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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF IMPERIAL

MICHAEL HONEA, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

SPENCER CONSTRUCTION LLC, a Limited
Liability Company; and DOES 1 through 50,
inclusive,

Defendants.

Case No. ECU001860

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

Date: June 29, 2023

Time: 8:30 a.m.

Judge: Hon. Jeffrey B. Jones

Dept.: 7

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE LITIGATION	2
III.	THE SETTLEMENT BEFORE THE COURT	4
IV.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	6
V.	THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	7
	A. Class Counsel Conducted a Thorough Investigation.	8
	B. The Parties Settled At Mediation.	8
	C. Class Counsel is Experienced in Similar Litigation.	8
	D. The Settlement Class Responded Positively to the Settlement.	9
	E. The Gross Settlement Amount is Fair and Reasonable	9
	F. The Strength of Plaintiff's Case and Risks of Continued Litigation	12
VI.	THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE	15
VII.	CONCLUSION	16

TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1150-1151.....	6
5	<i>Ali v. U.S.A. Cab Ltd.</i>	
6	(2009) 176 Cal.App.4th 1333, 1341.....	13
7	<i>Barcia v. Contain-A-Way, Inc.</i>	
8	2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009).....	14
9	<i>Brinker</i>	
10		13
11	<i>Brown v. Fed Express Corp.</i>	
12	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	13
13	<i>Browning v. Yahoo!, Inc.</i>	
14	2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007).....	14
15	<i>Campbell v. Best Buy Stores, L.P.,</i>	
16	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	13
17	<i>Contreras v. United Food Group, LLC</i>	
18	Case No. BC389253 (L.A. County Super. Ct.).....	11
19	<i>Doty v. Costco Wholesale Corp.</i>	
20	Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007).....	12
21	<i>Dunk v. Ford Motor Co.</i>	
22	(1996) 48 Cal.App.4th 1794, 1801.....	6-7
23	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
24	(9th Cir. 2000) 213 F.3d 454, 459.....	10
25	<i>Duran v. U.S. Bank National Association</i>	
26	(2014) 59 Cal.4th 1, 31.....	13-14
27	<i>Fukuchi v. Pizza Hut</i>	
28	Case No. BC302589 (L.A. County Super. Ct.).....	11
	<i>Glass v. UBS Fin. Servs.</i>	
	2007 WL221862.....	12
	<i>Gomez v. Amadeus Salon, Inc.</i>	
	Case No. BC392297 (L.A. Super. Ct.).....	12
	<i>Hanlon v. Chrysler Corp.</i>	
	(9th Cir. 1998) 150 F.3d 1011, 1026.....	14
	<i>Hopson v. Hanesbrands Inc.</i>	
	No. CV-08-0844 EDL, 2009 WL 928133, at *1, 9.....	15
	<i>Hopson v. Hanesbrands Inc.</i>	
	2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009).....	13
	<i>Huens v. Tatum</i>	
	(1997) 52 Cal.App.4th 259, 265.....	6
	<i>In re Austrian & German Bank Holocaust Litigation</i>	
	(S.D.N.Y. 2000)80 F.Supp.2d 164, 175.....	9
	<i>In re Newbridge Networks Sec. Litig.</i>	
	(D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2.....	11
	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	15
	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	(2008) 168 Cal.App.4th 116, 128-29.....	7, 9-10

