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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

GABRIELLE BOYD, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

BLUESTONE LANE HOLDINGS, LLC, a
Delaware limited liability company;
BLUESTONE LANE NY LLC, a New York
limited liability company; and DOES 1
through 50, Inclusive,

Defendants.

Case No. CGC-20-585787

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

Date: August 31, 2022
Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer
Dept.: 302

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1 I. INTRODUCTION

2 Plaintiff GABRIELLE BOYD (hereinafter “Plaintiff”) seeks final approval of the Joint
3 Stipulation of Settlement of Class Action Claims and Release of Claims (“Agreement”)¹, which if
4 approved, would provide valuable monetary relief for 656 Settlement Class Members employed by
5 Defendant BLUESTONE LANE HOLDINGS, LLC, and Defendant BLUESTONE LANE NY LLC
6 (hereinafter “Defendants”) during the Class Period.

7 In an order dated April 26, 2022, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On June 24,
9 2022, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
10 Declaration of Lluvia Islas (“ILYM Dec.”), ¶ 7. *The Class greeted news of the Settlement with*
11 *unanimous approval.*² There are zero opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶
12 11-12. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness
13 of the Settlement. JCL Dec., ¶ 7.

14 An objective evaluation of the proposed settlement of Two Hundred Sixty Thousand Dollars
15 (\$260,000.00) (“Gross Settlement Sum”) confirms that the relief negotiated on behalf of the Settlement
16 Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-
17 collusive negotiations, between experienced counsel, and presided over by Steven Serratore, Esq., a
18 well-respected wage and hour class action mediator. After deducting any Court-approved attorneys’
19 fees and costs, class representative incentive payments, administration costs, and the payments to the
20 Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to
21 the Settlement Class based on the number of Workweeks they worked while employed by Defendants
22 during the Class Period. JCL Dec., ¶ 7.

23 This Settlement provides substantial recovery for Defendants’ alleged wage and hour violations.
24 Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of
25 approximately \$119,833.33. This will result in an average Individual Settlement Payment of **\$182.67**
26

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

² 58 Notices were deemed undeliverable. ILYM Dec. at ¶¶ 10.

1 and high payment of **\$1,404.38**. JCL Dec., ¶ 8; ILYM Dec. at ¶ 14.

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

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

11 **II. OVERVIEW OF THE LITIGATION**

12 Defendants operate Bluestone Lane, a chain of coffee shops throughout the United States,
13 including California. Plaintiff worked for Defendants as a non-exempt employee from November 2018
14 to March 2020. At all times during her employment, Plaintiff earned an hourly wage and was entitled
15 to tips, legally compliant meal and rest periods, and minimum, regular, and overtime wages for all
16 hours worked. Throughout her employment, Plaintiff was subject to Defendants' written policies and
17 procedures contained in, among other documents, Defendants' Team Member Handbook. JCL Dec., ¶
18 11.

19 Generally, Plaintiff claims that Defendants failed to pay her wages, including overtime
20 compensation and tips, and failed to provide compliant meal and rest periods. Defendants forcefully
21 deny liability for each of Plaintiff's claims. Further, Defendants assert that they fully complied with
22 all applicable employment laws and raised several other significant defenses to Plaintiff's claims,
23 including, but not limited to, facially compliant meal and rest period policies. JCL Dec., ¶ 12.

24 On July 27, 2020, Plaintiff filed a Notice of Violations ("PAGA Notice") with the Labor and
25 Workforce Development Agency ("LWDA") and served the same on Defendants. Plaintiff's PAGA
26 Notice set forth the facts and theories supporting Defendants' alleged violations of various California
27 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to
28 pursue claims under the California Labor Code Private Attorneys General Act, Cal. Lab. Code sections

2698, *et seq.* (“PAGA”). JCL Dec., ¶ 13.

On July 28, 2020, Plaintiff filed a class action complaint in the San Francisco Superior Court, Case Number CGC-20-585787 for: (1) Unfair Competition in Violation of Business and Professions Code §§ 17200, *et seq.*; (2) failure to pay overtime wages in violation of California Labor Code §§ 510 *et seq.*; (3) failure to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (4) failure to provide required meal periods in violation of California Labor Code §§ 226.7 and 512; (5) failure to provide required rest periods in violation of California Labor Code §§ 226.7 and 512; (6) failure to provide accurate itemized wage statements in violation of California Labor Code § 226; (7) failure to provide wages when due in violation of California Labor Code §§ 201, 202, and 203; and (8) failure to provide gratuities in violation of California Labor Code § 351. On July 2, 2021, Plaintiff filed a First Amended Complaint to add a ninth cause of action for violations of the California Labor Code Private Attorney General Act (“PAGA”). JCL Dec., ¶ 14.

The parties agreed to mediation the action. To prepare for mediation, Defendants agreed to informally produce certain documents and data points subject to the mediation privilege, including but not limited to, a sample of the Class Members’ time and payroll data. As discussed *infra*, Plaintiff’s counsel retained the Berger Consulting Group (“BCG”), to analyze Defendants’ time and payroll data. JCL Dec., ¶ 15.

