

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney S. Castillo-Johnson (State Bar #343881)
Monnett De La Torre (State Bar #272884)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com
mdelatorre@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF BUTTE

THOMAS HAVEN, BRETT OWENS, AND
DONAVON PATTERSON individuals, on
behalf of themselves and on behalf of all
persons similary situated,

Plaintiffs,

v.

CALIFORNIA VOCATIONS, INC., a
California Corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. 20CV01514

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

Date: March 1, 2023

Time: 9:00 a.m.

Judge: Hon. Stephen E. Benson

Dept.: 6

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. The Class Counsel Conducted a Thorough Investigation	8
	B. The Parties Settled At Mediation	8
	C. Class Counsel is Experience 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 Plaintiffs' 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>Dunk v. Ford Motor Co.</i>	
18	(1996) 48 Cal.App.4th 1794, 1801.....	6-7
19	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
20	(9th Cir. 2000) 213 F.3d 454, 459.....	11
21	<i>Duran v. U.S. Bank National Association</i>	
22	(2014) 59 Cal.4th 1, 31.....	13, 14
23	<i>Glass v. UBS Fin. Servs.</i>	
24	2007 WL221862.....	12
25	<i>Hanlon v. Chrysler Corp.</i>	
26	(9th Cir. 1998) 150 F.3d 1011, 1026).....	14
27	<i>Hopson v. Hanesbrands Inc.</i>	
28	No. CV-08-0844 EDL, 2009 WL 928133, at *9.....	13, 15
29	<i>Huens v. Tatum</i>	
30	(1997) 52 Cal.App.4th 259, 265.....	6
31	<i>In re Austrian & German Bank Holocaust Litigation</i>	
32	(S.D.N.Y. 2000)80 F.Supp.2d 164, 175.....	9
33	<i>In re Newbridge Networks Sec. Litig.</i>	
34	(D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2.....	11
35	<i>In re Mego Fin. Corp. Sec. Litig.</i>	
36	(9th Cir. 2000) 213 F.3d 454, 459.....	11
37	<i>Jack v. Hartford Fire Ins. Co.</i>	
38	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	15
39	<i>Kullar v. Foot Locker Retail, Inc.</i>	
40	(2008) 168 Cal.App.4th 116, 128-129.....	7, 10
41	<i>Laskey v. Int'l Union</i>	
42	(6th Cir. 1981) 638 F.2d 954.....	9
43	<i>Leverage v. Traeger Pellet Grills, LLC</i>	
44	(N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7.....	11
45	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i>	
46	2008 U.S. Dist. LEXIS 78314, *14 (S.D. Cal. 2008).....	14
47	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
48	(9 th Cir. 2021) 999 F.3d 668.....	12, 14

1	<i>Malibu Outrigger Bd. Of Governors v. Superior Court</i>	
2	(1980) 103 Cal.App.3d 573, 578-579.....	6
3	<i>McKenzie v. Fed. Express Corp.</i>	
4	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	15
5	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
6	(2010) 186 Cal.App.4th 399, 408.....	7
7	<i>O’Conner v. Uber Technologies, Inc.</i>	
8	(9 th Cir. 2018) 904 F.3d 1087, 1133.....	13, 14
9	<i>Officers for Justice v. Civil Serv. Comm’n</i>	
10	(9 th Cir. 1982) 688 F. 2d 615, 625.....	7
11	<i>Rebney v. Wells Fargo Bank</i>	
12	(1990) 220 Cal.App.3d 1117, 1138.....	7
13	<i>Stoetzner v. U.S. Steel Corp.</i>	
14	(3d. Cir. 1990) 897 F.2d 115, 118-119.....	9
15	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
16	2015 U.S. Dist. LEXIS 78671.....	10
17	<i>Tech-Bilt, Inc. v. Woodward-Clyde & Associates</i>	
18	38 Cal.3d 488, 499-500 (1985).....	10
19	<i>Tien v. Tenet Healthcare Corp.</i>	
20	(2012) 209 Cal.App.4th 1077, 1088.....	13
21	<i>Viceral v. Mistras Grp., Inc.</i>	
22	(N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7.....	11
23	<i>Wershba v. Apple Computer</i>	
24	(2001) 91 Cal.App.4th 224, 245-246, 250, 2246.....	6, 10

SECONDARY SOURCES

16	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992)	
17	§11.41, pp. 11-91.....	7

I. INTRODUCTION

Plaintiffs THOMAS HAVEN, BRETT OWENS, and DONAVON PATTERSON (hereinafter “Plaintiffs”) seek final approval of the Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for 724 Settlement Class Members employed by Defendant CALIFORNIA VOCATIONS, INC. (hereinafter “Defendant”).

