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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

SUKHRAJ KAUR, an individual, on
behalf of herself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

ACES 2020 I, LLC, a Delaware limited
liability company (fka Comprehensive
Educational Ervices, Inc.); ACES 2020,
LLC, a California limited liability company
(fka Comprehensive Educational Services,
Inc.); and DOES 1 through 50, inclusive,

Defendants.

Case No. MSC20-02482

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

Date: December 8, 2022
Time: 9:00 a.m.

Judge: Hon. Edward G. Weil
Dept.: 39

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE LITIGATION	2
III.	THE SETTLEMENT BEFORE THE COURT	4
IV.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	6
V.	THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	7
	A. Class Counsel Conducted a Thorough Investigation	8
	B. The Parties Settled Following Mediation	8
	C. Class Counsel is Experienced in Similar Litigation	9
	D. The Settlement Class Responded Positively to the Settlement	9
	E. The Gross Settlement Amount is Fair and Reasonable	10
	F. The Strength of Plaintiff's Case and Risks of Continued Litigation	12
VI.	THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE	15
VII.	CONCLUSION	16

TABLE OF AUTHORITIES

CASES

1		
2		
3	<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
4	(2000) 85 Cal.App.4th 1135, 1150-1151.....	6
5	<i>Ali v. U.S.A. Cab Ltd.</i>	
6	(2009) 176 Cal.App.4th 1333, 1341.....	13
7	<i>Barcia v. Contain-A-Way, Inc.</i>	
8	2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009).....	14
9	<i>Brinker</i>	
10		13
11	<i>Brown v. Fed Express Corp.</i>	
12	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	13
13	<i>Browning v. Yahoo!, Inc.</i>	
14	2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007).....	14
15	<i>Campbell v. Best Buy Stores, L.P.,</i>	
16	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	13
17	<i>Contreras v. United Food Group, LLC</i>	
18	Case No. BC389253 (L.A. County Super. Ct.).....	12
19	<i>Doty v. Costco Wholesale Corp.</i>	
20	Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007).....	12
21	<i>Dunk v. Ford Motor Co.</i>	
22	(1996) 48 Cal.App.4th 1794, 1801.....	6-7
23	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
24	(9th Cir. 2000) 213 F.3d 454, 459.....	11
25	<i>Duran v. U.S. Bank National Association</i>	
26	(2014) 59 Cal.4th 1, 31.....	13, 14
27	<i>Fukuchi v. Pizza Hut</i>	
28	Case No. BC302589 (L.A. County Super. Ct.).....	12
29	<i>Glass v. UBS Fin. Servs.</i>	
30	2007 WL221862.....	12
31	<i>Gomez v. Amadeus Salon, Inc.</i>	
32	Case No. BC392297 (L.A. Super. Ct.).....	12
33	<i>Hanlon v. Chrysler Corp.</i>	
34	(9th Cir. 1998) 150 F.3d 1011, 1026).....	14
35	<i>Hopson v. Hanesbrands Inc.</i>	
36	No. CV-08-0844 EDL, 2009 WL 928133, at *9.....	13, 15
37	<i>Huens v. Tatum</i>	
38	(1997) 52 Cal.App.4th 259, 265.....	6
39	<i>In re Austrian & German Bank Holocaust Litigation</i>	
40	(S.D.N.Y. 2000)80 F.Supp.2d 164, 175.....	9
41	<i>In re Newbridge Networks Sec. Litig.</i>	
42	(D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2.....	11
43	<i>Jack v. Hartford Fire Ins. Co.</i>	
44	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	15
45	<i>Kullar v. Foot Locker Retail, Inc.</i>	
46	(2008) 168 Cal.App.4th 116, 128-129.....	7, 10
47	<i>Laskey v. Int'l Union</i>	
48	(6th Cir. 1981) 638 F.2d 954.....	9

