

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Eduardo Garcia (State Bar #290572)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

egarcia@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

Jackland K. Hom (State Bar #327243)

5440 Morehouse Drive, Suite 3500

San Diego, CA 92121

Telephone: (619)255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

jackland@zakaylaw.com

Attorneys for Plaintiff ERIK FOSS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SHASTA

ERIK FOSS, individually and on behalf of
all persons similarly situated,

Plaintiffs,

vs.

ANDERSON HOSPITALITY, INC., a
California corporation and DOES 1
through 50, Inclusive,

Defendants.

Case No. 195317

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

Date: July 18, 2022

Time: 8:30 a.m.

Judge: Stephen H. Baker

Dept.: 3

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE LITIGATION	2
III.	THE SETTLEMENT BEFORE THE COURT	4
IV.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	6
V.	THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE	7
	A. Class Counsel Conducted a Thorough Investigation	8
	B. The Parties Settled at Mediation	8
	C. Class Counsel is Experienced in Similar Litigation	9
	D. The Settlement Class Responded Positively to the Settlement	9
	E. The Risk, Expense, Complexity and Duration of Further Litigation Favor Settlement	10
	F. The Total Settlement Amount is Fair and Reasonable	13
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 Fran. v. Southland Corp.</i>	
4	85 Cal. App. 4th 1135, 1150, 1151 (2000).....	6-7
5	<i>Ali v. U.S.A. Cab Ltd.</i>	
6	176 Cal. App. 4th 1333, 1341 (2009).....	10
7	<i>Austrian & German Bank Holocaust Litigation</i>	
8	80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000).....	9
9	<i>Barcia v. Contain-A-Way, Inc.</i>	
10	2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009).....	12
11	<i>Brinker</i>	
12		11
13	<i>Brown v. Fed Express Corp.</i>	
14	(C.D. Cal. 2008) 249 F.R.D. 580, 587-88.....	11
15	<i>Browning v. Yahoo!, Inc.</i>	
16	2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007).....	12
17	<i>Campbell v. Best Buy Stores, L.P.</i>	
18	(C.D. Cal. 2013) 2013 WL 5302217 at *11-13.....	10
19	<i>Contreras v. United Food Group, LLC</i>	
20	Case No. BC389253 (L.A. County Super. Ct.).....	15
21	<i>Doty v. Costco Wholesale Corp.</i>	
22	Case No. CV05-3241 FMC-JWJx (CD. Cal. May 14, 2007).....	15
23	<i>Dunk v. Ford Motor Co.</i>	
24	48 Cal.App.4th 1794, 1801 (1996).....	6-8
25	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
26	213 F.3d 454, 459 (9 th Cir. 2000)	14
27	<i>Duran v. U.S. Bank National Association</i>	
28	59 Cal.4th 1,31 (2014).....	10, 12
	<i>Fukuchi v. Pizza Hut</i>	
	Case No. BC302589 (L.A. County Super. Ct.).....	14-15
	<i>Glass v. UBS Fin. Servs.</i>	
	2007 WL221862 * 5.....	10
	<i>Gomez v. Amadeus Salon, Inc.</i>	
	Case No. BC392297 (L.A. Super. Ct.).....	15
	<i>Jack v. Hartford Fire Ins. Co.</i>	
	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	15
	<i>Hanlon v. Chrysler Corp.</i>	
	150 F.3d 1011, 1026 (9th Cir. 1998).....	12
	<i>Hopson v. Hanesbrands Inc.</i>	
	2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009).....	11, 15
	<i>Huens v. Tatum</i>	
	52 Cal. App. 4th 259, 265 (1997).....	6
	<i>Kullar v. Foot Locker Retail, Inc.</i>	
	168 Cal.App.4th 116, 128 (2008).....	8
	<i>Laskey v. Int'l Union</i>	
	638 F.2d 954 (6th Cir. 1981).....	9
	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
	(N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7.....	14

