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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

GABRIEL MENDEZ, GEORGE GOSCH,
JOHN DIAN, MICHAEL KNIGHTON,
individuals, on behalf of themselves and on
behalf of all person similarly situated,

Plaintiffs,

vs.

BONDZ, INC., a California Corporation; and
DOES 1-50, Inclusive,

Defendants.

Case STK-CV-UOE-2020-0007486

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

Date: September 14, 2023

Time: 9:00 a.m.

Judge: Hon. George J. Abdallah, Jr.

Dept.: 10A

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I. INTRODUCTION

Plaintiffs GABRIEL MENDEZ, GEORGE GOSCH, JOHN DIAN, and MICHAEL KNIGHTON (hereinafter “Plaintiffs”) seek final approval of the Stipulation and Settlement of Class and Representative Action Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for approximately 77 Participating Class Members and 41 Aggrieved Employees employed by defendant BONDZ, INC. (“Defendant”) during the Settlement Class Period.

In an order dated April 27, 2023, this Court preliminarily approved the Agreement and preliminarily certified the Settlement Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On June 9, 2023, the Settlement Administrator, ILYM Group, Inc., delivered notice of the proposed settlement to the Settlement Class. Declaration of Cassandra Polites (“ILYM Dec.”), ¶ 6.

The Settlement Class greeted news of the Settlement with overwhelming approval as 100% of the Settlement Class choose to participate in the Settlement – 77 of 77. There are zero opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶ 7-9,12. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 6.

An objective evaluation of the proposed settlement of \$180,000 (“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, guided by the wisdom and experience of prominent wage and hour, class action mediator, the Hon. Steven R. Denton (Ret.). After deducting any Court-approved attorneys’ fees and costs, class representative incentive payments, administration costs, and payments to the Labor & Workforce Development Agency (“LWDA”), the Net Settlement Amount shall be distributed to the Participating Class Members based on the number of Workweeks they worked while employed by Defendant during the Class Period. JCL Dec., ¶ 6.

This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of \$70,500. This will result in an average Individual Settlement Payment of **\$915.58** and high payment

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

1 with all applicable employment laws and raised several other significant defenses to Plaintiffs’ claims
2 including but not limited to, facially compliant meal and rest period policies, compliant wage statements,
3 and payment of all wages upon separation. JCL Dec., ¶ 11.

4 On July 1, 2020, Plaintiff Mendez served Defendant and the Labor and Workforce Development
5 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiffs’ PAGA Notice set forth
6 the facts and theories supporting Defendant’s alleged violations of various provisions of the California
7 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
8 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code sections
9 2698 *et seq* (“PAGA”). JCL Dec., ¶ 12.

10 On September 9, 2020, Plaintiff Mendez filed a class action complaint in the San Joaquin County
11 Superior Court, Case Number STK-CV-UOE-2020-7486. JCL Dec., ¶ 13. On May 18, 2022, Plaintiffs
12 filed a First Amended Complaint. JCL Dec., ¶ 14. On February 8, 2023, Plaintiffs filed a Second
13 Amended Complaint, the operative complaint, against Defendant. The Action alleged ten causes of
14 action against Defendant for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200
15 *et. seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3)
16 Failure to Provide Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC
17 Wage Order; (4) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 &
18 512 and the Applicable IWC Wage Order; (5) Failure to Provide Accurate Itemized Wage Statements
19 in Violation of Cal. Lab. Code § 226; (6) Failure to Provide Wages When Due in Violation of Cal. Lab.
20 Code §§ 201, 202; (7) Failure to Pay Overtime in Violation of Cal. Lab. Code §§ 510, *et seq.*; (8) Failure
21 to Pay Vacation Wages Due; (9) Unlawful Deductions; and (10) Violations of the Private Attorneys
22 General Act under California Labor Code §§ 2698, *et seq.* (“Class Claims”). JCL Dec., ¶ 14.

23 The Parties agreed to mediate the Action after engaging in significant written discovery. To
24 prepare for mediation, the Parties agreed to informally produce additional documents and data points
25 subject to the mediation privilege, including but not limited to, a sample of the Class Members’ time
26 data and certain payroll data points. As discussed *infra*, Plaintiffs’ counsel retained the forensic
27 consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL
28 Dec., ¶ 15.