1	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
2	(N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7.....	11
3	<i>Lim v. Victoria's Secret Stores, Inc.</i>	
4	Case No. 04CC00213 (Orange County Super. Ct.).....	12
5	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i>	
6	2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).....	14
7	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
8	(9 th Cir. 2021) 999 F.3d 668.....	13-14
9	<i>Malibu Outrigger Bd. Of Governors v. Superior Court</i>	
10	(1980) 103 Cal.App.3d 573, 578-579.....	6
11	<i>McKenzie v. Fed. Express Corp.</i>	
12	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	15
13	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
14	(2010) 186 Cal.App.4th 399, 408.....	7
15	<i>O'Conner v. Uber Technologies, Inc.</i>	
16	(9 th Cir. 2018) 904 F.3d 1087, 1133.....	13-14
17	<i>Officers for Justice v. Civil Serv. Comm'n</i>	
18	(9 th Cir. 1982) 688 F. 2d 615, 625.....	7
19	<i>Palencia v. 99 Cents Only Stores</i>	
20	No. 34-2010-00079619.....	12
21	<i>Rebney v. Wells Fargo Bank</i>	
22	(1990) 220 Cal.App.3d 1117, 1138.....	7
23	<i>Ressler v. Federated Department Stores, Inc.</i>	
24	Case No. BC335018 (L.A. County Super. Ct.).....	12
25	<i>Sorenson v. PetSmart, Inc.</i>	
26	Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.).....	12
27	<i>Stoetzner v. U.S. Steel Corp.</i>	
28	(3d. Cir. 1990) 897 F.2d 115, 118-119.....	9
29	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
30	2015 U.S. Dist. LEXIS 78671.....	11
31	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Associates</i>	
32	38 Cal.3d 488, 499-500 (1985).....	10
33	<i>Tien v. Tenet Healthcare Corp.</i>	
34	(2012) 209 Cal.App.4th 1077, 1088.....	13
35	<i>Viceral v. Mistras Grp., Inc.</i>	
36	(N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7.....	11
37	<i>Wershba v. Apple Computer</i>	
38	(2001) 91 Cal.App.4th 224, 245-246, 250, 2246.....	6, 10

SECONDARY SOURCES

39	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992)	
40	§11.41, pp. 11-91.....	7

I. INTRODUCTION

Plaintiff SUKHRAJ KAUR (hereinafter “Plaintiff”) seeks final approval of the Stipulation of Class Action Settlement and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for 10,458 Class Members employed by defendant ACES 2020, LLC, a Delaware limited liability company (formerly known as Comprehensive Educational Services, Inc., a California Corporation), known in California as ACES 2020 I, LLC, doing business as ACES (hereinafter “Defendant”) in California, and who were classified as non-exempt employees during the Class Period.

In an order dated August 8, 2022, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On September 12, 2022, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Karen Hernandez (“ILYM Dec.”), ¶ 7. ***The Class greeted news of the Settlement with 99.91% approval.***² There are nine opt-outs and zero objections to the Settlement. JCL Dec., ¶ 10; ILYM Dec., ¶¶ 11-12. The high approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 7.

An objective evaluation of the proposed settlement of One Million Seven Hundred Fifteen Thousand Dollars (\$1,715,000) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Jeff Krivis, Esq., a highly regarded wage and hour class action mediator. After deducting any Court-approved attorneys’ fees and costs, class representative incentive payments, administration costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendant during the Class Period. JCL Dec., ¶ 10.

This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates

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

² 285 Notices were deemed undeliverable. ILYM Dec. at ¶¶ 10.

1 that the Settlement, if approved, would result in a Net Settlement Amount of approximately
2 **\$973,333.34**. This will result in an average Individual Settlement Payment of **\$93.15**, a high payment
3 of **\$1,754.56**, and a low payment of **\$5.87**. Aggrieved Employees will receive an estimated average
4 gross payment of **\$2.65**, a high payment of **\$12.38**, and a low payment of **\$0.19**. JCL Dec., ¶ 11; ILYM
5 Dec. at ¶ 14.

