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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ALEXANDER CASTELLANOS, an
individual, on behalf of himself, and on
behalf of all persons similarly situated,

Plaintiff,

vs.

SOUTHWEST SECURITY PATROL,
INC., d.b.a. SOUTHWEST PATROL, a
California corporation; and DOES 1 through
50, Inclusive;

Defendants.

Case No. 37-2020-00024905

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

Date: April 8, 2022

Time: 8:30 a.m.

Judge: Hon. Keri Katz

Dept.: 74

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I. INTRODUCTION

Plaintiffs Alexander Castellanos, Douglas Alonzo Allen Gray, and Robert Mauna (collectively “Plaintiffs”) seek final approval of the Stipulation of Settlement of Class Action Claims and Release of Claims and the Stipulation and Order to Modify the Timing Under the Settlement Agreement (collectively “Agreement”),¹ which if approved, would provide valuable monetary relief for 933 Settlement Class Members employed by defendant SOUTHWEST SECURITY PATROL, INC., d.b.a. SOUTHWEST PATROL (“Defendant”) during the Class Period.

In an order dated December 3, 2021, this Court preliminarily approved the Agreement and preliminarily certified the Class. JCL Dec., ¶ 5. On January 14, 2022, the Settlement Administrator delivered notice of the proposed settlement to the Class. Declaration of Lluvia Islas (“ILYM Dec.”), ¶¶ 1-7.

*The Class greeted news of the Settlement with unanimous approval as 99.79% of all Class Members choose to participate in the Settlement.*² There were only three (3) opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶ 8-13. 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 \$600,000.00 (“Total Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, guided by the wisdom and experience of prominent wage and hour, class action mediator Lynn Frank, Esq. After deducting any Court-approved attorneys’ fees and costs, class representative incentive payments, administration costs, and payments to the Labor & Workforce Development Agency (“LWDA”), the Net Settlement Amount shall be distributed to the Settlement Class Members based on the number of Workweeks they worked while employed by Defendant during the Class Period. JCL Dec., ¶ 7.

This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations.

¹ The Agreement and the Stipulation and Order to are attached as Exs. “A” and “B” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶¶ 3-4. 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.

² 36 Notices were deemed undeliverable.

1 Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of
2 approximately \$276,585.40. This will result in an average Individual Settlement Payment of **\$296.77**
3 and high payment of **\$1,009.75**. ILYM Dec., ¶ 14; JCL Dec., ¶ 8.

4 Additionally, if approved \$50,000 of the Total Settlement Amount will be allocated to Plaintiffs’
5 claims arising out of the Private Attorney General Act (“PAGA Settlement”). This will result in a
6 \$37,500 payment to the LWDA (“LWDA Payment”) to continue enforcing labor laws throughout
7 California and providing education to employers and employees about their rights and responsibilities
8 under the Labor Code. The remaining \$12,500 will be allocated to the Aggrieved Employees.
9 Agreement, ¶III(O)(4).

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

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

19 **II. OVERVIEW OF THE LITIGATION**

20 Defendant is a security guard company that provides security services to clients throughout
21 Southern California. Plaintiffs Mauna, Gray, and Castellanos were employed by Defendant as non-
22 exempt employees during the Class Period. At all times during their employment, Plaintiffs earned an
23 hourly wage and were entitled to legally compliant meal and rest periods, and minimum, regular and
24 overtime wages for all hours worked. Throughout their employment, Plaintiffs were subject to
25 Defendant’s written policies and procedures contained in, among other documents, the “Southwest
26 Patrol Employee Policy and Procedure Handbook.” JCL Dec., ¶ 11.

27 Generally, Plaintiffs claim that Defendant failed to pay for all hours worked, failed to provide
28 compliant meal and rest periods, failed to reimburse mandatory business expenses and failed to timely

pay wages upon separation. Defendant forcefully denies liability for each of Plaintiffs’ claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiffs’ claims, including but not limited to, facially compliant meal and rest period policies, written policies prohibiting the use of personal cell phones, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 12.

On September 11, 2019, plaintiff Mauna served Defendant and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff Mauna’s PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). JCL Dec., ¶ 13.