1 On October 6, 2022, the Parties participated in a full day mediation with Hon. Steven R. Denton,
2 a highly regarded jurist and experienced mediator. After arms-length negotiations and bargaining, the
3 Parties reached an agreement to settle based on Judge Denton’s proposal and signed a Memorandum
4 of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a
5 longform settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 16.

6 On April 27, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4.
7 Shortly, thereafter, the Claims Administrator mailed Notice Packets to all 77 Settlement Class
8 members. ILYM Dec. ¶ 4-6. The mailing of the Notice Packets triggered a forty-five (45) day
9 Response Deadline for the Settlement Class to submit requests for exclusion or objections to the
10 Settlement. The response from the Settlement Class to the Settlement was outstanding – 100% of
11 Settlement Class members are participating in the Settlement. ILYM Dec., ¶¶ 7-8.

12 **III. THE SETTLEMENT BEFORE THE COURT**

13 The Court preliminarily approved a Gross Settlement Amount of \$180,000 based on a total of
14 approximately 5,594 Workweeks worked by the Settlement Class during the Class Period. The Gross
15 Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class
16 Representative Service Awards; (3) to satisfy the Attorneys’ Fees and Costs; (4) to satisfy the PAGA
17 Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action. Agreement at
18 I(H). The Gross Settlement Amount is all-in with no reversion to Defendant. Agreement at V(5)(j). The
19 remainder, the Net Settlement Amount, shall be used for the payment of all Individual Settlement
20 Payments to satisfy all Released Claims. Agreement at I(P),

21 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
22 Settlement Fund within thirty (30) calendar days of the Effective Date. Agreement at III. The Settlement
23 Administrator shall disburse the Individual Settlement Payments to the Participating Class Members no
24 later than ten (10) days after Defendant funds the Gross Settlement Amount. Agreement at III. The
25 Settlement Administrator will calculate the total number of workweeks worked by each Class Member
26 during the Class Period. The Settlement Administrator will then divide the respective Workweeks for
27 each member of the Settlement Class by the total Workweeks for the entire Settlement Class, resulting
28 in a Payment Ratio for each Settlement Class member. Each Settlement Class Member’s payment ratio

1 is then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement
2 Payment. Agreement at IV(1)(a) – (b). The Claims Administrator estimates the average Individual
3 Settlement Payment is \$915.58 and the highest Individual Settlement Payment is \$2,687.39. ILYM
4 Dec., ¶ 13.

5 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
6 the Class Members who do not exclude themselves by properly opting-out of the Settlement will fully
7 release and discharge the Released Parties from the Released Claims for the entire Class Period.
8 Agreement at X(23).

9 ILYM Group, Inc. was appointed as the Claims Administrator for the class. Claims
10 Administration Expenses include those expenses of effectuating and administering the Settlement, i.e.,
11 the costs incurred to the Claims Administrator, the costs of giving notice to the Class, the costs of
12 administering and disbursing the Individual Settlement Shares, and the fees of the Claims Administrator
13 approved for reimbursement by the court. The Claims Administration expenses are \$4,500. ILYM Dec.,
14 ¶ 16. These expenses shall be paid from the Gross Settlement Amount. Agreement at I (H).

15 Subject to Court approval, Class Counsel shall seek Attorneys’ Fees not to exceed one-third (1/3)
16 of the Gross Settlement Amount, currently estimated to be Sixty Thousand Dollars (\$60,000). Class
17 Counsel will also seek reimbursement of costs, in an amount not to exceed Fifteen Thousand Dollars
18 (\$15,000.00). Agreement at I(B).

19 Subject to Court approval, the Agreement provides for a Class Representative Service Awards in
20 the amount of \$10,000.00 to plaintiff Gabriel Mendez and \$5,000.00 each to plaintiffs George Gosch,
21 John Dian, and Michael Knighton, in consideration of their time, risk and efforts as the Class
22 Representatives on behalf of the Settlement Class and, more importantly, a broad release of Civil Code
23 section 1542. Agreement at I(G); I(X).