1	<i>Lim v. Victoria's Secret Stores, Inc.</i>	
2	Case No. 04CC00213 (Orange County Super. Ct.).....	15
3	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i>	
4	2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).....	12
5	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
6	(9 th Cir. 2021) 999 F.3d 668.....	10, 12
7	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i>	
8	103 Cal.App.3d 573, 578-579 (1980).....	6
9	<i>McKenzie v. Fed. Express Corp.</i>	
10	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	15
11	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
12	186 Cal. App. 4th 399, 408 (2010).....	8
13	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
14	40 Cal.App.5 th 444 (2019) (review granted).....	11
15	<i>Newbridge Networks Sec. Litig.</i>	
16	(D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2.....	14
17	<i>O'Conner v. Uber Technologies</i>	
18	(9 th Cir. 2018) 904 F.3d 1087.....	10
19	<i>O'Conner v. Uber Technologies</i>	
20	82 F. Supp. 3d 1133 (N.D. Cal. 2018).....	12
21	<i>Officers for Justice v. Civil Service Com'n,</i>	
22	688 F.2d 615, 625 (9th Cir. 1982).....	7
23	<i>Palencia v. 99 Cents Only Stores</i>	
24	No. 34-2010-00079619 (Sacramento County Super. Ct.).....	14
25	<i>Rebney v. Wells Fargo Bank</i>	
26	220 Cal.App.3d 1117, 1138 (1990).....	7
27	<i>Ressler v. Federated Department Stores, Inc.</i>	
28	Case No. BC335018 (L.A. County Super. Ct.).....	15
	<i>Sorenson v. Pet Smart, Inc.</i>	
	Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.).....	15
	<i>Stoetznner v. U.S. Steel Corp.</i>	
	897 F.2d 115, 118-119 (3d. Cir. 1990).....	9
	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
	2015 U.S. Dist. LEXIS 78671, at * 12.....	13
	<i>Tien v. Tenet Healthcare Corp.</i>	
	209 Cal.App.4th 1077, 1088 (2012).....	10
	<i>Viceral v. Mistras Grp., Inc.</i>	
	(N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7.....	14
	<i>Wershba v. Apple Computer</i>	
	91 Cal. App. 4th 224, 245-46 (2001).....	6-7

SECONDARY SOURCES

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

1 I. INTRODUCTION

2 Plaintiff ERIK FOSS (hereinafter “Plaintiff”) seeks final approval of the Stipulation of Settlement
3 of Class Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide
4 valuable monetary relief for 116 Settlement Class Members and 71 Aggrieved Employees employed by
5 defendant ANDERSON HOSPITALITY, INC. (“Defendant”) during the Class Period and PAGA
6 Period.

7 In an order dated March 14, 2022, this Court granted preliminary approval of the Agreement and
8 preliminary certified the Class. JCL Dec., ¶ 4. On April 11, 2022, the Settlement Administrator
9 delivered notice of the proposed settlement to the Class. Declaration of Lluvia Islas (“ILYM Dec.”), ¶¶
10 4-7.

11 *The Class greeted news of the Settlement with unanimous approval as, at the time of the filing*
12 *of this motion, all 116 Class Members choose to participate in the Settlement.*² There are zero opt-
13 outs and zero objections to the Settlement. ILYM Dec., ¶¶ 8-13. The unanimous approval by the
14 Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 7.

15 An objective evaluation of the proposed settlement of \$100,000.00 (“Total Settlement Amount”)
16 confirms that the relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable.
17 The Settlement is a product of informed, adversarial, and non-collusive negotiations, between
18 experienced counsel, guided by the wisdom and experience of respected jurist and mediator, Honorable
19 Judge William C. Pate (Ret.). After deducting any Court-approved attorneys’ fees and costs, class
20 representative incentive payments, administration costs, and payments to the Labor & Workforce
21 Development Agency (“LWDA”), the Net Settlement Amount shall be distributed to the Settlement
22 Class Members based on the number of Workweeks they worked while employed by Defendant during
23 the Class Period. JCL Dec., ¶ 7.

