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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN BERNARDINO**

SARAH P. ESPINOZA,

Plaintiffs,

vs.

LOVE'S COUNTRY STORES OF  
CALIFORNIA; and DOES 1-100, Inclusive,

Defendants.

Case No. CIVDS2016481

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

Date: June 13, 2022

Time: 10:00 a.m.

Judge: Hon. David Cohn

Dept.: S-26

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## I. INTRODUCTION

Plaintiffs ESTEFANIA RENTERIA and SARAH P. ESPINOZA (hereinafter “Plaintiffs”) seek final approval of the Stipulation of Settlement of Class Action and PAGA Action and Release of Claims (“Agreement”)<sup>1</sup>, which if approved, would provide valuable monetary relief for 1,674 Settlement Class Members employed by defendant LOVE’S COUNTRY STORES OF CALIFORNIA (hereinafter collectively “Defendant”) during the Class Period.

In an order dated November 16, 2021, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On March 14, 2022, the Court-approved Class Notice was mailed to each Class Member via First Class mail. Declaration of Jenny D. Baysinger (“JDB Dec.”), ¶¶ 98.

*The Class greeted news of the Settlement with unanimous approval as all 1,674 Class Members choose to participate in the Settlement.*<sup>2</sup> There are zero opt-outs and zero objections to the Settlement. JDB Dec., ¶¶ 123; Declaration of Madely Nava (“ILYM Dec.”) at ¶¶ 13-15. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 7.

An objective evaluation of the proposed settlement of \$2,219,318.18 (“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 Steven Rottman, Esq. a well-respected class action mediator. 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 the Settlement Class based on the number of Workweeks they worked while employed by Defendant during the relevant time period. JCL Dec., ¶ 7.

This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of

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

<sup>2</sup> 129 Notices were deemed undeliverable as no updated address was found via skip tracing efforts. ILYM Dec. at ¶¶ 12.

1 \$1,326,586.71. This will result in an average Individual Settlement Payment of **\$792.47** and high  
2 payment of **\$2,396.55**. JDB Dec., ¶ 43; JCL Dec., ¶ 8; ILYM Dec. at ¶ 16.

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

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

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

13 Defendant is a California corporation that owns and operates approximately thirteen full-service  
14 travel stops in California. Defendant is part of the closely held family of companies known as Love's  
15 Family of Companies. Defendant provides professional truck drivers and motorists with 24-hour access  
16 to clean and safe places to purchase gasoline, diesel fuel, Compress Natural Gas (CNG), travel items,  
17 electronics, snacks, restaurant offerings, and more. Plaintiff Renteria was employed by Defendant as a  
18 non-exempt employee from April 2015 through March 2020. Plaintiff Espinoza was employed by  
19 Defendant from January 2019 through April 2019 as a non-exempt cashier. At all times during their  
20 employment, Plaintiffs earned an hourly wage plus certain non-discretionary flat-sum incentive awards  
21 and were entitled to legally complaint meal and/or rest periods, and minimum, regular, and overtime  
22 wages for all hours worked. Throughout their employment, Plaintiffs were subject to Defendant's  
23 written policies and procedures contained in, among other documents, the Employee Handbook. JCL  
24 Dec., ¶ 11.

25 Generally, Plaintiffs claim that Defendant failed to pay for all time worked, failed to provide  
26 suitable seating, failed to furnish accurate itemized wage statements, failed to provide compliant meal  
27 and rest periods, and failed to pay all wages upon separation of employment. Defendant forcefully  
28 denies liability for each of Plaintiffs' claims. Further, Defendant asserts that it fully complied with all

1 applicable employment laws and raised several other significant defenses to Plaintiffs’ claims,  
2 including but not limited to, facially compliant meal and rest period polices, timely paid all wages due  
3 upon separation of employment, accurately calculated the regular rate of pay, and provided suitable  
4 seating. JCL Dec., ¶ 12.

5 On May 27, 2020, Plaintiff Renteria served Defendant and the Labor and Workforce  
6 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff Renteria’s  
7 PAGA Notice set for the facts and theories supporting Defendant’s alleged violations of various  
8 provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”)   
9 Wage Order and of her intent to pursue claims under the California Labor Code Private Attorneys  
10 General Act, Cal. Lab. Code Sections 2698, *et seq.* (“PAGA”). JCL Dec., ¶ 13.

