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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

PATRICK CLEGG, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiffs,

vs.

POULIN VENTURES, LLC a California
Corporation; BRANDON POULIN, an
Individual, and DOES 1 through 50, Inclusive;

Defendants.

Case No. 37-2021- 00033824-CU-OE-CTL

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT,
ATTORNEYS' FEE AWARD, COSTS AND
CLASS REPRESENTATIVE SERVICE
AWARD**

Date: January 20, 2023
Time: 8:30 a.m.

Judge: Hon. Keri G. Katz
Dept: C-74

1 **TO THE COURT, ALL PARTIES, AND THEIR RESPECTIVE ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE** that on January 20, 2023, at 8:30 a.m. or as soon thereafter as
4 counsel may be heard, in Department C-74 of the San Diego County Superior Court, the Honorable
5 Judge Keri G. Katz presiding, plaintiff PATRICK CLEGG will apply for an order granting (1) Final
6 Approval of the Class Action and PAGA Settlement, Attorneys' Fee Award, Costs and Class
7 Representative Award, and (2) Entry of the Final Approval Order and Judgment.

8 This Motion is brought in accordance with the Preliminary Approval Order dated October 28,
9 2022, and California Rules of Court, Rule 3.769. This Motion will be based on this notice, the
10 accompanying points and authorities, the Settlement Agreement and General Release of All Claims
11 (hereinafter the "Agreement"), the Declaration of Nicole Barvie, Declaration of Shani O. Zakay, the
12 Declaration of Jean-Claude Lapuyade, and the Declaration of Karen Hernandez, (the Settlement
13 Administrator), the Declaration of the Plaintiff, Patrick Clegg, and the complete files and records in
14 this action.

15 Because all parties have agreed to the proposed class settlement and have met and conferred
16 regarding the motion, this motion is not opposed by Defendant. To date, there have been no
17 objections submitted by the Class.

18 **As this Motion is unopposed, the Parties respectfully request relief from the page limit**
19 **requirement set by California Rules of Court, Rule 3.1113(d).**

20 Pursuant to San Diego County Local Rule 2.1.19, the tentative ruling will be issued in
21 conformance with the tentative ruling procedures set forth in California Rules of Court, rule
22 3.1308(a)(2). No notice of intent to appear is required to appear for oral argument regardless of when
23 the tentative ruling is issued. The tentative ruling may be obtained through the court's website at
24 <http://www.sdcourt.ca.gov> and clicking on the tentative ruling link listed under the civil tab, or by
25 telephoning the independent calendar clerk for the assigned department. This rule does not preclude
26 posting a tentative ruling the day of the hearing pursuant to California Rules of Court, Rule 3.1308(b),
27 nor does it mandate a tentative ruling be issued on all law and motion matters.

1 Dated: December 20, 2022

BARVIÉ LAW, APC

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4 By: Nicole Barvie
Nicole Barvie, Esq.
5 Attorney for Plaintiff
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Defendants.

Case No. 37-2021- 00033824-CU-OE-CTL

**PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT, ATTORNEYS'
FEE AWARD, COSTS AND CLASS
REPRESENTATIVE SERVICE AWARD**

Date: January 20, 2023
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I. INTRODUCTION

Plaintiff PATRICK CLEGG (hereinafter “Plaintiff”) seeks final approval of the Settlement Agreement and General Release of All Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for 215 Settlement Class Members employed by POULIN VENTURES, LLC. (“Defendant”) during the Class Period. Plaintiff and Class Counsel also seek approval of the Class Counsel Award in the amount of **\$61,250.00** comprised of \$41,250.00 for attorneys’ fees (one-third of the Total Settlement Amount) and up to \$20,000 for reimbursement of actually incurred litigation expenses².

An objective evaluation of the proposed settlement of \$125,000.00 (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, guided by the wisdom and experience of Mr. Steven Serratore, Esq., a respected wage and hour mediator. Declaration of Nicole Barvie (“Barvie Dec.”), ¶ 10. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$35,450.00**, an average Individual Settlement Payment of **\$164.88**, high payment of **\$1,466.64**, and a low payment of **\$12.54**. Aggrieved Employees will receive an estimated average gross payment of **\$27.17**, a high payment of **\$96.95**, and a low payment of **\$2.06**. Declaration of Karen Hernandez (“ILYM Dec.”), ¶ 14; Barvie Dec., ¶ 11.

The relief offered by the Settlement is immediate and is particularly impressive when viewed against the difficulties encountered by Plaintiff pursuing similar wage and hour cases (*see infra*). As discussed below, the proposed Settlement satisfies all criteria for final settlement approval under California law and falls well within the range of reasonableness. Barvie Dec., ¶ 12-13.

II. OVERVIEW OF THE LITIGATION

Defendants promote and sell women’s health supplements and weight loss programs and coaching. Defendants operated one facility in San Diego, California, where Plaintiff worked. This action

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

² Currently Class Counsel’s actually incurred litigation expenses are \$11,230.41 Class Counsel will provide an updated total at the time of hearing on this motion.

1 asserts claims on behalf of Defendants’ non-exempt employees who are or previously were employed
2 in California. Plaintiff worked for Defendants as a non-exempt employee in California from September
3 2019 to November 2020. At all times during his employment, Plaintiff earned an hourly wage, and was
4 eligible for commissions and entitled to legally compliant meal and/or rest periods, and minimum,
5 regular and overtime wages for all hours worked. Barvie Dec., ¶ 14; Declaration of Patrick Clegg
6 (“Clegg Dec.”) at ¶ 3.

7 On July 14, 2021, Plaintiff served Defendants and the Labor and Workforce Development Agency
8 (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth the facts
9 and theories supporting Defendants’ alleged violations of various provisions of the California Labor
10 Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue
11 claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698,h
12 *et seq* (“PAGA”). Barvie Dec., ¶ 16.