24 As set forth in the Agreement, \$5,000 of the Gross Settlement Amount has been allocated for civil
25 penalties under the PAGA (“PAGA Settlement”). Seventy-Five percent of the PAGA Settlement will
26 be paid to the California Labor Workforce and Development Agency (“PAGA Payment”). The
27 Settlement Administrator shall distribute the remaining 25% of the PAGA Settlement to the Aggrieved
28 Employees (“Aggrieved Employee Payment”). Agreement at I(O).

1 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
2 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
3 the Settlement Class and absence of any objections to the Settlement. ILYM Dec., ¶¶ 7-8; JCL Dec., ¶
4 6.

5 Further supporting final approval, the average Individual Settlement Payment of \$915.58, equals
6 or exceeds settlement payments in similar wage and hour class actions. This result is particularly
7 favorable considering that liability and certification were far from certain. Given the complexities of
8 this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of
9 proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted
10 final approval. JCL Dec., ¶ 17.

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

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

18 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
19 action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) *citing*
20 *Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). The
21 court must decide whether the proposed settlement falls within the range of reasonable settlements,
22 taking into account that settlements are compromises between the parties reflecting subjective,
23 unquantifiable judgments concerning the risks and possible outcomes of litigation. See also *Wershba v.*
24 *Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed settlement is not to be judged against
25 a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at
26 trial.”). In *Wershba*, appellants argued that the settlement was too low given the “clear” liability,
27 however, the Court rejected this argument and held that “the merits of the underlying class claims are
28 not a basis for upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven*,

1 *supra*, at 1150.

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

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

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

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

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

28 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 Defendant in informal
13 discovery. In response to Class Counsel’s request, Defendant produced, among other things, the time
14 and payroll records for all of the Class Members, aggregate workweek and pay period data, and copies
15 of applicable handbooks, policies, and agreements. Class Counsel then retained the statisticians and
16 economists at BCG to evaluate the Class Members’ payroll and time data to formulate damage models
17 estimating Defendant’s liability exposure. Class Counsel’s investigation, research, experience and
18 damage models, informed and guided the mediated negotiations that resulted in this Settlement.
19 Accordingly, Class Counsel fully understood the strengths and weaknesses of the class claims before
20 the parties reached a settlement. JCL Dec., ¶ 18.

21 **B. The Parties Settled at Mediation.**

22 The Settlement is the product of a mediation session with a respected mediator and negotiations
23 over the terms of the Settlement. The negotiations were adversarial, conducted at arm’s length and
24 tempered by the efforts of both sides to serve the interests of their clients. The amount of the service
25 awards was not negotiated until after the parties agreed to the Gross Settlement Amount and many other
26 terms. No action would likely have been taken by Class Members individually, and no compensation
27 would have been recovered for them, but for Plaintiffs’ services on behalf of the Class. JCL Dec., ¶ 19.

28 ///

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

2 Class Counsel in this matter has extensive class action experience in multiple fields and has
3 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
4 and hour class actions involving similar meal and rest period violations. Class Counsel has been
5 approved as class counsel in similar wage and hour class actions throughout the State of California. As
6 such, courts throughout the California have deemed Class Counsel experienced and knowledgeable in
7 this area of law. Class Counsel has participated in every aspect of the settlement discussions and has
8 concluded the settlement is fair, adequate and reasonable and in the best interests of the Class. JCL
9 Dec., ¶¶ 20-28; Declaration of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3.

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

11 The reaction of the Settlement Class unequivocally supports approval of the Settlement. The
12 notice sent to the Settlement Class provided each class member with the terms of the Settlement,
13 including the specific estimated Individual Settlement Payments. To date, *none* of the 77 members of
14 the Settlement Class opted-out of the Settlement. Moreover, there are zero objections. Thus, 100% of
15 the Settlement Class chose to participate in the Settlement. JCL Dec., ¶ 6; ILYM Dec., ¶¶ 6 - 8, 12.

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

25 **E. The Strength of Plaintiffs’ Case**

26 “Compromise is inherent and necessary in the settlement process. Thus, even if the relief
27 afforded by the proposed settlement is narrower than it would be if the suit were to be successfully
28 litigated, this is no bar to a class settlement because the public interest may indeed be served by a

1 voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Wershba*,
2 91 Cal.App.4th at 250. The Court must also satisfy itself, “that the consideration being received for
3 the release of the class members’ claims is reasonable in light of the strengths and weaknesses of the
4 claims and the risks of the particular litigation.” *Kullar*, 168 Cal.App.4th at 129. The *Kullar* court
5 further acknowledged that “as the court does when it approves a settlement as in good faith under Code
6 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
7 the ‘ballpark’ of reasonableness.” *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal. 3d
8 488, 499-500 (1985).)