On October 4, 2021, the Parties participated in a mediation presided over Steven Serratore, Esq., a well-respected wage and hour class action mediator. The mediation concluded without a settlement, but the Parties, represented by its respective counsel, reached a settlement thereafter with Mediator Serratore’s assistance. The Parties subsequently drafted and negotiated a long-form settlement which is the subject of the instant motion. JCL Dec., ¶ 16.

On April 26, 2022, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On June 24, 2022, the Settlement Administrator mailed Notice Packets to all 656 Settlement Class Members. ILYM Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement was outstanding – 100% of the Class Members are participating in the Settlement. ILYM Dec., ¶¶ 13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Sum of Two Hundred Sixty Thousand Dollars (\$260,000.00) based on a total estimated 14,000 Workweeks worked by the Class during the Class Period. The Gross Settlement Sum shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶17.

Defendants will fund the Settlement by transferring the Gross Settlement Sum into a Qualified Settlement Fund within thirty (30) days after the Effective Date. Agreement, ¶ I(N). The Settlement Administrator shall disburse the Individual Settlement Payments to the Settlement Class Members no later than fifteen (15) calendar days after Defendants fund the Gross Settlement Sum. Agreement, ¶ III(L)(7). The Settlement Administrator will calculate Individual Settlement Payments by adding up the total number of Workweeks for all Class Members. The Settlement Administrator will then divide the respective Workweeks for each member of the Settlement Class by the total Workweeks for the entire Settlement Class, resulting in a Payment Ratio for each Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement Payment. Agreement, ¶ III(L)(1). The estimated average Individual Settlement Payment is approximately **\$182.67**. JCL Dec., ¶16; ILYM Dec., ¶ 14.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Sum, Plaintiff and the Settlement Class Members will release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement, ¶ III(B).

ILYM Group, Inc. was appointed as the Settlement Administrator for the class. Settlement Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Settlement Payments, and the fees of the Settlement Administrator approved for reimbursement by the court. The Settlement Administrator expenses are \$11,000. ILYM Dec., ¶ 15. These expenses shall be paid from the Gross Settlement Sum. Agreement, ¶ III(L)(12).

1 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
2 \$111,666.67 comprised of attorneys' fees equal to one-third of the Gross Settlement Sum estimated to
3 be at least \$86,666.67 and up to \$25,000 for actually incurred litigation expenses. Plaintiff's counsel is
4 to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC. Agreement,
5 ¶ I(E). The Agreement also provides for a Class Representative Service Award in the amount of \$7,500
6 for Plaintiff, in consideration of her time, risk, and efforts as the Class Representative on behalf of the
7 Settlement Class and a general release. Agreement, ¶¶ I(I); III(B); III(L)(9).

8 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
9 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
10 the Settlement Class, the absence of any objections to the Settlement and the average Individual
11 Settlement Payment of \$182.67. ILYM Dec., ¶¶ 12-13; JCL Dec., ¶ 18-19.

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

14 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
15 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
16 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
17 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the
18 preferred means of dispute resolution. This is especially true in complex class action litigation").

19 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
20 action requires court approval." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
21 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court
22 must decide whether the proposed settlement falls within the range of reasonable settlements,
23 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
24 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*
25 *Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to be judged against a
26 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.").
27 In *Wershba*, appellants argued that the settlement was too low given the "clear" liability, however, the
28 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.

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

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

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

The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.

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

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

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

10 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
11 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
12 assessed the value of the class claims using data and documents provided by Defendants through
13 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
14 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
15 Class Counsel retained BCG to analyze Defendants’ time and payroll data to formulate damage models
16 estimating Defendants’ liability exposure. Class Counsel’s investigation, research, experience, and
17 damage models informed and guided the mediated negotiations that resulted in this settlement.
18 Accordingly, Plaintiff’s Counsel fully understood the strengths and weaknesses of the class claims
19 before the parties reached a settlement. JCL Dec., ¶ 20-26.

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

21 On October 4, 2021, the Parties participated in a mediation presided over Steven Serratore, Esq.,
22 a well-respected wage and hour class action mediator. Mediator Serratore helped to manage the Parties’
23 expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties
24 made substantial progress with Mediator Serratore’s assistance. Namely, the Parties exchanged
25 information regarding their respective claims and defenses, including their respective evaluations of
26 the damages. After a full day of arm’s length and adversarial negotiations, the mediation concluded
27 without a settlement. Following the mediation, the Parties, represented by their respective counsel,
28 reached a settlement with the mediator’s assistance. The amount of the service awards was not

1 negotiated until after the parties agreed to the Gross Settlement Sum and many other terms. JCL Dec.,
2 ¶ 27. No action would likely have been taken by Class Members individually, and no compensation
3 would have been recovered for them, but for Plaintiff's service on behalf of the Class.

