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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

OSCAR ALMANZA, individually and on
behalf of all persons similarly situated,

Plaintiffs,

vs.

XTREME XPRESS, INC., a California
corporation and DOES 1 through 50,
Inclusive,

Defendants.

Case No. 20STCV15387

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

Date: July 28, 2022

Time: 9:00 a.m.

Judge: Hon. Mark Borrell

Dept.: 40

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1 I. INTRODUCTION

2 Plaintiff OSCAR ALMANZA (hereinafter “Plaintiff”) seeks final approval of the Second
3 Amended Stipulation of Settlement of Class Action Claims and Release of Claims (“Agreement”)¹,
4 which if approved, would provide valuable monetary relief for 619 Settlement Class Members employed
5 by defendant XTREME XPRESS, INC. (“Defendant”) during the Class Period.

6 In an order dated March 30, 2022, this Court granted preliminary approval of the Agreement and
7 preliminary certified the Class. JCL Dec., ¶ 4. On April 29, 2022, the Settlement Administrator
8 delivered notice of the proposed settlement to the Class. Declaration of Madely Nava (“ILYM Dec.”),
9 ¶¶ 7-8.

10 *The Class greeted news of the Settlement with unanimous approval as, at the time of the filing*
11 *of this motion, all 619 Class Members choose to participate in the Settlement.*² There are zero opt-
12 outs and zero objections to the Settlement. ILYM Dec., ¶¶ 9-13. The unanimous approval by the
13 Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 7.

14 An objective evaluation of the proposed settlement of \$467,309.60 (“Total Settlement Amount”)
15 confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable.
16 The Settlement is a product of informed, adversarial, and non-collusive negotiations, between
17 experienced counsel, guided by the wisdom and experience of respected jurist and mediator, Honorable
18 Judge William Pate (Ret.). After deducting any Court-approved attorneys’ fees and costs, class
19 representative incentive payments, administration costs, and payments to the Labor & Workforce
20 Development Agency (“LWDA”), the Net Settlement Amount shall be distributed to the Settlement
21 Class Members based on the number of Workweeks they worked while employed by Defendant during
22 the Class Period. JCL Dec., ¶ 7.

23 This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations.
24 Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of
25 approximately **\$257,539.74**. This will result in an average Individual Settlement Payment of **\$416.06**,
26

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

² As of the filing date of this Motion, 11 Notices were deemed undeliverable.

1 and high payment of **\$3,411.39**. ILYM Dec., ¶ 14; JCL Dec., ¶ 8.

2 Additionally, if approved \$15,000 of the Total Settlement Amount will be allocated to Plaintiff's
3 claims arising out of the Private Attorney General Act ("PAGA Settlement"). This will result in a
4 \$11,250 payment to the LWDA ("LWDA Payment") to continue enforcing labor laws throughout
5 California and providing education to employers and employees about their rights and responsibilities
6 under the Labor Code. The remaining \$3,750 will be allocated to the Aggrieved Employees.
7 Agreement, ¶III(M)(4).

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

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

17 **II. OVERVIEW OF THE LITIGATION**

18 Defendant is in the transportation industry and provides logistics and freight transportation
19 services to its customers. Defendant provides services such as trucking and delivery services,
20 messenger and courier services, fulfillment services, and warehousing throughout California.
21 Defendant also contracts with other companies, such as Amazon, to conduct deliveries to its customers.
22 Plaintiff was employed by Defendant as a non-exempt parcel delivery driver from November 2017
23 through November 2019. At all times during his employment, Plaintiff earned an hourly wage and was
24 entitled to legally complaint meal and/or rest periods, and minimum, regular and overtime wages for
25 all hours worked. Throughout his employment, Plaintiff was subject to Defendant's written policies
26 and procedures contained in, among other documents, Defendant's Employee Handbook. JCL Dec., ¶
27 11.

28 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide

compliant meal and rest periods, failed to reimburse mandatory business expenses, failed to provide accurate itemized wage statements, and failed to pay all wages due at the time of his separation from employment. including, failed to provide compliant meal and rest periods, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation failure. 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, timely paid all wages due upon separation of employment, and reimbursed employees for required business expenses. JCL Dec., ¶ 12.

On February 13, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice sets 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., ¶ 13.

On April 21, 2020, Plaintiff filed a class action complaint in the Los Angeles Superior Court, Case Number 20STCV15387 ("Class Action"). The Class Action alleged nine 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 California Labor Code §§ 1194, 1197 and 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code §2802; (7) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (8) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203); and (9) Violation of the Private Attorney General Act ("PAGA"). JCL Dec., ¶ 14.