1	<i>Laskey v. Int'l Union</i>	
	(6th Cir. 1981) 638 F.2d 954.....	9
2	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
	(N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7.....	11
3	<i>Lim v. Victoria's Secret Stores, Inc.</i>	
	Case No. 04CC00213 (Orange County Super. Ct.).....	12
4	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i>	
	2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).....	14
5	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
	(9 th Cir. 2021) 999 F.3d 668.....	12, 14
6	<i>Malibu Outrigger Bd. Of Governors v. Superior Court</i>	
	(1980) 103 Cal.App.3d 573, 578-579.....	6
7	<i>McKenzie v. Fed. Express Corp.</i>	
	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	15
8	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
	(2010) 186 Cal.App.4th 399, 408.....	7
9	<i>O'Conner v. Uber Technologies, Inc.</i>	
	(9 th Cir. 2018) 904 F.3d 1087, 1133.....	12-14
10	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
	(9th Cir. 1982) 688 F. 2d 615, 625.....	7
11	<i>Palencia v. 99 Cents Only Stores</i>	
	No. 34-2010-00079619.....	11
12	<i>Rebney v. Wells Fargo Bank</i>	
	(1990) 220 Cal.App.3d 1117, 1138.....	7
13	<i>Ressler v. Federated Department Stores, Inc.</i>	
	Case No. BC335018 (L.A. County Super. Ct.).....	11-12
14	<i>Sorenson v. PetSmart, Inc.</i>	
	Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.).....	12
15	<i>Stoetzner v. U.S. Steel Corp.</i>	
	(3d. Cir. 1990) 897 F.2d 115, 118-119.....	9
16	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
	2015 U.S. Dist. LEXIS 78671.....	10
17	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Associates</i>	
	38 Cal.3d 488, 499-500 (1985).....	10
18	<i>Tien v. Tenet Healthcare Corp.</i>	
	(2012) 209 Cal.App.4th 1077, 1088.....	13
19	<i>Viceral v. Mistras Grp., Inc.</i>	
	(N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7.....	11
20	<i>Wershba v. Apple Computer</i>	
	(2001) 91 Cal.App.4th 224, 245-46, 250, 2246.....	6, 10

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RULES, CODES, AND STATUTES

1	<i>Cal. Bus. & Prof. Code</i> §§ 17200 <i>et seq.</i>	3
2	<i>Cal. Lab. Code</i> § 201.....	3
	<i>Cal. Lab. Code</i> § 202.....	3
3	<i>Cal. Lab. Code</i> § 203.....	3
	<i>Cal. Lab. Code</i> § 226.....	3
4	<i>Cal. Lab. Code</i> § 226.7.....	3
	<i>Cal. Lab. Code</i> §§ 510 <i>et seq.</i>	3
5	<i>Cal. Lab. Code</i> § 512.....	3
6	<i>Cal. Lab. Code</i> § 1102.5 <i>et seq.</i>	3
	<i>Cal. Lab. Code</i> § 1194.....	3
7	<i>Cal. Lab. Code</i> § 1197.....	3
	<i>Cal. Lab. Code</i> § 1197.1.....	3
8	<i>Cal. Lab. Code</i> § 1198.5.....	3
	<i>Cal. Lab. Code</i> §§ 2698 <i>et seq.</i>	3
9	<i>Cal. Lab. Code</i> § 2802.....	3
10	<i>Cal. Lab. Code</i> § 6310.....	3
	<i>Code of Civ. Proc.</i> § 877.6.....	9

SECONDARY SOURCES

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1 I. INTRODUCTION

2 Plaintiff MICHAEL HONEA (hereinafter “Plaintiff”) seeks final approval of the Stipulation of
3 Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if
4 approved, would provide valuable monetary relief for 121 Settlement Class Members employed by
5 Defendant SPENCER CONSTRUCTION LLC (hereinafter “Defendant”) during the Class Period.

6 In an order dated October 31, 2022, this Court preliminarily approved the Agreement and
7 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On February
8 28, 2023, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
9 Declaration of Nathalie Hernandez (“ILYM Dec.”), ¶ 7. *The Class greeted news of the Settlement with*
10 *unanimous approval as, at the time of the filing of this motion, all 121 Class Members chose to*
11 *participate in the Settlement.*² As of the filing of this motion, there are zero opt-outs and zero objections
12 to the Settlement. ILYM Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences
13 the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

14 An objective evaluation of the proposed settlement of One Hundred Fifty Thousand Dollars and
15 Zero Cents (\$150,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf
16 of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed,
17 adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Louis
18 Marlin, Esq., an experienced mediator of wage and hour class and representative actions. After
19 deducting any Court-approved attorneys’ fees and costs, class representative incentive payments,
20 administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”),
21 the net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks
22 they worked while employed by Defendant during the Class Period. JCL Dec., ¶ 8.

23 This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates
24 that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$57,000.00**.
25 This will result in an average Individual Settlement Payment of **\$471.07**, a high payment of **\$1,393.91**,

26
27 ¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the
28 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 Seven (7) Notices were deemed undeliverable. ILYM Dec. at ¶ 10.

1 and a low payment of **\$21.44**. Aggrieved Employees will receive an estimated average gross payment
2 of **\$10.33** and a high payment of **\$29.37**. JCL Dec., ¶ 9; ILYM Dec. at ¶ 14.

