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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JEFFREY GREGORY, an individual, on behalf
of himself, and on behalf of all persons similarly
situated

Plaintiff,

vs.

VERIO HEALTHCARE, INC., a California
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 20STCV37254

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

Date: August 13, 2024
Time: 10:00 a.m.

Judge: Hon. Kenneth R. Freeman
Dept.: 14

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I. INTRODUCTION

Plaintiff JEFFREY GREGORY (hereinafter “Plaintiff”) seeks final approval of the Class Action and PAGA Settlement Agreement and Class Notice (“Agreement”)¹, which if approved, would provide valuable monetary relief for 216 Class Members employed by Defendant VERIO HEALTHCARE, INC. (hereinafter “Defendant”) during the Class Period.

In an order dated July 24, 2023, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jaclyn Joyce (“Decl. Joyce.”), ¶ 4. On July 24, 2023, the Court approved the Class Notice to be mailed to each Class Member. Decl. Joyce, ¶ 4. On September 27, 2023, the Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Markus Bulthuis (“Simpluris Dec.”), ¶ 8. On January 26, 2024, a corrected Class Notice was mailed to each Class Member via U.S. First Class Mail. Simpluris Dec., ¶ 9. The corrected Class Notice contained the adjusted class period based on the triggered escalator clause. Simpluris Dec. ¶ 9. *As of the filing of this motion, the Class greeted news of the Settlement with unanimous approval as, at the time of the filing of this motion, 100% of Class Members have chosen to participate in the Settlement.* There are zero opt-outs and zero objections to the Settlement. Simpluris Dec., ¶¶ 14-15. The unanimous approval by the Class evidences the clear fairness and reasonableness of the Settlement.

An objective evaluation of the proposed settlement of One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Jeffery Krivis, Esq., a highly regarded mediator of wage and hour class actions. After deducting any Court-approved attorneys’ fees and litigation costs, class representative service payment, settlement administration fees, and the PAGA Payment, the net settlement fund shall be distributed to the Class based on the number of Workweeks they worked while employed by Defendant during the Class Period. Decl. Joyce, ¶ 7.

This Settlement provides substantial recovery to Class Members. Plaintiff estimates that the

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

Settlement, if approved, would result in a Net Settlement Amount of approximately **\$64,000.00**. Simpluris Dec., ¶¶ 12-13. This will result in an average Settlement Share of **\$503.94**, and a high payment of **\$1,735.71**. Simpluris Dec., ¶ 13. PAGA Employees will receive an average Net PAGA payment of **\$7.86** and a high payment of **\$13.04**. Simpluris Dec., ¶ 13.

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

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

II. OVERVIEW OF THE LITIGATION

Defendant is a supplier of quality manufactured disposable medical supplies throughout California, including Los Angeles County where Plaintiff worked. Plaintiff worked for Defendant as a non-exempt employee in California from August of 2018 to January 24, 2020. Decl. Joyce, ¶ 10; Declaration of Jeffrey Gregory (“JG Dec.”), ¶ 3. At all times during his employment, Plaintiff earned an hourly wage and was entitled to legally complaint meal and/or rest periods, minimum, regular, and overtime wages. Throughout his employment, Plaintiff was subject to Defendant’s written policies and procedures. Decl. Joyce, ¶ 10; JG Dec., ¶ 3.

Defendant forcefully denies liability for each of Plaintiff’s claims. Further, Defendant assert that they 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 policies, compliant wage statements, reimbursed for all required business expenses, and payment of all wages upon separation. Decl. Joyce, ¶ 11.

On April 15, 2020, Plaintiff served Defendant and the Labor and Workforce Development

1 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth
2 the facts and theories supporting Defendant’s alleged violations of various provisions of the California
3 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to
4 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code sections 2698
5 *et seq* (“PAGA”). Decl. Joyce, ¶ 12.

6 On September 29, 2020, Plaintiff filed a class action complaint in the Los Angeles Superior Court,
7 Case Number 20STCV37254 (the “Action”). The Action alleged eight causes of action against
8 Defendant for: (1) unfair competition in violation of Cal. Business & Professions Code § 17200; (2)
9 failure to pay overtime wages in violation of Cal. Labor Code § 510; (3) failure to pay minimum wages
10 in violation of Cal. Labor Code §§ 1194, 1197, and 1197.1; (4) failure to provide required meal breaks
11 in violation of Cal. Labor Code §§ 226.7& 512 and the applicable IWC Wage Order; (5) failure to
12 provide required rest breaks in violation of Cal. Labor Code §§ 226.7 & 512 and the applicable IWC
13 Wage Order; (6) failure to provide accurate itemized wage statements in violation of Cal. Labor Code §
14 226; (7) failure to provide wages when due in violation of Cal. Lab. Code §§ 201, 202 and 203; (8)
15 violation of the Private Attorneys General Act [Labor Code §§ 2698, *et seq.*]. Decl. Joyce, ¶ 13.

