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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JAMES F. RACHAL JR., an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

ELG METALS, INC., a Pennsylvania
Corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 20STCV45861

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

Date: June 23, 2023

Time: 10:30 a.m.

Judge: Hon. Stuart M. Rice

Dept.: 1

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1 I. INTRODUCTION

2 Plaintiff JAMES F. RACHAL JR. (hereinafter “Plaintiff”) seeks final approval of the Joint
3 Stipulation of Settlement and Release of Class and PAGA Action (“Agreement”)¹, which if approved,
4 would provide valuable monetary relief for 35 Settlement Class Members employed by Defendant ELG
5 METALS, INC. (hereinafter “Defendant”) during the Class Period.

6 In an order dated January 19, 2023, this Court preliminarily approved the Agreement and
7 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 6. On February
8 17, 2023, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
9 Declaration of Cassandra Polites (“ILYM Dec.”), ¶ 6. *As of the filing of this motion, the Class greeted*
10 *news of the Settlement with unanimous approval as, at the time of the filing of this motion, all 35*
11 *Class Members chose to participate in the Settlement.*² There are zero opt-outs and zero objections to
12 the Settlement. ILYM Dec., ¶¶ 9-10. The unanimous approval by the Settlement Class evidences the
13 clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 9.

14 An objective evaluation of the proposed settlement of Two Hundred Twelve Thousand, Five
15 Hundred Dollars and Zero Cents (\$212,500.00) (“Gross Settlement Amount”) confirms that the relief
16 negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a
17 product of informed, adversarial, and non-collusive negotiations, between experienced counsel, and
18 presided over by Hon. Steven R. Denton (Ret.), a highly regarded jurist and mediator. After deducting
19 any Court-approved attorneys’ fees and costs, class representative incentive payments, administration
20 costs, and the payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement
21 fund shall be distributed to the Settlement Class based on the number of Workweeks they worked while
22 employed by Defendant during the Class Period. JCL Dec., ¶ 9.

23 This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates
24 that the Settlement, if approved, would result in a Net Settlement Amount of approximately
25 **\$101,038.27**. This will result in an average Individual Class Payment of **\$2,886.81**, and a high payment

26
27 ¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the
28 Agreement incorporate by this reference a citation to the JCL Dec. Further, unless indicated otherwise, capitalized terms
used herein have the same meaning as those defined by the Agreement.

² As of the filing date of this Motion, zero (0) Notices were deemed undeliverable. ILYM Dec. at ¶ 8.

of **\$3,989.86**. ILYM Dec. at ¶ 13. PAGA Group Members will receive an estimated average gross payment of **\$40.32** and a high payment of **\$49.12**. JCL Dec., ¶ 10; ILYM Dec. at ¶ 15.

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

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

II. OVERVIEW OF THE LITIGATION

Defendant is in the business of trading, processing, and recycling raw materials for the stainless-steel industry and recycles high performance materials for the aerospace industry throughout California, including Los Angeles County where Plaintiff worked. Plaintiff worked for Defendant as a non-exempt employee in California from September of 2003 until March 24, 2020. At all times during his employment, Plaintiff earned an hourly wage and was entitled to legally complaint meal and/or rest periods, minimum, regular, and overtime wages, and additional compensation in the form of non-discretionary incentive wages. Throughout his employment, Plaintiff was subject to Defendant’s written policies and procedures contained in, among other documents, the Employee Handbook and “California State Supplement.” JCL Dec., ¶ 13; Declaration of James Rachal (“Rachal Dec.”), ¶¶ 2-4.

Defendant forcefully 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, compliant wage statements, reimbursed for all required business expenses, and payment of all wages upon separation. JCL Dec., ¶ 14.

On September 18, 2020, Plaintiff served Defendant and the Labor and Workforce Development

Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 15.

On November 30, 2020, Plaintiff filed a class action complaint in the Los Angeles Superior Court, Case Number 20STCV45861 (the “Action”). The Action alleged nine causes of action against Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200 *et seq*; (2) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq*; (3) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (4) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (6) Failure to Reimburse Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; (7) Failure to Provide Wages When Due in Violation of Cal. Lab. Code §§ 201, 202, and 203; (8) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; and (9) Violations of the Private Attorney General Act at Lab. Code §§ 2698 *et. seq.* (“Class Claims”). JCL Dec., ¶ 16.

On March 19, 2021, Defendant filed a notice of removal of action to the Central District Court, asserting diversity jurisdiction pursuant to 28 U.S.C. sections 1332(a), 1441, and 1446. The Central District Court remanded the case to Los Angeles County Superior Court shortly thereafter. JCL Dec., ¶ 17.

Plaintiff commenced written discovery in May 2021. Defendant propounded written discovery in June 2021. After responding to each Party’s respective written discovery requests, the Parties agreed to mediate the Action. To prepare for mediation, the Parties agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to, all of the Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 18.