11 On May 28, 2020, Plaintiff Renteria filed a class action complaint in the Kern Superior Court,  
12 Case Number BCV-20-101260 (“Renteria Action”). The Renteria Action alleged seven causes of  
13 action against Defendant for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200  
14 *et. seq.*; (2) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510, *et seq.*; (3) Failure  
15 to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (4) Failure to Provide  
16 Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5)  
17 Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the  
18 Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in Violation  
19 of Cal. Lab. Code § 226; and (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code  
20 §§ 201-203. On August 3, 2020, Plaintiff Renteria filed a First Amended Complaint (“FAC”) against  
21 Defendant adding an eighth cause of action for violations of PAGA. JCL Dec., ¶ 14.

22 On July 29, 2020, Plaintiff Espinoza filed a PAGA Notice with the LWDA and served the same  
23 on Defendant. On July 30, 2020, Plaintiff Espinoza filed a lawsuit in the San Bernardino Superior  
24 Court, Case Number CIV-DS-2016481 (“Espinoza Action”). The Espinoza Action alleged six causes  
25 of action against Defendant for: (1) Failure to Properly Calculate and Pay Overtime; (2) Failure to  
26 Provide Meal Breaks; (3) Failure to Provide Rest Breaks; (4) Failure to Pay All Wages Due at the End  
27 of Employment; (5) Failure to Furnish Accurate Itemized Wage Statements; and (6) Unlawful Business  
28 Practices. On October 7, 2020, Plaintiff Espinoza filed a First Amended Complaint against Defendant

1 adding a seventh cause of action for violations of PAGA. JCL Dec., ¶ 15; JDB Dec., ¶ 4-5, 9.

2 Plaintiff Renteria commenced written discovery in the Action in September 2020. After failing  
3 to answer Plaintiff Renteria’s written discovery, the Parties agreed to collectively mediate the Action.  
4 In anticipation of mediation, the Parties agreed to stay additional formal discovery and continue  
5 deadlines for class certification in the Action. To prepare for mediation, the Parties agreed to informally  
6 produce additional documents and data points subject to the mediation privilege, including but not  
7 limited to, the Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiffs’  
8 counsel retained the forensic consultants at Econ One Research, Inc. (“Econ One”) to analyze  
9 Defendant’s time and payroll data. JCL Dec., ¶ 16.

10 In October 2020, Plaintiff Espinoza propounded formal written discovery to Defendant,  
11 consisting of Form Interrogatories – General, Form Interrogatories – Employment, Special  
12 Interrogatories, Requests for Production of Documents, and Requests for Admission. Defendant  
13 provided responses on November 17, 2020, consisting solely of objections on the asserted basis of a  
14 Court-imposed stay of all discovery until the initial case management conference. JDB Dec., ¶ 13.

15 In December 2020, counsel for Plaintiff Espinoza, Jenny D. Baysinger of Mayall Hurley, P.C.,  
16 and counsel for Plaintiff Renteria, Jean-Claude Lapuyade of JCL Law Firm, APC, and Shani Zakay of  
17 Zakay Law Group, APLC, entered into a formal Joint Prosecution and Attorney Fee Division  
18 Agreement. JDB Dec., ¶ 15.

19 On May 25, 2021, the Parties participated in mediation presided over by Steven Rottman, Esq.,  
20 a well-respected class action mediator. At the conclusion of the negotiations, Mediator Rottman  
21 presented a mediator’s proposal that was ultimately accepted by all Parties for the Gross Settlement  
22 Amount of \$2,100,000<sup>3</sup>. The parties subsequently executed a binding and enforceable Memorandum  
23 of Understanding (“MOU”). After reaching an agreement in principle, the Parties drafted and  
24 negotiated a long-form settlement agreement, which is the subject of the instant motion. As part of the  
25 Agreement, the Parties stipulated to the filing of a Second Amended Complaint (“SAC”) in the  
26 Espinoza Action to incorporate the claims and factual allegations asserted in the Renteria Action, as  
27

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28 <sup>3</sup> As discussed *infra*, an escalator provision was subsequently triggered thereby increasing the Gross Settlement Amount to \$2,219,318.18.

1 well as add Plaintiff Renteria as a named Plaintiff in the Espinoza Action. JCL Dec., ¶ 17; JDB Dec. ¶  
2 28-31.

