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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MERCED

KALAINA A. DULA, an individual, on
behalf of herself, and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

2 KINGS GAMING, INC., a California
corporation; and DOES 1-50, inclusive,

Defendants.

Case No. 20CV-02289

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

Date: July 15, 2022

Time: 8:15 a.m.

Judge: Hon. Brian McCabe

Dept.: 8

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1 I. INTRODUCTION

2 Plaintiff KALAINA A. DULA (hereinafter “Plaintiff”) seeks final approval of the Class Action
3 Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable monetary relief for
4 118 Settlement Class Members Aggrieved Employees employed by defendant 2 KINGS GAMING,
5 INC. (“Defendant”) during the Class Period.

6 In an order dated April 21, 2022, this Court preliminarily approved the Agreement and
7 preliminarily certified the Class. JCL Dec., ¶ 4. On May 20, 2022, the Administrator delivered notice
8 of the proposed settlement to the Class. Declaration of Evelin Reyes (“Simpluris Dec.”), ¶ 8.

9 *The Class greeted news of the Settlement with unanimous approval as, at the time of the filing*
10 *of this motion, all 118 Class Members chose to participate in the Settlement.*² There are zero opt-outs
11 and zero objections to the Settlement. Simpluris Dec., ¶¶ 13-15. The unanimous approval by the
12 Settlement Class evidences the clear fairness and reasonableness of the Settlement. Declaration of Jean-
13 Claude Lapuyade (“JCL Dec.”), ¶ 7.

14 An objective evaluation of the proposed settlement of Ninety-Seven Thousand Five Hundred
15 Dollars and Zero Cents (\$97,500.00) (“Settlement Sum”) confirms that the relief negotiated on behalf
16 of the Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and
17 non-collusive negotiations, between experienced counsel, guided by the wisdom and experience of
18 Jeffrey Ross, Esq., a respected mediator of wage and hour class actions. After deducting any Court-
19 approved attorneys’ fees and costs, class representative enhancement payments, administration costs,
20 and payments to the Labor & Workforce Development Agency (“LWDA”), the Net Settlement Sum
21 shall be distributed to the Settlement Class Members based on the number of workweeks they worked
22 while employed by Defendant during the Class Period. JCL Dec., ¶ 7.

23 This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations.
24 Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Sum of
25 approximately \$37,209.00. This will result in an average Individual Settlement Payment of \$315.33
26

27 ¹ The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to
28 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 As of the filing date of this Motion, zero Notices were deemed undeliverable.

1 and high payment of \$958.39. Simpluris Dec., ¶ 12; JCL Dec., ¶ 8.

2 Additionally, if approved Five Thousand Dollars and Zero Cents (\$5,000) of the Settlement Sum
3 will be allocated to Plaintiff's claims arising out of the Private Attorney General Act ("PAGA
4 allocation"). This will result in a \$3,750.00 payment to the LWDA ("LWDA") to continue enforcing
5 labor laws throughout California and providing education to employers and employees about their
6 rights and responsibilities under the Labor Code. The remaining \$1,250.00 will be allocated to the
7 Aggrieved Employees. Agreement, ¶ 2(c).

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

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

17 **II. OVERVIEW OF THE LITIGATION**

18 Defendant provides staffing for gaming facilities throughout California. This action asserts
19 claims on behalf of all individuals who are or previously were employed by Defendant in California
20 and classified as non-exempt employees at any time during the Class Period. Plaintiff was employed
21 by Defendant as a non-exempt employee from November of 2019 to December of 2019. At all times
22 during her employment, Plaintiff was paid on an hourly basis and was entitled to legally compliant
23 meal and/or rest periods, and minimum, regular, and overtime wages for all hours worked. Throughout
24 her employment, Plaintiff was subject to Defendant's written policies and procedures. JCL Dec., ¶ 11.

25 Generally, Plaintiff claims that Defendant failed to pay for all time worked, including overtime,
26 failed to provide compliant meal and rest periods, failed to reimburse for required business expenses,
27 failed to furnish complete and accurate itemized wage statements, and failed to timely pay employees
28 all wages owed at the time of separation of their employment. Defendant forcefully denies liability for

1 each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable
2 employment laws and raised several other significant defenses to Plaintiff's claims, including but not
3 limited to, facially compliant meal and rest period policies, compliant overtime policies, compliant
4 reimbursement policies, complete and accurate wage statements, and payment of wages to employees
5 upon separation of employment. JCL Dec., ¶ 12.

