

1 I. INTRODUCTION

2 Plaintiffs CHRISTOPHER CHACON, VYNZ PUNONGBAYAN, NICHOLAS CORDERO, and
3 LUIS VEGA (“Plaintiffs”) seek final approval of the Stipulation of Settlement of Class and PAGA
4 Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable
5 monetary relief for 963 Participating Class Member employed by Defendant Panda Motors Inc.
6 (hereinafter collectively “Defendant”) during the Class Period.

7 In an order dated May 4, 2023, this Court preliminarily approved the Agreement and preliminarily
8 certified the Class. Declaration of Shani O. Zakay (“Zakay Dec.”), ¶ 5. On June 22, 2023, the Court-
9 approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of
10 Cassandra Polites (“ILYM Dec.”), ¶ 7. *The Class greeted news of the Settlement with unanimous*
11 *approval*. There are two opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶ 8-9. The nearly
12 unanimous approval by the Class evidences the clear fairness and reasonableness of the Settlement.
13 Zakay Dec., ¶ 6.

14 An objective evaluation of the proposed settlement of Nine Hundred Fifty Thousand Dollars and
15 Zero Cents (\$950,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf
16 of the Participating Class Members is fair, reasonable, and valuable. The Settlement is a product of
17 informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over
18 by the Honorable Judge Carl West (Ret.). After deducting any Court-approved attorneys’ fees and costs,
19 class representative incentive payments, administration costs, and the payments to the Labor &
20 Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to
21 Participating Class Members based on the number of Workweeks they worked while employed by
22 Defendant during the Class Period. Zakay Dec., ¶ 6.

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 \$497,833.33. This will result in an average Individual Class Settlement Payment of
26 **\$515.89** and high payment of **\$5,517.75**. Zakay Dec., ¶ 7; ILYM Dec. at ¶ 14.

27
28 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.

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. Zakay
5 Dec., ¶ 8.

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 Representative and Class Counsel respectfully request this Court grant final approval of the Agreement
9 and, entry of the proposed Final Approval Order and Judgment. Zakay Dec., ¶ 9.

10 II. OVERVIEW OF THE LITIGATION

11 Defendant operates car dealerships. This action asserts claims on behalf of Defendant's non-
12 exempt employees, who performed work in California during the Class Period. Plaintiffs worked for
13 Defendant as a non-exempt employees in California from at various times during the Class Period. At
14 all times during their employment, Plaintiffs earned an hourly wage plus various commissions and
15 other incentive compensation and were entitled to legally compliant meal and/or rest periods, and
16 minimum, regular and overtime wages for all hours worked. Throughout their employment, Plaintiffs
17 were subject to Defendant's written policies and procedures. Zakay Dec., ¶ 10.

18 Generally, Plaintiffs claim that Defendant failed to pay for all time worked, failed to pay
19 overtime and meal premiums at the correct rate of pay, failed to provide compliant meal and rest
20 periods, failed to furnish accurate itemized wage statements, and failed to pay all wages upon
21 separation. Defendant forcefully denies liability for each of Plaintiffs' claims. Further, Defendant
22 asserts that it fully complied with all applicable employment laws and raised several other significant
23 defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period
24 policies, compliant wage statements, and timely paid all wages due upon separation of employment.
25 Zakay Dec., ¶ 11.

26 On August 11, 2020, Plaintiff Chacon filed a Notice of Violations with the Labor and Workforce
27 Development Agency (LWDA) and served the same on Defendant. On October 14, 2020, Plaintiff
28 Chacon filed the class action lawsuit for: Unfair competition (Bus. & Prof. Code § 17200 *et seq.*;

1 Minimum wage violations (Labor Code §§ 1182.12, 1194, 1194.2, 1197); Failure to pay all overtime
2 wages (Labor Code §§ 204, 510, 558, 1194, 1198); Meal period violations (Labor Code §§ 26.7, 512,
3 558); Rest period violations (Labor Code §§ 226.7, 516, 558); Failure to reimburse required expenses
4 (Labor Code §2802); Wage statement violations (Labor Code § 226, *et seq.*); Failure to provide wages
5 when due (Labor Code §§ 201, 202, 203 and; Violation of the Private Attorneys General Act (Labor
6 Code §§ 2698 *et seq.* Zakay Dec., ¶ 12.