13 On August 6, 2021, Plaintiff filed a class action complaint in the San Diego Superior Court, Case
14 Number 37-2021- 00033824-CU-OE-CTL (the “Action”). The Action alleged eight causes of action
15 against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code
16 § 17200; (2) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (3) Failure
17 to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (4) Failure to Provide
18 Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Required
19 Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to Provide Accurate Itemized
20 Wage Statements in Violation of Cal. Lab. Code § 226; (7) Failure Pay Wages When Due In Violation
21 of Cal. Labor Code §§ 201, 202 and 203. Barvie Dec., ¶ 17.

22 On October 6, 2021, Plaintiff amended his Class Action Complaint to add a Violation of the
23 Private Attorney General Act at Lab. Code §§ 2698 *et. seq.* (“Class Claims”), and individual FEHA
24 claims for (1) Hostile Work Environment In Violation of FEHA, California Government Code
25 § 12940(J); (2) Failure to Take All Reasonable Steps to Prevent Harassment, Discrimination and
26 Retaliation from Occurring in Violation of FEHA (Cal. Gov’t Code § 12950(K); (3) Discrimination and
27 Harassment in Violation of FEHA; (4) Wrongful Termination; and (13) Intentional Infliction of
28 Emotional Distress (“FEHA Claims”). Barvie Dec., ¶ 18.

1 Before commencing formal written discovery, the Parties agreed to mediate the Action and stay
2 formal discovery. To prepare for mediation, the Parties agreed to informally produce certain documents
3 and data points subject to the mediation privilege, including but not limited to, a sampling of Class
4 Members' time data and certain payroll data points. As discussed *infra*, Plaintiff's counsel retained the
5 forensic consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data.
6 Barvie Dec., ¶ 19.

7 On April 18, 2022, the Parties participated in a full day mediation with highly regarded wage and
8 hour mediator Steven Serratore, Esq. The mediation concluded with a settlement after both sides agreed
9 to a Mediator's proposal that was subsequently memorialized in the form of a Memorandum of
10 Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form
11 settlement agreement, which is the subject of the instant motion. Barvie Dec., ¶ 20.

12 On October 28, 2022, this Court granted preliminary approval of the Settlement. Barvie Dec.,
13 ¶¶ 4, 21. The Settlement Administrator mailed Notice Packets to all 215 Settlement Class members.
14 ILYM Dec., ¶¶ 4-7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline
15 for the Settlement Class to submit requests for exclusion or objections to the Settlement. Agreement at
16 § I(32). In response, 100% of the Class Members are participating in the Settlement. ILYM Dec., ¶¶ 13.

17 At the preliminary approval motion, the Court issued a tentative ruling which ordered changes to
18 the Proposed Order and the Notice of Pendency of Class Action Settlement ("Notice"). Barvie Dec. ¶22.

19 Plaintiff's counsel made those revisions and filed the amended notice with Court. However, while
20 preparing the instant motion, and reviewing the third party administrator's, Karen Hernandez,'
21 declaration, Plaintiff's Counsel realized the initial proposed Notice inadvertently went out to the class
22 and not the revised approved Notice. Barvie Dec. ¶22. Plaintiff's Counsel reviewed this case's register
23 of actions and noticed the Proposed Order and Notice had been approved on October 28, 2022, however,
24 Plaintiff's Counsel had not received the conformed copy. Upon realizing the discrepancy, counsel called
25 the San Diego Superior Court's business office and they stated, the staff member in charge of this matter
26 had gone on maternity leave, and unfortunately the conformed order had not been sent out timely. Barvie
27 Dec. ¶22. However, the Business Office was able to provide the signed order the following day
28 (December 9, 2022). As soon as Plaintiff's Counsel became aware of this, Plaintiff's Counsel met and

1 conferred with Defense Counsel, Talia Delanoy, via phone. Based on our telephonic meet and confer,
2 counsel collectively believes the changes do not substantively alter the Notice such that it is unlikely the
3 class members' current decisions to opt in/out to the class settlement would be affected. Such belief is
4 based on the fact that the revised notice to the class Notice did not alter the amount of settlement funds
5 a class member would receive, the limitation period included in the class or PAGA period, or the
6 underlying claims asserted, and released, against Defendants. Barvie Dec. ¶22. As such, the Parties
7 respectfully request the final approval be granted. Barvie Dec. ¶22.

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

9 The Court preliminarily approved a Gross Settlement Amount of \$125,000.00. The Gross
10 Settlement Amount is all-in with no reversion to Defendant. Agreement, ¶ III(1)(a). The Net Settlement
11 Amount shall be used for the payment of all Individual Settlement Payments to satisfy all Released Class
12 Claims. The Settlement Administrator will calculate Individual Settlement Payments by adding up the
13 total number of Workweeks for all Class Members. The respective Workweek for each Class Member
14 will be divided by the total Workweeks for all Class Members, resulting in the Payment Ratio for each
15 Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net
16 Settlement Amount to calculate each Class Member's estimated Individual Settlement Payment.
17 Agreement, ¶ III(12)(a). The Settlement Administrator estimates the average Individual Settlement
18 Payment is **\$164.88**, the highest Individual Settlement Payment is **\$1,466.64**, and the lowest Individual
19 Settlement Payment is **\$12.54**. ILYM Dec., ¶ 14.

20 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
21 the Settlement Class Members will release the Released Parties from the Released Class Claims for the
22 Class Period. Agreement, ¶ I(29).

23 ILYM Group, Inc. was appointed as the Settlement Administrator for the class. The Settlement
24 Administration Costs are \$8,300.00. ILYM Dec., ¶ 15. These expenses shall be paid from the Gross
25 Settlement Amount. Agreement, ¶ III(12)(m).

26 Subject to Court approval, Class Counsel shall seek a Class Counsel Award in the amount of
27 \$61,250.00 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
28 to be at least \$41,250.00 and up to \$20,000 for actually incurred litigation expenses. Agreement,

¶ III(12)(k).

Subject to Court approval, the Agreement 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 and a general release. Agreement, ¶¶ III(12)(i).

As set forth in the Agreement, \$10,000 of the Gross 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 (“LWDA Payment”). The Settlement Administrator shall distribute the remaining 25% of the PAGA Settlement to the Aggrieved Employees (“Aggrieved Employee Payment”). Agreement, ¶ III(12)(l).