6 On June 4, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency
7 ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth the facts
8 and theories supporting Defendant's alleged violations of various provisions of the California Labor
9 Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue
10 claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et*
11 *seq* ("PAGA"). JCL Dec., ¶ 13.

12 On August 12, 2020, Plaintiff filed a class and representative action complaint in the Merced
13 Superior Court, Case Number 20CV-02289 ("Class Action"). The Class Action alleged nine causes of
14 action against Defendant for: (1) unfair competition in violation of Cal. Business & Professions Code
15 § 17200; (2) failure to pay minimum wages in violation of Cal. Labor Code §§ 1194, 1197, and 1197.1;
16 (3) failure to pay overtime wages in violation of Cal. Labor Code § 510; (4) failure to provide required
17 meal breaks in violation of Cal. Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (5)
18 failure to provide required rest breaks in violation of Cal. Labor Code §§ 226.7 & 512 and the applicable
19 IWC Wage Order; (6) failure to reimburse employees for required expenses in violation of Cal. Lab.
20 Code § 2802; (7) failure to provide accurate itemized wage statements in violation of Cal. Labor Code
21 § 226; (8) failure to provide wages when due in violation of Cal. Lab. Code §§ 201, 202 and 203; and
22 (9) violation of the Private Attorneys General Act under Labor Code §§ 2698, *et seq*. JCL Dec., ¶ 14.

23 Prior to mediation, the Parties engaged in formal discovery, as well as in investigation and the
24 informal exchange of documents and information in connection with the Action and mediation. To
25 prepare for mediation, Defendant provided Class Counsel with a significant sample of time records and
26 certain payroll data points, as well as other documents and information. As discussed *infra*, Plaintiff's
27 counsel retained the forensic consultants at Econ One Research, Inc. ("Econ One") to analyze
28 Defendant's time and payroll data. JCL Dec., ¶ 15.

1 On July 7, 2021, the Parties participated in a full day mediation presided over by Jeffrey Ross,
2 Esq., a respected mediator of wage and hour class actions. At the conclusion of the full-day mediation,
3 the Parties were unable to reach an agreement for settlement. Thereafter, for several months, the Parties
4 continued settlement negotiations until they reached a tentative agreement. The Parties then prepared
5 the full Agreement, which was signed by all counsel and the Parties. JCL Dec., ¶ 16.

6 On April 21, 2022, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4.
7 Shortly, thereafter, on May 20, 2022, the Administrator mailed Notice Packets to all 118 Settlement
8 Class members. Simpluris Dec., ¶ 8. The mailing of the Notice Packets triggered a forty-five (45) day
9 Response Deadline for class members to contest the number of workweeks allocated to them, request
10 to opt out of the class action settlement, or object to the proposed settlement. Agreement, ¶ 6(g). The
11 response from the Settlement Class to the Settlement was outstanding – 100% of the Class Members
12 are participating in the Settlement. Simpluris Dec., ¶¶ 13-15.

13 **III. THE SETTLEMENT BEFORE THE COURT**

14 The Court preliminarily approved a Settlement Sum of Ninety-Seven Thousand Five Hundred
15 Dollars and Zero Cents (\$97,500.00). The Settlement Sum shall be used: (1) to satisfy attorneys' fees
16 and costs; (2) to satisfy the costs of administration; (3) to satisfy the PAGA allocation; and (4) to satisfy
17 the representative enhancement award to the Plaintiff incurred in this action. JCL Dec., ¶ 17. The
18 Settlement Sum is all-in with no reversion to Defendant. Agreement, ¶ 2.