7 On July 12, 2022, Plaintiff Chacon filed a Doe Amendment, adding Edgar Castellanos, an
8 individual, as Doe 1 Defendant to the Complaint. On February 8, 2023, Plaintiffs submitted for filing
9 the Parties’ stipulation for leave to file a First Amended Complaint, which adds Class Representatives
10 Vynz Punongbayan, Nicholas Cordero, and Luis Vega. Zakay Dec., ¶ 13.

11 The Parties collectively agreed to mediate the Action, stay formal discovery, and continue
12 deadlines for class certification in the Action. To prepare for mediation, the Parties agreed to informally
13 produce additional documents and data points subject to the mediation privilege, including but not
14 limited to, employee handbooks, the Class Members’ time data, and certain payroll data points. As
15 discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group
16 (“BCG”) to analyze Defendant’s time and payroll data. Zakay Dec., ¶ 14.

17 On September 27, 2021, the Parties participated in mediation presided over by Hon. Judge Carl
18 West (Ret.), an experienced mediator of wage and hour class and PAGA actions. The mediation
19 concluded without a settlement, and the Parties proceeded with litigation, including extensive formal
20 discovery. On October 18, 2022, the Parties participated in a second session of mediation presided
21 over by Judge West. The mediation concluded with a settlement, which was subsequently
22 memorialized in the form of a Memorandum of Understanding. After reaching an agreement in
23 principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of
24 the instant motion. Zakay Dec., ¶ 15.

25 On May 4, 2023, this Court granted preliminary approval of the Settlement. On June 22, 2023,
26 the Settlement Administrator mailed Notice Packets to all 965 Participating Class Member. ILYM
27 Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the
28 Class to submit requests for exclusion or objections to the Settlement. The response from the Class to

the Settlement was outstanding – 99.8% of the Class Members are participating in the Settlement. ILYM Dec., ¶¶ 15.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Nine Hundred Fifty Thousand Dollars (\$950,000.00) based on a total of an estimated 34,000 Workweeks worked by the Class during the Class Period. After reviewing the data, the Settlement Administrator has determined that the Class consists of only **19,286** workweeks. The Gross Settlement Amount shall be used: (1) to satisfy Individual Class Settlement Payments; (2) to satisfy the Class Representative Service Payments; (3) to satisfy the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment (collectively hereinafter “Class Counsel Fees and Expenses Payment”); (4) to satisfy the PAGA Civil Penalty Payment; and (5) to satisfy the Administration Expenses incurred in this action. Zakay Dec., ¶ 16.

Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified Settlement Fund within ten (10) calendar days of the Court’s entry of the order granting final approval of this Settlement. Agreement, ¶ §I(M). The Settlement Administrator shall disburse the Individual Class Settlement Payments to the Participating Class Member no later than fifteen (15) days after Defendant funds the Gross Settlement Amount. Agreement, ¶ §I(M)(7). The Settlement Administrator will calculate Individual Class Settlement Payments by adding up the total number of Workweeks for all Class Members. The Settlement Administrator will then divide the Net Settlement Amount of the Workweek Total, resulting in a Workweek Value for each Class Member. Each Workweek Value is then multiplied by the number of Workweeks of all Participating Class Members to calculate each estimated Individual Class Settlement Payment. The estimated average Individual Class Settlement Payment is approximately **\$515.89**. ILYM Dec., ¶ 14.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, the Participating Class Member will release the Released Parties from the Released Class Claims that accrued during the Class Period. Agreement, ¶ I(BB).

ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. The Administration Expenses 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 Class Settlement Payments, and the fees of the Settlement Administrator approved for reimbursement by the court. The Settlement Administrator expenses are \$15,500. ILYM Dec., ¶ 17. These expenses shall be paid from the Gross Settlement Amount.

Subject to Court approval, Class Counsel shall seek a Class Counsel Fees and Expenses Payment in the amount of \$346,666.66 comprised of attorneys' fees equal to 1/3 of the Gross Settlement Amount which will be \$316,666.66 and up to \$30,000 for actually incurred litigation expenses. Agreement, ¶ I(M)(10). Plaintiff's counsel is to split the fees (19.5% to Blumenthal Nordrehaug Bhowmik De Blouw, LLP, 45.5% to Zakay Law Group, APLC, and 35% to Robinson Di Lando, APLC. Agreement, ¶ I(D). The Agreement also provides for a Class Representative Service Payment in the amount of \$10,000 for each Plaintiff, in consideration of their time, risk, and efforts as the Class Representative on behalf of the Class and a general release. Agreement, ¶ I(K).