In an order dated November 9, 2022, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On December 15, 2022, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail. Declaration of Makenna Snow (“ILYM Dec.”), ¶ 7. *The Class greeted news of the Settlement with 99.72% approval.*² There are two opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶ 11-13; JCL Dec., ¶ 10. The high approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 10.

An objective evaluation of the proposed settlement of Five Hundred Eighty-Five Thousand Dollars and Zero Cents (\$585,000.00) (“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 Hon. Brian Walsh (Ret.), a respected jurist and mediator of wage and hour class and representative actions. 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. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$297,000.00**. This will result in an average Individual Settlement Payment of

¹ The Agreement is attached as Ex “1” 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 Seventy-nine (79) Notices were deemed deliverable. ILYM Dec. at ¶¶ 10.

1 **\$410.22**, a high payment of **\$1,223.63**, and a low payment of **\$3.85**. Aggrieved Employees will
2 receive an estimated average gross payment of **\$10.36**, a high payment of **\$36.75**, and a low
3 payment of **\$.55**. JCL Dec., ¶ 11; ILYM Dec. at ¶ 14-15.

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

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

13 **II. OVERVIEW OF THE LITIGATION**

14 Defendant provides residential and vocational support to developmentally disabled adults.
15 Defendant operates a facility in Butte County where Plaintiffs worked. This action asserts claims
16 on behalf of Defendant's non-exempt employees who are or previously were employed in
17 California. Plaintiffs worked for Defendant in various non-exempt job positions at various times
18 during the Class Period. At all times during their employment, Plaintiffs earned hourly wage,
19 were entitled to legally compliant meal and/or rest periods, and minimum, regular and overtime
20 wages for all hours worked. Throughout their employment, Plaintiffs were subject to Defendant's
21 written policies and procedures contained in, among other documents, Defendant's written
22 Employee Handbook. JCL Dec., ¶ 14.

23 Generally, Plaintiffs claim that Defendant failed to pay for all time worked, failed to
24 provide compliant meal and rest periods, failed to furnish accurate itemized wage statements, and
25 failed to reimburse for required business expenses. Defendant forcefully denies liability for each
26 of Plaintiffs' claims. Further, Defendant asserts that it fully complied with all applicable
27 employment laws and raised several other significant defenses to Plaintiffs' claims, including but
28 not limited to, facially compliant meal and rest period policies, compliant wage statements, and

1 reimbursed for all required business expenses. JCL Dec., ¶ 15.

2 On May 27, 2020, Plaintiff Haven served Defendant and the Labor and Workforce
3 Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff
4 Haven’s PAGA Notice set forth the facts and theories supporting Defendant’s alleged violations
5 of various provisions of the California Labor Code and applicable Industrial Welfare
6 Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor
7 Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 et seq (“PAGA”). On January
8 19, 2022, Plaintiff Haven and Plaintiff Owens served Defendant and the LWDA with an amended
9 PAGA Notice. JCL Dec., ¶ 16.

10 On August 3, 2020, Plaintiff Haven filed a class action complaint in the Butte County
11 Superior Court (the “Action”). The Action alleged nine causes of action against Defendant for:
12 (1) Unfair Competition in Violation of California Business and Professions Code §§ 17200; (2)
13 Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (3)
14 Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510 *et seq.*; (4) Failure to
15 Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (5) Failure to
16 Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 and 512; (6) Failure to
17 Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (7) Failure to
18 Reimburse Employees for Required Business Expenses in Violation of Cal. Lab. Code § 2802; (8)
19 Failure to provide wages when due in violation of Cal. Lab. Code Sections § 201, 202, and 203,
20 and (9) Violations of the Private Attorney General Act at Lab. Code §§ 2698 *et. seq.* (“Class
21 Claims”). On March 29, 2022, Plaintiff Haven filed an amended complaint adding Plaintiff
22 Owens to the Action. On July 11, 2022, Plaintiffs filed a second amended complaint adding
23 Plaintiff Patterson to the Action. JCL Dec., ¶ 17.

24 After the Action was commenced, the Parties engaged in motion practice and significant
25 written discovery, including the dissemination of the *Belaire-West* notice to the Class Members.
26 After answering each party’s respective written discovery, and after Class Counsel contacted
27 many of the Class Members and discuss Plaintiffs’ claims with them, the Parties agreed to
28 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, the Class Members' time data and certain payroll data points. As discussed *infra*, Plaintiffs' counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. JCL Dec., ¶ 18.