On November 1, 2019, plaintiff Gray also served Defendant and the LWDA with a separate PAGA Notice setting forth the facts and theories supporting Defendant’s alleged violations of Labor Code and IWC Wage Order. Gray subsequently filed a representative action for PAGA penalties in the Los Angeles Superior Court, Case Number 20STCV02521 (“Gray Action”). JCL Dec., ¶ 14.

On August 20, 2019, Mauna, filed an individual action in the Los Angeles Superior Court entitled *Mauna v. Southwest Patrol, Inc.* Case Number 19STCV28903 (“*Mauna Action*”) asserting numerous wage and hour violations against Defendant. JCL Dec., ¶ 15.

Subsequently, on July 15, 2020, plaintiff Castellanos also served Defendant and the LWDA with a PAGA Notice. Plaintiff Castellanos’ PAGA Notice also set forth the facts and theories supporting Defendant’s alleged violations of the Labor Code and IWC Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). JCL Dec., ¶ 16.

On July 17, 2020, plaintiff *Castellanos* filed this class action complaint in the San Diego Superior Court for: (1) Unfair Competition in Violation of Bus. and Prof. Code §§ 17200; (2) failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of California Labor Code sections 510 *et seq.*; (4) failure to provide required meal periods in violation of California Labor Code sections 226.7 and 512; (5) failure to

1 provide required rest periods in violation of California Labor Code sections 226.7 and 512; (6) failure
2 to reimburse employees for required business expenses in violation of California Labor Code sections
3 2802; (7) failure to provide accurate itemized wage statements in violation of California Labor Code
4 section 226; and (8) failure to provide wages when due in violation of California Labor Code sections
5 201, 202 and 203 (“*Castellanos Action*”). JCL Dec., ¶ 17.

6 Plaintiff Castellanos commenced written discovery in December 2020. Prior to answering
7 Plaintiff’s written discovery, the Parties agreed to collectively mediate the *Mauna Action*, the *Gray*
8 *Action* and the *Castellanos Action*. In anticipation of mediation, the Parties stipulated to stay formal
9 discovery. To prepare for mediation, the Parties agreed to informally produce certain documents and
10 data points subject to the mediation privilege, including but not limited to, a sample of the Class
11 Members’ time and payroll data. As discussed *infra*, Plaintiffs’ counsel retained the forensic
12 consultants at Econ One to analyze Defendant’s time and payroll data. JCL Dec., ¶ 18.

13 On June 8, 2021 the Parties participated in a full day mediation with highly regarded wage and
14 hour mediator Lynn Frank, Esq. After arms-length negotiations and bargaining, the parties reached an
15 agreement to settle and signed a Memorandum of Understanding. After reaching an agreement in
16 principle, the parties drafted and negotiated a long-form settlement agreement, which is the subject of
17 the instant motion. As part of the Agreement, the Parties stipulated to the filing of a First Amended
18 Complaint joining all Plaintiffs and causes of action into a single proceeding and seeking approval of
19 the Agreement in the *Castellano Action*. JCL Dec., ¶ 19.

20 On November 19, 2021, this Court granted preliminary approval of the Settlement. JCL Dec., ¶
21 5. Shortly, thereafter, the Claims Administrator mailed Notice Packets to all 933 Class Members.
22 ILYM Dec., ¶¶ 1-7. The mailing of the Notice Packets triggered a forty-five (45) day Response
23 Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The
24 response from the Settlement Class to the Settlement was outstanding – 100% of the Class Members
25 are participating in the Settlement. ILYM Dec., ¶¶ 7-13.

26 **III. THE SETTLEMENT BEFORE THE COURT**

27 The Court preliminarily approved a Total Settlement Amount of \$600,000 based on a total of
28 approximately 39,937 Workweeks worked by the Class during the Class Period. The Total Settlement

Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Awards; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 20. The Total Settlement Amount is all-in with no reversion to Defendant. Agreement, ¶III(A)(1). The remainder, the Net Settlement Amount, shall be used for the payment of all Individual Settlement Payments to satisfy all Released Claims. Agreement, ¶III(O)(1).

