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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

JIE XU, individually and on behalf of all persons
similarly situated,

Plaintiff,

v.

HT MULTINATIONAL, INC., a California
Corporation; CHTC (USA), INC., a California
Corporation; HT INDUSTRIES, INC., a
Corporation, and Does 1 through 50, Inclusive,

Defendants.

Case No. CIVDS2015679

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

Date: December 12, 2022

Time: 10:00 a.m.

Judge: Hon. David Cohn

Dept.: S-26

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1 I. INTRODUCTION

2 Plaintiff JIE XU (hereinafter “Plaintiff”) seeks final approval of the Stipulation of Settlement of
3 Class and PAGA Action Claims and Release of Claims (“Agreement”)¹, which if approved, would
4 provide valuable monetary relief for 30 Settlement Class Members employed by Defendants HT
5 MULTINATIONAL, INC. dba HT INDUSTRIES, INC. and CHTC (USA), INC. (hereinafter
6 collectively “Defendants”) during the Class Period.

7 In an order dated July 15, 2022, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On August
9 12, 2022, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
10 Declaration of Krystal Quiroz (“ILYM Dec.”), ¶ 7. *The Class greeted news of the Settlement with*
11 *unanimous approval.*² There are zero opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶
12 11-12. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness
13 of the Settlement. JCL Dec., ¶ 10.

14 An objective evaluation of the proposed settlement of One Hundred Fifty Thousand Dollars
15 (\$150,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the
16 Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial,
17 and non-collusive negotiations, between experienced counsel, and presided over by Phyllis Cheng,
18 Esq., a respected mediator of wage and hour class and representative actions. Although the mediation
19 with Mediator Cheng was unsuccessful, the parties continued to engage in several months of arms-
20 length negotiations and reached an agreement to settle the Action. After deducting any Court-approved
21 attorneys’ fees and costs, class representative incentive payments, administration costs, and the
22 payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall
23 be distributed to the Settlement Class based on the number of Workweeks they worked while employed
24 by Defendants during the Class Period. JCL Dec., ¶ 10.

25 This Settlement provides substantial recovery for Defendants’ alleged wage and hour violations.

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
28 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 1 Notice was deemed undeliverable. ILYM Dec. at ¶ 10.

1 Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of
2 approximately \$65,000.00. This will result in an average Individual Settlement Payment of **\$2,166.67**,
3 a high payment of **\$7,325.77** and a low payment of **\$86.22**. Aggrieved Employees will receive an
4 estimated average gross payment of **\$23.91**, a high payment of **\$66.00**, and a low payment of **\$1.00**.
5 JCL Dec., ¶ 11; ILYM Dec. at ¶ 14.

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

11 Considered as a whole, the \$150,000 represents between approximately 12.03% (“Aggressive
12 Model”) and 25.02% (“Conservative Model”) of Defendants’ *class-wide* liability exposure identified
13 by Class Counsel at the time of mediation. Under *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th
14 116 (2008), this Settlement is a fair and reasonable recovery on these claims (which were subject to
15 considerable uncertainty, both as to the merits and certification). The response of the Class has been
16 positive. JCL Dec., ¶ 13.

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

21 **II. OVERVIEW OF THE LITIGATION**

22 Defendants are California Corporations. Defendants are in the business of importing and selling
23 buses and bus parts throughout the United States, including California. Plaintiff worked for Defendants
24 as an exempt employee in California from approximately March of 2019 to March of 2020. Throughout
25 her employment, Plaintiff alleges Defendants failed to pay her a monthly salary of at least two times
26 the applicable minimum wage in violation of Cal. Labor Code section 515. As a result, Plaintiff alleges
27 that she was misclassified and denied legally mandated meal and rest periods, minimum wages, and
28 overtime compensation. Throughout her employment, Plaintiff was subject to Defendants’ written

1 policies and procedures contained in, among other documents, the “Employee Handbook.” JCL Dec.,
2 ¶ 15; Declaration of Jie Xu (“Xu Dec.”) at ¶¶ 2-4.