9 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
10 provides a sizeable recovery to the Participating Class Members and need not necessarily obtain 100
11 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.
12 App. 4th at 250. While the Gross Settlement Amount of \$180,000 represents a discount on Defendant’s
13 potential exposure if Plaintiffs established liability on all claims and were awarded the full amount of
14 the estimated damages at trial, this compromise is reasonable because: 1) the formidable defenses raised
15 by Defendant presented a risk that could award significantly less in damages than Plaintiffs’ estimate;
16 and 2) any theoretical post-trial recovery may require many more years of litigation, resulting in added
17 fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 29.

18 After deductions for the Attorneys Fees and Costs, Settlement Administration Cost, Class
19 Representative Enhancement Payments and the PAGA Settlement, the Net Settlement Amount is
20 currently estimated to be \$ 70,500.00. ILYM Dec., ¶12. The average individual settlement payment is
21 estimated to be \$ 915.58 with the estimated highest gross payment being \$ 2,687.39. ILYM Dec., ¶ 13.

22 Although Class Counsel believe strongly in Plaintiffs’ claims, it would be misguided to ignore
23 the asserted defenses. If successful on any one its defenses, Defendant could defense the action or, at
24 least, drastically undercut Plaintiffs’ claims. JCL Dec., ¶ 30.

25 **F. The Risk, Expense, Complexity and Duration of Further Litigation Favor**
26 **Settlement.**

27 Although Plaintiffs and Class Counsel believe that their case has merit, they recognized the
28 potential risks both sides would face if litigation of this action continued. As the federal court in *Glass*

1 v. *UBS 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
8 expense and possible duration of the litigation should be considered in
9 evaluating the reasonableness of [a] settlement.”

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

1 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
2 recognize that Defendant has factual and legal defenses that, if successful, would potentially defeat or
3 impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
4 drastically affect the value of Plaintiffs' claims and, in fact, already has. JCL Dec., ¶ 32. In 2019, the
5 Court of Appeal held that premium pay for missed breaks does not constitute "wages" that must be
6 reported on statutorily required wage statements and paid within statutory deadlines when an employees
7 leaves the job. *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal. App. 5th 444 (2019), *as modified on*
8 *denial of reh'g* (Oct. 10, 2019), *aff'd in part, rev'd in part and remanded*, 13 Cal. 5th 93, 509 P.3d 956
9 (2022). In 2022, the California Supreme Court reversed that portion of the Appellate Court's holding,
10 concluding that premium pay compensates for the work the employee performed during the break
11 period, thus constitutes wages subject to the same timing and reporting rules as other forms of
12 compensation for work. *Naranjo v. Spectrum Sec. Servs., Inc.*, 13 Cal. 5th 93 (2022). The California
13 Supreme Court then remanded the matter back to the Appellate Court to resolve whether the employer
14 had acted "willfully" failed to timely pay employees premium pay, and whether the employer's failure
15 to report missed meal break premium pay on wage statements was "knowing and intentional." In
16 response, in February of this year, the Appellate Court published *Naranjo v. Spectrum Sec. Servs., Inc.*,
17 88 Cal. App. 5th 937 (2023), which found that an employer's "good faith dispute" can prevent the
18 employee from collecting penalties and attorneys' fees for "willful" or "knowing and intentional"
19 violations under Labor Code 203 and 226.

20 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*, No.
21 CV-08-0844 EDL, 2009 WL 928133 (N.D. Cal. Apr. 3, 2009) granted approval of an overtime class
22 action settlement and explained:

23 **Plaintiffs may have a strong case, but the risks inherent in continued**
24 **litigation are great.** Defendants strongly deny liability for Plaintiffs'
25 principal claim that full-time Service Associates were misclassified as
26 exempt. In addition to the uncertainties raised by Defendants at the
27 preliminary stage regarding Plaintiffs' chance of success in this case,
28 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 gross settlement amount and the Class Members' expected net recovery, after fees and other costs are deducted, appear to be a reasonable compromise, in light of the risks of litigation.