16 Prior to mediation, the Parties agreed to informally produce additional documents and data points
17 subject to the mediation privilege, including but not limited to, significant sample of time records and
18 payroll records, as well as other documents and information. As discussed *infra*, Plaintiff’s counsel
19 retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and
20 payroll data. Decl. Joyce, ¶ 14.

21 On April 23, 2021, the Parties participated in a full day mediation with Jeffrey Krivis, Esq., a
22 highly regarded mediator of wage and hour class actions. At the conclusion of the full-day mediation,
23 and after arms-length negotiations and bargaining, the Parties reached an agreement to settle based on a
24 mediator’s proposal. The basic terms were set forth in a signed Memorandum of Understanding. After
25 reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement,
26 which is the subject of the instant motion. Decl. Joyce, ¶ 15.

27 On July 24, 2023, this Court granted preliminary approval of the Settlement. Decl. Joyce, ¶ 4.
28

On September 27, 2023, the Settlement Administrator mailed Notice Packets to all 216 Class Members. Simpluris Dec., ¶ 8. However, on January 26, 2024, the Settlement Administrator mailed corrected Notice Packets, with an adjusted class period, to all 216 Class Members. Simpluris Dec., ¶ 9. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Class to submit requests for exclusion or objections to the Settlement. The response from the Class to the Settlement has been outstanding – as of the filing of this motion, all 216 of the Class Members are participating in the Settlement. Simpluris Dec., ¶¶ 14-15.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00) based on a total of an estimated 3,500 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy each Participating Class Members' Settlement Share; (2) to satisfy the Class Representative Service Payment; (3) to satisfy the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (4) to satisfy the PAGA Payment; and (5) to satisfy the Settlement Administration Expenses incurred in this action. Decl. Joyce, ¶ 16.

After Final Approval and the Judgment becoming final (the "Effective Date," as defined in the Agreement), the Defendant will fund the Gross Settlement Amount in one lump sum payment.² Agreement, § III(E)(9). Within fifteen (15) days after Defendant funds the Gross Settlement Amount and the Settlement becomes Final,³ the Settlement Administrator will pay: the Participating Class Members their Settlement Shares; Class Counsel their Class Counsel Fees and Litigation Expenses; the PAGA Penalties to the LWDA; and the Settlement Administrator its Settlement Administration Costs. Agreement, § III(E)(9). The Settlement Administrator will calculate Settlement Shares by dividing the Net Settlement Amount by the total number of Workweeks worked by all Class Members during the Class Period and multiplying the result by each Class Member's Workweeks. Agreement, § III(C)(2)(a).

² Defendant has already funded the Settlement by depositing the Gross Settlement Amount into a QSF account set up by the Settlement Administrator. The Parties agreed that the Settlement Administrator will hold the Settlement funds in trust until the Court approves the Settlement and the Court's order and judgment becomes final. Decl. Joyce, ¶ 17.

³ See AGREEMENT TO HOLD FUNDS AND INSTRUCTIONS FOR SETTLEMENT PAYMENT attached to the Declaration of Jaelyn Joyce as **Exhibit 5**.

1 The estimated average Settlement Share is approximately **\$503.94**. Simpluris Dec., ¶ 13.

2 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
3 the Class Members will release the Defendant from the Released Class Claims that accrued during the
4 Class Period. Agreement at § III(F)(1). The PAGA Employees, the LWDA, and the State of California
5 will release the Defendant from the Released PAGA Claims for the PAGA Period. Agreement at §
6 III(F)(5).

7 Simpluris, Inc. was appointed as the Settlement Administrator for the Class. Settlement
8 Administration Fees include those expenses of effectuating and administering the Settlement, i.e., the
9 costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
10 administering and disbursing the Settlement Shares, and the fees of the Settlement Administrator
11 approved for reimbursement by the court. The Settlement Administrator expenses are **\$3,500**. Simpluris
12 Dec., ¶ 17. These expenses shall be paid from the Gross Settlement Amount. Agreement, § III(B)(4).

13 Subject to Court approval, Class Counsel shall seek payment of Class Counsel's Fees Payment
14 and Class Counsel Litigation Expenses Payment in the amount of \$70,000.00, comprised of attorneys'
15 fees equal to one-third of the Gross Settlement Amount estimated to be at least \$50,000.00 and up to
16 \$20,000.00 for actually incurred litigation expenses. Plaintiff's counsel is to split the fees 60% to the
17 Zakay Law Group, APLC and 40% to Blumenthal Nordrehuag Bhowmik De Blouw, LLP. Agreement,
18 § I(D). The Agreement also provides for a Class Representative Service Payment in the amount of
19 \$7,500 to Plaintiff, in consideration of his time, risk, and efforts as the Class Representative on behalf
20 of the Class. Agreement, § III(B)(1).