Defendant has already began funding the Total Settlement Amount. On January 5, 2022, Defendant deposited \$125,000.02 into the QSF. Defendant deposited another \$14,583.33 into the QSF on March 7, 2022 and another \$75,000 on March 16, 2022. Defendant will fund the remaining installments in accord with the Stipulation and Order to Modify the Timing of Payments Under the Settlement Agreement. JCL Dec., ¶¶ 4, 21. Once fully funded, the Settlement Administrator shall disburse the Individual Settlement Payments to the Settlement Class Members no later than 15 days after Defendant funds the Total Settlement Amount. Agreement, ¶ III(O)(1)(e).

The Settlement Administrator will calculate Individual Settlement Payments by adding up the total number of Workweeks for the Settlement Class. The Settlement Administrator will then divide the respective Workweeks for each member of the Settlement Class by the total Workweeks for the entire Settlement Class, resulting in a Payment Ratio for each Settlement Class member. Each Settlement Class Member's payment ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement Payment. Agreement, ¶ III(O)(1)(a). The Claims Administrator estimates the average Individual Settlement Payment is \$296.77 and the highest Individual Settlement Payment is \$1,009.75. ILYM Dec., ¶ 14.

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

ILYM Group was appointed as the Claims Administrator for the class. Claims Administration Expenses include those expenses of effectuating and administering the Settlement, i.e., the costs incurred to the Claims Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Settlement Shares, and the fees of the Claims Administrator approved for

reimbursement by the court. The Claims Administration expenses are \$18,414.60,000. ILYM Dec., ¶ 15. These expenses shall be paid from the Total Settlement Amount. Agreement, ¶ III(O)(5).

Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of \$225,000 comprised of attorneys' fees equal to one-third of the Total Settlement Amount estimated to be at least \$200,000 and up to \$25,000 for actually incurred litigation expenses. Agreement, ¶ III(O)(3).

Subject to Court approval, the Agreement provides for a Class Representative Service Awards in the amount of \$10,000 for each Plaintiff, in consideration of their time, risk and efforts as the Class Representatives on behalf of the Settlement Class and a broad release of Civil Code section 1542. Settlement Agreement, ¶¶ III(D) and III (O)(2).

As set forth in the Agreement, \$50,000 of the Total Settlement Amount has been allocated for civil penalties under the PAGA ("PAGA Settlement"). Seventy-Five percent of the PAGA Settlement will be paid to the California Labor Workforce and Development Agency ("PAGA Payment"). The Settlement Administrator shall distribute the remaining 25% of the PAGA Settlement to the Aggrieved Employees ("Aggrieved Employee Payment"). Agreement, ¶¶ III(O)(4).

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; JCL Dec., ¶ 7.

Further supporting final approval, the average Individual Settlement Payment of \$296.77 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., ¶ 22.

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*, 52 Cal. App. 4th 259, 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*

v. *Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

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

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

V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); see also *Officers for Justice v. Civil Service Com’n*, 688

F. 2d 615, 625 (9th Cir. 1982). The purpose of the requirement is "the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties." *Dunk, supra*, at 1801.

The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d 1117, 1138 (1990). "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.*, 168 Cal. App. 4th 116, 128 (2008); see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 408 (2010).

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 in 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 in order to assess damages before mediation. Class Counsel retained Berger

Consulting Group to analyze Defendant's time and payroll data to formulate damage models estimating Defendant's liability exposure. Class Counsel's investigation, research, experience and damage models, informed and guided the mediated negotiations that resulted in this settlement. Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶¶ 23-31.

B. The Parties Settled at Mediation.

The Settlement is the product of a mediation session with a respected mediator and negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. The amount of the service award was not negotiated until after the parties agreed to the Total Settlement Amount and many other terms. JCL Dec., ¶ 32. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class.

C. Class Counsel is Experienced in Similar Litigation.

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar claims. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout the California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 33 - 39.