24 This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations.
25 Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of
26

27 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.

28 ² Fifteen (15) Notices Packets were deemed undeliverable as no updated address was found via skip tracing efforts. ILYM
Dec. at ¶ 10.

1 approximately \$35,666.66. This will result in an average Individual Settlement Payment of \$318.25
2 and high payment of \$2,495.83. ILYM Dec., ¶ 14; JCL Dec., ¶ 8.

3 Additionally, if approved \$5,000.00 of the Total Settlement Amount will be allocated to
4 Plaintiff's claims arising out of the Private Attorney General Act ("PAGA Settlement"). This will
5 result in a \$3,750.00 payment to the LWDA ("LWDA Payment") to continue enforcing labor laws
6 throughout California and providing education to employers and employees about their rights and
7 responsibilities under the Labor Code. The remaining \$1,250.00 will be allocated to the Aggrieved
8 Employees. Agreement, ¶III(M)(4).

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

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

18 **II. OVERVIEW OF THE LITIGATION**

19 Defendant operates a Best Western hotel in Anderson, California. Plaintiff was employed by
20 Defendant as an hourly, non-exempt front desk clerk during 2020. At all times during his employment,
21 Plaintiff earned an hourly wage, and was subject to all laws regarding meal and/or rest periods, and
22 minimum, regular and overtime wages for all hours worked. Throughout his employment, Plaintiff
23 was subject to Defendant's written policies and procedures contained in, among other documents,
24 Defendant's Employee Handbook. JCL Dec., ¶ 11.

25 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
26 compliant meal and rest periods, failed to provide accurate itemized wage statements, and failed to pay
27 all wages due at the time of his separation from employment, including, failed to provide compliant
28 meal and rest periods, failed to furnish accurate itemized wage statements, and failed to pay all wages

1 upon separation. Defendant forcefully denies liability for each of Plaintiff's claims. Further, Defendant
2 asserts that it fully complied with all applicable employment laws and raised several other significant
3 defenses to Plaintiff's claims, including but not limited to, facially compliant meal and rest period
4 polices, appropriate on-duty meal break agreements, compliant wage statements, timely paid all wages
5 due upon separation of employment, and arbitration with class action waivers. JCL Dec., ¶ 12.

6 On April 24, 2020, Plaintiff served Defendant and the Labor and Workforce Development
7 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice sets forth
8 the facts and theories supporting Defendant's alleged violations of various provisions of the California
9 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to
10 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
11 2698 et seq ("PAGA"). JCL Dec., ¶ 13.

12 On July 2, 2020, Plaintiff filed a class action complaint in the Shasta County Superior Court,
13 Case Number 195317 ("Class Action"). The Class Action alleged eight causes of action against
14 Defendant for: (1) Unfair Competition in Violation of California Business and Professions Code §§
15 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code §§ 1194, 1197 and
16 1197.1; (3) Failure to Pay Overtime Wages in Violation of California Labor Code §§ 510 *et seq.*; (4)
17 Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure
18 to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to
19 Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Provide
20 Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203); and (8) Violation of the Private
21 Attorney General Act ("PAGA"). JCL Dec., ¶ 14.

22 Plaintiff commenced written discovery in December 2020, including interrogatories, requests
23 for production, and requests for admissions. The Parties also engaged in the Belaire-West notice
24 procedure and Defendant produced the Class Members contact information to Plaintiff's Counsel.
25 Plaintiff's Counsel subsequently conducted interviews with many of the Class Members. Thereafter,
26 the Parties agreed to mediate this action. In anticipation for mediation, the Parties stipulated to stay
27 further formal discovery until after mediation. To prepare for mediation, the Class Counsel Requested
28 several documents and data points to further evaluate Plaintiff's claims and Defendant's liability

1 exposure to the Settlement Class Members. In response to Class Counsel’s request, Defendant
2 produced a sample of the Class Members’ time and payroll data. As discussed *infra*, Plaintiff’s counsel
3 retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and
4 payroll data. JCL Dec., ¶ 15.