3 On November 16, 2021, this Court granted preliminary approval of the Settlement. JCL Dec., ¶  
4 4. On March 14, 2022, the Settlement Administrator mailed Notice Packets to all 1,674 Settlement  
5 Class members. JDB Dec., ¶ 46; ILYM Dec., ¶10. The mailing of the Notice Packets triggered a forty-  
6 five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections  
7 to the Settlement. The response from the Settlement Class to the Settlement was outstanding – 100%  
8 of the Class Members are participating in the Settlement. ILYM Dec., ¶¶ 15.

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

10 The Court preliminarily approved an initial Gross Settlement Amount of \$2,100,000 based on a  
11 total of approximately 50,296 Workweeks worked by the Class during the Class Period. The Gross  
12 Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class  
13 Representative Service Awards; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA  
14 Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶18.

15 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified  
16 Settlement Fund within 65 days after the Effective Date. Agreement, ¶ I(N). The Settlement  
17 Administrator shall disburse the Individual Settlement Payments to the Settlement Class Members no  
18 later than 15 days after Defendants fund the Gross Settlement Amount. Agreement, ¶ III(O)(7). The  
19 Settlement Administrator will calculate Individual Settlement Payments by adding up the total number  
20 of Workweeks for the Settlement Class. The Settlement Administrator will then divide the respective  
21 Workweeks for each member of the Settlement Class by the total Workweeks for the entire Settlement  
22 Class, resulting in a Payment Ratio for each Settlement Class member. Each Settlement Class Member's  
23 payment ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual  
24 Settlement Payment. Agreement, ¶ III(O)(1). At the time of preliminary approval, the initial estimates  
25 of the average Individual Settlement Payment was \$870.30 based on the initial Gross Settlement  
26 Amount. Using the Increased Gross Settlement Amount, the average Individual Settlement Payment is  
27 \$792.46, and the highest Individual Settlement Payment was \$2,396.55. JDB Dec., ¶ 43; ILYM Dec.,  
28 ¶16.

1 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,  
2 the Settlement Class Members will release the Released Parties from the Released Claims that accrued  
3 during the Released Claim Period. Agreement, ¶ III(B).

4 **A. The Application of the Escalator.**

5 After the Settlement Administrator mailed the original court-approved Notice Packet in this case,  
6 Defendant's counsel reached out and advised a number of individuals who met the definition of the  
7 Class had been inadvertently left off. In light of this development, and in anticipation of needing to, at  
8 least, send notice to the Class Members who had not been on the initial Class List, the Parties submitted  
9 a stipulation to this Court to continue the final approval hearing from March 8, 2022, to May 27, 2022.  
10 This court approved the stipulation on February 18, 2022. JDB Dec., ¶ 39-40.

11 Defendant provided the contact information for the additional Class Members to the  
12 Administrator on February 23, 2022. After the Settlement Administrator evaluated the additional data,  
13 Class Counsel were advised the number of Class Members had increased from 1,440 to 1,674 and the  
14 total number of workweeks increased from 50,296 to 56,357. The percentage increase in Class Members  
15 and Workweeks triggered the escalator clause in the Agreement. Agreement at ¶ III(A)(2). Based on the  
16 express language of the Agreement, the Gross Settlement Amount increased by \$119,318.18 since the  
17 number of Workweeks increased by 15.68%. The new Gross Settlement Amount in this matter is  
18 **\$2,219,318.18**. JDB Dec., ¶ 41-42.

19 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of  
20 \$769,772.72 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated  
21 to be at least \$739,772.72 and up to \$30,000 for actually incurred litigation expenses. JDB Dec. ¶ 99.  
22 Plaintiffs' counsel is to split the fees 40% to Mayall Hurley, P.C., 30% to the JCL Law Firm, APC, and  
23 30% to the Zakay Law Group, APLC. JDB Dec. ¶ 15.

24 Subject to Court approval, the Agreement provides for Class Representative Service Awards in  
25 the amount of \$10,000 for each Plaintiff, in consideration of their time, risk and efforts as the Class  
26 Representatives on behalf of the Settlement Class and a broad release of Civil Code section 1542.  
27 Settlement Agreement, ¶ III(O)(9).