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

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

15 **II. OVERVIEW OF THE LITIGATION**

16 Defendant provides a comprehensive suite of services dedicated to enhancing the quality of life
17 for individuals and families impacted with Autism or other special needs. Defendant operates across
18 eight states, including California, where Defendant operates thirty-six locations spread throughout the
19 State. This action asserts claims on behalf of Defendant's non-exempt employees working at those
20 California locations. Plaintiff worked for Defendant as a non-exempt Behavioral Interventionist
21 employee in California between September of 2018 to January of 2020. At all times during her
22 employment, Plaintiff earned an hourly wage and was entitled to legally compliant meal and rest
23 periods, and minimum, regular and overtime wages for all hours worked. Throughout her employment,
24 Plaintiff was subject to Defendant's written policies and procedures contained in, among other
25 documents, the "ACES' Behavioral Interventionist Handbook." JCL Dec., ¶ 14; Declaration of
26 SUKHAJ KAUR ("Kaur Dec."), ¶¶ 1-17.

27 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
28

compliant meal and rest periods, failed to reimburse mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay all wages upon separation. Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies, written policies requiring all loss prevention security checks to take place while on-the-clock, compliant wage statements, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 15.

On September 12, 2020, Plaintiff served Defendant and the Labor and Workforce Development Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). On November 18, 2020, Plaintiff filed an Amended Notice of Violations with the LWDA and served the same on Defendant. Plaintiff's Amended PAGA Notice set forth the facts and theories supporting Defendant's alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* ("PAGA"). JCL Dec., ¶ 16.

On November 19, 2020, Plaintiff filed a class action complaint in the Contra Costa County Superior Court, Case No. C20-02482 ("Action"). The Action alleged nine causes of action against Defendant for: (1) Unfair Competition in violation of *Bus. and Prof. Code* §§ 17200; (2) failure to pay minimum wages in violation of California *Labor Code* sections 1194, 1197 and 1197.1; (3) failure to pay overtime wages in violation of California *Labor Code* sections 510 *et seq.*; (4) failure to provide required meal periods in violation of California *Labor Code* sections 226.7 and 512; (5) failure to provide required rest periods in violation of California *Labor Code* sections 226.7 and 512; (6) failure to provide accurate itemized wage statements in violation of California *Labor Code* section 226; (7) failure to reimburse employees for required expenses in violation of California *Labor Code* section 2802; (8) failure to provide wages when due in violation of California *Labor Code* sections 201, 202, and 203; and (9) violations of the Private Attorneys General Act ("PAGA"). JCL Dec., ¶ 17.

After serving written discovery, the Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally produce additional documents and data points subject to the

1 mediation privilege, including but not limited to, the Class Members' time data and certain payroll data
2 points. As discussed *infra*, Plaintiff's counsel retained the forensic consultants at Econ One Research,
3 Inc. ("Econ One") to analyze Defendant's time and payroll data. JCL Dec., ¶ 18.

4 On September 14, 2021, the Parties participated in a full day mediation with highly regarded
5 wage and hour mediator Jeff Krivis, Esq. Despite a full day of mediated negotiations, the Parties
6 reached an impasse and the mediation session concluded without a settlement. The matter only resolved
7 when Mediator Krivis issued a mediator's proposal several months later that was accepted by the
8 Parties. While the Parties attended the mediation voluntarily, it was always at arm's length and
9 adversarial. The Parties subsequently executed a binding and enforceable Memorandum of
10 Understanding ("MOU"). After reaching an agreement in principle, the Parties drafted and negotiated
11 a long-form settlement which is the subject of the instant motion. JCL Dec., ¶ 19.

12 On August 8, 2022, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4.
13 On September 12, 2022, the Settlement Administrator mailed Notice Packets to all 10,458 Settlement
14 Class Members. ILYM Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day
15 Response Deadline for the Settlement Class to submit requests for exclusion or objections to the
16 Settlement. The response from the Settlement Class to the Settlement was outstanding – 99.91% of the
17 Class Members are participating in the Settlement. ILYM Dec., ¶¶ 13.

18 **III. THE SETTLEMENT BEFORE THE COURT**

19 The Court preliminarily approved an initial Gross Settlement Amount of One Million, Seven
20 Hundred Fifty Thousand Dollars (\$1,715,000) based on a total of an estimated 160,902 Workweeks
21 worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy
22 Individual Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the
23 Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement
24 Administration Costs incurred in this action. JCL Dec., ¶20.

