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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SACRAMENTO**

NORMAN RESPASS, an individual, on  
behalf of himself, and on behalf of all persons  
similarly situated,

Plaintiff,

vs.

THE SCION GROUP LLC, a Limited  
Liability Company; and DOES 1 through 50,  
inclusive,

Defendants.

Case No. 34-2020-00285285

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR FINAL  
APPROVAL OF CLASS AND PAGA  
SETTLEMENT**

Date: August 11, 2023

Time: 9:00 a.m.

Judge: Hon. Lauri A. Damrell

Dept.: 28

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1 I. INTRODUCTION

2 Plaintiff NORMAN RESPASS (hereinafter “Plaintiff”) seeks final approval of the Joint  
3 Stipulation of Class Action Settlement (“Agreement”)<sup>1</sup>, which if approved, would provide valuable  
4 monetary relief for 221 Settlement Class Members employed by Defendant THE SCION GROUP  
5 LLC (hereinafter “Defendant”).

6 In an order dated March 3, 2023, this Court preliminarily approved the Agreement and  
7 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On April  
8 7, 2023, the Settlement Administrator delivered notice of the proposed settlement to the Class.  
9 Declaration of Cassandra Polites (“ILYM Dec.”), ¶ 6.

10 ***The Class greeted news of the Settlement with 100% approval.***<sup>2</sup> There are zero opt-outs and  
11 zero objections to the Settlement. ILYM Dec., ¶¶ 8-10. The high approval by the Settlement Class  
12 evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 10.

13 An objective evaluation of the proposed settlement of Three Hundred Twenty-Five Thousand  
14 Dollars and Zero Cents (\$325,000.00) (“Gross Settlement Amount”) confirms that the relief  
15 negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a  
16 product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and  
17 presided over by Jeffrey Krivis, Esq., a respected and experienced mediator of wage and hour class  
18 and representative actions. After deducting any Court-approved attorneys’ fees and costs, incentive  
19 payments, settlement administration costs, and the payments to the Labor & Workforce  
20 Development Agency (“LWDA”), the net settlement amount shall be distributed to the Settlement  
21 Class based on the number of Workweeks they worked while employed by Defendant during the  
22 Class Period. JCL Dec., ¶ 10.

23 This Settlement provides substantial recovery to Class Members. Plaintiff estimates that the  
24 Settlement, if approved, would result in a Net Settlement Amount of approximately **\$159,276.67**.  
25 This will result in an average Individual Settlement Share of **\$804.43**, with the estimated highest  
26 gross payment being \$4,357.49. FCRA/ICRAA/CCRAA Class Members will receive an estimated

27 <sup>1</sup> The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations  
28 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.

<sup>2</sup> As of the filing date of this Motion, 22 Notices were deemed undeliverable.

1 average gross payment of \$90.91, with the estimated highest gross payment being \$178.57. PAGA  
2 Group Members will receive an estimated average gross payment of \$27.03, with the estimated  
3 highest gross payment being \$80.91. JCL Dec., ¶ 11; ILYM Dec., ¶¶ 13, 15, 17.

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

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

## 13 **II. OVERVIEW OF THE LITIGATION**

14 Defendant provides real estate services, such as facility and strategic planning, operations  
15 assessments, development consulting and property management to higher education institutions  
16 foundations, and private-sector providers of student housing, including in Sacramento County,  
17 California, where Plaintiff worked. This action asserts claims on behalf of Defendant's current and  
18 former non-exempt employees employed in California. Plaintiff worked for Defendant as a  
19 Maintenance Technician during the Wage and Hour Class Period. At all times during his  
20 employment, Plaintiff earned hourly wage, was entitled to legally compliant meal and rest periods,  
21 and minimum, regular and overtime wages for all hours worked. Throughout his employment,  
22 Plaintiff was subject to Defendant's written policies and procedures. JCL Dec., ¶ 14.

23 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide  
24 compliant meal and rest periods, failed to include bonuses in the regular rate of pay, failed to furnish  
25 accurate itemized wage statements, failed to pay all wages when due, failed to reimburse employees  
26 for mandatory business expenses, and violated the Fair Credit Reporting Act ("FCRA"), the  
27 Investigative Consumer Reporting Agencies Act ("ICRAA"), and the Consumer Credit Reporting  
28 Agencies Act ("CCRAA"). Defendant forcefully denies liability for each of Plaintiff's claims.

Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period polices, compliant wage statements, and timely payment of all wages due upon separation of employment. JCL Dec., ¶ 15.