28 ILYM Group was appointed as the Settlement Administrator for the class. Settlement

Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Settlement Shares, and the fees of the Settlement Administrator approved for reimbursement by the court. The Settlement Administrator expenses are \$22,958.75. ILYM Dec., ¶ 17; JDB Dec., ¶ 102. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ III(O)(12).

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by the Settlement Class and absence of any objections to the Settlement. ILYM Dec., ¶¶ 13-15; JCL Dec., ¶ 19; JDB Dec., ¶ 51.

Further supporting final approval, the average Individual Settlement Payment of \$792.47 is comparable to settlement payments in similar wage and hour class actions. This result is particularly favorable considering that liability and certification were far from certain. Given the complexities of this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 20.

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

Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th 259, 265. 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.* (2000) 85 Cal.App.4th 1135, 1151 (“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.* (1996) 48 Cal.App.4th 1794, 1801 citing *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. 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

1 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*  
2 *Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to be judged against a  
3 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”).  
4 In *Wershba*, appellants argued that the settlement was too low given the “clear” liability, however, the  
5 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for  
6 upsetting the settlement of a class action.” *Wershba, supra*, at 246; see also *7-Eleven, supra*, at 1150.

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

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

#### 18 **V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

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

24 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*  
25 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138. “The well-recognized factors that the trial court should  
26 consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of  
27 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of  
28 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 Defendant through formal and informal discovery, as well as interviews from several Class Members. 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 Econ One 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, Plaintiffs' Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 21-30; JDB Dec., ¶ 20-27.

**B. The Parties Settled Shortly After Mediation.**

The Settlement is the product of a mediation session and subsequent negotiations with a respected mediator over the terms of the Settlement. At the conclusion of the negotiations, Mediator

1 Rottman presented a mediator’s proposal that was ultimately accepted by all Parties. The negotiations  
2 were adversarial, conducted at arm’s length and tempered by the efforts of both sides to serve the  
3 interests of their clients. The amount of the service awards was not negotiated until after the parties  
4 agreed to the Gross Settlement Amount and many other terms. JCL Dec., ¶ 31; JDB Dec., ¶ 29. No  
5 action would likely have been taken by Class Members individually, and no compensation would have  
6 been recovered for them, but for Plaintiffs’ services on behalf of the Class.

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

8 Class Counsel in this matter has extensive class action experience in multiple fields and has  
9 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage  
10 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in  
11 similar wage and hour class actions throughout the State of California. As such, courts throughout the  
12 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class  
13 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement  
14 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 32-38; Declaration  
15 of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3; JDB Dec., ¶¶ 124-127.

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

17 The reaction of the Settlement Class unequivocally supports approval of the Settlement.  
18 Significantly, after dissemination of the notice to the Settlement Class, which provided each class  
19 member with the terms of the Settlement, including the specific estimated Individual Settlement  
20 Payments. To date, none of the 1,674 members of the Settlement Class opted-out of the Settlement.  
21 Moreover, there are zero objections. Stated differently, 100% of the Settlement Class chose to  
22 participate in the Settlement. JCL Dec., ¶ 7; ILYM Dec., ¶¶ 13-15.

23 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement  
24 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y.  
25 2000)80 F.Supp.2d 164, 175 (“If only a small number of objections are received, that fact can be  
26 viewed as indicative of the adequacy of the settlement.”); *Stoetznner v. U.S. Steel Corp.* (3d. Cir. 1990)  
27 897 F.2d 115, 118-119 (29 objections out of 281 member class “strongly favors settlement”); *Laskey*  
28 *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 Settlement Class and grant final approval of the Settlement.

**E. The Strength of Plaintiffs' Case**

“Compromise is inherent and necessary in the settlement process. Thus, even if the relief afforded by the proposed settlement is narrower than it would be if the suit were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Wershba*, 91 Cal.App.4th at 250. The Court must also satisfy itself, “that the consideration being received for the release of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” *Kullar*, 168 Cal.App.4th at 129. The *Kullar* court further 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.” *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).)

Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250. While the Gross Settlement Amount of \$2,219,318.18 represents a discount on Defendant’s potential exposure if Plaintiffs established liability on all claims and were awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award significantly less in damages than Plaintiffs’ 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, the PAGA Settlement, and the Class Representative Service Award, the Net Settlement Amount is currently estimated to be \$1,326,586.71. ILYM Dec., ¶16. 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 \$792.47 with the estimated highest gross payment being \$2,396.55. ILYM Dec., ¶ 16.