21 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
22 and should be granted final approval. This is evidenced by the high approval of the Settlement by the
23 Class, the absence of any objections to the Settlement and the average Settlement Share of **\$503.94**.
24 Simpluris Dec., ¶¶ 13-15.

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1 **IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
2 **OF CLASS ACTION SETTLEMENTS**

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

8 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
9 action requires court approval.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
10 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court
11 must decide whether the proposed settlement falls within the range of reasonable settlements,
12 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
13 judgments concerning the risks and possible outcomes of litigation. *See also Wershba v. Apple*
14 *Computer* (2001) 91 Cal.App.4th 224, 246 (The proposed settlement is not to be judged against a
15 hypothetical or speculative measure of what might have been achieved had plaintiff prevailed at trial.”).
16 In *Wershba*, appellants argued that the settlement was too low given the “clear” liability, however, the
17 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for
18 upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

27 The essential evaluation is whether, given the risks of litigation and the range of probable results,
28

1 the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. Here, the facts and
2 circumstances compel the conclusion that the proposed settlement satisfies that standard.

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

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

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

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

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

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1 **A. Class Counsel Conducted A Thorough Investigation.**

2 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
3 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
4 assessed the value of the class claims using data and documents provided by Defendant through informal
5 discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the number
6 of Class Members, workweeks, and average rate of pay to assess damages before mediation. Class
7 Counsel retained Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data to
8 formulate damage models estimating Defendant’s liability exposure. Class Counsel’s investigation,
9 research, experience, and damage models informed and guided the mediated negotiations that resulted
10 in this settlement. Accordingly, Plaintiff’s Counsel fully understood the strengths and weaknesses of the
11 class claims before the parties reached a settlement. Decl. Joyce, ¶ 18.

12 **B. The Parties Settled At Mediation.**

13 On April 23, 2021, the Parties conducted a full-day mediation with Jeffery Krivis, Esq., a highly
14 regarded mediator of wage and hour class actions. Mediator Krivis helped to manage the Parties’
15 expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties
16 made substantial progress with Mediator Krivis’ assistance. Namely, the Parties exchanged information
17 regarding their respective claims and defenses, including their respective evaluations of the damages.
18 After a full day of arm’s length and adversarial negotiations, the mediation concluded with a settlement
19 following the mediator’s proposal. The amounts of the service awards were not negotiated until after
20 the parties agreed to the Gross Settlement Amount and many other terms. No action would likely have
21 been taken by Class Members individually, and no compensation would have been recovered for them,
22 but for Plaintiff’s service on behalf of the Class. Decl. Joyce, ¶ 19.

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

24 Class Counsel in this matter has extensive class action experience in multiple fields and has
25 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
26 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
27 similar wage and hour class actions throughout the State of California. As such, courts throughout the
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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. Decl. Joyce, ¶ 20; Declaration of Shani O. Zakay (“SOZ Decl.”) at ¶ 3.

D. The Class Responded Positively to the Settlement.

The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Class, which provided each class member with the terms of the Settlement, including the specific estimated Settlement Share. As of the filing of this motion, zero members of the Class opted-out of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Class have chosen to participate in the Settlement. Decl. Joyce, ¶ 10; Simpluris Dec., ¶¶ 14-15.

The unanimous approval by the 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.”); *Stoetznier v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d 115, 118-119 (29 objections out of 281 member class “strongly favors settlement”); *Laskey v. Int’l Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed settlement should be considered when determining fairness of settlement.). Consequently, Class Counsel respectfully request the Court to follow the unanimous approval of the Class and grant final approval of the Settlement.

E. The Gross Settlement Amount is Fair and Reasonable.

The Gross Settlement Amount of One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar* court acknowledged that “as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985.).

1 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
2 provides a sizeable recovery to the Class and need not necessarily obtain 100 percent of the damages
3 sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250. While the
4 Gross Settlement Amount of One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00)
5 represents a discount on Defendant’s potential exposure if Plaintiff established liability on all claims
6 and was awarded the full amount of the estimated damages at trial, this compromise is reasonable
7 because (1) the formidable defenses raised by Defendant presented a risk that could award significantly
8 less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may require many
9 more years of litigation, resulting in added fees and costs without any guarantee of recovery for the
10 Class. Decl. Joyce, ¶ 21.