On February 17, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq ("PAGA"). JCL Dec., ¶ 16.

On September 23, 2020, Plaintiff filed a class action complaint in the Sacramento County Superior Court (the "Action"). The Action alleged thirteen causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code Sections § 201, 202, and 203; (8) Failure to Reimburse Employees for Required Business Expenses in Violation of Cal. Lab. Code § 2802; (9) Violation of the Fair Credit Reporting Act for Failure to Make Proper Disclosures [15 U.S.C. § 1681, *et seq.*]; (10) Violation of the Fair Credit Reporting Act for Failure to Obtain Proper Authorization [15 U.S.C. § 1681, *et seq.*]; (11) Violation of the Investigative Consumer Reporting Agencies Act for Failure to Make Proper Disclosures [California Civil Code § 1786, *et seq.*]; (12) Violation of the Consumer Credit Reporting Agencies Act for Failure to Obtain Proper Disclosures [California Civil Code § 1785, *et seq.*]; and (13) Violations of the Private Attorney General Act at Lab. Code §§ 2698 *et. seq.* ("Class Claims"). JCL Dec., ¶ 17.

1 The Parties agreed to mediate the Action. To prepare for mediation, the Parties agreed to  
2 informally exchange relevant documents and data points subject to the mediation privilege.  
3 Pursuant to that agreement, Defendant produced a sample of the Class Members' time and payroll  
4 data along with itemized wage statements and relevant policies applicable to Class Members. As  
5 discussed *infra*, Plaintiff's counsel retained the forensic consultants at Berger Consulting Group  
6 ("BCG") to analyze Defendant's time and payroll data. JCL Dec., ¶ 18.

7 On June 22, 2021, the Parties participated in a full day mediation with highly regarded wage  
8 and hour mediator, Jeffrey Krivis, Esq. Although the Parties were not able to reach a settlement on  
9 the day of mediation, the Parties continued to negotiate mutually agreeable terms of settlement over  
10 several months. The settlement discussions were conducted at arm's-length. After reaching an  
11 agreement in principle, the Parties negotiated a long-form settlement agreement, which is the  
12 subject of the instant motion. JCL Dec., ¶ 19.

13 On March 3, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶  
14 6. On April 7, 2023, the Settlement Administrator mailed Notice Packets to all 221 Class Members.  
15 ILYM Dec., ¶ 6. The mailing of the Notice Packets triggered a forty-five (45) day Response  
16 Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement.  
17 The response from the Settlement Class to the Settlement was outstanding – 100% of the Class  
18 Members are participating in the Settlement. ILYM Dec., ¶¶ 8-10.

### 19 **III. THE SETTLEMENT BEFORE THE COURT**

20 The Court preliminarily approved an initial Gross Settlement Amount of Three Hundred  
21 Twenty-Five Thousand Dollars and Zero Cents (\$325,000.00) based on a total of an estimated  
22 10,360 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount  
23 will be used: (1) to satisfy Individual Settlement Shares, including the Credit Report Claim  
24 Settlement Cash Payment; (2) to satisfy the Class Counsel Attorneys' Fees; (3) to satisfy the Class  
25 Counsel Litigation Costs; (4) to satisfy the incentive payment to Plaintiff, (5) to satisfy the PAGA  
26 Settlement Amount; and (6) to satisfy the Settlement Administration Costs incurred in this action.  
27 JCL Dec., ¶ 20.

28 Defendant will fund the Settlement by transferring the Gross Settlement Amount to the

1 Settlement Administrator within ten (10) calendar days of the Effective Date. Agreement, ¶ V(A).  
2 Individual Settlement Shares, Individual Settlement Shares from the Credit Report Claim  
3 Settlement Cash Payment, and Individual Settlement Shares from the PAGA Settlement Amount  
4 will be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or PAGA Group  
5 Members' last known mailing address within twenty-one (21) calendar says after the Effective Date.  
6 Agreement, ¶ V(D)(2). The Settlement Administrator will calculate Individual Settlement Shares  
7 by dividing the total number of Workweeks worked by all Settlement Class Members to yield a  
8 "Class Weekly Rate." Each Settlement Class Member's respective number of Workweeks will be  
9 multiplied by the Class Weekly Rate to yield his or her respective Individual Settlement Share.  
10 Agreement, ¶ V(D)(3). The estimated average Individual Settlement Share is approximately  
11 **\$804.43**. The Credit Report Claim Settlement Cash Payment will be distributed pro rata to each  
12 FCRA/ICRAA/CCRAA Class Members based on the number of Credit Reports he or she was  
13 subjected to by Defendant. Agreement, ¶ V(C)(5). The estimated average Individual Settlement  
14 Share of the Credit Report Claim Settlement Cash Payment is \$ 90.91.

