

I. INTRODUCTION

Plaintiff ROMAN PEREZ (hereinafter “Plaintiff”) seeks final approval of the Class Action Settlement Agreement and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for 63 Participating Class Member employed by Defendant Butler America, LLC to perform services for Zones, LLC (hereinafter collectively “Defendants”) during the Class Period.

In an order dated April 11, 2023, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Shani O. Zakay (“Zakay Dec.”), ¶ 5. On May 4, 2023, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Cassandra Polites (“ILYM Dec.”), ¶ 7. *The Class greeted news of the Settlement with unanimous approval.* There are zero opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶ 13-14. The unanimous approval by the Class evidences the clear fairness and reasonableness of the Settlement. Zakay Dec., ¶ 6.

An objective evaluation of the proposed settlement of One Hundred Fifty Thousand Dollars and Zero Cents (\$150,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Participating Class Members is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Steven Serratore, Esq. After deducting any Court-approved attorneys’ fees and costs, class representative incentive payments, administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to Participating Class Members based on the number of Workweeks they worked while employed by Defendants during the Class Period. Zakay Dec., ¶ 6.

This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately \$59,500.00. This will result in an average Individual Class Settlement Payment of **\$944.44** and high payment of **\$2,887.23**. Zakay Dec., ¶ 7; ILYM Dec. at ¶ 14.

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

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

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

10 **II. OVERVIEW OF THE LITIGATION**

11 Defendants provide technical services and offer engineering, technology, aftermarket, and other
12 related services to defense, energy, telecommunications, and healthcare sectors. This action asserts
13 claims on behalf of non-exempt employees who were assigned to provide professional services to
14 Zones, LLC by Butler America, LLC, who performed work in California during the Class Period.
15 Plaintiff was employed by Butler America, LLC as a non-exempt employee in California from July
16 2016 to July 2019. At all times during his employment, Plaintiff earned an hourly wage and was entitled
17 to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours
18 worked. Throughout his employment, Plaintiff claims he was subject to Defendants' written policies
19 and procedures. Zakay Dec., ¶ 10.

20 Generally, Plaintiff claims that Defendants failed to pay for all time worked, failed to provide
21 compliant meal and rest periods, failed to furnish accurate itemized wage statements, and failed to pay
22 all wages due upon separation. Defendants forcefully deny liability for each of Plaintiff's claims.
23 Further, Defendants assert that they fully complied with all applicable employment laws and raised
24 several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant
25 meal and rest period polices, compliant wage statements, and timely payment of all wages due upon
26 separation of employment. Zakay Dec., ¶ 11.

27 On May 27, 2020, Plaintiff filed a class action complaint in the Superior Court of California,
28 County of Los Angeles (the "Los Angeles Action"), alleging the following: (1) Unfair Competition in

1 Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (2) Failure to Pay Minimum Wages in Violation
2 of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal.
3 Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code
4 §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in
5 Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to
6 Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; and (7) Failure to
7 Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203. Zakay Dec., ¶ 12.

8 On September 2, 2020, Plaintiff filed a representative action complaint in the Superior Court of
9 California, County of San Bernardino (the “San Bernardino Action”), alleging a single cause of action
10 pursuant to PAGA for civil penalties pursuant to Cal. Lab. Code § 2699, *et seq.* On February 22, 2021,
11 Plaintiff filed a first amended complaint in the San Bernardino Action, adding the seven causes of
12 action alleged in the Los Angeles Action, and adding Zones, LLC as a defendant. Subsequent to filing
13 the Los Angeles Action, the Plaintiff and Defendant Butler met and conferred regarding the proper
14 venue for the action and determined that Defendant Butler operates its business, and Plaintiff performed
15 work, in the County of San Bernardino. As such, on March 19, 2021, Plaintiff filed a Request for
16 Dismissal of the Los Angeles Action, which the Court granted on March 25, 2021. The operative
17 complaint is the Class Action Complaint, which is the first amended complaint in the San Bernardino
18 Action. Zakay Dec., ¶ 13.

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

25 On April 21, 2022, the Parties participated in a full day mediation with Steven Serratore, Esq., a
26 respected mediator of wage and hour class and representative actions. After arms-length negotiations
27 and bargaining, the Parties reached an agreement to settle and signed a Memorandum of Understanding.
28 After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement

1 agreement, which is the subject of the instant motion. Zakay Dec., ¶ 15.