See also *Browning v. Yahoo! Inc.*, No. C04-01463 HRL, 2007 WL 4105971, at *10 (N.D. Cal. Nov. 16, 2007) (“In considering the strength of Plaintiff’s case, legal uncertainties at the time of settlement—particularly those which go to fundamental legal issues—favor approval.”).

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

The potential complexity and possible duration of trial also weigh 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.

Barcia v. Contain-A-Way, Inc., No. 07CV938-IEG-JMA, 2009 WL 587844, at *3 (S.D. Cal. Mar. 6, 2009); see also *Louie v. Kaiser Found. Health Plan, Inc.*, No. 08CV0795 IEG RBB, 2008 WL 4473183 (S.D. Cal. Oct. 6, 2008)

In sum, while other cases have approved class certification in wage and hour claims, class certification in this action would have been hotly disputed and was by no means a foregone conclusion. Where both sides face significant uncertainty, as here, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1026 (9th Cir. 1998). JCL Dec., ¶ 33.

As demonstrated by the decisions in *Magadia*, *supra*, 999 F.3d 668 and *O’Conner v. Uber Technologies*, 82 F. Supp. 3d 1133 (N.D. Cal. 2018) and *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to

1 post a bond and appeal. A post-judgment appeal by Defendant would have required many more years
2 to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the
3 case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today
4 outweigh an uncertain result three or more years in the future. JCL Dec., ¶ 33.

5 Class Representatives and Class Counsel recognize the expense and length of a trial against
6 Defendant through possible appeals which could take another three years. In arriving at their informed
7 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
8 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
9 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
10 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
11 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
12 Class Representatives and Class Counsel believe that the Settlement confers substantial monetary and
13 non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives and Class
14 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
15 Class, is fair, reasonable and adequate, and should be granted final approval. JCL Dec., ¶ 34.

16 **G. The Gross Settlement Amount is Fair and Reasonable.**

17 The Gross Settlement Amount of \$180,000 in this case is fair and well within the range of
18 recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement
19 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the
20 various potential impediments to recovery. Class Counsel developed varied economic damages models
21 measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation.
22 The various models were informed by Class Counsel's investigation, including the analysis of a
23 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
24 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on
25 behalf of the Settlement Class. The Gross Settlement Amount of \$180,000.00 represents approximately
26 23.2% of Defendant's class-wide liability exposure for damages, and approximately 15.1% of
27 Defendant's class-wide liability exposure for damages and statutory penalties, as estimated by Class
28 Counsel at the time of mediation. JCL Dec., ¶ 35.

1 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
2 Court for the Northern District of California granted final approval in a wage and hour misclassification
3 action and found that the gross settlement representing 10% of the estimated trial award was within the
4 “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F. 3d 454,
5 459 (9th Cir. 2000), the 9th Circuit approved a settlement representing “roughly one-sixth of the potential
6 recovery.” Given the amount of the settlement here as compared to potential value of the claims,
7 particularly the strength of Plaintiffs’ action, the settlement is clearly fair and reasonable².

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

19 The settlement also provides significant relief to the Participating Class Members. The average
20 settlement payment is approximately \$915.58, and the highest is approximately \$2,687.39. ILYM Dec.,
21 ¶ 13. This average net recovery is greater than many wage and hour class action settlements approved
22 by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-
23 00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v.*

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.”).

1 *Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120);
2 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net
3 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018
4 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*,
5 Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately
6 \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery
7 of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County
8 Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No.
9 BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20).

10 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
11 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
12 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
13 JCL Dec., ¶ 36.

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

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

25 Here, Plaintiffs and Defendant negotiated a good faith PAGA Settlement in the amount of
26 \$5,000 which is 2.8% of the Gross Settlement Amount. This amount falls well within the range of
27 approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$3,750.00) will
28 be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) to be

distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 37.

Further, on March 21, 2023, Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with the LWDA. On August 21, 2023, Plaintiffs gave the LWDA notice of this motion seeking final approval of this settlement. JCL Dec., ¶¶ 5, 40. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

VII. CONCLUSION

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

Dated: August 21, 2023

JCL LAW FIRM, APC

By: 

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