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. 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. Barvie Dec., ¶ 23-24.

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).

“[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). 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.”

1 *Wershba*, *supra*, at 246; *see also* *7-Eleven*, *supra*, at 1150. In these cases, Courts have repeatedly
2 emphasized that there is a strong initial presumption that the compromise is fair and reasonable.
3 *Wershba*, 91 Cal.App.4th at 245. The presumption of fairness exists where: (1) investigation and
4 discovery are sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached
5 through arm's-length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage
6 of objectors is small. *Dunk*, 48 Cal. App. 4th at 1801, citing *Newberg & Conte*, *Newberg on Class*
7 *Actions*, (3d ed. 1992) § 11.41, pp. 11-91. Here, all of these factors support a presumption of fairness.

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

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

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

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

1 approximations and rough justice.’ [Citation omitted.]” *Id.* These factors are analyzed seriatim below
2 and all support final approval of the class action settlement before this Court.

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

4 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
5 proposed Class Members’ claims, applicable law, and potential defenses. Months before filing any one
6 of the Actions, Class Counsel began its pre-filing investigation into the Plaintiff’s complaints. Class
7 Counsel’s investigation started with several lengthy interviews with Plaintiff. As part of the interview
8 process, the Plaintiff produced documents related to his employment, including time and payroll records.
9 At the conclusion of the interviews, Class Counsel determined that each of Plaintiff’s complaints
10 appeared to substantiate Plaintiff’s claim that Defendants’ failed to, among other things, pay for all time
11 worked and to provide compliant meal and rest periods. Barvie Dec., ¶ 25.

12 Considering the many anticipated factual disputes, the Parties agreed, relatively early in the
13 litigation, that it would be in the best interest of both Parties to mediate the matter. To prepare for
14 mediation, Class Counsel requested documents and data points to further evaluate Plaintiff’s claims and
15 Defendants’ liability exposure to the Class Members. In response to Class Counsel’s request,
16 Defendants produced a sample of time records for the Class Members, aggregate workweek and pay
17 period data for the Class Members, wage statements for the Class Members, and copies of applicable
18 handbooks, policies, and agreements containing, *inter alia*, compensation, timekeeping and meal and
19 rest period policies. In total, Defendant produced over 5,709 pages of pertinent policy documents, time
20 records for Class Members, and more than 17,312 unique cells of payroll and time data for Class Counsel
21 to analyze. Barvie Dec., ¶ 27.

22 Class Counsel then retained the statisticians and economists at BCG to evaluate the Class
23 Members’ payroll and time data. BCG provides data analysis and damage modeling consulting services
24 specializing in wage and hour class actions. BCG’s team of financial and data analysts are credentialed
25 and experienced experts in their fields and have provided their expertise on thousands of cases. Stated
26 differently, the BCG is uniquely qualified to analyze Defendants’ time and payroll data. Barvie
27 Dec., ¶ 28.

28 BCG analyzed Defendants’ time and payroll data to assist in the development of various damage

models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay periods, average length of shift and average number of hours worked per week and pay periods during the Class Period. BCG also estimated the number of overtime, missed, late or truncated meal and rest periods, the amount of paid missed meal period premiums paid during the Class Period, and the amount of off-the-clock work performed by the Class Members during the Class Period. BCG calculated and created a damage model for Defendants' potential liability exposure while accounting for the uncertainties of continued litigation. The damage model informed and guided Class Counsel during the mediated settlement discussions. Barvie Dec., ¶ 29.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and payroll records; (5) analyzing Defendants' labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants' liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. Barvie Dec., ¶ 30.

Prior to the Parties' scheduled mediation, Defendant stated it was dissolving due to financial hardship. Prior to mediation Defendant provided its tax returns and profit and losses statements in support of their representations. Barvie Dec., ¶ 31.

B. The Parties Settled at Mediation.

The Settlement is the product of a mediation session with a respected mediator and subsequent negotiations over the terms of the Settlement. The negotiations were adversarial, conducted at arms-length and tempered by the efforts of both sides to serve the interests of their clients. Barvie Dec., ¶ 33-34.

///

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

2 Class Counsel in this matter has extensive class action experience in multiple fields and has
3 represented tens-of-thousands of persons in class actions. Class Counsel’s experience is summarized in
4 their concurrently filed declarations. Class Counsel has concluded the settlement is fair, adequate, and
5 reasonable and in the best interests of the Class. Barvie Dec., ¶¶35-37; Declaration of Jean-Claude
6 Lapuyade, Esq. (“JCL Dec.”), ¶ 3; Declaration of Shani O. Zakay (“Zakay Dec.”) ¶ 3.

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

8 The reaction of the Settlement Class unequivocally supports approval of the Settlement. To date,
9 none of the 215 members of the Settlement Class opted-out of the Settlement. Only 17 Notice Packets
10 were deemed undeliverable. ILYM Dec. ¶10. Moreover, there are zero objections. Stated differently,
11 100% of the Settlement Class chose to participate in the Settlement. Barvie Dec., ¶ 10; ILYM Dec.,
12 ¶¶ 7-13.

13 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement
14 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp.
15 2d 164, 175 (S.D.N.Y. 2000). Consequently, Class Counsel respectfully request the Court to follow the
16 unanimous approval of the Settlement Class and grant final approval of the Settlement.

17 **E. The Risk, Expense, Complexity and Duration of Further Litigation Favor**
18 **Settlement.**

19 Although Plaintiff and Class Counsel believe that this case has merit, they recognized the
20 potential risks both sides would face if litigation of this action continued. Barvie Dec., ¶¶ 39-41. As the
21 federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties
22 similar to those in this litigation:

23 ***“In light of the above-referenced uncertainty in the law, the risk, expense,***
24 ***complexity, and likely duration of further litigation likewise favors the***
25 ***settlement.*** Regardless of how this Court might have ruled on the merits of
26 the legal issues, the losing party likely would have appealed, and the parties
27 would have faced the expense and uncertainty of litigating an appeal. The
28 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

1 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.*
2 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
3 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
4 to enter judgement in favor of the employer. Consequently, the uncertainty of obtaining certification
5 through a contested motion is a significant risk factor favoring settlement. Barvie Dec., ¶¶42-43.

