, ¶¶ I(I); III(B)(1).

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 high approval of the Settlement
27 by the Settlement Class, the absence of any objections to the Settlement and the average Individual
28 Settlement Payment of **\$104.65**. Simpluris Dec., ¶¶ 11; Zakay Dec., ¶ 21.

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 class
10 action requires court approval.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
11 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The
12 court must decide whether the proposed settlement falls within the range of reasonable settlements,
13 considering that settlements are compromises between the parties reflecting subjective,
14 unquantifiable judgments concerning the risks and possible outcomes of litigation. *See also*
15 *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to
16 be judged against a hypothetical or speculative measure of what might have been achieved had
17 plaintiffs prevailed at trial.”). In *Wershba*, appellants argued that the settlement was too low given
18 the “clear” liability, however, the Court rejected this argument and held that “the merits of the
19 underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba*,
20 *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 counsel
25 and the court to act intelligently; (2) the settlement is reached through arm’s-length bargaining; (3)
26 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48
27 Cal.App.4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41,
28 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 settlement,
16 the extent of discovery completed and the stage of the proceedings, the experience and views of
17 counsel, the presence of a governmental participant, and the reaction of the class members to the
18 proposed settlement.’ [Citations.]” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,
19 128; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,
20 408.

21 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
22 Due regard should be given to what is otherwise a private consensual agreement between the parties.
23 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the
24 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating
25 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
26 *Id.* “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate
27 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 claims using data and documents provided by Defendant through
6 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data
7 regarding the number of Class Members, workweeks, and average rate of pay to assess damages
8 before mediation. Class Counsel retained BCG to analyze Defendant's time and payroll data to
9 formulate damage models estimating Defendant's liability exposure. Class Counsel's investigation,
10 research, experience, and damage models informed and guided the mediated negotiations that
11 resulted in this settlement. Accordingly, Plaintiffs' Counsel fully understood the strengths and
12 weaknesses of the class claims before the parties reached a settlement. Zakay Dec., ¶ 22-27.

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

14 On February 1, 2022, the Parties conducted a full-day mediation with Tripper Ortman, Esq.
15 a respected mediator of wage and hour class and representative actions. Mr. Ortman helped to
16 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to
17 both sides. The Parties made substantial progress with Mr. Ortman's assistance. Namely, the Parties
18 exchanged information regarding their respective claims and defenses, including their respective
19 evaluations of the damages. After more than eight hours of arm's length and adversarial
20 negotiations, the mediation concluded with a settlement. The amount of the service awards was not
21 negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No
22 action would likely have been taken by Class Members individually, and no compensation would
23 have been recovered for them, but for Plaintiffs' services on behalf of the Class. Zakay Dec., ¶ 28.

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

25 Class Counsel in this matter has extensive class action experience in multiple fields and has
26 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar
27 wage and hour class actions involving similar claims. Class Counsel has been approved as class
28 counsel in similar wage and hour class actions throughout the State of California. As such, courts

1 throughout the California have deemed Class Counsel experienced and knowledgeable in this area
2 of law. Class Counsel has participated in every aspect of the settlement discussions and has
3 concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class.
4 Zakay Dec., ¶29; Declaration of Nicholas De Blouw (“De Blouw Dec.”), ¶¶ 1-3.

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

6 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
7 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
8 member with the terms of the Settlement, including the specific estimated Individual Settlement
9 Payments. To date, only two of the 1,591 members of the Settlement Class have opted-out of the
10 Settlement. Moreover, there are zero objections. Stated differently, 99.88% of the Settlement Class
11 chose to participate in the Settlement. Zakay Dec., ¶ 10; Simpluris Dec., ¶¶ 14-15.

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

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

22 The Gross Settlement Amount of Three Hundred Fifty Thousand Dollars and Zero Cents
23 (\$350,000.00) in this case is fair and well within the range of recognized reasonableness. The
24 *Kullar* court acknowledged that “as the court does when it approves a settlement as in good faith
25 under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class
26 settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v.*
27 *Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

28 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement

1 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
2 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
3 Cal.App.4th at 250. While the Gross Settlement Amount of Three Hundred Fifty Thousand Dollars
4 and Zero Cents (\$350,000.00) represents a discount on Defendant's potential exposure if Plaintiffs
5 established liability on all claims and were awarded the full amount of the estimated damages at
6 trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant
7 presented a risk that could award significantly less in damages than Plaintiffs' estimate and (2) any
8 theoretical post-trial recovery may require many more years of litigation, resulting in added fees
9 and costs without any guarantee of recovery for the Class. *Zakay Dec.*, ¶ 30.