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

5 Class Counsel in this matter has extensive class action experience in multiple fields and has
6 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
7 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
8 similar wage and hour class actions throughout the State of California. As such, courts throughout the
9 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
10 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
11 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 28-34; Declaration
12 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

14 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
15 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
16 member with the terms of the Settlement, including the specific estimated Individual Settlement
17 Payments. To date, none of the 656 members of the Settlement Class opted-out of the Settlement.
18 Moreover, there are zero objections. Stated differently, 100% of the Settlement Class chose to
19 participate in the Settlement. JCL Dec., ¶ 7; ILYM Dec., ¶¶ 12-13.

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

1 **E. The Gross Settlement Sum is Fair and Reasonable.**

2 The Gross Settlement Sum of Two Hundred Sixty Thousand Dollars (\$260,000.00) in this case
3 is fair and well within the range of recognized reasonableness. The *Kullar* decision acknowledged that
4 “as the court does when it approves a settlement as in good faith under Code of Civil Procedure section
5 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of
6 reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d
7 488, 499-500 (1985).)

8 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
9 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
10 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
11 Cal.App.4th at 250. While the Gross Settlement Sum of Two Hundred Sixty Thousand Dollars
12 (\$260,000.00) represents a discount on Defendants’ potential exposure if Plaintiff established liability
13 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
14 reasonable because (1) the formidable defenses raised by Defendants presented a risk that could award
15 significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may
16 require many more years of litigation, resulting in added fees and costs without any guarantee of
17 recovery for the Class. JCL Dec., ¶ 35.

18 As detailed at the time of preliminary approval, the Gross Settlement Sum is fair and reasonable
19 considering the nature and magnitude of the claims being settled and the various potential impediments
20 to recovery. Class Counsel developed varied economic damages models measuring Defendants’ liability
21 exposure while accounting for the uncertainties of continued litigation. The various models were
22 informed by Class Counsel’s investigation, including the analysis of a significant sample of time and
23 payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel
24 projected a range of Defendants’ liability exposure for the claims asserted on behalf of the Settlement
25 Class. The Gross Settlement Sum represents approximately 27% of Defendants’ *class-wide* liability
26 exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 41.

27 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
28 Court for the Northern District of California granted final approval in a wage and hour misclassification

1 action and found that the Gross Settlement Sum representing 10% of the estimated trial award was within
2 the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
3 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
4 potential recovery.” Given the amount of the settlement here as compared to potential value of the
5 claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable³.

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

17 The settlement also provides significant relief to the Settlement Class Members. After deductions
18 for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement, and the Class
19 Representative Service Award, the Net Settlement Amount is currently estimated to be \$119,833.33.
20 ILYM Dec., ¶14. The average settlement payment is approximately \$182.67, and the highest is
21 approximately \$1,404.38. ILYM Dec., ¶ 14. This average net recovery is on par with many wage and
22 hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99*
23 *Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of
24

25 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
26 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
27 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
28 *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.”).

approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendants must separately fund its share of any employer side payroll taxes. Agreement, ¶ III(A)(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., ¶ 42.

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

Although Class Counsel believes strongly in Plaintiff's 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 Plaintiff's claims. JCL Dec., ¶ 36. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110

1 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
2 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
3 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
4 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
5 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
6 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
7 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
8 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
9 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
10 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
11 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
12 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
13 certification of driver meal and rest period claims based on the predominance of individual issues).
14 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
15 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
16 settlement. JCL Dec., ¶ 37.

17 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
18 that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair
19 the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
20 affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 38.

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

24 **Plaintiffs may have a strong case, but the risks inherent in continued**
25 **litigation are great.** Defendants strongly deny liability for Plaintiffs’
26 principal claim that full-time Service Associates were misclassified as
27 exempt. In addition to the uncertainties raised by Defendants at the
28 preliminary stage regarding Plaintiffs’ chance of success in this case,
Defendants notes that the question of an employer’s duty to provide rest and
meal periods is an open one, signaling even less certainty for
Plaintiffs.....[T]he **Total Settlement amount and the Class Members’**

1 **expected net recovery, after fees and other costs are deducted, appear**
2 **to be a reasonable compromise, in light of the risks of litigation.**

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

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

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

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

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

22 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
23 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
24 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
25 that if Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post
26 a bond and appeal. A post-judgment appeal by Defendants would have required many more years to
27 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
28 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., ¶ 39.

Class Representative and Class Counsel recognize the expense and length of a trial against
Defendants through possible appeals which could take another three years. In arriving at their informed

1 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
2 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
3 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
4 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
5 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
6 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
7 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
8 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
9 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 40.

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

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

21 Here, Plaintiff and Defendants negotiated a good faith PAGA Settlement in the amount of
22 \$10,000 which is 3.8% of the Gross Settlement Sum. As illustrated above, this amount falls well
23 within the range of approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA
24 Settlement (\$7,500) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five
25 percent (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA
26 penalties approved by courts and should be approved. JCL Dec., ¶ 43.

27 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
28 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval

1 with the LWDA. JCL Dec., ¶¶ 5-6. By not registering an objection with either Class Counsel or the
2 Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

3 **VII. CONCLUSION**

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

7
8 Dated: August 9, 2022

JCL LAW FIRM, APC

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10 By: 
11 Jean-Claude Lapuyade, Esq.
12 Attorneys for Plaintiff
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