2 On April 11, 2023, this Court granted preliminary approval of the Settlement. On May 4, 2023,
3 the Settlement Administrator mailed Notice Packets to all 63 Participating Class Member. ILYM Dec.,
4 ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Class
5 to submit requests for exclusion or objections to the Settlement. The response from the Class to the
6 Settlement was outstanding – 100% of the Class Members are participating in the Settlement. ILYM
7 Dec., ¶¶ 15.

8 **III. THE SETTLEMENT BEFORE THE COURT**

9 The Court preliminarily approved an initial Gross Settlement Amount of One Hundred Fifty
10 Thousand Dollars (\$150,000.00) based on a total of an estimated 2,576 Workweeks worked by the Class
11 during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Class
12 Settlement Payments; (2) to satisfy the Class Representative Service Payment; (3) to satisfy the Class
13 Counsel Fees Payment and the Class Counsel Litigation Expenses Payment (collectively hereinafter
14 “Class Counsel Fees and Expenses Payment”); (4) to satisfy the PAGA Civil Penalty Payment; and (5)
15 to satisfy the Administration Expenses incurred in this action. Zakay Dec., ¶ 16.

16 Defendants will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
17 Settlement Fund within thirty (30) calendar days of the Court’s entry of the order granting final approval
18 of this Settlement. Agreement, ¶ 1.19. The Settlement Administrator shall disburse the Individual Class
19 Settlement Payments to the Participating Class Member no later than ten (10) days after Defendants
20 fund the Gross Settlement Amount. Agreement, ¶ 5.5.2. The Settlement Administrator will calculate
21 Individual Class Settlement Payments by adding up the total number of Workweeks for all Class
22 Members. The Settlement Administrator will then divide the Net Settlement Amount of the Workweek
23 Total, resulting in a Workweek Value for each Class Member. Each Workweek Value is then multiplied
24 by the number of Workweeks of all Participating Class Members to calculate each estimated Individual
25 Class Settlement Payment. The estimated average Individual Class Settlement Payment is approximately
26 **\$944.44**. ILYM Dec., ¶ 14.

27 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
28 the Participating Class Member will release the Released Parties from the Released Class Claims that

1 accrued during the Class Period. Agreement, ¶ 6.1.

2 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. The
3 Administration Expenses include those expenses of effectuating and administering the Settlement, i.e.,
4 the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
5 administering and disbursing the Individual Class Settlement Payments, and the fees of the Settlement
6 Administrator approved for reimbursement by the court. The Settlement Administrator expenses are
7 \$5,500. ILYM Dec., ¶ 50. These expenses shall be paid from the Gross Settlement Amount.

8 Subject to Court approval, Class Counsel shall seek a Class Counsel Fees and Expenses Payment
9 in the amount of \$70,000.00 comprised of attorneys' fees equal to 1/3 of the Gross Settlement Amount
10 which will be \$50,000.00 and up to \$20,000 for actually incurred litigation expenses. Agreement, ¶
11 50(b). Plaintiff's counsel is to split the fees 40% to the Blumenthal Nordrehaug Bhowmik De Blouw,
12 LLP, and 60% to the Zakay Law Group, APLC. Agreement, ¶ 1.06. The Agreement also provides for a
13 Class Representative Service Payment in the amount of \$10,000 for Plaintiff, in consideration of his
14 time, risk, and efforts as the Class Representative on behalf of the Class and a general release.
15 Agreement, ¶ 5.3.

16 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
17 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
18 the Class, the absence of any objections to the Settlement and the average Individual Class Settlement
19 Payment of \$944.44. ILYM Dec., ¶¶ 12-13; Zakay Dec., ¶ 17.

20 **IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
21 **OF CLASS ACTION SETTLEMENTS**

22 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
23 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
24 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
25 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the
26 preferred means of dispute resolution. This is especially true in complex class action litigation").

27 "[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
28 action requires court approval." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*

1 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court
2 must decide whether the proposed settlement falls within the range of reasonable settlements,
3 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
4 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*
5 *Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to be judged against a
6 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”).
7 In *Wershba*, appellants argued that the settlement was too low given the “clear” liability, however, the
8 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for
9 upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

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

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

27 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*
28 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial court should

consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.' [Citations.]" *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.