On May 5, 2022, the Parties participated in a full day mediation with highly regarded wage and hour mediator Hon. Brian Walsh (Ret.). After arms-length negotiations and bargaining, the Parties reached an agreement to settle based on Judge Walsh's mediator proposal, and signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 19.

On November 9, 2022, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On December 15, 2022, the Settlement Administrator mailed Notice Packets to all 724 Class Members. ILYM Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement was outstanding – 99.72% of the Class Members are participating in the Settlement. ILYM Dec., ¶ 13.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Five Hundred Eighty-Five Thousand Dollars and Zero Cent (\$585,000.00) based on a total of an estimated 77,511 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Awards; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 20.

Defendant will fund the Settlement by transferring \$400,000.00 of the Gross Settlement Amount into a Qualified Settlement Fund within sixty-five (65) days after the Effective Date and the remaining amount in twelve (12) equal monthly installments in the amount of \$15,416.67 commencing on the first day of the full month following the initial payment. Agreement, ¶ III(A)(3). Individual Settlement Payments and Aggrieved Employee Payments shall be mailed by

1 regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees' last
2 known mailing address no later than fifteen (15) calendar days after Defendant makes the initial
3 payment of \$400,000.00. Agreement, ¶ III(O)(7). The Settlement Administrator will calculate
4 Individual Settlement Payments by adding up the total number of Workweeks for all Class
5 Members. The Settlement Administrator will then divide the respective Workweeks for each
6 member of the Settlement Class by the total Workweeks for the entire Settlement Class, resulting
7 in a Payment Ratio for each Class Member. Each Settlement Class Member's Payment Ratio is
8 then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement
9 Payment. Agreement, ¶ III(O)(1). The estimated average Individual Settlement Payment is
10 approximately **\$410.22**. JCL Dec., ¶ 21; ILYM Dec., ¶ 15.

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

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

23 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
24 \$215,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount
25 estimated to be at least \$195,000.00 and up to \$20,000 for actually incurred litigation expenses.
26 Plaintiffs' counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law
27 Group, APLC. Agreement, ¶ I(E). The Agreement also provides for a Class Representative
28 Service Awards in the amount of \$30,000, with \$10,000 allocated to each Plaintiff in

1 consideration of their time, risk, and efforts as the Class Representatives on behalf of the
2 Settlement Class. Agreement, ¶¶ I(I); III(O)(9).

3 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the
4 class and should be granted final approval. This is evidenced by the high approval of the
5 Settlement by the Settlement Class, the absence of any objections to the Settlement and the
6 average Individual Settlement Payment of \$410.22. ILYM Dec., ¶¶ 11-15; JCL Dec., ¶ 21.

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

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

15 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a
16 class action requires court approval.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801
17 *citing Malibu Outrigger Bd. Of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-
18 579. The court must decide whether the proposed settlement falls within the range of reasonable
19 settlements, considering that settlements are compromises between the parties reflecting
20 subjective, unquantifiable judgments concerning the risks and possible outcomes of litigation. *See*
21 *also Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 2246 (The proposed settlement is
22 not to be judged against a hypothetical or speculative measure of what might have been achieved
23 had plaintiffs prevailed at trial.”). In *Wershba*, appellants argued that the settlement was too low
24 given the “clear” liability, however, the Court rejected this argument and held that “the merits of
25 the underlying class claims are not a basis for upsetting the settlement of a class action.”
26 *Wershba, supra*, at 246; *see also 7-Eleven, supra*, at 1150.

27 In these cases, Courts have repeatedly emphasized that there is a strong initial presumption
28 that the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not

1 substitute their judgment for that of the parties who negotiated the settlement. *Id.* At 246. The
2 presumption of fairness exists where: (1) investigation and discovery are sufficient to allow
3 counsel and the court to act intelligently; (2) the settlement is reached through arm's-length
4 bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
5 small. *Dunk*, 48 Cal.App.4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d
6 ed. 1992) §11.41, pp. 11-91. Here, all of these factors support a presumption of fairness.