6 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes
7 that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair
8 the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
9 affect the value of Plaintiff's claims and, in fact, already has. Barvie Dec., ¶ 43.

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

13 **Plaintiffs may have a strong case, but the risks inherent in continued**
14 **litigation are great.** Defendants strongly deny liability for Plaintiffs'
15 principal claim that full-time Service Associates were misclassified as
16 exempt. In addition to the uncertainties raised by Defendants at the
17 preliminary stage regarding Plaintiffs' chance of success in this case,
18 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. ...
19 **[T]he Total Settlement amount and the Class Members' expected net**
20 **recovery, after fees and other costs are deducted, appear to be a**
21 **reasonable compromise, in light of the risks of litigation.**

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

23 **The potential complexity and possible duration of trial also weigh in favor of**
24 **granting final approval.** Plaintiffs acknowledge the difficulties of proving damages,
25 recognize the uncertainty of outcome, and believe defendant would appeal in the event of
26 adverse judgment. A post-judgment appeal would require many years to resolve and delay
27 payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today
28 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).

29 In sum, while other cases have approved class certification in wage and hour claims, class
30 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.*

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

2 Plaintiff and Class Counsel recognize the expense and length of a trial against Defendant through
3 possible appeals which could take another three years. In arriving at their informed belief that the present
4 settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in
5 complex actions such as this one. Class Counsel are also mindful of and recognize the inherent problems
6 of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions
7 and appeals would have been inevitable. Costs would have mounted, and recovery would have been
8 delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and Class Counsel
9 believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class.
10 Based upon their evaluation, Class Representative and Class Counsel have determined that the
11 Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate,
12 and should be granted final approval. Barvie Dec., ¶ 43.

13 **F. The Gross Settlement Amount is Fair and Reasonable.**

14 The Gross Settlement Amount of \$125,000.00 in this case is fair and well within the range of
15 recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement
16 Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the
17 various potential impediments to recovery. Class Counsel developed varied economic damages models
18 measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation.
19 The various models were informed by Class Counsel's investigation, including the analysis of a
20 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
21 process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on
22 behalf of the Settlement Class. The Gross Settlement Amount represents approximately 37.07% of
23 Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. Barvie
24 Dec., ¶ 44.

25 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
26 Court for the Northern District of California granted final approval in a wage and hour misclassification
27 action and found that the total settlement representing 10% of the estimated trial award was within the
28 "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 reasonable.

The settlement provides relief to the Settlement Class Members. The average settlement payment is approximately **\$164.88**, the highest is approximately **\$1,466.64**, and the lowest is approximately **\$12.54**. ILYM Dec., ¶ 14. This average net recovery is greater than 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).

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 entitled to final approval. Barvie Dec., ¶ 45.

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

Courts routinely approve 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, Plaintiff and Defendant negotiated a good faith PAGA Settlement in the amount of \$10,000 which is 8% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$7,500) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25% and/or \$2,500) to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by

1 courts and should be approved. Barvie Dec., ¶ 46.

2 Further, on August 10, 2022, Class Counsel gave the LWDA notice of this Settlement and
3 proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with the
4 LWDA. On December 20, 2022, Plaintiff gave the LWDA notice of this motion seeking final approval
5 of this settlement. Barvie Dec., ¶¶ 5-6, 47. By not registering an objection with either Class Counsel or
6 the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

7 **VII. CLASS COUNSEL’S REQUEST FOR FEES AND COSTS**

8 As part of the settlement, the parties agreed to a Class Counsel Award of **\$61,250.00** comprised
9 of \$41,250.00 for attorneys’ fees (one-third of the Gross Settlement Amount) and up to \$20,000 for
10 reimbursement of actually incurred litigation expenses. The requested attorneys’ fee portion of the Class
11 Counsel Award equal to one-third of the Gross Settlement Amount is fair compensation and,
12 respectfully, should be approved. Class Counsel undertook complex, risky, and time-consuming wage
13 and hour litigation on a contingent basis. Further, the attorneys’ fee portion of the requested Class
14 Counsel Award is within the historically recognized range attorneys’ fees awarded in common fund
15 class action settlements – between 25% and 50% – and is supported by Class Counsel’s lodestar cross-
16 check with a negative multiplier of .58. That is well-below the 2.13 multiplier approved by the Supreme
17 Court in *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, with additional work to be
18 performed, and within the recognized multiplier range of between 2 and 4³. Thus, the reasonableness of
19 the requested Class Counsel Award is confirmed by reference to the lodestar with a reasonable multiplier
20 with significant additional work still to be performed.

21 **A. Common Fund**

22 Courts have long recognized that when class counsel’s efforts result in the creation of a common
23 fund that benefits plaintiffs and unnamed class members, class counsel have an equitable right to be
24 compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)

26 ³ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with 2 multiplier); *Wershba v. Apple Computer*,
27 91 Cal. App. 4th 224, 255 (2001) (“multipliers can range from 2 to 4 or even higher.”); *In re Sutter Health*
28 *Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as “fair and reasonable”);
Chavez v. Netflix, Inc., 162 Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 as well within the approved
range of 2 to 4).

1 (“recogniz[ing] consistently that a litigant or a lawyer who recovers a common fund ... is entitled to a
2 reasonable attorney’s fee from the fund as a whole”); *Laffitte*, 1 Cal. 5th at 488-89 (common fund
3 doctrine “long recognized” under California law). The common fund doctrine rests on the understanding
4 that attorneys should normally be paid by their clients and that, unless attorneys’ fees are paid out of the
5 common fund, those who benefit from the fund will be “unjustly enriched.” *Boeing*, 444 U.S. at 478.