3 Generally, Plaintiff claims that Defendants, as a result of the alleged misclassification, failed to
4 pay her minimum wages, overtime wages, failed to provide compliant meal and rest periods, failed to
5 provide accurate itemized wage statements, and failed to pay all wages due at the time of her separation.
6 Defendants forcefully deny liability as to all of Plaintiff’s claims and assert that they fully complied
7 with all applicable employment laws. Further, Defendants contend that it provided Plaintiff and the
8 alleged aggrieved employees compliant meal and rest periods, compliant wage statements, and timely
9 paid all wages due upon separation of employment. JCL Dec., ¶ 16.

10 On May 18, 2020, Plaintiff filed a Notice of Violations (“PAGA Notice”) with the Labor and
11 Workforce Development Agency (“LWDA”) and served the same on Defendants. Plaintiff’s PAGA
12 Notice set forth the facts and theories supporting Defendants’ alleged violations of various California
13 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of her intent to
14 pursue claims under the California Labor Code Private Attorneys General Act, Cal. Lab. Code sections
15 2698, *et seq.* (“PAGA”). JCL Dec., ¶ 17.

16 On July 27, 2020, Plaintiff filed a class action complaint in the San Bernardino Superior Court,
17 Case Number CIV-DS2015679 for: (1) Unfair Competition in Violation of Business and Professions
18 Code §§ 17200, *et seq.*; (2) failure to provide required meal periods in violation of California Labor
19 Code §§ 226.7 and 512; (3) failure to provide required rest periods in violation of California Labor
20 Code §§ 226.7 and 512; (4) failure to pay minimum wages in violation of California Labor Code §§
21 1194, 1197, and 1197.1; (5) failure to pay overtime wages in violation of California Labor Code §§
22 510 *et seq.*; (6) failure to provide accurate itemized wage statements in violation of California Labor
23 Code § 226; (7) failure to provide wages when due in violation of California Labor Code §§ 201, 202,
24 and 203; and (8) violations of the California Labor Code Private Attorney General Act [Labor Code §§
25 2698 *et seq.*]. JCL Dec., ¶ 18.

26 The Parties commenced written and deposition discovery in November 2020. After each Party
27 responded to formal discovery requests, the Parties collectively agreed to mediate the Action. To
28 prepare for mediation, the Parties agreed to informally produce additional documents and data points

1 subject to the mediation privilege, including but not limited to, employee handbooks, the Class
2 Members' time data, and certain payroll data points. As discussed *infra*, Plaintiff's counsel retained
3 the Berger Consulting Group ("BCG"), to analyze Defendants' time and payroll data. JCL Dec., ¶ 19.

4 On June 22, 2021, the Parties participated in a mediation with Phyllis Cheng, Esq., a respected
5 mediator of wage and hour class and representative actions. Although the mediation was unsuccessful,
6 the parties continued to negotiate and engage in discovery including the taking of Plaintiff's deposition.
7 After several months of arms-length negotiations, the parties reached an agreement to settle this action.
8 After reaching an agreement in principle, the parties drafted and negotiated a long-form settlement
9 which is the subject of the instant motion. JCL Dec., ¶ 20.

10 On July 15, 2022, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On
11 August 12, 2022, the Settlement Administrator mailed Notice Packets to all 30 Settlement Class
12 Members. ILYM Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response
13 Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The
14 response from the Settlement Class to the Settlement was outstanding – 100% of the Class Members
15 are participating in the Settlement. ILYM Dec., ¶ 13.

16 **III. THE SETTLEMENT BEFORE THE COURT**

17 The Court preliminarily approved an initial Gross Settlement Amount of One Hundred Fifty
18 Thousand Dollars (\$150,000.00) based on a total of an estimated 2,963 Workweeks worked by the Class
19 during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement
20 Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the Class Counsel Award;
21 (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement Administration Costs incurred in
22 this action. JCL Dec., ¶ 21.

23 Defendants will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
24 Settlement Fund within twenty (20) calendar days after the Effective Date. Agreement, ¶ I(N). The
25 Settlement Administrator shall disburse the Individual Settlement Payments to the Settlement Class
26 Members no later than fifteen (15) calendar days after Defendants fund the Gross Settlement Amount.
27 Agreement, ¶ III(M)(7). The Settlement Administrator will calculate Individual Settlement Payments
28 by adding up the total number of Workweeks for all Class Members. The Settlement Administrator will

1 then divide the respective Workweeks for each member of the Settlement Class by the total Workweeks
2 for the entire Settlement Class, resulting in a Payment Ratio for each Class Member. Each Settlement
3 Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to calculate each
4 estimated Individual Settlement Payment. Agreement, ¶ III(M)(1). The estimated average Individual
5 Settlement Payment is approximately **\$2,166.67**. JCL Dec., ¶ 11; ILYM Dec., ¶ 14.