15 In exchange for the valuable consideration, upon the Effective Date and funding in full of the  
16 Gross Settlement Amount, Plaintiff and the Settlement Class Members will release the Released  
17 Parties from the Released Wage and Hour Claims and the Released Credit Reporting Claims. The  
18 PAGA Group, the LWDA, and the State of California will release the Released Parties from the  
19 Released PAGA Claims for the PAGA Period. Agreement at ¶¶ V(J), II(DD), II(EE), II(FF).

20 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Settlement  
21 Administration Costs include those expenses of effectuating and administering the Settlement, i.e.,  
22 the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs  
23 of administering and disbursing the Individual Settlement Shares, and the fees of the Settlement  
24 Administrator approved for reimbursement by the court. The Settlement Administrator expenses  
25 are \$6,390. ILYM Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount.  
26 Agreement, ¶ V(H).

27 Subject to Court approval, Class Counsel shall seek Class Counsel's Attorneys' Fees equal  
28 to one-third of the Gross Settlement Amount estimated to be \$108,333.33 and Class Counsel's

1 Litigation Costs in an amount of up to \$25,000 for actually incurred litigation expenses. Plaintiff's  
2 counsel will split the fees 30% to Blumenthal Nordrehaug Bhowmik De Blouw LLP, 35% to the  
3 JCL Law Firm, APC, and 35% to the Zakay Law Group, APLC. The Agreement also provides for  
4 an incentive payment in the amount of \$5,000 paid to Plaintiff in consideration of his time, risk,  
5 and efforts as the Class Representative on behalf of the Settlement Class. Agreement, ¶¶ V(C)(3).

6 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the  
7 class and should be granted final approval. This is evidenced by the high approval of the Settlement  
8 by the Settlement Class and absence of any objections to the Settlement and the average Individual  
9 Settlement Share of **\$804.43**. ILYM Dec., ¶ 13; JCL Dec., ¶ 21.

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

12 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52  
13 Cal.App.4th 259, 265. In evaluating settlements, the courts have long recognized that compromise  
14 is particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven*  
15 *Owners for Fair Fran. v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary  
16 conciliation and settlement are the preferred means of dispute resolution. This is especially true in  
17 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.* (1996) 48 Cal.App.4th 1794, 1801 *citing*  
20 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The  
21 court must decide whether the proposed settlement falls within the range of reasonable settlements,  
22 considering that settlements are compromises between the parties reflecting subjective,  
23 unquantifiable judgments concerning the risks and possible outcomes of litigation. *See also*  
24 *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to  
25 be judged against a hypothetical or speculative measure of what might have been achieved had  
26 plaintiffs prevailed at trial.”). In *Wershba*, appellants argued that the settlement was too low given  
27 the “clear” liability, however, the Court rejected this argument and held that “the merits of the  
28 underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba*,

1 *supra*, at 246; *see also* 7-Eleven, *supra*, at 1150.

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

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

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

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

20 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v.*  
21 *Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial  
22 court should consider in evaluating the reasonableness of a class action settlement agreement  
23 include ‘the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further  
24 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,  
25 the extent of discovery completed and the stage of the proceedings, the experience and views of  
26 counsel, the presence of a governmental participant, and the reaction of the class members to the  
27 proposed settlement.’ [Citations.]” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,  
28 128; *see also* *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399,

1 408.

2 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.  
3 Due regard should be given to what is otherwise a private consensual agreement between the parties.  
4 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the  
5 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating  
6 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”  
7 *Id.* “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate  
8 balancing, gross approximations and rough justice.’ [Citation omitted.]” *Id.*

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

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

12 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated  
13 the proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class  
14 Counsel assessed the value of the claims using data and documents provided by Defendant through  
15 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data  
16 regarding the number of Class Members, workweeks, and average rate of pay to assess damages  
17 before mediation. Class Counsel retained BCG to analyze Defendant’s time and payroll data to  
18 formulate damage models estimating Defendant’s liability exposure. Class Counsel’s investigation,  
19 research, experience, and damage models informed and guided the mediated negotiations that  
20 resulted in this settlement. Accordingly, Class Counsel fully understood the strengths and  
21 weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 22-27.