6 As noted above, in *Laffitte*, the California Supreme Court upheld the trial court’s award of 33.33%
7 of the settlement amount of \$19 million dollars with a 2.13 multiplier and affirmed that “empirical
8 studies show the percentage method with a lodestar cross-check is the most prevalent form of fee method
9 in practice.” *Laffitte*, 1 Cal. 5th at 496-97. In fact, courts have historically awarded between 25% and
10 50% of the common fund as attorneys’ fees class action settlements. *In re Warner Communications*, 618
11 F.Supp. 735, 749-50 (S.D.N.Y 1985).

12 Here, the fairest way to calculate a reasonable fee when contingency-fee litigation has produced
13 a fixed settlement amount for the Settlement Class Members is by awarding Settlement Class Counsel
14 a percentage of the total settlement sum. *See, e.g., In re Bluetooth Headset Products Liab. Litig.*,
15 654 F.3d 935, 942 (9th Cir. 2011). More importantly, a fee award under the common fund method here
16 would achieve the two underlying goals of the common fund doctrine by: (1) equitably requiring the
17 beneficiaries of the common fund to pay their pro rata share of fees incurred in creating the fund; and
18 (2) providing an incentive to attract competent counsel to handle wage and hour class actions, which
19 California courts recognize as a fundamental tool to ensure the effective enforcement of the Labor Code
20 and minimum labor standards. *See, e.g., Gentry v. Super. Ct.*, 42 Cal. 4th 443, 455-56 (2007) (overruled
21 on other grounds by *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014)
22 (emphasizing the indispensable value of private enforcement of California’s wage-and-hour laws
23 through class actions).

24 The Agreement provides for payment of the Class Counsel Award from the common fund.
25 Accordingly, it is well within the Court’s discretion to award fees to Class Counsel under the common
26 fund doctrine. Class Counsel requests attorneys’ fees in the amount of \$41,250.00 representing one-third
27 of the Gross Settlement Amount. Class Counsel’s request is consistent with many fee awards in similar
28 wage and hour class actions. Moreover, the requested attorneys’ fee award is in the lower of historically

1 recognized range of attorneys' fees awarded in common fund settlements. Barvie Dec., ¶ 57.

2 The attorneys' fee portion of the Class Counsel Award request should be awarded based upon the
3 Gross Settlement Amount in accordance with *Laffitte*, i.e., percentage of the fund with a lodestar cross
4 check. As further explained below, the reasonableness of the requested \$41,250.00 attorneys' fee award
5 is further supported by the lodestar cross-check. Barvie Dec., ¶¶57-59.

6 **B. Class Counsels' Lodestar Supports the Requested Attorneys' Fees**

7 Class Counsel's lodestar to date is \$79,145.00 *exclusive of costs*, with significant work remaining.
8 Thus, Class Counsel's fee request is equal to Class Counsel's lodestar with a negative .52 multiplier –
9 below the 2.13 multiplier approved in *Laffitte* – is well within the recognized multiplier range between
10 2 and 4. See also *Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016)
11 (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v.*
12 *Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following
13 *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of 1.7).

14 Because the Settlement in this case is a pure common fund case, and the percentage of the fund
15 is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award based
16 upon the percentage of the common fund. Moreover, Class Counsel's lodestar supports the requested
17 attorneys' fees with a multiplier well within the recognized range reasonableness, and in fact, below
18 what the California Supreme Court approved in *Laffitte*. Barvie Dec., ¶ 59.

19 Although no rigid formula applies, an analysis of each of the following "basic factors" that
20 California courts typically consider further supports the reasonableness of a fee request: **(1)** the result
21 class counsel obtained; **(2)** the time and labor required of the attorneys; **(3)** the contingent nature of the
22 case and the delay in payment to class counsel; **(4)** the extent to which the nature of the litigation
23 precluded other employment by class counsel; **(5)** the experience, reputation, and ability of the attorneys
24 who performed the services, the skill they displayed in the litigation, and the novelty, complexity and
25 difficulty of the case; and **(6)** the informed consent of the clients to the fee agreement. *Serrano v. Priest*,
26 20 Cal. 3d 25, 49 (1977); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1810 n.2. Those factors support
27 Class Counsel's request and are addressed in more detail in Counsels' declarations submitted
28 concurrently herewith. In short: **(1)** Considering the issues presented in the case, the Gross Settlement

1 Amount of \$125,000.00 is an excellent result for the Settlement Class, (2) Collectively, Class Counsel
2 worked hard on this case and, expended approximately 143 hours in the prosecution of this litigation in
3 the almost year and half since it was filed for a total lodestar of \$79,145.00, (3) Class Counsel undertook
4 this litigation on a contingent-fee basis, assuming a significant risk that the litigation would yield no
5 recovery after many years of work, (4) Class Counsel negotiated a one-third contingency fee
6 arrangement, which is a reasonable arrangement to obtain competent counsel in the marketplace for
7 representation in wage and hour class actions of this nature, and it is only equitable that Settlement Class
8 who share in the excellent results achieved by this Settlement bear their pro rata share of the attorney's
9 fees award to Class Counsel, (5) Class Counsel possesses significant experience litigating complex wage
10 and hour class actions and the way this Settlement was achieved is demonstrative of the highly efficient
11 way this litigation was managed and resolved (See Class Counsels' declarations for a detailed outline of
12 their skills and experience), and (6) Class Counsels' hourly rates are set forth in the concurrently filed
13 declarations of Nicole Barvie, Esq. which is well within the range of rates billed by comparable attorneys
14 in this market and reasonably compare with rates
15 approved by other trial courts in wage and hour class action litigation. Barvie Dec., ¶¶ 63-75.

16 **C. Class Counsel's Costs**

17 Moreover, common fund fee and expense awards include counsel's incurred expenses because
18 those who benefit from their effort should share in the cost. *See Rider v. City of San Diego*,
19 11 Cal.App.4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is
20 whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See*
21 *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

22 As of the date of this filing, Class Counsel has incurred a total of \$11,230.41 litigating this action.
23 All of Class Counsel's out-of-pocket expenses are the types of expenses normally charged to paying
24 clients including the following: filing fees; copying; postage; factual; mediation fees; and expert costs,
25 which were all incurred during, and were necessary for the successful prosecution of, the litigation and,
26 therefore, should be reimbursed. Barvie Dec. ¶¶ 7, 76-78.