25 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
26 Settlement Fund within sixty-five (65) calendar days after the Effective Date. Agreement, ¶ I(N). The
27 Settlement Administrator shall disburse the Individual Settlement Payments and Aggrieved Employee
28

1 Payments to the Settlement Class Members and/or Aggrieved Employees no later than fifteen (15)
2 calendar days after Defendant funds the Gross Settlement Amount. Agreement, ¶ III(L)(7). The
3 Settlement Administrator will calculate Individual Settlement Payments by adding up the total number
4 of Workweeks for all Class Members. The Settlement Administrator will then divide the respective
5 Workweeks for each member of the Settlement Class by the total Workweeks for the entire Settlement
6 Class, resulting in a Payment Ratio for each Class Member. Each Settlement Class Member's Payment
7 Ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement
8 Payment. Agreement, ¶ III(L)(1). The estimated average Individual Settlement Payment is
9 approximately **\$93.15**. JCL Dec., ¶ 21; ILYM Dec., ¶ 14.

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

15 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Settlement
16 Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the
17 costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
18 administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
19 Administrator approved for reimbursement by the court. The Settlement Administrator expenses are
20 \$60,000.00. ILYM Dec., ¶ 15. These expenses shall be paid from the Gross Settlement Amount.
21 Agreement, ¶ III(L)(12).

22 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
23 \$596,666.66 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
24 to be at least \$571,666.66 and up to \$25,000 for actually incurred litigation expenses. Plaintiff's counsel
25 is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC.
26 Agreement, ¶ I(E). The Agreement also provides for a Class Representative Service Award in the
27 amount of \$5,000 for Plaintiff, in consideration of her time, risk, and efforts as the Class Representative
28

on behalf of the Settlement Class and a general release. Agreement, ¶¶ I(I); III(L)(9).

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the high approval of the Settlement by the Settlement Class, the absence of any objections to the Settlement and the average Individual Settlement Payment of \$93.15. ILYM Dec., ¶¶ 11-14; JCL Dec., ¶ 21.

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

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

“[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action requires court approval.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 *citing Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579. The court must decide whether the proposed settlement falls within the range of reasonable settlements, considering 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* (2001) 91 Cal.App.4th 224, 2246 (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.* (1996) 48 Cal.App.4th 1794, 1801; *see also Officers for Justice v. Civil Service Com'n* (9th Cir. 1982) 688 F. 2d 615, 625. 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* (1990) 220 Cal.App.3d 1117, 1138. "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.* (2008) 168 Cal.App.4th 116, 128; *see also Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.

The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801. Due regard should be given to what is otherwise a private consensual agreement between the parties. *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* "Ultimately, the

[trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.' [Citation omitted.]" *Id.*

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

A. Class Counsel Conducted a Thorough Investigation.

As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel assessed the value of the class claims using data and documents provided by Defendant through informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the number of Class Members, workweeks, and average rate of pay to assess damages before mediation. Class Counsel retained Econ One to analyze Defendant's time and payroll data to formulate damage models estimating Defendant's liability exposure. Class Counsel's investigation, research, experience, and damage models informed and guided the mediated negotiations that resulted in this settlement. Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 22-30.

B. The Parties Settled Following Mediation.

On September 14, 2021, the Parties conducted a full-day mediation with Jeff Krivis, Esq., a highly regarded wage and hour class action and PAGA mediator. Mediator Krivis helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Krivis's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluations of the damages. After more than eight hours of arm's length and adversarial negotiations, the mediation concluded without a settlement. However, following the mediation the Parties continued settlement negotiations until they reached an agreement. The amount of the service awards was not negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's service on behalf of the Class. JCL Dec., ¶ 31.

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. Counsel has previously litigated similar wage
4 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
5 similar wage and hour class actions throughout the State of California. As such, courts throughout the
6 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
7 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
8 is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 32-38; Declaration
9 of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3.