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., ¶ 10.

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, the Class
10 Representative 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., ¶ 11.

12 **II. OVERVIEW OF THE LITIGATION**

13 Defendant operates a construction business which was recently involved in border infrastructure
14 improvements in the state of California, including Imperial County where Plaintiff worked. Plaintiff
15 worked for Defendant as a non-exempt employee in California from approximately December of 2019
16 to June of 2020. Throughout his employment, Plaintiff was subject to Defendant's written policies and
17 procedures contained in, among other documents, the "Spencer Construction Employee Handbook."
18 JCL Dec., ¶ 12; Declaration of Michael Honea ("MH Dec."), ¶¶ 2-4.

19 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
20 legally compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to
21 furnish accurate itemized wages statements, and failed to pay all wages when due. Defendant forcefully
22 denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all
23 applicable employment laws and raised several other significant defenses to Plaintiff's claims,
24 including but not limited to, compliant compensation policies and plans, complaint meal and rest
25 practices, compliant wage statements, timely paid all wages due upon separation of employment, and
26 compliant reimbursement policies and plans. JCL Dec., ¶ 13.

27 On November 20, 2020, Plaintiff served Defendant and the Labor and Workforce Development
28

Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’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., ¶ 14.

On April 15, 2021, Plaintiff filed a class action complaint in the Imperial Superior Court, Case Number ECU001860 (“Action”). The Action alleged twelve causes of action against Defendant for: (1) Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*; (2) Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 & 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 and the applicable IWC wage order; (5) Failure to provide required rest periods in violation of California Labor Code sections 226.7 and 512 and the applicable IWC wage order; (6) Failure to reimburse employees for required expenses in violation of Cal. Lab. Code section 2802; (7) Failure to provide accurate itemized wage statements in violation of California Labor Code section 226; (8) Failure to provide wages when due in violation of Cal. Lab. Code sections 201, 202 and 203; (9) Failure to provide personnel files in violation of Cal. Lab. Code section 1198.5; (10) Termination in violation of public policy [Labor Code sections 1102.5 and 6310]; (11) Retaliation in violation of Labor Code section 1102.5, *et seq.*; and (12) Violation of the Private Attorneys General Act [Labor Code section 2698, *et seq.*]. JCL Dec., ¶ 15.

After serving written discovery, the Parties agreed to mediate the Action. To prepare for mediation, the Defendant agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to, employee handbooks, the Class Members’ time data, and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 16.

On February 7, 2022, the Parties participated in a full day mediation with Louis Marlin, Esq., an experienced mediator of wage and hour class and PAGA actions. The mediation concluded with a

1 settlement, after both sides agreed to a Mediator’s proposal, which was subsequently memorialized in
2 the form of a Memorandum of Understanding (“MOU”). After reaching an agreement in principle, the
3 Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant
4 motion. JCL Dec., ¶ 17.

5 On October 31, 2021, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 6.
6 On February 28, 2023, the Settlement Administrator mailed Notice Packets to all 121 Settlement Class
7 Members. ILYM Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response
8 Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The
9 response from the Settlement Class to the Settlement was outstanding – 100% of the Class Members
10 are participating in the Settlement. ILYM Dec., ¶¶ 13.

11 **III. THE SETTLEMENT BEFORE THE COURT**

12 The Court preliminarily approved an initial Gross Settlement Amount of One Hundred Fifty
13 Thousand Dollars and Zero Cents (\$150,000.00) based on a total of an estimated 2,425 Workweeks
14 worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy
15 Individual Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the
16 Class Counsel Award; (4) to satisfy the PAGA Payment; and (5) to satisfy the Claims Administration
17 Expenses incurred in this action. JCL Dec., ¶ 18.