6 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
7 the Settlement Class Members will release the Released Parties from the Released Class Claims that
8 accrued during the Class Period. Agreement, ¶ III(B).

9 ILYM Group, Inc. was appointed as the Settlement Administrator for the class. Settlement
10 Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the
11 costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
12 administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
13 Administrator approved for reimbursement by the court. The Settlement Administrator expenses are
14 \$5,000. ILYM Dec., ¶ 15. These expenses shall be paid from the Gross Settlement Amount. Agreement,
15 ¶ III(M)(12).

16 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
17 \$65,000.00 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
18 to be at least \$50,000.00 and up to \$15,000 for actually incurred litigation expenses. Plaintiff's counsel
19 is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC.
20 Agreement, ¶ I(E). The Agreement also provides for a Class Representative Service Award in the
21 amount of \$10,000 for Plaintiff, in consideration of her time, risk, and efforts as the Class Representative
22 on behalf of the Settlement Class and a general release. Agreement, ¶¶ I(I); III(D); III(M)(9).

23 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
24 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
25 the Settlement Class, the absence of any objections to the Settlement and the average Individual
26 Settlement Payment of \$2,166.67. ILYM Dec., ¶¶ 12-14; JCL Dec., ¶ 22.

27
28 ///

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

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

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

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

27 The essential evaluation is whether, given the risks of litigation and the range of probable results,
28 the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. Here, the facts and

1 circumstances compel the conclusion that the proposed settlement satisfies that standard.

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

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

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

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

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

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

27 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
28 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel

1 assessed the value of the class claims using data and documents provided by Defendants through formal
2 and informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data
3 regarding the number of Class Members, workweeks, and average rate of pay to assess damages before
4 mediation. Class Counsel retained BCG to analyze Defendants' time and payroll data to formulate
5 damage models estimating Defendants' liability exposure. Class Counsel's investigation, research,
6 experience, and damage models informed and guided the mediated negotiations that resulted in this
7 settlement. Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the class
8 claims before the parties reached a settlement. JCL Dec., ¶¶ 23 - 27.

9 **B. The Parties Settled Following Mediation.**

10 On June 22, 2021, the Parties conducted a full day mediation with Phyllis Cheng, Esq., a
11 respected mediator of wage and hour class and representative actions. Mediator Cheng helped to
12 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both
13 sides. The Parties made substantial progress with Mediator Cheng's assistance. After a full day of
14 arm's length and adversarial negotiations, the mediation concluded without a settlement. Although the
15 mediation with Mediator Cheng was unsuccessful, the parties continued to engage in several months
16 of arms-length negotiations and reached an agreement to settle the Action. JCL Dec., ¶ 28. No action
17 would likely have been taken by Class Members individually, and no compensation would have been
18 recovered for them, but for Plaintiff's service on behalf of the Class.

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

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

28 ///

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. To date, none of the 30 members of the Settlement Class opted-out of the Settlement.
6 Moreover, there are zero objections. Stated differently, 100% of the Settlement Class chose to
7 participate in the Settlement. JCL Dec., ¶ 22; ILYM Dec., ¶¶ 12-13.

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

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

18 The Gross Settlement Amount of One Hundred Fifty Thousand Dollars (\$150,000.00) in this
19 case is fair and well within the range of recognized reasonableness. The *Kullar* court acknowledged
20 that "as the court does when it approves a settlement as in good faith under Code of Civil Procedure
21 section 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of
22 reasonableness." *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d
23 488, 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 Members and need not necessarily obtain 100
26 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
27 Cal.App.4th at 250. While the Gross Settlement Amount of One Hundred Fifty Thousand Dollars
28 (\$150,000.00) represents a discount on Defendants' potential exposure if Plaintiff established liability

1 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
2 reasonable because (1) the formidable defenses raised by Defendants presented a risk that could award
3 significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may
4 require many more years of litigation, resulting in added fees and costs without any guarantee of
5 recovery for the Class. JCL Dec., ¶ 36.