1 On March 29, 2022, the Parties participated in a full day mediation with Hon. Steven Denton
2 (Ret.), a highly regarded jurist and mediator. After arms-length negotiations and bargaining, the Parties
3 reached an agreement to settle based on Judge Denton’s Mediator’s proposal and signed a Memorandum
4 of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-
5 form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 19.

6 On January 19, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 6.
7 On February 17, 2023, the Settlement Administrator mailed Notice Packets to all 35 Settlement Class
8 Members. ILYM Dec., ¶ 6. The mailing of the Notice Packets triggered a forty-five (45) day Response
9 Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The
10 response from the Settlement Class to the Settlement was outstanding – as of the filing of this motion,
11 100% of the Class Members are participating in the Settlement. ILYM Dec., ¶¶ 9-10.

12 **III. THE SETTLEMENT BEFORE THE COURT**

13 The Court preliminarily approved an initial Gross Settlement Amount of Two Hundred Twelve
14 Thousand, Five Hundred Dollars and Zero Cents (\$212,500.00) based on a total of an estimated 6,400
15 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used:
16 (1) to satisfy Individual Settlement Payments; (2) to satisfy the Incentive Award; (3) to satisfy the Class
17 Counsel Fees and Expenses Payment; (4) to satisfy the PAGA Payment; and (5) to satisfy the Settlement
18 Administration Fees incurred in this action. JCL Dec., ¶ 20.

19 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
20 Settlement Fund within fifteen (15) calendar days after the Effective Date. Agreement, § 7.2. The
21 Settlement Administrator shall mail the Individual Settlement Payments and Individual PAGA Payment
22 to the Settlement Class Members and/or PAGA Group Members no later than thirty (30) calendar days
23 after Defendant funds the Gross Settlement Amount. Agreement, § 9.5. The Settlement Administrator
24 will calculate Individual Settlement Payments by dividing the Net Settlement Amount by the total
25 number of Workweeks worked by all Settlement Class Members during the Class Period and multiplying
26 the result by each Participating Class Member’s Workweeks. Agreement, § 9.2. The estimated average
27 Individual Class Payment is approximately **\$2,886.81**. JCL Dec., ¶ 21; ILYM Dec., ¶ 13.

1 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
2 the Settlement Class Members will release the Defendant from the Released Class Claims that accrued
3 during the Class Period. The PAGA Group Members, the LWDA, and the State of California will
4 release the Defendant from the Released PAGA Claims for the PAGA Period. Agreement at § 1.31,
5 1.32, 6.1.

6 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Settlement
7 Administration Fees include those expenses of effectuating and administering the Settlement, i.e., the
8 costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
9 administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
10 Administrator approved for reimbursement by the court. The Settlement Administrator expenses are
11 \$5,628.40. ILYM Dec., ¶ 16. These expenses shall be paid from the Gross Settlement Amount.
12 Agreement, §§ 1.35, 7.1, 7.2.

13 Subject to Court approval, Class Counsel shall seek a Class Counsel's Attorneys' Fees and
14 Expenses in the amount of \$90,833.33, comprised of attorneys' fees equal to one-third of the Gross
15 Settlement Amount estimated to be at least \$70,833.33 and up to \$20,000 for actually incurred litigation
16 expenses. Plaintiff's counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay
17 Law Group, APLC. Agreement, § 1.7. The Agreement also provides for an Incentive Award in the
18 amount of \$10,000 for Plaintiff, in consideration of his time, risk, and efforts as the Class Representative
19 on behalf of the Settlement Class and a general release. Agreement, §§ 1.14; 3.2.1; 6.1.1.

20 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
21 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
22 the Settlement Class, the absence of any objections to the Settlement and the average Individual Class
23 Payment of \$2,886.81. ILYM Dec., ¶¶ 9-10; JCL Dec., ¶ 21.

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

26 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
27 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
28

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, 246 (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*

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

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

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

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

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

24 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
25 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
26 assessed the value of the class claims using data and documents provided by Defendant through informal
27 discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding the number
28

of Class Members, workweeks, and average rate of pay to assess damages before mediation. Class Counsel retained Berger Consulting Group (“BCG”) 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., ¶ 22-27.

B. The Parties Settled At Mediation.

On March 29, 2022, the Parties conducted a full-day mediation with Hon. Steven R. Denton (Ret.), a highly regarded jurist and mediator. Judge Denton 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 Judge Denton’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, the Parties were thereafter able to reach a settlement based on a Mediator’s proposal. 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., ¶ 28.

C. Class Counsel is Experienced in Similar Litigation.

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar claims. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout the California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 29-35; Declaration of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3.