After the initial Case Management Conference, Plaintiff commenced written discovery. Prior to answering Plaintiff's written discovery, the Parties agreed to collectively mediate the Class Action. To

1 prepare for mediation, the Class Counsel Requested several documents and data points to further
2 evaluate Plaintiff's claims and Defendant's liability exposure to the Settlement Class Members. In
3 response to Class Counsel's request, Defendant produced the time and payroll records for
4 approximately 10% of the Settlement Class Members, aggregate workweek and pay period data for
5 100% of the Settlement Class and copies of applicable handbooks containing, *inter alia*, compensation,
6 timekeeping and meal and rest period policies. As discussed *infra*, Plaintiff's counsel retained the
7 forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll
8 data. JCL Dec., ¶ 15.

9 On March 18, 2021, the Parties participated in mediation presided over by respected jurist and
10 mediator, Honorable Judge William Pate (Ret.). After arms-length negotiations and bargaining, the
11 Parties reached an agreement to settle and signed a Memorandum of Understanding. After reaching an
12 agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is
13 the subject of the instant motion. JCL Dec., ¶ 16.

14 On March 30, 2022, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4.
15 Shortly, thereafter, the Claims Administrator mailed Notice Packets to all 619 Settlement Class
16 members. ILYM Dec., ¶¶ 7-8. The mailing of the Notice Packets triggered a forty-five (45) day
17 Response Deadline for the Settlement Class to submit requests for exclusion or objections to the
18 Settlement. The response from the Settlement Class to the Settlement was outstanding – 100% of the
19 Class Members are participating in the Settlement. ILYM Dec., ¶¶ 8-13.

20 **III. THE SETTLEMENT BEFORE THE COURT**

21 The Court preliminarily approved an initial Total Settlement Amount of \$300,000 based on a total
22 of approximately 10,600 Workweeks worked by the 468 Class Members during the Class Period. The
23 Total Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the
24 Class Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA
25 Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶17.

26 After this Court granted Preliminary Approval of the Agreement on August 16, 2021, Defendant
27 produced the Class Data to the Settlement Administrator. Upon production of the Class Data to the
28 Settlement Administrator, it was discovered that the actual number of Class Members increased to 619

1 and the actual number of Workweeks worked by Class Members during the Class Period increased to
2 17,019. The increased number of Class Members and Workweeks triggered an escalator provision in
3 the Settlement Agreement, thereby increasing the Total Settlement Amount by \$167,309.60. The new
4 Total Settlement Amount in this matter is \$467,309.60. JCL Dec., ¶ 18.

5 Defendant will fund the Settlement by transferring the Total Settlement Amount in two
6 installments. The first installment of the Total Settlement Amount will be transferred on or before March
7 18, 2022, in the amount of \$300,000.00 and the second installment will be transferred on or before
8 February 22, 2023, in the amount of \$167,309.60. Agreement, ¶ III(A)(3). The Settlement
9 Administrator shall disburse the Individual Settlement Payments to the Settlement Class Members no
10 later than fifteen (15) days after Defendant deposits the first installment of the Total Settlement Amount
11 into the Qualified Settlement Fund. Agreement, ¶ III(M)(1)(e).

12 ILYM Group was appointed as the Settlement Administrator for the class. Settlement
13 Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the
14 costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
15 administering and disbursing the Individual Settlement Shares, and the fees of the Settlement
16 Administrator approved for reimbursement by the court. The Settlement Administrator expenses are
17 \$14,000. ILYM Dec., ¶ 15. These expenses shall be paid from the Total Settlement Amount.
18 Agreement, ¶ III(M)(5).

19 The Settlement Administrator will calculate Individual Settlement Payments by adding up the
20 total number of Workweeks for the Settlement Class. The Settlement Administrator will then divide the
21 respective Workweeks for each member of the Settlement Class by the total Workweeks for the entire
22 Settlement Class, resulting in a Payment Ratio for each Settlement Class member. Each Settlement Class
23 Member's payment ratio is then multiplied by the Net Settlement Amount to calculate each estimated
24 Individual Settlement Payment. Agreement, ¶ III(M)(1)(a). The Settlement Administrator estimates the
25 average Individual Settlement Payment is \$416.06 and the highest Individual Settlement Payment is
26 \$3,411.39. ILYM Dec., ¶ 14.

27 In exchange for the valuable consideration, as of the funding of the Total Settlement Amount, the
28 Settlement Class Members will release the Released Parties from the Released Claims that accrued

1 during the Released Claim Period. Agreement, ¶ III(B).

2 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
3 \$170,769.86 comprised of attorneys' fees equal to one-third of the Total Settlement Amount estimated
4 to be at least \$155,769.86 and up to \$15,000 for actually incurred litigation expenses. Agreement, ¶
5 III(M)(3).