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

23 On June 22, 2021, the Parties conducted a full-day mediation with Jeffrey Krivis, Esq., a  
24 respected and experienced mediator of wage and hour class and representative actions. Mediator  
25 Krivis helped to manage the Parties’ expectations and provided a useful, neutral analysis of the  
26 issues and risks to both sides. The Parties made substantial progress with Mediator Krivis’  
27 assistance. Namely, the Parties exchanged information regarding their respective claims and  
28 defenses, including their respective evaluations of the damages. After more than eight hours of

arm's length and adversarial negotiations, the mediation concluded without a settlement. However, the Parties continued to negotiate mutually agreeable terms of settlement over several months. The amount of the incentive payment was not negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class. JCL Dec., ¶ 28.

**C. Class Counsel are Experienced in Similar Litigation.**

Class Counsel in this matter have extensive class action experience in multiple fields and have represented tens-of-thousands of persons in class actions. Counsel have previously litigated similar wage and hour class actions involving similar claims. Class Counsel have been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout the California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel have participated in every aspect of the settlement discussions and have concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 29-35; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3; Declaration of Nicholas De Blouw ("De Blouw Dec."), ¶¶ 2-6.

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

The reaction of the Settlement Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Settlement Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Settlement Shares. To date, none of the 221 members of the Settlement Class has opted-out of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement Class chose to participate in the Settlement. JCL Dec., ¶ 10; ILYM Dec., ¶¶ 8-10.

The high approval by the Settlement Class strongly supports a finding that the Settlement is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y. 2000) 80 F.Supp.2d 164, 175 ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement."); *Stoetznner v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d 115, 118-119 (29 objections out of 281 member class "strongly favors settlement");

1 *Laskey v. Int'l Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members  
2 objected to the proposed settlement should be considered when determining fairness of settlement.).  
3 Consequently, Class Counsel respectfully request the Court to follow the high approval of the  
4 Settlement Class and grant final approval of the Settlement.

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

6 The Gross Settlement Amount of Three Hundred Twenty-Five Thousand Dollars and Zero  
7 Cents (\$325,000.00) in this case is fair and well within the range of recognized reasonableness. The  
8 *Kullar* court acknowledged that “as the court does when it approves a settlement as in good faith  
9 under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class  
10 settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v.*  
11 *Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

12 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement  
13 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100%  
14 of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th  
15 at 250. While the Gross Settlement Amount of Three Hundred Twenty-Five Thousand Dollars and  
16 Zero Cents (\$325,000.00) represents a discount on Defendant’s potential exposure if Plaintiff  
17 established liability on all claims and were awarded the full amount of the estimated damages at  
18 trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant  
19 presented a risk that could award significantly less in damages than Plaintiff’s estimate and (2) any  
20 theoretical post-trial recovery may require many more years of litigation, resulting in added fees  
21 and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 36.

22 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and  
23 reasonable considering the nature and magnitude of the claims being settled and the various  
24 potential impediments to recovery. Class Counsel developed varied economic damages models  
25 measuring Defendant’s liability exposure while accounting for the uncertainties of continued  
26 litigation. The various models were informed by Class Counsel’s investigation, including the  
27 analysis of a significant sample of time and payroll data. As detailed in greater depth during the  
28 preliminary approval process, Class Counsel projected a range of Defendant’s liability exposure for

1 the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents  
2 approximately 44.4% of the value of the maximum potential *damages* at issue. Even when  
3 including the penalties for Plaintiff’s claim for wage statement violations and waiting time penalties  
4 under *Labor Code* Sections 203 and 226, the settlement represents up to 25.2% of the maximum  
5 potential liability, assuming all of these amounts could be proved at trial. JCL Dec., ¶ 37.

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

14 The calculation methodology used to compensate the Settlement Class Members for the  
15 alleged damages was negotiated at the time of the Settlement. More importantly, the methodology  
16 is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks  
17 each Settlement Class Member worked for Defendant during the Class Period. The number of  
18 Workweeks for the Settlement Class Members is established through Defendant’s data and  
19 documented compensation records. The Settlement Administrator is responsible for calculating the  
20 Individual Settlement Shares by multiplying the Class Weekly Rate by each Settlement Class  
21 Member’s respective number of Workweeks. The Settlement Administrator will calculate the Class  
22 Weekly Rate by dividing the Net Settlement Amount by the total number of Workweeks worked  
23 by all of the Settlement Class Members. This process establishes an objectively fair and reasonable

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24  
25 <sup>3</sup> See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at \*3, 7  
26 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or  
27 approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-  
28 00784) 2017 WL 2797811, at \*7 (Approving a California wage and hour settlement where the class received 18% of  
the estimated total liability); see also *In re Newbridge Networks Sec. Litig.* (D.D.C. Oct. 23, 1998) 1998 WL 765724,  
at \*2 (“Courts have not identified a precise numerical range within which a settlement must fall in order to be deemed  
reasonable; but an agreement that secures roughly six to twelve percent of a potential trial recovery, while preventing  
further expenditures and delays and eliminating the risk that no recovery at all will be won, seems to be within the  
targeted range of reasonableness.”).