19 Within fourteen (14) calendar days after the Court grants final approval of this Agreement,
20 Defendant will deposit the Settlement Sum into a Qualified Settlement Fund established by the
21 Administrator. Agreement, ¶ 2(g). After the court grants final approval and within seven (7) calendar
22 days after the Administrator receives payment of the Settlement Sum, the Administrator shall provide
23 the Parties the final calculations of settlement payments to Class Members. Agreement, ¶ 6(j). Within
24 seven (7) calendar days after the final calculations are distributed by the Administrator, the
25 Administrator, only upon final approval by the Parties of the final distribution amounts, will mail to
26 Class Members their pro-rata share of the Net Settlement Sum and Aggrieved Employees their pro-rata
27 share of their PAGA Payment. *Id.*

28 All Class Members will receive a portion of the Net Settlement Sum on a pro rata basis based on

1 the number of workweeks they worked during the Class Period. The Administrator will calculate
2 Individual Settlement Payments by taking the number of workweeks each individual Class Member
3 worked during the Class Period and dividing that number by the total number of workweeks Class
4 Members worked during the Class Period and multiplying that fraction by the Net Settlement Amount.
5 Agreement, ¶ 2(f). The Administrator estimates the average Individual Settlement Payment is \$315.33
6 and the highest Individual Settlement Payment is \$958.39. Simpluris Dec., ¶ 12.

7 In exchange for the valuable consideration, as of the funding of the Settlement Sum, the Class
8 Members will release the Released Parties from the Released Claims for the Class Period. Agreement,
9 ¶ 3(c).

10 Simpluris, Inc. (“Simpluris”) was appointed as the Administrator for the class. The costs of
11 administration include those expenses of effectuating and administering the Settlement, i.e., the costs
12 incurred to the Administrator, the costs of giving notice to the Class, the costs of administering and
13 disbursing the Individual Settlement Payments, and the fees of the Administrator approved for
14 reimbursement by the court. The costs of administration are \$5,541.00 Simpluris Dec., ¶ 11. These
15 expenses shall be paid from the Settlement Sum. Agreement, ¶ 2(b).

16 Subject to Court approval, Class Counsel shall seek attorneys’ fees and costs in the amount of up
17 to \$52,500.00, comprised of attorneys’ fees equal to one-third of the Settlement Sum (\$32,500.00) and
18 up to Twenty Thousand Dollars and Zero Cents (\$20,000.00) for actually incurred litigation expenses.
19 Agreement, ¶ 2(d).

20 Subject to Court approval, the Agreement provides for a representative enhancement award in the
21 amount of \$7,500 for Plaintiff in consideration of her time, risk, and efforts as the Class Representative
22 on behalf of the Settlement Class and a general release of her rights under California Civil Code Section
23 1542. Settlement Agreement, ¶ 2(a).

24 As set forth in the Agreement, Five Thousand Dollars, and Zero Cents (\$5,000) of the Settlement
25 Sum will be allocated to Plaintiff’s claims under the Private Attorneys General Act (“PAGA”). Seventy-
26 five percent (\$3,750.00) of the PAGA allocation will be paid to the California Labor Workforce and
27 Development Agency (“LWDA”). The Administrator shall distribute the remaining twenty-five percent
28 (\$1,250.00) of the PAGA allocation to the Aggrieved Employees (“Individual PAGA Payment”).

Agreement, ¶¶ 2(c), 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. *Simpluris Dec.*, ¶¶ 13-15; *JCL Dec.*, ¶ 18.

Further supporting final approval, the average Individual Settlement Payment of \$315.33 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.*, ¶ 19.

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).

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

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

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

11 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
12 proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class Counsel
13 assessed the value of the class claims using the information provided by Defendant in formal discovery,
14 as well as in investigation and the informal exchange of documents and information in connection with
15 the Action and mediation. Class Counsel obtained time, payroll, and policy records, as well as data
16 regarding the number of Class Members, workweeks, and average rate of pay in order to assess damages
17 before mediation. Class Counsel retained Econ One to analyze Defendant’s time and payroll data to
18 formulate damage models estimating Defendant’s liability exposure. Class Counsel’s investigation,
19 research, experience, and damage models informed and guided the mediated negotiations that resulted
20 in this settlement. Accordingly, Plaintiff’s Counsel fully understood the strengths and weaknesses of
21 the class claims before the parties reached a settlement. JCL Dec., ¶ 20-28.