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

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

Although Plaintiffs 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, Inc.* (9<sup>th</sup> 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.* (9<sup>th</sup> 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.4<sup>th</sup> 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4<sup>th</sup> 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.4<sup>th</sup> 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 41.

Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless recognize 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 Plaintiffs’ claims and, in fact, already has. Recently, the California Court of Appeal, Second District, held that meal and rest period violations do not entitle employees to pursue the derivative waiting time and itemized wage statement penalties. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5<sup>th</sup> 444 (*review granted*). The *Naranjo* decision gutted Plaintiffs’ claims for Labor Code Section 226 penalties and Labor Code Section 203 waiting time penalties predicated on meal and rest period violations. JCL Dec., ¶ 42.

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

**Plaintiffs may have a strong case, but the risks inherent in continued litigation are great.** Defendants strongly deny liability for Plaintiffs’ principal claim that full-time Service Associates were misclassified as exempt. In addition to the uncertainties raised by Defendants at the preliminary stage regarding Plaintiffs’ chance of success in this case, Defendants notes that the question of an employer’s duty to provide rest and

meal periods is an open one, signaling even less certainty for Plaintiffs.....[T]he **Total Settlement amount and the Class Members' expected net recovery, after fees 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 Plaintiffs’ case, legal uncertainties at the time of settlement - particularly those which go to fundamental legal issues - favor approval.”).

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

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

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

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

As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668 and *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 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

1 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case  
2 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh  
3 an uncertain result three or more years in the future. JCL Dec., ¶ 43.

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

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

16 The Gross Settlement Amount of \$2,219,318.18 in this case is fair and well within the range of  
17 recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement  
18 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the  
19 various potential impediments to recovery. Class Counsel developed varied economic damages models  
20 measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation.  
21 The various models were informed by Class Counsel's investigation, including the analysis of a  
22 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval  
23 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on  
24 behalf of the Settlement Class. The Gross Settlement Amount represents approximately 34.11% of  
25 Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL  
26 Dec., ¶ 45.

27 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at \* 12, the District  
28 Court for the Northern District of California granted final approval in a wage and hour misclassification

1 action and found that the Total Settlement representing 10% of the estimated trial award was within the  
2 “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)  
3 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the  
4 potential recovery.” Given the amount of the settlement here as compared to potential value of the  
5 claims, particularly the strength of Plaintiffs’ action, the settlement is clearly fair and reasonable<sup>4</sup>.

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

17 The settlement also provides significant relief to the Settlement Class Members. The average  
18 settlement payment is approximately \$792.47, and the highest is approximately \$2,396.55. ILYM Dec.,  
19 ¶ 16. This average net recovery is on par with many wage and hour class action settlements approved  
20 by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-  
21 00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Fukuchi v.*  
22 *Pizza Hut*, Case No. BC302589 (LA. County Super. Ct.) (average net recovery of approximately \$120);  
23 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net  
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25 <sup>4</sup> 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 recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018  
2 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*,  
3 Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately  
4 \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery  
5 of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County  
6 Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No.  
7 BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20).

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

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

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

23 Here, Plaintiffs and Defendant negotiated a good faith PAGA Settlement in the amount of  
24 \$80,000 which is 3.6% of the Gross Settlement Amount. This amount falls well within the range of  
25 approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$60,000) will  
26 be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) to be  
27 distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by  
28 courts and should be approved. JCL Dec., ¶ 47.

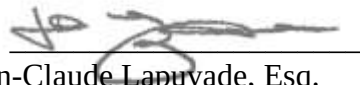
1 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a  
2 copy of the Settlement, the Motion for Preliminary Approval and this motion seeking final approval  
3 with the LWDA. Declaration of Jenny D. Baysinger filed concurrently herewith at ¶ 103; JCL Dec.,  
4 ¶¶ 5-6. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted  
5 and approved of the proposed PAGA Settlement.

6 **VII. CONCLUSION**

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

10  
11 Dated: May 19, 2022

**JCL LAW FIRM, APC**

12  
13 By:   
14 Jean-Claude Lapuyade, Esq.  
15 Attorneys for Plaintiff  
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