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

11 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
12 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
13 member with the terms of the Settlement, including the specific estimated Individual Settlement
14 Payments. To date, only nine of the 10,458 members of the Settlement Class opted-out of the
15 Settlement. Moreover, there are zero objections. Stated differently, 99.91% of the Settlement Class
16 chose to participate in the Settlement. JCL Dec., ¶ 10; ILYM Dec., ¶¶ 12-13.

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

26
27 ///

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

2 The Gross Settlement Amount of One Million Seven Hundred Fifteen Thousand Dollars
3 (\$1,715,000) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
4 court acknowledged that “as the court does when it approves a settlement as in good faith under Code
5 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
6 the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
7 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

8 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
9 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
10 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
11 Cal.App.4th at 250. While the Gross Settlement Amount of One Million Seven Hundred Fifteen
12 Thousand Dollars (\$1,715,000) represents a discount on Defendant’s potential exposure if Plaintiff
13 established liability on all claims and was awarded the full amount of the estimated damages at trial, this
14 compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that
15 could award significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial
16 recovery may require many more years of litigation, resulting in added fees and costs without any
17 guarantee of recovery for the Class. JCL Dec., ¶ 39.

18 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
19 reasonable considering the nature and magnitude of the claims being settled and the various potential
20 impediments to recovery. Class Counsel developed varied economic damages models measuring
21 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
22 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
23 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
24 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the
25 Settlement Class. The Gross Settlement Amount represents between approximately 7.1% and 22.6% of
26 Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL
27 Dec., ¶ 40.

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

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

19 The settlement also provides significant relief to the Settlement Class Members. After deductions
20 for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement, and the Class
21 Representative Service Award, the Net Settlement Amount is currently estimated to be \$973,333.34.
22 ILYM Dec., ¶14. The average settlement payment is approximately \$93.15, the highest is approximately
23 \$1,754.56, and the lowest payment is approximately \$5.87. ILYM Dec., ¶ 14. This average net recovery

24 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
25 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
26 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
27 *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); see also
28 *In re Newbridge Networks Sec. Litig.* (D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2 (“Courts have not identified a precise
numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures roughly
six to twelve percent of a potential trial recovery, while preventing further expenditures and delays and eliminating the risk
that no recovery at all will be won, seems to be within the targeted range of reasonableness.”).

in on par with many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, ¶ I(O).

Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval. JCL Dec., ¶ 41.

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

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 42. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

1 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
2 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
3 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
4 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
5 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
6 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
7 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
8 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
9 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
10 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
11 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
12 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
13 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
14 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
15 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
16 certification of driver meal and rest period claims based on the predominance of individual issues).
17 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
18 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
19 settlement. JCL Dec., ¶ 43.

20 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
21 that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the
22 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
23 affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 44.

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

27 **Plaintiffs may have a strong case, but the risks inherent in continued**
28 **litigation are great.** Defendants strongly deny liability for Plaintiffs’

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

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

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

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

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

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

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

1 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
2 an uncertain result three or more years in the future. JCL Dec., ¶ 45.

3 Class Representative and Class Counsel recognize the expense and length of a trial against
4 Defendant through possible appeals which could take another three years. In arriving at their informed
5 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
6 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
7 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
8 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
9 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
10 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
11 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
12 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
13 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 46.

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

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

25 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$80,000 which is
26 4.6% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range
27 of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement (\$60,000) will
28

1 be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA
2 Settlement (\$20,000) to be distributed to the Aggrieved Employees, which is within the range of
3 PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 47.

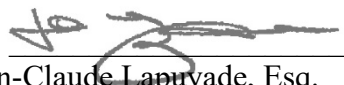
4 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
5 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
6 with the LWDA. JCL Dec., ¶¶ 5-6, 48. By not registering an objection with either Class Counsel or
7 the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

8 **VII. CONCLUSION**

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

12
13 Dated: November 10, 2022

JCL LAW FIRM, APC

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15 By: 
16 Jean-Claude Lapuyade, Esq.
17 Attorneys for Plaintiff
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