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

23 The Settlement is the product of a mediation session with a respected mediator and negotiations
24 over the terms of the Settlement. Although the mediation concluded without a settlement, the Parties,
25 represented by its respective counsel, were able to reach an agreement after months of negotiations.
26 The negotiations were adversarial, conducted at arm’s length and tempered by the efforts of both sides
27 to serve the interests of their clients. The amount of the service award was not negotiated until after
28 the parties agreed to the Settlement Sum and many other terms. JCL Dec., ¶ 29. No action would likely

1 have been taken by Class Members individually, and no compensation would have been recovered for
2 them, but for Plaintiff's services on behalf of the Class.

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

4 Class Counsel in this matter has extensive class action experience in multiple fields and has
5 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
6 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
7 similar wage and hour class actions throughout the State of California. As such, courts throughout the
8 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
9 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
10 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 30-36; Declaration
11 of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

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

13 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
14 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
15 member with the terms of the Settlement, including the specific estimated Individual Settlement
16 Payments. To date, none of the 118 members of the Settlement Class opted-out of the Settlement.
17 Moreover, there are zero objections. Stated differently, 100% of the Settlement Class chose to
18 participate in the Settlement. JCL Dec., ¶ 7; Simpluris Dec., ¶¶ 13-15.

19 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement
20 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp.
21 2d 164, 175 (S.D.N.Y. 2000) ("If only a small number of objections are received, that fact can be
22 viewed as indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.*, 897 F.2d 115,
23 118-119 (3d. Cir. 1990) (29 objections out of 281 member class "strongly favors settlement"); *Laskey*
24 *v. Int'l Union*, 638 F.2d 954 (6th Cir. 1981) (The fact that 7 out of 109 class members objected to the
25 proposed settlement should be considered when determining fairness of settlement.). Consequently,
26 Class Counsel respectfully request the Court to follow the unanimous approval of the Settlement Class
27 and grant final approval of the Settlement.

28 ///

1 **E. The Strength of Plaintiff's Case**

2 “Compromise is inherent and necessary in the settlement process. Thus, even if the relief
3 afforded by the proposed settlement is narrower than it would be if the suit were to be successfully
4 litigated, this is no bar to a class settlement because the public interest may indeed be served by a
5 voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Wershba*,
6 91 Cal.App.4th at 250. The Court must also satisfy itself, “that the consideration being received for
7 the release of the class members’ claims is reasonable in light of the strengths and weaknesses of the
8 claims and the risks of the particular litigation.” *Kullar*, 168 Cal.App.4th at 129. The *Kullar* court
9 further acknowledged that “as the court does when it approves a settlement as in good faith under Code
10 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
11 the ‘ballpark’ of reasonableness.” *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal. 3d
12 488, 499-500 (1985).)

13 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
14 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
15 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
16 Cal.App.4th at 250. While the Settlement Sum of Ninety-Seven Thousand, Five Hundred Dollars and
17 Zero Cents (\$97,500.00) represents a discount on Defendant’s potential exposure if Plaintiff established
18 liability on all claims and was awarded the full amount of the estimated damages at trial, this
19 compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk
20 that could award significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial
21 recovery may require many more years of litigation, resulting in added fees and costs without any
22 guarantee of recovery for the Class. JCL Dec., ¶ 37.

23 After deductions for the attorneys’ fees and costs, cost of administration, representative
24 enhancement award, and PAGA allocation, the Net Settlement Sum is currently estimated to be
25 \$37,209.00. *Simpluris Dec.*, ¶ 11. Additionally, Defendant must separately fund its share of any
26 employer-side payroll taxes. *Agreement*, ¶ 2(f). The average Individual Settlement Payment is
27 estimated to be \$315.33 with the estimated highest gross payment being \$958.39. *Simpluris Dec.*, ¶
28 12.

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

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

6 Although Plaintiff and Class Counsel believe that their case has merit, they recognized the
7 potential risks both sides would face if litigation of this action continued. As the federal court in *Glass*
8 *v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
9 litigation:

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

17 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
18 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
19 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
20 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
21 trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.*
22 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
23 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
24 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
25 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly
26 individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176
27 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to
28 having taken meal and rest breaks demonstrated that individualized inquiries were required to show

1 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
2 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
3 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
4 certification of driver meal and rest period claims based on the predominance of individual issues).
5 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
6 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
7 settlement. JCL Dec., ¶ 39.