27 **D. Plaintiff's Service Award Is Reasonable and Should be Approved**

28 Courts routinely approve service awards to compensate named plaintiffs for the services they

1 provide and the risks they incur during the class litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th
2 715, 726 (2004). The factors courts use in determining the amount of service awards include: (1) a
3 comparison between the service awards and the range of monetary recovery available to the class; (2)
4 time and effort put into the litigation; (3) whether the litigation will further the public policy underlying
5 the statutory scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, 175
6 Cal.App.4th 785, 804-805 (2009).

7 As a preliminary matter, Plaintiff granted Defendant a general release of all claims arising from
8 his employment. In exchange, the Class Representative Service Award is, in part, intended to
9 compensate Plaintiff for executing this general release. Barvie Dec., ¶¶78-79.

10 Regarding the amount of the requested award, courts frequently approve awards of \$10,000.00 or
11 more. *See In re Cellphone*, 186 Cal.App.4th 1380. The amount of the requested Class Representative
12 Service Award to Plaintiff for \$10,000 is reasonable by reference to the amounts that California courts
13 (both federal and state) have repeatedly awarded in similar class action settlements. Further, the
14 unanimous consent by the Class Members favors the Court's approval of the requested Class
15 Representative Service Award. Equally important, the time, effort, and services provided to the
16 Settlement Class justifies the requested Class Representative Service Award. The Class Representative
17 performed his duties to the Settlement Class admirably. Plaintiff's work is summarized in his
18 declaration filed concurrently herewith. Plaintiff assumed the serious risk of liability for Defendant's
19 costs and potentially fees if the case was unsuccessful. Nevertheless, Plaintiff knowingly and voluntarily
20 undertook the risk to vindicate the rights of the Settlement Class. Clegg Dec. ¶ 1-12; Barvie
21 Dec., ¶¶ 79-83.

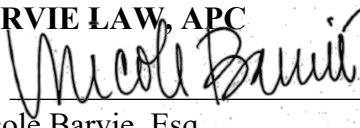
22 **VIII. CONCLUSION**

23 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
24 established in California law and should therefore be finally approved as fair, reasonable, and adequate
25 and requests entry of the Final Approval Order and Judgment submitted herewith. Further, based on the
26 foregoing, Class Counsel respectfully requests approval of the Class Counsel Award in the amount of
27 \$61,250.00, comprised of (1) \$41,250.00 as compensation for attorneys' fees (one-third of the Gross
28 Settlement Amount of \$125,000.00) and (2) litigation expenses up to \$20,000 as supported by Class

1 Counsel's billing records. Class Counsel and the Class Representative also respectfully request approval
2 of the requested Class Representative Service Award in the amount of \$10,000 to Plaintiff.
3

4 Dated: December 20, 2022

BARVIE LAW, APC

By: 

Nicole Barvie, Esq.

Attorneys for Plaintiff

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

PATRICK CLEGG, an individual, on behalf of himself, and on behalf of all persons similarly situated, Plaintiffs, vs. POULIN VENTURES, LLC a California Corporation; BRANDON POULIN, an Individual, and DOES 1 through 50, Inclusive; Defendants.	Case No. 37-2021- 00033824-CU-OE-CTL [PROPOSED] JUDGMENT Date: January 20, 2023 Time: 8:30 a.m. Judge: Hon. Keri G. Katz Dept.: 74
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Plaintiff’s motion for an order finally approving the Settlement Agreement and General Release of All Claims (“Agreement”) and for Award of Class Counsel Award and Class Representative Service Award duly came on for hearing on January 20, 2023, before the above-entitled Court. The parties having settled this action and the Court having entered an Order Granting Motion for Final Approval of Class Action and PAGA Settlement and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDICATED, and DECREED THAT:

1. The certification of the Settlement Class is confirmed for the purposes of settlement. The Class is defined as all non-exempt employees who are or previously were employed

1 by Defendant and performed work in California during the Class Period. The Class Period is defined
2 as the period between August 6, 2017 to June 17, 2022.

3 2. All persons who meet the foregoing definition are members of the Settlement
4 Class, except for those individuals who filed a valid request for exclusion (“opt out”) from the Class.

5 3. Except as set forth in the Agreement, the Order Granting Motion for Final
6 Approval of Class Action and PAGA Settlement and this Final Judgment, Plaintiff, and all members
7 of the Settlement Class, shall take nothing in the Action. Each party shall bear its own attorneys’ fees
8 and costs, except as otherwise provided in the Agreement, the Order Granting Motion for Final
9 Approval of Class Action and PAGA Settlement, and in this Final Judgment.

10 4. The Court shall retain jurisdiction to construe, interpret, implement, and
11 enforce the Agreement, to hear and resolve any contested challenge to a claim for settlement benefits,
12 and to supervise and adjudicate any dispute arising from or in connection with the distribution of
13 settlement benefits.

14 5. As of the date the Defendant funds the Gross Settlement Amount, each Class
15 Member who has not validly opted out, has released the “Released Class Claims” against the
16 Defendant and all of the “Released Parties” as set forth in the Agreement.

17 6. As used in paragraph 5 above, the quoted terms have the meanings set forth
18 below: The Released Class Claims are defined as all class claims alleged, or that could have been
19 alleged, in the operative complaint which occurred during the Class Period, including those claims
20 for alleged failure to pay overtime in violation of Labor Code §§ 512 et seq., failure to pay minimum
21 wages in violation of Labor Code §§ 1194, 1197, and 1197.1, failure to provide rest breaks and meal
22 periods in violation of Labor Code §§ 226.7 and 512, failure to provide accurate itemized wage
23 statements, failure to pay wages when due in violation of Labor Code §§ 201-203, and expressly
24 excluding all other claims, including claims for vested benefits (other than vacation and/or paid time
25 off to the extent those are alleged in the operative complaint), wrongful termination, unemployment
26 insurance, disability, social security, workers' compensation, and class claims outside of the Class
27 Period.