6 Subject to Court approval, the Agreement provides for a Class Representative Service Award in
7 the amount of \$10,000 for Plaintiff, in consideration of his time, risk and efforts as the Class
8 Representative on behalf of the Settlement Class and a broad release of Civil Code section 1542.
9 Settlement Agreement, ¶ III(M)(2).

10 As set forth in the Agreement, \$15,000 of the Total Settlement Amount has been allocated for
11 civil penalties under the PAGA ("PAGA Settlement"). Seventy-Five percent of the PAGA Settlement
12 will be paid to the California Labor Workforce and Development Agency ("PAGA Payment"). The
13 Settlement Administrator shall distribute the remaining 25% of the PAGA Settlement to the Aggrieved
14 Employees ("Aggrieved Employee Payment"). Agreement, ¶¶III(M)(4).

15 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
16 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
17 the Settlement Class and absence of any objections to the Settlement. ILYM Dec., ¶¶ 13; JCL Dec., ¶
18 19.

19 Further supporting final approval, the average Individual Settlement Payment of \$416.06 is
20 comparable to settlement payments in similar wage and hour class actions. This result is particularly
21 favorable considering that liability and certification were far from certain. Given the complexities of
22 this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of
23 proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted
24 final approval. JCL Dec., ¶ 20.

25 **IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
26 **OF CLASS ACTION SETTLEMENTS**

27 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
28 265 (1997). 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.*, 85 Cal. App. 4th 1135, 1151 (2000) (“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.*, 48 Cal. App. 4th 1794, 1801 (1996) citing *Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). The court must decide whether the proposed settlement falls within the range of reasonable settlements, taking into account that settlements are compromises between the parties reflecting subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”). In *Wershba*, appellants argued that the settlement was too low given the “clear” liability, however, the Court rejected this argument and held that “the merits of the underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba, supra*, at 246; see also *7-Eleven, supra*, at 1150.

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

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

V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford*

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

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

14 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
15 Due regard should be given to what is otherwise a private consensual agreement between the parties.
16 *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement
17 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
18 settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* "Ultimately, the
19 [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
20 approximations and rough justice.' [Citation omitted.]" *Id.*

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

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

24 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
25 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
26 assessed the value of the class claims using data and documents provided by Defendant in formal and
27 informal discovery, as well as interviews and declarations from dozens of Class Members. Class
28 Counsel obtained time, payroll, and policy records, as well as data regarding the number of Class

Members, workweeks, and average rate of pay in order to assess damages before mediation. Class Counsel retained Berger Consulting Group 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. JCL Dec., ¶ 21-30.

B. The Parties Settled at Mediation.

The Settlement is the product of a mediation session with a respected mediator and negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arm’s length and tempered by the efforts of both sides to serve the interests of their clients. The amount of the service award was not negotiated until after the parties agreed to the Total Settlement Amount and many other terms. JCL Dec., ¶ 30. 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.

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 the 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. JCL Dec., ¶¶ 32-38; Declaration of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3.

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 Payments. To date, none of the 619 members of the Settlement Class opted-out of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement Class chose to

1 participate in the Settlement. JCL Dec., ¶ 7; ILYM Dec., ¶¶ 11-13.

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

11 **E. The Strength of Plaintiff's Case**

12 "Compromise is inherent and necessary in the settlement process. Thus, even if the relief
13 afforded by the proposed settlement is narrower than it would be if the suit were to be successfully
14 litigated, this is no bar to a class settlement because the public interest may indeed be served by a
15 voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Wershba*,
16 91 Cal.App.4th at 250. The Court must also satisfy itself, "that the consideration being received for
17 the release of the class members' claims is reasonable in light of the strengths and weaknesses of the
18 claims and the risks of the particular litigation." *Kullar*, 168 Cal.App.4th at 129. The *Kullar* court
19 further acknowledged that "as the court does when it approves a settlement as in good faith under Code
20 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
21 the 'ballpark' of reasonableness." *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal. 3d
22 488, 499-500 (1985).)

23 Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement
24 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
25 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
26 Cal.App.4th at 250. While the Total Settlement Amount of \$467,309.60 represents a discount on
27 Defendant's potential exposure if Plaintiff established liability on all claims and was awarded the full
28 amount of the estimated damages at trial, this compromise is reasonable because of (1) the formidable

defenses raised by Defendant presented a risk that could award significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 39.

After deductions for the Attorneys Fees and Costs, Settlement Administration Cost, Class Representative Service Award and the PAGA Settlement, the Net Settlement Amount is currently estimated to be \$257,539.74. ILYM Dec., ¶14. Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, ¶ III(A)(1). The average individual settlement payment is estimated to be \$416.06 with the estimated highest gross payment being \$3,411.39. ILYM Dec., ¶ 14.

Although Class Counsel believe strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one its defenses, Defendant could defense the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 40.