6 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
7 reasonable considering the nature and magnitude of the claims being settled and the various potential
8 impediments to recovery. Class Counsel developed varied economic damages models measuring
9 Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The various
10 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
11 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
12 Counsel projected a range of Defendants’ liability exposure for the claims asserted on behalf of the
13 Settlement Class. The Gross Settlement Amount represents between approximately 12.03%
14 (“Aggressive Model”) and 25.02% (“Conservative Model”) of Defendants’ *class-wide* liability exposure
15 as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 37.

16 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
17 Court for the Northern District of California granted final approval in a wage and hour misclassification
18 action and found that the Gross Settlement Amount representing 10% of the estimated trial award was
19 within the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir.
20 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
21 potential recovery.” Given the amount of the settlement here as compared to potential value of the
22 claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable³.

23 The calculation methodology used to compensate the Settlement Class Members for the alleged
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25 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
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.”).

1 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
2 objective, and impartial. The calculation methodology is based on the number of Workweeks each
3 Settlement Class Member worked for Defendants during the Class Period. The number of Workweeks
4 for the Settlement Class Members is established through Defendants' data and documented
5 compensation records. The Settlement Administrator is responsible for calculating the Individual
6 Settlement Payments by multiplying the Payment Ratio for each Settlement Class Member by the Net
7 Settlement Amount. The Settlement Administrator will calculate the payment ratio by dividing the total
8 number of Workweeks for each Settlement Class Member by the total number of Workweeks for all
9 Settlement Class Members. This process establishes an objectively fair and reasonable procedure to
10 compensate the Settlement Class. Agreement, ¶ III(M)(1).

11 The settlement also provides significant relief to the Settlement Class Members. After deductions
12 for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement, and the Class
13 Representative Service Award, the Net Settlement Amount is currently estimated to be \$65,000.00
14 ILYM Dec., ¶14. The average settlement payment is approximately \$2,166.67, the highest is
15 approximately \$7,325.77, and the lowest is approximately \$86.22. ILYM Dec., ¶ 14. This average net
16 recovery is on par with many wage and hour class action settlements approved by California state and
17 federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County
18 Super. Ct.) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589
19 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food*
20 *Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately
21 \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.)
22 (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241
23 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v.*
24 *PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately
25 \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average
26 net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A.
27 Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendants must separately fund
28 its share of any employer side payroll taxes. Agreement, ¶ III(A)(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 its defenses, Defendants 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 Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack

1 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
2 certification of driver meal and rest period claims based on the predominance of individual issues).
3 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
4 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
5 settlement. JCL Dec., ¶ 40.

6 Although Plaintiff is confident about the strength of her claims, Plaintiff nevertheless recognizes
7 that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair
8 the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
9 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 41.

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

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

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

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

27 **The potential complexity and possible duration of trial also weigh in**
28 **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.

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

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

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

16 Class Representative and Class Counsel recognize the expense and length of a trial against
17 Defendants through possible appeals which could take another three years. In arriving at their informed
18 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
19 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
20 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
21 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
22 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
23 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
24 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
25 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
26 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 43.

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

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

12 Here, Plaintiff and Defendants negotiated a good faith PAGA Settlement in the amount of
13 \$5,000 which is 3.3% of the Gross Settlement Amount. As illustrated above, this amount falls well
14 within the range of approved PAGA Settlements. Seventy-Five percent (75%) of the PAGA
15 Settlement (\$3,750.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-
16 five percent (25%) (\$1,250.00) to be distributed to the Aggrieved Employees, which is within the
17 range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 44.

18 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
19 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
20 with the LWDA. JCL Dec., ¶¶ 5, 6, 45. By not registering an objection with either Class Counsel or
21 the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

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1 **VII. CONCLUSION**

2 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
3 established in California law and should therefore be finally approved as fair, reasonable, and adequate
4 and requests entry of the Final Approval Order and Judgment submitted herewith.
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6 Dated: November 15, 2022

JCL LAW FIRM, APC

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8 By: 
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