28 ///

1 7. As of the date the Defendant funds the Gross Settlement Amount, the Plaintiff,
2 the Labor and Workforce Development Agency (“LWDA”), the State of California, and each
3 “Aggrieved Employee” has released the Released Parties from the “Released PAGA Claims” for the
4 “PAGA Period” as set forth in the Agreement.

5 8. As used in paragraph 7 above, the quoted terms have the meanings as set forth
6 below: The Aggrieved Employees are defined as all non-exempt employees who are or previously
7 were employed by Defendants and performed work in California during the PAGA Period. The
8 Released PAGA Claims are defined as all PAGA claims asserted by Plaintiff on behalf the State of
9 California, LWDA, and the Aggrieved Employees in the operative complaint and Plaintiff’s PAGA
10 notice to the LWDA, premised upon alleged failure to pay overtime in violation of Labor Code §§
11 512 et seq., failure to pay minimum wages in violation of Labor Code §§ 1194, 1197, and 1197.1,
12 failure to provide rest breaks and meal periods in violation of Labor Code §§ 226.7 and 512, failure
13 to provide accurate itemized wage statements, failure to pay wages when due in violation of Labor
14 Code §§ 201-203, which occurred during the PAGA Period, and expressly excluding all other claims,
15 including claims for vested benefits (other than vacation and/or paid time off to the extent those are
16 alleged in the operative complaint and Plaintiff’s PAGA notice to the LWDA), wrongful termination,
17 unemployment insurance, disability, social security, workers' compensation, and PAGA claims
18 outside of the PAGA Period. The PAGA Period means the period of July 14, 2020 to June 17, 2022.

19 9. This Court hereby grants final approval and awards the following: (i)
20 \$61,250.00 for the Class Counsel Award comprised of one-third of the Gross Settlement Amount, or
21 Forty-One Thousand Two Hundred and Fifty Dollars (\$41,250.00) and costs and expenses in the
22 amount of up to Twenty Thousand Dollars (\$20,000.00); (ii) the Class Representative Service Award
23 to Class Representative, Patrick Clegg, of Ten Thousand Dollars and Zero Cents (\$10,000.00) in
24 exchange for a general release; (iii) settlement administration costs of Eight Thousand Three Hundred
25 Dollars and Zero Cents (\$8,300.00) to ILYM Group, Inc. (“Settlement Administration Cost”); and
26 (iv) Ten Thousand Dollars and Zero Cents (\$10,000.00) (75% of the PAGA Settlement) to the Labor
27 and Workforce Development Agency (“LWDA Payment”).

28 ///

1 10. Plaintiff shall give notice of this Judgment to the Labor and Workforce
2 Development Agency within ten (10) days after entry of the Judgment or order pursuant to California
3 Labor Code section 2699(1)(3).

4 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO**
5 **ORDERED.**

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8 DATED: _____, 2023

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Hon. Keri G. Katz
12 Judge, Superior Court for the State of California,
13 County of San Diego
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SAN DIEGO**

12 PATRICK CLEGG, an individual, on behalf
13 of himself, and on behalf of all persons
14 similarly situated,

15 Plaintiffs,

16 vs.

17 POULIN VENTURES, LLC a California
18 Corporation; BRANDON POULIN, an
19 Individual, and DOES 1 through 50, Inclusive;

20 Defendants.

Case No. 37-2021- 00033824-CU-OE-CTL

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT, ATTORNEYS' FEE
AWARD, COSTS AND CLASS
REPRESENTATIVE SERVICE AWARD**

Date: January 20, 2023
Time: 8:30 a.m.

Judge: Hon. Keri Katz
Dept.: 74

21 Plaintiff's motion for an order finally approving the Settlement Agreement and General
22 Release of All Claims ("Agreement") and motion for an award of attorneys' fees, costs, and
23 representative service award duly came on for hearing on January 20, 2023, before the above-
24 entitled Court. Barvie Law, APC, Zakay Law Group, APLC, and the JCL Law Firm, APC, appeared
25 on behalf of Plaintiff PATRICK CLEGG ("Plaintiff"). Talia L. Delanoy, Esq. and Annette Rose,
26 Esq. of Gordon Rees Scully Mansukhani appearing for Defendants POULIN VENTURES, LLC
and BRANDON POULIN (hereinafter "Defendants").

27 Based on the oral and written argument and evidence presented in connection with the
28 motion, the Court makes the following findings:

- 1 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 2 2. This Court has jurisdiction over the subject matter of this litigation pending in the
- 3 California Superior Court for the County of San Diego (“Court”), Case No. 37-2021-00033824-CU-
- 4 OE-CTL, entitled *Clegg v. Poulin Ventures, LLC. et al*, and over all Parties to this litigation,
- 5 including the Class.

6 **Preliminary Approval of the Settlement**

7 3. On October 28, 2022, the Court granted preliminary approval of a class-wide

8 settlement. At this same time the court approved certification of a provisional settlement class for

9 settlement purposes only. The Court confirms this Order and finally approves the settlement and

10 the certification of the Class.

11 **Notice to the Class**

12 4. The Notice Packet was mailed by first class U.S. First Class Mail to the Class

13 Members at their last known addresses on October 4, 2022. Mailing of the Notice Packet to their

14 last known addresses was the best notice practicable under the circumstances and was reasonably

15 calculated to communicate actual notice of the litigation and the proposed settlement to the members

16 of the Class Members. The Court finds that the Notice Packet provided fully satisfies the

17 requirements of California Rules of Court, Rule 3.769.

18 5. The Response Deadline for opting out or objecting was November 18, 2022. There

19 was an adequate interval between notice and deadline to permit Class Members to choose what to

20 do and act on their decision. No Class Members objected. No Class Members requested exclusion.

21 **Fairness Of The Settlement**

22 6. The Agreement provides for a Gross Settlement Amount of \$125,000.00. The

23 Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th

24 1794, 1801.)

25 a. The settlement was reached through arms-length bargaining between the

26 parties. There is no evidence of any collusion between the parties in reaching the proposed

27 settlement.

28

1 b. The Parties' investigation and discovery have been sufficient to allow the
2 Court and counsel to act intelligently.