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

2 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
3 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
4 member with the terms of the Settlement, including the specific estimated Individual Settlement
5 Payments. As of the filing of this motion, none of the 35 members of the Settlement Class opted-out of
6 the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement Class
7 chose to participate in the Settlement. JCL Dec., ¶ 9; ILYM Dec., ¶¶ 9-10.

8 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement
9 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y.
10 2000)80 F.Supp.2d 164, 175 ("If only a small number of objections are received, that fact can be viewed
11 as indicative of the adequacy of the settlement."); *Stoetznier v. U.S. Steel Corp.* (3d. Cir. 1990) 897 F.2d
12 115, 118-119 (29 objections out of 281 member class "strongly favors settlement"); *Laskey v. Int'l*
13 *Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the proposed
14 settlement should be considered when determining fairness of settlement.). Consequently, Class Counsel
15 respectfully request the Court to follow the unanimous approval of the Settlement Class and grant final
16 approval of the Settlement.

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

18 The Gross Settlement Amount of Two Hundred Twelve Thousand, Five Hundred Dollars and
19 Zero Cents (\$212,500.00) in this case is fair and well within the range of recognized reasonableness.
20 The *Kullar* court acknowledged that "as the court does when it approves a settlement as in good faith
21 under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement
22 is within the 'ballpark' of reasonableness." *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde*
23 *& Associates*, 38 Cal.3d 488, 499-500 (1985).)

24 Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement
25 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the
26 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
27 While the Gross Settlement Amount of Two Hundred Twelve Thousand, Five Hundred Dollars and Zero
28

Cents (\$212,500.00) represents a discount on Defendant's potential exposure if Plaintiff established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 35.

As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents between approximately 13.8% and 20.6% of Defendant's *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 36.

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

³ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); see also *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.").

1 The calculation methodology used to compensate the Settlement Class for the alleged damages
2 was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
3 impartial. The calculation methodology is based on the number of Workweeks each Settlement Class
4 Member worked for Defendant during the Class Period. The number of Workweeks for the Settlement
5 Class Members is established through Defendant's data and documented compensation records. The
6 Settlement Administrator is responsible for calculating the Individual Settlement Payments by dividing
7 the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members
8 during the Class Period and multiplying the result by each Participating Class Member's Workweeks.
9 This process establishes an objectively fair and reasonable procedure to compensate the Settlement
10 Class. Agreement, § 9.2.

11 The settlement also provides significant relief to the Settlement Class Members. After deductions
12 for the Class Counsel's Attorneys' Fees and Expenses, Settlement Administration Fees, the PAGA
13 Payment, and the Incentive Award, the Net Settlement Amount is currently estimated to be **\$101,038.27**.
14 ILYM Dec., ¶ 11. The average settlement payment is approximately **\$2,886.81**, and the highest is
15 approximately \$3,989.86. ILYM Dec., ¶ 13. This average net recovery is on par with many wage and
16 hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99*
17 *Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of
18 approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net
19 recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
20 County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department*
21 *Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90);
22 *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average
23 net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD
24 (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No.
25 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v.*
26 *Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately
27 \$20). Additionally, Defendant must separately fund its share of any employer side payroll taxes.
28

Agreement, §§ 1.14, 6.1.

Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval. JCL Dec., ¶ 38.

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

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 39. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

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

1 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
2 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform policy);
3 *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver
4 meal and rest period claims based on the predominance of individual issues). Collectively, the examples
5 cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining
6 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 40.

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

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

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

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

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

28 **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

1 Court agrees, the actual recovery confers substantial benefits on the class
2 that outweigh the potential recovery through full adjudication.

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

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

9 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber*
10 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
11 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
12 that if Defendant faced a large adverse judgment, Defendant undoubtedly has the resources to post a
13 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
14 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
15 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
16 an uncertain result three or more years in the future. JCL Dec., ¶ 42.

17 The Class Representative and Class Counsel recognize the expense and length of a trial against
18 Defendant through possible appeals which could take another three years. In arriving at their informed
19 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
20 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
21 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
22 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
23 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
24 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
25 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
26 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
27 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 42.

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

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

12 Here, Plaintiff and Defendant negotiated a good faith PAGA Payment in the amount of \$5,000
13 which is 2.3% of the Gross Settlement Amount. As illustrated above, this amount falls well within the
14 range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Payment (\$3,750.00)
15 will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) to be
16 distributed to the PAGA Group Members, which is within the range of PAGA Payment approved by
17 courts and should be approved. JCL Dec., ¶ 43.

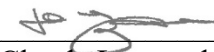
18 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy
19 of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the
20 LWDA. JCL Dec., ¶¶ 5-6, 44. By not registering an objection with either Class Counsel or the Court,
21 the LWDA has accepted and approved of the proposed PAGA Payment.

22 **VII. 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.

26 Dated: May 30, 2023

JCL LAW FIRM, APC

27 By: 
Jean-Claude Lapuyade, Esq.
28 Attorney for Plaintiff