5 On June 1, 2021, the Parties participated in mediation presided over by respected jurist and
6 mediator, Honorable Judge William Pate (Ret.). After arms-length negotiations and bargaining, the
7 mediation concluded without a settlement. However, the Parties were able to reach an agreement to
8 settle the Action with Judge Pate’s assistance. After reaching an agreement in principle, the Parties
9 drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion.
10 JCL Dec., ¶ 16.

11 On March 14, 2022, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4.
12 Shortly thereafter, the Claims Administrator mailed Notice Packets to all 116 Settlement Class
13 members. ILYM Dec., ¶¶7-9. The mailing of the Notice Packets triggered a forty-five (45) day
14 Response Deadline for the Settlement Class to submit requests for exclusion or objections to the
15 Settlement. The response from the Settlement Class to the Settlement was outstanding – 100% of the
16 Class Members are participating in the Settlement. ILYM Dec., ¶¶ 13.

17 **III. THE SETTLEMENT BEFORE THE COURT**

18 The Court preliminarily approved an initial Total Settlement Amount of \$100,000 based on a total
19 of approximately 3,800 Workweeks worked by the 116 Class Members during the Class Period. The
20 Total Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the
21 Class Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA
22 Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶17.

23 Defendant will fund the Settlement by transferring the Total Settlement Amount in two
24 installments. As there are no objectors, Defendant will pay the first installment of \$55,000.00 within
25 ten (10) calendar days of the Court entering an order granting final approval of this Settlement.
26 Defendant’s will transfer the second installment in the amount of \$45,000.00 within six (6) months of
27 the Effective Date. Agreement, ¶ III(A)(3). The Settlement Administrator shall disburse the Individual
28 Settlement Payments to the Settlement Class Members no later than fifteen (15) days after Defendant

1 deposits the first installment of the Total Settlement Amount into the Qualified Settlement Fund.
2 Agreement, ¶ III(M)(1)(e). The Settlement Administrator will calculate Individual Settlement Payments
3 by adding up the total number of Workweeks for the Settlement Class. The Settlement Administrator
4 will then divide the respective Workweeks for each member of the Settlement Class by the total
5 Workweeks for the entire Settlement Class, resulting in a Payment Ratio for each Settlement Class
6 member. Each Settlement Class Member's payment ratio is then multiplied by the Net Settlement
7 Amount to calculate each estimated Individual Settlement Payment. Agreement, ¶ III(M)(1). The
8 Settlement Administrator estimates the average Individual Settlement Payment is **\$318.25** and high
9 payment of **\$2,495.83**. ILYM Dec., ¶ 14.

10 In exchange for the valuable consideration, as of the funding of the Total Settlement Amount, the
11 Settlement Class Members will release the Released Parties from the Released Claims that accrued
12 during the Released Claim Period. Agreement, ¶ III(B).

13 ILYM Group was appointed as the Settlement Administrator for the class. Settlement
14 Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the
15 costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
16 administering and disbursing the Individual Settlement Shares, and the fees of the Settlement
17 Administrator approved for reimbursement by the court. The Settlement Administrator expenses are
18 \$6,000. ILYM Dec., ¶ 15. These expenses shall be paid from the Total Settlement Amount. Agreement,
19 ¶ III(M)(12).

20 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
21 \$45,833.33 comprised of attorneys' fees equal to one-third of the Total Settlement Amount estimated to
22 be at least \$33,333.33 and up to \$12,500.00 for actually incurred litigation expenses. Agreement, ¶
23 III(M)(10).

24 Subject to Court approval, the Agreement provides for a Class Representative Service Award in
25 the amount of \$7,500.00 for Plaintiff, in consideration of his time, risk and efforts as the Class
26 Representative on behalf of the Settlement Class, his individual release, and a broad release of Civil
27 Code section 1542. Settlement Agreement, ¶ III(M)(9).