3 c. Counsel for all parties are experienced in similar employment class action
4 litigation and have previously settled similar class claims on behalf of employees claiming
5 compensation. All counsel recommended approval of the Settlement.

6 d. No objections were received. No requests for exclusion were received.

7 e. The participation rate is high. All but seventeen (17) Class Members will be
8 participating in the Settlement and will be sent settlement payments.

9 7. The consideration to be given to the Class Members under the terms of the
10 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
11 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
12 Released Class Claims, given the uncertainties and risks of the litigation and the delays which would
13 ensue from continued prosecution of the Action.

14 8. The Agreement is finally approved as fair, adequate, and reasonable and in the best
15 interests of the Settlement Class Members.

16 **Attorneys' Fees and Litigation Expenses**

17 9. The Agreement provides for a Class Counsel Award in the amount of up to Sixty
18 One Thousand Two Hundred and Fifty Dollars (\$61,250.00). Subject to Court approval, the Class
19 Counsel Award consists of attorneys' fees equal to one-third (1/3) of the Gross Settlement Amount,
20 Forty One Thousand Two Hundred and Fifty Dollars (\$41,250.00) and reimbursement of costs and
21 expenses in the amount of up to Twenty Thousand Dollars (\$20,000.00).

22 10. A Class Counsel Award of Sixty One Thousand and Six Hundred and Sixty One
23 Thousand Two Hundred and Fifty Dollars (\$61,250.00) comprised of attorneys' fees in the amount
24 of Forty One Thousand Two Hundred and Fifty Dollars (\$41,250.00) and reimbursement of costs
25 and expenses in the amount of up to Twenty Thousand Dollars (\$20,000.00) is reasonable in light
26 of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
27 achieved by Class Counsel. The requested attorneys' fee award represents one-third (1/3) of the
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1 common fund, which is reasonable and at the low end of the range for fee awards in common fund
2 cases and is supported by Class Counsel's lodestar.

3 **Class Representative Service Award**

4 11. The Agreement provides for a Class Representative Service Award of up to \$10,000
5 for Plaintiff, Patrick Clegg, subject to the Court's approval. The Court finds that the amounts of
6 \$10,000 is reasonable in light of the risks and burdens undertaken by the Plaintiff in this class action
7 litigation.

8 **Settlement Administration Costs**

9 12. The Agreement provides for Settlement Administration Costs to be paid in an amount
10 not to exceed \$8,000.00. The Declaration of the Settlement Administrator provides that the actual
11 claims administration expenses were \$8,300.00. The amount of this payment is reasonable in light
12 of the work performed by the Settlement Administrator.

13 **II.**

14 **ORDERS**

15 Based on the foregoing findings, and good cause appearing, **IT IS HEREBY ORDERED:**

16 1. The Class is certified for the purposes of settlement only. The Settlement
17 Class is hereby defined to include:

18 2. All non-exempt employees who are or previously were employed by
19 Defendant in California during the Class Period. The Class Period is the period between August 6,
20 2017 to June 17, 2022.

21 3. Every person in the Class who did not opt out is a Settlement Class Member.

22 4. The Agreement is hereby approved as fair, reasonable, adequate, and in the
23 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with
24 this Order and the terms of the Agreement.

25 5. Class Counsel are awarded a Class Counsel Award in the amount of
26 \$61,250.00 comprised of attorneys' fees in the amount of \$41,250.00 and litigation expenses up to
27 \$20,000.00. Class Counsel shall not seek or obtain any other compensation or reimbursement from
28 Defendant, Plaintiff, or members of the Class.

1 6. The payment of the Class Representative Service Award to the Plaintiff in
2 the amount of \$10,000 is approved.

3 7. The payment of \$8,300.00 to the Settlement Administrator for Settlement
4 Administration Costs is approved.

5 8. The PAGA Settlement of \$10,000 is hereby approved as fair, reasonable,
6 adequate, and adequately protects the interests of the public and the LWDA. Further, the Court
7 finds that Plaintiff and Class Counsel negotiated the PAGA Settlement at arms-length, absent of any
8 fraud or collusion.

9 9. Final Judgment is hereby entered in this action. The Final Judgment shall
10 bind each Settlement Class Member.

11 10. Final Judgment shall also bind Plaintiff, acting on behalf of the State of
12 California and all Aggrieved Employees, pursuant to the California Private Attorneys' General Act
13 ("PAGA")

14 11. The term "Aggrieved Employees" is hereby defined as all non-exempt
15 employees who are or previously were employed by Poulin Ventures, LLC dba LadyBoss and
16 performed work in California during the period of July 14, 2020 to June 17, 2022. The PAGA
17 Period means the period of July 14, 2020, through and including June 17, 2022.

18 12. In addition to the release given by each Settlement Class Member, Plaintiff
19 also generally releases Defendant from any and all of the Released Class Claims as defined in the
20 Agreement.

21 13. The Agreement is not an admission by Defendant, nor is this Final Approval
22 Order and Judgment a finding, of the validity of any claims in the Action or of any wrongdoing by
23 Defendant. Neither this Final Approval Order, the Settlement, nor any document referred to herein,
24 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
25 admission by or against Defendant of any fault, wrongdoing, or liability whatsoever. The entering
26 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
27 in any event be construed as, or deemed to be evidence of, an admission or concession with regard
28 to the denials or defenses by Defendant and shall not be offered in evidence in any action or

1 proceeding against Defendant in any court, administrative agency or other tribunal for any purpose
2 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and
3 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,
4 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and
5 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
6 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
7 or issue preclusion or similar defense as to the claims being released by the Settlement.

8 14. Notice of entry of this Final Approval Order and Judgment shall be given to
9 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice
10 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
11 Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated
12 in the Notice Packet.

13 15. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
14 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
15 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
16 connection with the distribution of settlement benefits.

17 16. If the Settlement does not become final and effective in accordance with the
18 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
19 Defendant consistent with the terms of the Settlement, then this Final Approval Order and Judgment,
20 and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

21
22 **IT IS SO ORDERED.**

23 DATED: _____, 2023

Hon. Keri Katz
JUDGE OF THE SUPERIOR COURT