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

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

A. Class Counsel Conducted a Thorough Investigation.

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

1 **B. The Parties Settled Following Mediation.**

2 On April 21, 2022, the Parties conducted a full day mediation with Steven Serratore, Esq., an
3 experienced wage and hour mediator. Mediator Serratore helped to manage the Parties' expectations
4 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
5 progress with Mediator Serratore assistance. Namely, the Parties exchanged information regarding
6 their respective claims and defenses, including their respective evaluations of the damages. After more
7 than eight hours of arm's length and adversarial negotiations, the mediation concluded with a
8 settlement. The amount of the service awards was not negotiated until after the parties agreed to the
9 Gross Settlement Amount and many other terms. Zakay Dec., ¶ 27. No action would likely have been
10 taken by Class Members individually, and no compensation would have been recovered for them, but
11 for Plaintiff's service on behalf of the Class.

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

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

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

22 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
23 dissemination of the notice to the Class, which provided each class member with the terms of the
24 Settlement, including the specific estimated Individual Class Settlement Payments. To date, none of
25 the 63 members of the Class opted out of the Settlement. Moreover, there are zero objections. Stated
26 differently, 100% of the Class chose to participate in the Settlement. Zakay Dec., ¶ 10; ILYM Dec.,
27 ¶¶ 12-13.

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

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

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

10 The Gross Settlement Amount of One Hundred Fifty Thousand Dollars and Zero Cents
11 (\$150,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
12 court acknowledged that "as the court does when it approves a settlement as in good faith under Code
13 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
14 the 'ballpark' of reasonableness." *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
15 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

16 Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement
17 provides a sizeable recovery to the Participating Class Member and need not necessarily obtain 100
18 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
19 Cal.App.4th at 250. While the Gross Settlement Amount of One Hundred Fifty Thousand Dollars and
20 Zero Cents (\$150,000.00) represents a discount on Defendant's potential exposure if Plaintiff
21 established liability on all claims and was awarded the full amount of the estimated damages at trial, this
22 compromise is reasonable because (1) the formidable defenses raised by Defendants presented a risk
23 that could award significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial
24 recovery may require many more years of litigation, resulting in added fees and costs without any
25 guarantee of recovery for the Class. *Zakay Dec.*, ¶ 30.

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

1 liability exposure while accounting for the uncertainties of continued litigation. The model was informed
2 by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data.
3 Detailed in greater depth during the preliminary approval process, Class Counsel projected a range of
4 Defendant's liability exposure for the claims asserted on behalf of the Class. The Gross Settlement
5 Amount represents almost 23% of Defendants' class-wide liability exposure for damages, and almost
6 13.5% of Defendants' class-wide liability exposure for damages and statutory penalties, as estimated by
7 Class Counsel at the time of mediation. Zakay Dec., ¶ 31.

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

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

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

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

The settlement also provides significant relief to the Participating Class Members. After deductions for the Class Counsel Fees and Expenses Payment, Administration Expenses, the PAGA Civil Penalty Payment, and the Class Representative Service Payment, the Net Settlement Amount is currently estimated to be \$59,500.00. ILYM Dec., ¶ 16. The average settlement payment is approximately \$944.44, and the highest is approximately \$2,887.23. ILYM Dec., ¶ 16. This average net recovery is on par with many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendants must separately fund its share of any employer side payroll taxes. Agreement, ¶ 1.20.

Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval. Zakay Dec., ¶ 31.

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

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

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

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

10 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
11 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
12 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
13 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
14 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
15 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
16 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
17 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
18 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
19 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
20 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
21 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
22 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
23 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
24 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
25 certification of driver meal and rest period claims based on the predominance of individual issues).
26 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
27 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
28 settlement. Zakay Dec., ¶ 33.

Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes
that Defendants have 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. Zakay Dec., ¶ 34.

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

As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendants faced a large adverse judgment, Defendants undoubtedly have the resources to post a bond and appeal. A post-judgment appeal by Defendants 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. Zakay Dec., ¶ 35.

Class Representative and Class Counsel recognize the expense and length of a trial against Defendants 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 increased, 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. Zakay Dec., ¶ 36.

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

Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no

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

9 Here, Plaintiff and Defendants negotiated a good faith PAGA Civil Penalty Payment in the
10 amount of \$5,000 which is 3.33% of the Gross Settlement Amount. As illustrated above, this amount
11 falls well within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA
12 Civil Penalty Payment (\$3,750) will be paid to the LWDA (“LWDA Payment”) with the remaining
13 twenty-five percent (25%) of the PAGA Civil Penalty Payment (\$1,250) to be distributed to the
14 Aggrieved Employees (“Individual PAGA Payment”), which is within the range of PAGA penalties
15 approved by courts and should be approved. Zakay Dec., ¶ 37.

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

20 II. CONCLUSION

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

24
25 Dated: August 18, 2023

ZAKAY LAW GROUP, APLC

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