28 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class

1 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
2 the Settlement Class and absence of any objections to the Settlement. ILYM Dec., ¶¶ 13; JCL Dec., ¶
3 19.

4 As set forth in the Agreement, \$5,000 of the Total Settlement Amount has been allocated for civil
5 penalties under the PAGA (“PAGA Settlement”). Seventy-Five percent of the PAGA Settlement will
6 be paid to the California Labor Workforce and Development Agency (“PAGA Payment”). The
7 Settlement Administrator shall distribute the remaining 25% of the PAGA Settlement to the Aggrieved
8 Employees (“Aggrieved Employee Payment”). Agreement, ¶ III(M)(11).

9 Further supporting final approval, the average Individual Settlement Payment of \$318.25 is
10 comparable to settlement payments in similar wage and hour class actions. This result is particularly
11 favorable considering that liability and certification were far from certain. Given the complexities of
12 this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of
13 proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted
14 final approval. JCL Dec., ¶ 20.

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

17 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
18 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
19 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
20 *v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the
21 preferred means of dispute resolution. This is especially true in complex class action litigation”).

22 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
23 action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) *citing*
24 *Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). The
25 court must decide whether the proposed settlement falls within the range of reasonable settlements,
26 taking into account that settlements are compromises between the parties reflecting subjective,
27 unquantifiable judgments concerning the risks and possible outcomes of litigation. See also *Wershba v.*
28 *Apple Computer*, 91 Cal. App. 4th 224, 246 (2001) (“The proposed settlement is not to be judged against

1 a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at
2 trial.”). In *Wershba*, appellants argued that the settlement was too low given the “clear” liability,
3 however, the Court rejected this argument and held that “the merits of the underlying class claims are
4 not a basis for upsetting the settlement of a class action.” *Wershba, supra*, at 246; *see also 7-Eleven,*
5 *supra*, at 1150.

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

14 The essential evaluation is whether, given the risks of litigation and the range of probable results,
15 the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. Here, the facts and
16 circumstances compel the conclusion that the proposed settlement satisfies that standard.

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

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

23 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*
24 *Fargo Bank*, 220 Cal. App. 3d 1117, 1138 (1990). “The well-recognized factors that the trial court
25 should consider in evaluating the reasonableness of a class action settlement agreement include 'the
26 strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk
27 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
28 completed and the stage of the proceedings, the experience and views of counsel, the presence of a

governmental participant, and the reaction of the class members to the proposed settlement.' [Citations.]" *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008); see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 408 (2010).

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 in formal and informal discovery, as well as interviews from dozens of Class Members. Class Counsel obtained time, payroll, and policy records, as well as data regarding the number of Class Members, workweeks, and average rate of pay in order to assess damages before mediation. Class Counsel retained Berger Consulting Group 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., ¶ 21-30.

B. The Parties Settled after Mediation.

The Settlement is the product of a mediation session with a respected mediator and subsequent negotiations over the terms of the Settlement. Although the mediation concluded without a settlement, the Parties, represented by their respective counsel, were able to reach an agreement shortly after the

mediation. The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. The amount of the service award was not negotiated until after the parties agreed to the Total Settlement Amount and many other terms. JCL Dec., ¶ 31. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class.

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., ¶¶ 31-38; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

D. The Settlement Class Responded Positively to the Settlement.

The reaction of the Settlement Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Settlement Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Settlement Payments. To date, none of the 116 members of the Settlement Class opted-out of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement Class chose to participate in the Settlement. JCL Dec., ¶ 7; ILYM Dec., ¶¶ 7-13.

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

Class Counsel respectfully request the Court to follow the unanimous approval of the Settlement Class and grant final approval of the Settlement.