1 procedure to compensate the Settlement Class. Agreement, ¶ V(D)(3).

2 The Settlement also provides significant relief to the Settlement Class Members. After  
3 deductions for the Class Counsel Attorneys' Fees and Litigation Costs, Settlement Administration  
4 Costs, the PAGA Settlement Amount, the Credit Report Claim Settlement Cash Payment and the  
5 incentive payment to Plaintiff, the Net Settlement Amount is currently estimated to be **\$159,276.67**.  
6 The average settlement payment is approximately **\$804.43**. ILYM Dec., ¶ 13. This average net  
7 recovery is greater than many wage and hour class action settlements approved by California state  
8 and federal courts. JCL Dec., ¶ 38. Additionally, Defendant must separately fund its share of any  
9 employer side payroll taxes. Agreement, ¶ V(D)(3).

10 Clearly the goal of this litigation – to obtain redress for the class – has been met by this  
11 Settlement. Given the amount of the Settlement, the risks of litigation, and the arm's length  
12 negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore  
13 entitled to final approval. JCL Dec., ¶ 39.

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

15 Although Class Counsel believe strongly in Plaintiff's claims, it would be misguided to  
16 ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the  
17 action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 40. As the federal court in  
18 *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to  
19 those in this litigation:

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

28 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 million judgement against an employer for, *inter alia*, inaccurately paying

overtime, and directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 41.

Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 42.

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

**Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.** Defendants strongly deny liability for Plaintiffs' principal claim that full-time Service Associates were misclassified as exempt. In addition to the uncertainties raised by Defendants at the 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' expected net recovery, after fees**

1                   **and other costs are deducted, appear to be a reasonable**  
2                   **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**  
8                   **in favor of granting final approval.** Plaintiffs acknowledge the  
9                   difficulties of proving damages, recognize the uncertainty of  
10                  outcome, and believe defendant would appeal in the event of adverse  
11                  judgment. A post-judgment appeal would require many years to  
12                  resolve and delay payment to class members. Plaintiffs believe the  
13                  benefits of a guaranteed recovery today outweigh an uncertain future  
14                  result. Accordingly, plaintiffs argue, and the Court agrees, the actual  
15                  recovery confers substantial benefits on the class that outweigh the  
16                  potential recovery through full adjudication.

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

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

23                  As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*  
24                  *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014)  
25                  59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little  
26                  doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources  
27                  to post a bond and appeal. A post-judgment appeal by Defendant would have required many more  
28                  years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total,  
29                  then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery  
30                  today outweigh an uncertain result three or more years in the future. JCL Dec., ¶ 43.

31                  Class Representative and Class Counsel recognize the expense and length of a trial against  
32                  Defendant through possible appeals which could take another three years. In arriving at their  
33                  informed belief that the present settlement is fair and adequate, Class Counsel accounted for the

1 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also  
2 mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims  
3 asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable.  
4 Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing  
5 the benefits of an ultimate victory. Class Representative and Class Counsel believe that the  
6 Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon  
7 their evaluation, Class Representative and Class Counsel have determined that the Settlement set  
8 forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and  
9 should be granted final approval. JCL Dec., ¶ 44.

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,  
18 at \*6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express*  
19 *Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at \*5 (C.D. Cal. Jan. 23, 2012)  
20 (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of  
21 the total settlement).

22 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$16,000 which  
23 is 4.9% of the Gross Settlement Amount. As illustrated above, this amount falls well within the  
24 range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement  
25 (\$12,000) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent  
26 (25%) to be distributed to the PAGA Group, which is within the range of PAGA penalties approved  
27 by courts and should be approved. JCL Dec., ¶ 45.

28 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a

1 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval  
2 with the LWDA. JCL Dec., ¶¶ 5-6, 46. By not registering an objection with either Class Counsel  
3 or the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

4 **VII. CONCLUSION**

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

8  
9 DATED: July 19, 2023

**JCL LAW FIRM APC**

10 By:   
11 Jean-Claude Lapuyade  
12 Attorney for Plaintiff  
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