18 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
19 Settlement Fund within thirty (30) days after the Effective Date. Agreement, ¶ I(N). The Settlement
20 Administrator shall mail the Individual Settlement Payments and Aggrieved Employee Payments to the
21 Settlement Class Members and/or Aggrieved Employees no later than fifteen (15) calendar days after
22 Defendant funds the Gross Settlement Amount. Agreement, ¶ III(L)(7). The Settlement Administrator
23 will calculate Individual Settlement Payments by adding up the total number of Workweeks for all Class
24 Members. The Settlement Administrator will then divide the respective Workweeks for each member
25 of the Settlement Class by the total Workweeks for the entire Settlement Class, resulting in a Payment
26 Ratio for each Class Member. Each Settlement Class Member’s Payment Ratio is then multiplied by the
27 Net Settlement Amount to calculate each estimated Individual Settlement Payment. Agreement, ¶
28

III(L)(1). The estimated average Individual Settlement Payment is approximately **\$471.07**. ILYM Dec., ¶ 14.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, Plaintiff and the Settlement Class Members will release the Released Parties from the Released Class Claims for the Class Period. Agreement at ¶ III(B). The Aggrieved Employees, the LWDA, and the State of California will release the Released Parties from the PAGA Released Claims for the PAGA Period. Agreement at ¶ III(C).

ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Claims Administration Expenses 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 Payments, and the fees of the Settlement Administrator (“Claims Administration Expenses”) approved for reimbursement by the court. The Claims Administration Expenses are \$8,000.00. ILYM Dec., ¶ 15. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ III(L)(12).

Subject to Court approval, Class Counsel shall seek a Class Counsel Award in the amount of \$70,000.00 comprised of attorneys’ fees equal to one-third of the Gross Settlement Amount estimated to be at least \$50,000.00 and up to \$20,000 for actually incurred litigation expenses. Plaintiff’s counsel is to split the fees 35% to the JCL Law Firm, APC, 35% to the Zakay Law Group, APLC, and 30% to Blumenthal, Nordrehaug, Bhowmik & De Blouw, LLP. Agreement, ¶ I(E). The Agreement also provides for a Class Representative Service Award in the amount of \$10,000 for Plaintiff, in consideration of his time, risk, and efforts as the Class Representative on behalf of the Settlement Class. Agreement, ¶¶ I(I); III(L)(9).

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, the absence of any objections to the Settlement and the average Individual Settlement Payment of **\$471.07**. ILYM Dec., ¶¶ 11-14; JCL Dec., ¶ 19.

///

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

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

8 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
9 action requires court approval.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing*
10 *Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court
11 must decide whether the proposed settlement falls within the range of reasonable settlements,
12 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
13 judgments concerning the risks and possible outcomes of litigation. *See also Wershba v. Apple*
14 *Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is not to be judged against a
15 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”).
16 In *Wershba*, appellants argued that the settlement was too low given the “clear” liability, however, the
17 Court rejected this argument and held that “the merits of the underlying class claims are not a basis for
18 upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

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

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

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

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

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

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

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

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

27 ///

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

2 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
3 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
4 assessed the value of the class claims using data and documents provided by Defendant through
5 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
6 the number of Class Members, aggregate workweeks and pay periods data for the Class, full and copies
7 of applicable handbooks containing, *inter alia*, compensation, timekeeping, and meal and rest period
8 policies. Class Counsel retained Berger Consulting Group (“BCG”) to analyze Defendant’s time and
9 payroll data to formulate damage models estimating Defendant’s liability exposure. Class Counsel’s
10 investigation, research, experience, and damage models informed and guided the mediated negotiations
11 that resulted in this settlement. Accordingly, Plaintiff’s Counsel fully understood the strengths and
12 weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 20-25.

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

14 On February 7, 2022, the Parties conducted a full-day mediation with Louis Marlin, Esq., an
15 experienced mediator of wage and hour class and representative actions. Mediator Marlin helped to
16 manage the Parties’ expectations and provided a useful, neutral analysis of the issues and risks to both
17 sides. The Parties made substantial progress with Mediator Marlin’s assistance. Namely, the Parties
18 exchanged information regarding their respective claims and defenses, including their respective
19 evaluations of the damages. After more than eight hours of arm’s length and adversarial negotiations,
20 the mediation concluded with a settlement after the Parties agreed to a Mediator’s proposal. The
21 amount of the service awards was not negotiated until after the parties agreed to the Gross Settlement
22 Amount and many other terms. No action would likely have been taken by Class Members
23 individually, and no compensation would have been recovered for them, but for Plaintiff’s service on
24 behalf of the Class. JCL Dec., ¶ 26.

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

26 Class Counsel in this matter has extensive class action experience in multiple fields and has
27 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
28

1 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
2 similar wage and hour class actions throughout the State of California. As such, courts throughout
3 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
4 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
5 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 27-33; Declaration
6 of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3; Declaration of Nicholas De Blouw (“BNBD Dec.”) ¶¶ 2-6.