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

Although Plaintiff and Class Counsel believe that their case has merit, they recognized the potential risks both sides would face if litigation of this action continued. 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 judgment against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following

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

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. Recently, the California Court of Appeal,
11 Second District, held that meal and rest period violations do not entitle employees to pursue the
12 derivative waiting time and itemized wage statement penalties. *Naranjo v. Spectrum Security Services,*
13 *Inc.*, 40 Cal.App.5th 444 (2019) (*review granted*). The *Naranjo* decision gutted Plaintiffs' claims for
14 Labor Code Section 226 penalties and Labor Code Section 203 waiting time penalties predicated on
15 rest period violations³. JCL Dec., ¶ 40.

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

19 **Plaintiffs may have a strong case, but the risks inherent in continued**
20 **litigation are great.** Defendants strongly deny liability for Plaintiffs'
21 principal claim that full-time Service Associates were misclassified as
22 exempt. In addition to the uncertainties raised by Defendants at the
23 preliminary stage regarding Plaintiffs' chance of success in this case,
24 Defendants notes that the question of an employer's duty to provide rest and

25
26 ³ Very recently, the California Supreme Court issued a decision concluding that meal premiums are
27 "wages," thus entitled Plaintiff and Class Members to derivative waiting time and wage statement
28 penalties for Defendant's meal and rest period violations. *Naranjo v. Spectrum Security Services, Inc.*,
(May 23, 2022, S258966) Cal.5th [p. 9] <http://courts.ca.gov/opinions>.) However, at the time the Parties
reached an agreement to settle the Action, Plaintiff's damages and penalties arising from derivative
wage statement and waiting time claims was far from certain.

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

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

1 assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case could
2 have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh an
3 uncertain result three or more years in the future. JCL Dec., ¶ 41.

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

15 **F. The Total Settlement Amount is Fair and Reasonable.**

16 The Total Settlement Amount of \$100,000.00 in this case is fair and well within the range of
17 recognized reasonableness. As detailed at the time of preliminary approval, the Total Settlement Amount
18 is fair and reasonable considering the nature and magnitude of the claims being settled and the various
19 potential impediments to recovery. Class Counsel developed varied economic damages models
20 measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation.
21 The various models were informed by Class Counsel's investigation, including the analysis of a
22 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
23 process, Class Counsel projected a range of Defendant's alleged liability exposure for the claims asserted
24 on behalf of the Settlement Class. The Total Settlement Amount represents approximately between 32%
25 of Defendant's liability exposure for damages, and 17.8% of Defendant's liability exposure for damages
26 and penalties, as estimated by Class Counsel and BCG at the time of mediation. JCL Dec., ¶ 43.

27 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
28 Court for the Northern District of California granted final approval in a wage and hour misclassification

1 action and found that the Total Settlement representing 10% of the estimated trial award was within the
2 “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F. 3d 454,
3 459 (9th Cir. 2000), the Ninth Circuit approved a settlement representing “roughly one-sixth of the
4 potential recovery.” Given the amount of the settlement here as compared to potential value of the
5 claims, particularly the strength of Plaintiffs’ action, the settlement is clearly fair and reasonable,
6 particularly in light of Defendant's myriad defenses and counter-arguments to Plaintiff's claims and
7 theories⁴.

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(M)(1)(a).

19 The settlement also provides significant relief to the Settlement Class Members. The average
20 settlement payment is approximately \$318.25, and a high payment of \$2,495.83. ILYM Dec., ¶ 14.
21 This average net recovery is on par with many wage and hour class action settlements approved by
22 California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619
23 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*,

24
25 ⁴ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving
26 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
27 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
28 *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.”).

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).

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., ¶ 46.

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

Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense of class members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of 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 \$5,000.00 which is 5% of the Total Settlement Amount. This amount falls well within the range of approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA Settlement (\$3,750.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) to be

distributed to the Aggrieved Employees, which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 47.

Further, on January 21, 2022, Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with the LWDA. On June 22, 2022, Plaintiff gave the LWDA notice of this motion seeking final approval of this settlement. JCL Dec., ¶¶ 5-6, 48. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

VII. CONCLUSION

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

Dated: June 22, 2022

JCL LAW FIRM, APC

By: 

Jean-Claude Lapuyade, Esq.
Attorneys for Plaintiff