10 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
11 reasonable considering the nature and magnitude of the claims being settled and the various
12 potential impediments to recovery. Class Counsel developed varied economic damages models
13 measuring Defendant's liability exposure while accounting for the uncertainties of continued
14 litigation. The various models were informed by Class Counsel's investigation, including the
15 analysis of a significant sample of time and payroll data. As detailed in greater depth during the
16 preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for
17 the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents
18 approximately 23.5% of the value of the maximum potential *damages* at issue, assuming all of these
19 amounts could be proved at trial. *Zakay Dec.*, ¶ 31.

20 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
21 Court for the Northern District of California granted final approval in a wage and hour
22 misclassification action and found that the Gross Settlement Amount representing 10% of the
23 estimated trial award was within the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego*
24 *Fin. Corp. Sec. Litig.)* (9th Cir. 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement
25 representing "roughly one-sixth of the potential recovery." Given the amount of the settlement here
26 as compared to potential value of the claims, particularly the strength of Plaintiffs' action, the
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1 settlement is clearly fair and reasonable.³

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

13 The Settlement also provides significant relief to the Settlement Class Members. After
14 deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement,
15 and the Class Representative Service Awards, the Net Settlement Amount is currently estimated to
16 be **\$104.65**. ILYM Dec., ¶14. The average settlement payment is approximately **\$104.65**, the
17 highest is approximately **\$855.90**, and the lowest payment is approximately **\$3.54**. Simpluris Dec.,
18 ¶ 11-12. This average net recovery is on par with many wage and hour class action settlements
19 approved by California state and federal courts. Zakay Dec., ¶32. Additionally, Defendant must
20 separately fund its share of any employer side payroll taxes. Agreement, ¶ III(A).

21 Clearly the goal of this litigation to obtain redress for the class has been met by this
22 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length
23 negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore

24 ³ See also *Viceral 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 entitled to final approval. Zakay Dec., ¶ 33.

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

3 Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to
4 ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the
5 action or, at least, drastically undercut Plaintiffs' claims. Zakay Dec., ¶ 34. As the federal court in
6 *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to
7 those in this litigation:

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

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

1 certification of driver meal and rest period claims based on the predominance of individual issues).
2 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
3 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
4 risk factor favoring settlement. Zakay Dec., ¶ 35.

5 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
6 recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat
7 or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation
8 can drastically affect the value of Plaintiffs' claims and, in fact, already has. Zakay Dec., ¶ 36.

9 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*,
10 2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009), granted approval of an overtime class
11 action settlement and explained:

12 **Plaintiffs may have a strong case, but the risks inherent in**
13 **continued litigation are great.** Defendants strongly deny liability for
14 Plaintiffs' principal claim that full-time Service Associates were
15 misclassified as exempt. In addition to the uncertainties raised by
16 Defendants at the preliminary stage regarding Plaintiffs' chance of
17 success in this case, Defendants notes that the question of an
18 employer's duty to provide rest and meal periods is an open one,
19 signaling even less certainty for Plaintiffs.....[T]he Total Settlement
20 **amount and the Class Members' expected net recovery, after fees**
21 **and other costs are deducted, appear to be a reasonable**
22 **compromise, in light of the risks of litigation.**

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

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

27 **The potential complexity and possible duration of trial also weigh**
28 **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.

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

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

7 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber*
8 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014)
9 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little
10 doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources
11 to post a bond and appeal. A post-judgment appeal by Defendant would have required many more
12 years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total,
13 then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery
14 today outweigh an uncertain result three or more years in the future. Zakay Dec., ¶ 37.

15 Class Representatives and Class Counsel recognize the expense and length of a trial against
16 Defendant through possible appeals which could take another three years. In arriving at their
17 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the
18 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also
19 mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims
20 asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable.
21 Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing
22 the benefits of an ultimate victory. Class Representatives and Class Counsel believe that the
23 Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon
24 their evaluation, Class Representatives and Class Counsel have determined that the Settlement set
25 forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and
26 should be granted final approval. Zakay Dec., ¶ 38.

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1 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF**
2 **2004 ARE REASONABLE**

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

13 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$12,000 which
14 is 3.4% of the Gross Settlement Amount. As illustrated above, this amount falls well within the
15 range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement
16 (\$3,750) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent
17 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties
18 approved by courts and should be approved. Zakay Dec., ¶ 39.

19 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
20 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
21 with the LWDA. Zakay Dec., ¶¶ 16, 40. By not registering an objection with either Class Counsel
22 or the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

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