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the nearly unanimous approval of the Settlement by the Class, the absence of any objections to the Settlement and the average Individual Class Settlement Payment of \$515.89. ILYM Dec., ¶¶ 14; Zakay Dec., ¶ 17.

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

1 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*
2 *Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to be judged against a
3 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”).
4 In *Wershba*, appellants argued that the settlement was too low given the “clear” liability, however, the
5 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for
6 upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

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

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

24 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*
25 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial court should
26 consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of
27 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of
28 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. Due regard should be given to what is otherwise a private consensual agreement between the parties. *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.' [Citation omitted.]" *Id.*

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

A. Class Counsel Conducted a Thorough Investigation.

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

B. The Parties Settled Following Mediation.

On September 27, 2021, the Parties participated in mediation presided over by Hon. Judge Carl West (Ret.), an experienced mediator of wage and hour class and PAGA actions. The mediation concluded without a settlement, and the Parties proceeded with litigation, including extensive formal

discovery. On October 18, 2022, the Parties participated in a second session of mediation presided over by Judge West. Judge West helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge West's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluations of the damages. After more than eight hours of arm's length and adversarial negotiations, the mediation concluded with a settlement. The amount of the service awards was not negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. Zakay Dec., ¶ 27. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's service on behalf of the Class.

C. Class Counsel is Experienced in Similar Litigation.

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar claims. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. Zakay Dec., ¶¶ 28-29; Declaration of Nicholas J. De Blouw ("BNBD Dec."), ¶¶ 1-3. Declaration of Orion Robinson ("Robinson Dec."), ¶¶ 1-3

D. The Class Responded Positively to the Settlement.

The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Class Settlement Payments. To date, only two of the 965 members of the Class opted out of the Settlement. Moreover, there are zero objections. Stated differently, 99.8% of the Class chose to participate in the Settlement. Zakay Dec., ¶ 10; ILYM Dec., ¶¶ 8-9.

The unanimous approval by the Class strongly supports a finding that the Settlement is fair,

1 reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y. 2000) 80
2 F.Supp.2d 164, 175 ("If only a small number of objections are received, that fact can be viewed as
3 indicative of the adequacy of the settlement."); *Stoetzner v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d
4 115, 118-119 (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
5 *Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed
6 settlement should be considered when determining fairness of settlement.). Consequently, Class
7 Counsel respectfully requests the Court to follow the unanimous approval of the Class and grant final
8 approval of the Settlement.

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

10 The Gross Settlement Amount of Five Hundred Fifty Thousand Dollars and Zero Cents
11 (\$950,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
12 court acknowledged that "as the court does when it approves a settlement as in good faith under Code
13 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
14 the 'ballpark' of reasonableness." *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
15 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

16 Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement
17 provides a sizeable recovery to the Participating Class Member and need not necessarily obtain 100
18 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
19 Cal.App.4th at 250. While the Gross Settlement Amount of Nine Hundred Fifty Thousand Dollars and
20 Zero Cents (\$950,000.00) represents a discount on Defendant's potential exposure if Plaintiffs
21 established liability on all claims and was awarded the full amount of the estimated damages at trial, this
22 compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that
23 could award significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial
24 recovery may require many more years of litigation, resulting in added fees and costs without any
25 guarantee of recovery for the Class. *Zakay Dec.*, ¶ 30.

26 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
27 reasonable considering the nature and magnitude of the claims being settled and the various potential
28 impediments to recovery. Class Counsel developed an economic damage model measuring Defendant's

1 liability exposure while accounting for the uncertainties of continued litigation. The model was informed
2 by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data.
3 Detailed in greater depth during the preliminary approval process, Class Counsel projected a range of
4 Defendant's liability exposure for the claims asserted on behalf of the Class. The Gross Settlement
5 Amount represents more than 25.8% of Defendant's class-wide liability exposure for damages, and over
6 13.1% of Defendant's class-wide liability exposure for damages and statutory penalties, as estimated by
7 Class Counsel at the time of mediation. Zakay Dec., ¶ 31.