11 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
12 reasonable considering the nature and magnitude of the claims being settled and the various potential
13 impediments to recovery. Class Counsel developed varied economic damages models measuring
14 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
15 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
16 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
17 Counsel projected a range of Defendant; liability exposure for the claims asserted on behalf of the Class.
18 The Gross Settlement Amount represents more than 30% of Defendant’s *class-wide* damages and
19 interest liability exposure as estimated by Class Counsel at the time of mediation. Decl. Joyce, ¶ 22.

20 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
21 for the Northern District of California granted final approval in a wage and hour misclassification action
22 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
23 the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
24 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
25 potential recovery.” Given the amount of the settlement here as compared to potential value of the
26 claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable⁴.

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28 ⁴ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving

1 The calculation methodology used to compensate the Class for the alleged damages was
2 negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
3 impartial. The calculation methodology is based on the number of Workweeks each Class Member
4 worked for Defendant during the Class Period. The number of Workweeks for the Class Members is
5 established through Defendant's data and documented compensation records. The Settlement
6 Administrator is responsible for calculating the Settlement Share by dividing the Net Settlement Amount
7 by the total number of Workweeks worked by all Class Members during the Class Period and
8 multiplying the result by each Class Member's Workweeks. This process establishes an objectively fair
9 and reasonable procedure to compensate the Class. Agreement, § III(C)(2)(a).

10 The settlement also provides significant relief to the Class Members. After deductions for the
11 Class Counsel's Fees Payment and Class Counsel Litigation Expenses Payment, Settlement
12 Administration Fees, the PAGA Payment, and the Class Representative Service Payment, the Net
13 Settlement Amount is currently estimated to be **\$64,000**. Simpluris Dec., ¶ 12. The average settlement
14 payment is approximately **\$503.94**, and the highest is approximately **\$1,735.71**. Simpluris Dec., ¶ 13.
15 This average net recovery is on par with many wage and hour class action settlements approved by
16 California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619
17 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*,
18 Case No. BC302589 (LA. County Super. Ct.) (average net recovery of approximately \$120); *Contreras*
19 *v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of
20 approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County
21 Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No.
22 CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65);
23 *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of

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

approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must separately fund their share of any employer side payroll taxes. Agreement, § III(A).

Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval. Decl. Joyce, ¶ 23.

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

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. Decl. Joyce, ¶ 24. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 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 plaintiff 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. Decl. Joyce, ¶ 25.

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. Decl. Joyce, ¶ 26.

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:

Plaintiff may have a strong case, but the risks inherent in continued litigation are great. Defendant strongly deny liability for Plaintiff’s principal claim that full-time Service Associates were misclassified as exempt. In addition to the uncertainties raised by Defendant at the preliminary stage regarding Plaintiff’s chance of success in this case, Defendant notes that the question of an employer’s duty to provide rest and meal periods is an open one, signaling even less certainty for Plaintiff.....**[T]he Total 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., 2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 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:

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

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

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

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

24 The Class Representative and Class Counsel recognize the expense and length of a trial against
25 Defendant through possible appeals which could take another three years. In arriving at their informed
26 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
27 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
28 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
29 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
30 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
31 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and

1 non-monetary benefits upon the Class. Based upon their evaluation, the Class Representative and Class
2 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
3 Class, is fair, reasonable, and adequate, and should be granted final approval. Decl. Joyce, ¶ 28.

4 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT ARE**
5 **REASONABLE**

6 Where settlements “negotiate a good faith amount” for PAGA settlements and “there is no
7 indication that this amount was the result of self-interest at the expense of class members,” such amounts
8 are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL
9 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA settlements in
10 the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of
11 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal.
12 Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-
13 02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts
14 approve PAGA claim settlements in the range of zero to two percent of the total settlement).

15 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of \$5,000.00
16 which is 3.33% of the Gross Settlement Amount. As illustrated above, this amount falls well within the
17 range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Payment (\$3,750.00)
18 will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) to be
19 distributed to the PAGA Employees, which is within the range of PAGA Payment approved by courts
20 and should be approved. Decl. Joyce, ¶ 29.

21 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy
22 of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the
23 LWDA. Decl. Joyce, ¶¶ 5-6, 30. By not registering an objection with either Class Counsel or the Court,
24 the LWDA has accepted and approved of the proposed PAGA Payment.

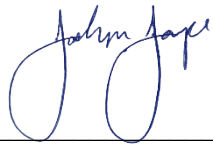
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1 **VII. CONCLUSION**

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

6 Dated: July 22, 2024

ZAKAY LAW GROUP, APLC

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8 By:  _____

9 Jaclyn Joyce, Esq.

10 Attorney for Plaintiff
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