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

11 V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

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

27 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at
28 1801. Due regard should be given to what is otherwise a private consensual agreement between

1 the parties. *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment
2 that the agreement is not the product of fraud or overreaching by, or collusion between, the
3 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
4 concerned.” *Id.* “Ultimately, the [trial] court's determination is nothing more than 'an amalgam of
5 delicate balancing, gross approximations and rough justice.' [Citation omitted.]” *Id.*

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

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

9 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated
10 the proposed Class Members’ claims, applicable law, and potential defenses. Specifically, Class
11 Counsel assessed the value of the class claims using data and documents provided by Defendant
12 through formal and informal discovery. Class Counsel obtained time, payroll, and policy records,
13 as well as data regarding the number of Class Members, workweeks, and average rate of pay to
14 assess damages before mediation. Class Counsel retained BCG to analyze Defendant’s time and
15 payroll data to formulate damage models estimating Defendant’s liability exposure. Class
16 Counsel’s investigation, research, experience, and damage models informed and guided the
17 mediated negotiations that resulted in this settlement. Accordingly, Plaintiffs’ Counsel fully
18 understood the strengths and weaknesses of the class claims before the parties reached a
19 settlement. JCL Dec., ¶ 22-28.

20 **B. The Parties Settled At Mediation.**

21 On May 5, 2022, the Parties conducted a full-day mediation with Hon. Brian Walsh (Ret.),
22 a respected jurist and mediator of wage and hour class and representative actions. Judge Walsh
23 helped to manage the Parties’ expectations and provided a useful, neutral analysis of the issues
24 and risks to both sides. The Parties made substantial progress with Judge Walsh’s assistance.
25 Namely, the Parties exchanged information regarding their respective claims and defenses,
26 including their respective evaluations of the damages. After more than eight hours of arm’s
27 length and adversarial negotiations, the mediation concluded with a settlement. The amount of
28 the service awards was not negotiated until after the parties agreed to the Gross Settlement

1 Amount and many other terms. No action would likely have been taken by Class Members
2 individually, and no compensation would have been recovered for them, but for Plaintiffs'
3 services on behalf of the Class. JCL Dec., ¶ 29.

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

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

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

14 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
15 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
16 member with the terms of the Settlement, including the specific estimated Individual Settlement
17 Payments. To date, only two of the 724 members of the Settlement Class has opted-out of the
18 Settlement. Moreover, there are zero objections. Stated differently, 99.72% of the Settlement
19 Class chose to participate in the Settlement. JCL Dec., ¶ 10; ILYM Dec., ¶¶ 11-13.

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

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

2 The Gross Settlement Amount of Five Hundred Eighty-Five Thousand Dollars and Zero
3 Cents (\$585,000.00) in this case is fair and well within the range of recognized reasonableness.
4 The *Kullar* court acknowledged that “as the court does when it approves a settlement as in good
5 faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the
6 class settlement is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt,*
7 *Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).)

8 Here, the Settlement is clearly within the “ballpark” of reasonableness because the
9 Settlement provides a sizeable recovery to the Settlement Class Members and need not necessarily
10 obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful.
11 *Wershba*, 91 Cal.App.4th at 250. While the Gross Settlement Amount of Five Hundred Eighty-
12 Five Thousand Dollars and Zero Cents (\$585,000.00) represents a discount on Defendant’s
13 potential exposure if Plaintiffs established liability on all claims and were awarded the full amount
14 of the estimated damages at trial, this compromise is reasonable because (1) the formidable
15 defenses raised by Defendant presented a risk that could award significantly less in damages than
16 Plaintiffs’ estimate and (2) any theoretical post-trial recovery may require many more years of
17 litigation, resulting in added fees and costs without any guarantee of recovery for the Class. JCL
18 Dec., ¶ 37.

19 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
20 reasonable considering the nature and magnitude of the claims being settled and the various
21 potential impediments to recovery. Class Counsel developed varied economic damages models
22 measuring Defendant’s liability exposure while accounting for the uncertainties of continued
23 litigation. The various models were informed by Class Counsel’s investigation, including the
24 analysis of a significant sample of time and payroll data. As detailed in greater depth during the
25 preliminary approval process, Class Counsel projected a range of Defendant’s liability exposure
26 for the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount
27 represents approximately 14.8% of the value of the maximum potential *damages* at issue. Even
28 when including the penalties for Plaintiff’s claim for wage statement violations and waiting time

1 penalties under *Labor Code* Sections 203 and 226, the settlement represents up to 8.3% of the
2 maximum potential liability, assuming all of these amounts could be proved at trial. JCL Dec., ¶
3 38.