8 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
9 Court for the Northern District of California granted final approval in a wage and hour misclassification
10 action and found that the Gross Settlement Amount representing 10% of the estimated trial award was
11 within the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir.
12 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing "roughly one-sixth of the
13 potential recovery." Given the amount of the settlement here as compared to potential value of the
14 claims, particularly the strength of Plaintiff's action, the settlement is clearly fair and reasonable.²

15 The calculation methodology used to compensate the Participating Class Member for the alleged
16 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
17 objective, and impartial. The calculation methodology is based on the number of Workweeks each
18 Participating Class Member worked for Defendant during the Class Period. The number of Workweeks
19 for the Participating Class Member is established through Defendant's data and documented
20 compensation records. The Settlement Administrator is responsible for calculating the Individual Class
21 Settlement Payments by multiplying the Workweek Value for each Participating Class Member by the
22 Net Settlement Amount. The Settlement Administrator will calculate the payment ratio by dividing the
23 total number of Workweeks for each Participating Class Member by the total number of Workweeks for
24

25 ² 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.").

all Participating Class Member. This process establishes an objectively fair and reasonable procedure to compensate the Class.

The settlement also provides significant relief to the Participating Class Members. After deductions for the Class Counsel Fees and Expenses Payment, Administration Expenses, the PAGA Civil Penalty Payment, and the Class Representative Service Payment, the Net Settlement Amount is currently estimated to be \$497,833.33. ILYM Dec., ¶ 12. The average settlement payment is approximately \$515.89, and the highest is approximately \$5,517.75. ILYM Dec., ¶ 16. This average net recovery is on par with many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (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, Defendant 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. Zakay Dec., ¶ 31.

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

Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiffs' claims. Zakay Dec., ¶ 42. As the federal court in *Glass v. UBS*

1 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
2 litigation:

3 ***In light of the above-referenced uncertainty in the law, the risk, expense,***
4 ***complexity, and likely duration of further litigation likewise favors the***
5 ***settlement.*** Regardless of how this Court might have ruled on the merits of
6 the legal issues, the losing party likely would have appealed, and the parties
7 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.

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. *Zakay Dec.*, ¶ 33.

27 Although Plaintiffs are confident about the strength of his claims, Plaintiffs nevertheless
28 recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat or

1 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
2 drastically affect the value of Plaintiffs' claims and, in fact, already has. Zakay Dec., ¶ 34.

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 conclusion.
5 Where both sides face significant uncertainty, as here, the attendant risks favor settlement. *Hanlon v.*
6 *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) 59
9 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
10 that if Defendant faced a large adverse judgment, Defendant undoubtedly has the resources to post a
11 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
12 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
13 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
14 an uncertain result three or more years in the future. Zakay Dec., ¶ 35.

15 Class Representative 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 informed
17 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
18 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
19 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
20 Moreover, post-trial motions and appeals would have been inevitable. Costs would have increased, and
21 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
22 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
23 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
24 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
25 Class, is fair, reasonable, and adequate, and should be granted final approval. Zakay Dec., ¶ 36.

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

28 Where settlements "negotiate a good faith amount" for PAGA penalties and "there is no

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

9 Here, Plaintiffs and Defendant negotiated a good faith PAGA Civil Penalty Payment in the
10 amount of \$50,000 which is 5.2% of the Gross Settlement Amount. As illustrated above, this amount
11 falls well within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA
12 Civil Penalty Payment (\$37,500) will be paid to the LWDA (“LWDA Payment”) with the remaining
13 twenty-five percent (25%) of the PAGA Civil Penalty Payment (\$12,500) to be distributed to the
14 Aggrieved Employees (“Individual PAGA Payment”), which is within the range of PAGA penalties
15 approved by courts and should be approved. Zakay Dec., ¶ 37.

16 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
17 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
18 with the LWDA. Zakay Dec., ¶ 38. By not registering an objection with either Class Counsel or the
19 Court, the LWDA has accepted and approved of the proposed PAGA Civil Penalty Payment.

20 II. CONCLUSION

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

24
25 Dated: September 11, 2023

ZAKAY LAW GROUP, APLC

26
27 By: 
28 Shani O. Zakay, Esq.
Attorneys for Plaintiff