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

8 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
9 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
10 member with the terms of the Settlement, including the specific estimated Individual Settlement
11 Payments. As of the filing of this motion, none of the 121 members of the Settlement Class opted-out
12 of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement
13 Class chose to participate in the Settlement. JCL Dec., ¶ 8; ILYM Dec., ¶¶ 12-13.

14 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement
15 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y.
16 2000) 80 F.Supp.2d 164, 175 (“If only a small number of objections are received, that fact can be
17 viewed as indicative of the adequacy of the settlement.”); *Stoetznner v. U.S. Steel Corp.* (3d. Cir. 1990)
18 897 F.2d 115, 118-119 (29 objections out of 281 member class “strongly favors settlement”); *Laskey*
19 *v. Int’l Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the
20 proposed settlement should be considered when determining fairness of settlement.). Consequently,
21 Class Counsel respectfully requests the Court to follow the unanimous approval of the Settlement Class
22 and grant final approval of the Settlement.

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

24 The Gross Settlement Amount of One Hundred Fifty Thousand Dollars and Zero Cents
25 (\$150,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
26 court acknowledged that “as the court does when it approves a settlement as in good faith under Code
27 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
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1 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
2 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

3 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
4 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the
5 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
6 While the Gross Settlement Amount of One Hundred Fifty Thousand Dollars and Zero Cents
7 (\$150,000.00) represents a discount on Defendant’s potential exposure if Plaintiff established liability
8 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
9 reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award
10 significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may
11 require many more years of litigation, resulting in added fees and costs without any guarantee of
12 recovery for the Class. JCL Dec., ¶ 34.

13 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
14 reasonable considering the nature and magnitude of the claims being settled and the various potential
15 impediments to recovery. Class Counsel developed varied economic damages models measuring
16 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
17 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
18 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
19 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the
20 Settlement Class. The Gross Settlement Amount represents approximately 20.9% of Defendant’s *class-*
21 *wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 35.

22 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
23 for the Northern District of California granted final approval in a wage and hour misclassification action
24 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
25 the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
26 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
27 potential recovery.” Given the amount of the settlement here as compared to potential value of the
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claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable³.

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

The settlement also provides significant relief to the Settlement Class Members. After deductions for the Class Counsel Award, Claims Administration Expenses, the PAGA Payment, and the Class Representative Service Award, the Net Settlement Amount is currently estimated to be \$57,000.00. ILYM Dec., ¶ 14. The average settlement payment is approximately \$471.07, the highest is approximately \$1,393.91, and the lowest payment is approximately \$21.44. ILYM Dec., ¶ 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 (LA. 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

³ *See also Vicer v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *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.”).

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, Defendant must separately fund its share of any employer side payroll taxes. Agreement, ¶ III(A)(1).

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., ¶ 36.

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

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 37. 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., ¶ 38.

Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 49.

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 **Gross 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.**

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

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

5 **The potential complexity and possible duration of trial also weigh in**
6 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
7 of proving damages, recognize the uncertainty of outcome, and believe
8 defendant would appeal in the event of adverse judgment. A post-judgment
9 appeal would require many years to resolve and delay payment to class
10 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.

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

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

17 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
18 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
19 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
20 that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a
21 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
22 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
23 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
24 an uncertain result three or more years in the future. JCL Dec., ¶ 40.

25 The Class Representative and Class Counsel recognize the expense and length of a trial against
26 Defendant through possible appeals, which could take another three years. In arriving at their informed
27 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
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1 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognizes
2 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
3 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
4 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
5 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
6 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
7 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
8 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 41.

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

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

20 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of \$5,000
21 which is 3.3% of the Gross Settlement Amount. As illustrated above, this amount falls well within
22 the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Payment
23 (\$3,750) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%)
24 of the PAGA Payment (\$1,250) to be distributed to the Aggrieved Employees (the “Aggrieved
25 Employee Payment”), which is within the range of PAGA penalties approved by courts and should be
26 approved. JCL Dec., ¶ 42.

27 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
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1 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
2 with the LWDA. JCL Dec., ¶¶ 5-6, 43. By not registering an objection with either Class Counsel or
3 the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

4 **VII. CONCLUSION**

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

8
9 Dated: June 5, 2023

JCL LAW FIRM, APC

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