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

Although Plaintiff and Class Counsel believe that their case has merit, they recognized the potential risks both sides would face if litigation of this action continued. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates*,

1 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
2 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
3 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
4 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
5 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
6 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
7 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
8 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
9 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
10 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
11 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
12 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
13 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
14 certification of driver meal and rest period claims based on the predominance of individual issues).
15 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
16 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
17 settlement. JCL Dec., ¶ 41.

18 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes
19 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
20 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
21 affect the value of Plaintiff’s claims and, in fact, already has. Recently, the California Court of Appeal,
22 Second District, held that meal and rest period violations do not entitle employees to pursue the
23 derivative waiting time and itemized wage statement penalties. *Naranjo v. Spectrum Security Services,*
24 *Inc.*, 40 Cal.App.5th 444 (2019) (*review granted*). The *Naranjo* decision gutted Plaintiffs’ claims for
25 Labor Code Section 226 penalties and Labor Code Section 203 waiting time penalties predicated on
26 rest period violations. JCL Dec., ¶ 42.

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

1 settlement and explained:

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

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

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

16 **The potential complexity and possible duration of trial also weigh in**
17 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
18 of proving damages, recognize the uncertainty of outcome, and believe
19 defendant would appeal in the event of adverse judgment. A post-judgment
20 appeal would require many years to resolve and delay payment to class
21 members. Plaintiffs believe the benefits of a guaranteed recovery today
22 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the
23 Court agrees, the actual recovery confers substantial benefits on the class
24 that outweigh the potential recovery through full adjudication.

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

27 In sum, while other cases have approved class certification in wage and hour claims, class
28 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).)

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 post a bond and appeal. A post-judgment appeal by Defendant would have required many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh an uncertain result three or more years in the future. JCL Dec., ¶ 43.

Class Representative and Class Counsel recognize the expense and length of a trial against Defendant through possible appeals which could take another three years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Class Representative and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 44.

G. The Total Settlement Amount is Fair and Reasonable.

The Total Settlement Amount of \$467,309.60 in this case is fair and well within the range of recognized reasonableness. As detailed at the time of preliminary approval, the Total Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a

1 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
2 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on
3 behalf of the Settlement Class. The Total Settlement Amount represents approximately between 13%
4 and 50% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of
5 mediation. JCL Dec., ¶ 45.

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 misclassification
8 action and found that the Total Settlement representing 10% of the estimated trial award was within the
9 "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F. 3d 454,
10 459 (9th Cir. 2000), the Ninth Circuit approved a settlement representing "roughly one-sixth of the
11 potential recovery." Given the amount of the settlement here as compared to potential value of the
12 claims, particularly the strength of Plaintiffs' action, the settlement is clearly fair and reasonable³.

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

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

1 The settlement also provides significant relief to the Settlement Class Members. The average
2 settlement payment is approximately \$416.06, and the highest is approximately \$3,411.39. ILYM Dec.,
3 ¶ 14. This average net recovery is on par with many wage and hour class action settlements approved
4 by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-
5 00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Fukuchi v.*
6 *Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120);
7 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net
8 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018
9 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*,
10 Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately
11 \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery
12 of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County
13 Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No.
14 BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20).

15 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
16 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
17 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
18 JCL Dec., ¶ 46.

19 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**
20 **ARE REASONABLE**

21 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
22 indication that this amount was the result of self-interest at the expense of class members,” such
23 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
24 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
25 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA
26 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at
27 *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*,
28 No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging

1 that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

2 Here, Plaintiff and Defendant negotiated a good faith PAGA Settlement in the amount of
3 \$15,000 which is 3.2% of the Total Settlement Amount. This amount falls well within the range of
4 approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$11,250) will
5 be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be
6 distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by
7 courts and should be approved. JCL Dec., ¶ 47.

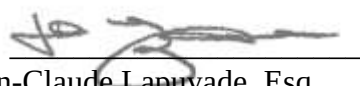
8 Further, on June 16, 2021, Class Counsel gave the LWDA notice of this Settlement and
9 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with
10 the LWDA. On December 10, 2021, Class Counsel filing an amended copy of the Settlement and the
11 Motion for Preliminary Approval with the LWDA. On May 31, 2022, Plaintiff gave the LWDA notice
12 of this motion seeking final approval of this settlement. JCL Dec., ¶¶ 5-6, 48. By not registering an
13 objection with either Class Counsel or the Court, the LWDA has accepted and approved of the
14 proposed PAGA Settlement.

15 VII. CONCLUSION

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

19
20 Dated: May 31, 2022

JCL LAW FIRM, APC

21
22 By: 
23 Jean-Claude Lapuyade, Esq.
24 Attorneys for Plaintiff
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