D. The Settlement Class Responded Positively to the Settlement.

The reaction of the Settlement Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Settlement Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Settlement Payments. To date, only three (3) of the 933 members of the Settlement Class opted-out of the Settlement. Moreover, there are zero objections. Stated differently, 99.79% of the Settlement Class chose to participate in the Settlement. JCL Dec., ¶ 7; ILYM Dec., ¶¶ 7-13.

The near unanimous approval by the Settlement Class strongly supports a finding that the

Settlement is fair, reasonable and adequate. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) ("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.*, 897 F.2d 115, 118-119 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l Union*, 638 F.2d 954 (6th Cir. 1981) (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 Plaintiff's 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 Total Settlement Amount of \$600,000.00 represents a discount on Defendant's potential exposure if Plaintiffs established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because 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., ¶ 43.

After deductions for the Class Counsel Award, Settlement Administration Cost, Class Representative Service Awards and the PAGA Settlement, the Net Settlement Amount is currently estimated to be \$276,585.40. ILYM Dec., ¶14. Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, ¶ III(A)(1). The average individual settlement payment is estimated to be \$296.77 with the estimated highest gross payment being \$1,009.75. ILYM Dec., ¶ 14.

Although Class Counsel believe strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one its defenses, Defendant could defense the action or, at least, drastically undercut Plaintiffs' claims. JCL Dec., ¶ 44.

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.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the

trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 45.

Although Plaintiffs are confident about the strength of their claims, Plaintiffs 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 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.*, 40 Cal.App.5th 444 (2019) (*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., ¶ 46.

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.*, 150 F. 3d 1011, 1026 (9th Cir. 1998.)

As demonstrated by the decisions in *Magadia*, *supra*, 999 F.3d 668 and *O'Conner v. Uber Technologies*, 82 F. Supp. 3d 1133 (N.D. Cal. 2018) and *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a bond and appeal. A post-judgment appeal by Defendant would have required many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh an uncertain result three or more years in the future. JCL Dec., ¶ 47.

Class Representatives and Class Counsel recognize the expense and length of a trial against Defendant through possible appeals which could take another three years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Class Representatives and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable and adequate, and should be granted final approval. JCL Dec., ¶ 48.

G. The Total Settlement Amount is Fair and Reasonable.

The Total Settlement Amount of \$600,000.00 in this case is fair and well within the range of recognized reasonableness. As detailed at the time of preliminary approval, the Total Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on

1 behalf of the Settlement Class. The Total Settlement Amount represents approximately between 9% and
2 33% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation.
3 JCL Dec., ¶ 49.

4 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
5 Court for the Northern District of California granted final approval in a wage and hour misclassification
6 action and found that the Total Settlement representing 10% of the estimated trial award was within the
7 "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F. 3d 454,
8 459 (9th Cir. 2000), the 9th Circuit approved a settlement representing "roughly one-sixth of the potential
9 recovery." Given the amount of the settlement here as compared to potential value of the claims,
10 particularly the strength of Plaintiffs' action, the settlement is clearly fair and reasonable³.

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

22 The settlement also provides significant relief to the Settlement Class Members. The average
23 settlement payment is approximately \$296.77, and the highest is approximately \$1,009.75. ILYM Dec.,
24

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

¶ 14. 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 (E.D. 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).

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. JCL Dec., ¶ 50.

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

Here, Plaintiffs and Defendant negotiated a good faith PAGA Settlement in the amount of

1 \$50,000 which is 8.3% of the Total Settlement Amount. This amount falls well within the range of
2 approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$60,000) will
3 be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) to be
4 distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by
5 courts and should be approved. JCL Dec., ¶ 51.

6 Further, on October 6, 2021, Class Counsel gave the LWDA notice of this Settlement and
7 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with
8 the LWDA. On March 16, 2022, Plaintiffs gave the LWDA notice of this motion seeking final
9 approval of this settlement. JCL Dec., ¶¶ 6, 52. By not registering an objection with either Class
10 Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

11 **VII. CONCLUSION**

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

15
16 Dated: March 16, 2022

JCL LAW FIRM, APC

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18 By: 
19 Jean-Claude Lapuyade, Esq.
20 Attorneys for Plaintiff
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