8 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
9 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
10 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
11 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 40.

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

15 **Plaintiffs may have a strong case, but the risks inherent in continued**
16 **litigation are great.** Defendants strongly deny liability for Plaintiffs'
17 principal claim that full-time Service Associates were misclassified as
18 exempt. In addition to the uncertainties raised by Defendants at the
19 preliminary stage regarding Plaintiffs' chance of success in this case,
20 Defendants notes that the question of an employer's duty to provide rest and
21 meal periods is an open one, signaling even less certainty for
22 Plaintiffs.....[T]he **Total Settlement amount and the Class Members'**
23 **expected net recovery, after fees and other costs are deducted, appear**
24 **to be a reasonable compromise, in light of the risks of litigation.**

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

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

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

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

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

16 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668 and *O'Conner v. Uber*
17 *Technologies*, 82 F. Supp. 3d 1133 (N.D. Cal. 2018) and *Duran v. U.S. Bank National Assn.*, 59 Cal.4th
18 1 (2014), the complexities and duration of further litigation cannot be overstated. There is little doubt
19 that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a
20 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
21 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
22 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
23 an uncertain result three or more years in the future. JCL Dec., ¶ 41.

24 Class Representative and Class Counsel recognize the expense and length of a trial against
25 Defendant through possible appeals which could take another three years. In arriving at their informed
26 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
27 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
28 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.

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 Representative and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 42.

G. The Settlement Sum is Fair and Reasonable.

The Settlement Sum of Ninety-Seven Thousand, Five Hundred Dollars and Zero Cents (\$97,500.00) in this case is fair and well within the range of recognized reasonableness. As detailed at the time of preliminary approval, the Settlement Sum 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 behalf of the Settlement Class. The Settlement Sum represents approximately between 20% and 43% of Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 43.

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

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 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

1 The calculation methodology used to compensate the Class Members for the alleged damages
2 was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
3 impartial. The calculation methodology is based on the number of workweeks each Class Member
4 worked for Defendant during the Class Period. The Administrator will calculate Individual Settlement
5 Payments by taking the number of workweeks each individual Class Member worked during the Class
6 Period and dividing that number by the total number of workweeks Class Members worked during the
7 Class Period and multiplying that fraction by the Net Settlement Amount. Agreement, ¶ 2(f).

8 The settlement also provides significant relief to the Class Members. The average settlement
9 payment is approximately \$315.33, and the highest is approximately \$958.39. Simpluris Dec., ¶ 12.
10 This average net recovery is on par with many wage and hour class action settlements approved by
11 California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619
12 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*,
13 Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras*
14 *v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of
15 approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County
16 Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No.
17 CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65);
18 *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of
19 approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super.
20 Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No.
21 BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20).

22 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
23 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
24 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
25 JCL Dec., ¶ 44.

26
27 *In re Newbridge Networks Sec. Litig.* (D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2 ("Courts have not identified a precise
28 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 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**
2 **ARE REASONABLE**

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

12 Here, Plaintiff and Defendant negotiated a good faith PAGA allocation in the amount of Five
13 Thousand Dollars and Zero Cents (\$5,000.00) which is 5.1% of the Settlement Sum. This amount
14 falls well within the range of approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA
15 allocation (\$3,750.00) will be paid to the LWDA (“LWDA”) with the remaining twenty-five percent
16 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties
17 approved by courts and should be approved. JCL Dec., ¶ 45.

18 Further, on March 7, 2022, Class Counsel gave the LWDA notice of this Settlement and
19 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with
20 the LWDA. On June 22, 2022, Plaintiff gave the LWDA notice of this motion seeking final approval
21 of this settlement. JCL Dec., ¶¶ 5-6, 46. By not registering an objection with either Class Counsel or
22 the Court, the LWDA has accepted and approved of the proposed PAGA allocation.

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1 **VII. CONCLUSION**

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

6 Dated: June 22, 2022

JCL LAW FIRM, APC

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8 By: 
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Attorneys for Plaintiff
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