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

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

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
25 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or
26 approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-
27 00784) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of
28 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 Settlement also provides significant relief to the Settlement Class Members. After
2 deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement,
3 and the Class Representative Service Awards, the Net Settlement Amount is currently estimated
4 to be **\$297,000.00**. ILYM Dec., ¶14. The average settlement payment is approximately **\$410.22**,
5 the highest is approximately **\$1,223.63**, and the lowest payment is approximately **\$3.85**. ILYM
6 Dec., ¶ 15. This average net recovery is on par with many wage and hour class action settlements
7 approved by California state and federal courts. JCL Dec., ¶ 39. Additionally, Defendant must
8 separately fund its share of any employer side payroll taxes. Agreement, ¶ I(O).

9 Clearly the goal of this litigation to obtain redress for the class has been met by this
10 Settlement. Given the amount of the Settlement, the risks of litigation and the arm's length
11 negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore
12 entitled to final approval. JCL Dec., ¶ 40.

13 **F. The Strength of Plaintiffs' Case and Risks of Continued Litigation**

14 Although Class Counsel believes strongly in Plaintiffs' claims, it would be misguided to
15 ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the
16 action or, at least, drastically undercut Plaintiffs' claims. JCL Dec., ¶ 41. As the federal court in
17 *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to
18 those in this litigation:

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

27 With respect to the most immediate challenge, i.e., class certification, the risks attendant to
28 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*

1 *O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and
2 hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59
3 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v.*
4 *Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that employees
5 might not take their breaks were predominantly individualized questions of fact not susceptible to
6 class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of
7 certification because employees’ declarations attesting to having taken meal and rest breaks
8 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy*
9 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying
10 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform
11 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
12 certification of driver meal and rest period claims based on the predominance of individual
13 issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation.
14 Consequently, the uncertainty of obtaining certification through a contested motion is a significant
15 risk factor favoring settlement. JCL Dec., ¶ 42.

16 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
17 recognize that Defendant has factual and legal defenses that, if successful, would potentially
18 defeat or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour
19 litigation can drastically affect the value of Plaintiffs’ claims and, in fact, already has. JCL Dec.,
20 ¶ 43.

21 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*,
22 2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009), granted approval of an overtime class
23 action settlement and explained:

24 **Plaintiffs may have a strong case, but the risks inherent in**
25 **continued litigation are great.** Defendants strongly deny liability
26 for Plaintiffs' principal claim that full-time Service Associates were
27 misclassified as exempt. In addition to the uncertainties raised by
28 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

1 **and other costs are deducted, appear to be a reasonable**
2 **compromise, in light of the risks of litigation.**

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

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

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

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

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

23 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
24 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014)
25 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is
26 little doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly has the
27 resources to post a bond and appeal. A post-judgment appeal by Defendant would have required
28 many more years to resolve, assuming the judgment was affirmed. If the judgment was not
29 affirmed in total, then the case could have dragged on for years after the appeal. The benefits of a
30 guaranteed recovery today outweigh an uncertain result three or more years in the future. JCL
31 Dec., ¶ 44.

32 Class Representatives and Class Counsel recognize the expense and length of a trial against

1 Defendant through possible appeals which could take another three years. In arriving at their
2 informed belief that the present settlement is fair and adequate, Class Counsel accounted for the
3 uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also
4 mindful of and recognize the inherent problems of proof under, and alleged defenses to, the
5 claims asserted in the litigation. Moreover, post-trial motions and appeals would have been
6 inevitable. Costs would have mounted, and recovery would have been delayed if not denied,
7 thereby reducing the benefits of an ultimate victory. Class Representatives and Class Counsel
8 believe that the Settlement confers substantial monetary and non-monetary benefits upon the
9 Class. Based upon their evaluation, Class Representatives and Class Counsel have determined
10 that the Settlement set forth in the Agreement is in the best interest of the Class, is fair,
11 reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 45.

12 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF**
13 **2004 ARE REASONABLE**

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

24 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$30,000 which
25 is 5.1% of the Gross Settlement Amount. As illustrated above, this amount falls well within the
26 range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement
27 (\$22,500) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent
28 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties

1 approved by courts and should be approved. JCL Dec., ¶ 46.

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

6 **VII. CONCLUSION**

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

10
11 DATED: February 6, 2023

JCL LAW FIRM APC

12
13
14 By: _____
15 Jean-Claude Lapuyade
16 Attorney for Plaintiffs
17
18
19
20
21
22
23
24
25
26
27
28