

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 Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

YVETTE MOLINA, an individual, on
behalf of herself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

HAWAIIAN AIRLINES, INC., a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20STCV28079

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

Date: November 16, 2022

Time: 9:00 a.m.

Judge: Hon. Maren Nelson

Dept.: 17

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	8
	D. The Settlement Class Responded Positively to the Settlement	9
	E. The Gross Settlement Amount is Fair and Reasonable	9
	F. The Strength of Plaintiff’s Case and Risks of Continued Litigation	12
VI.	THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE	15
VII.	CONCLUSION	16

TABLE OF AUTHORITIES
CASES

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

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

SECONDARY SOURCES

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

1 I. INTRODUCTION

2 Plaintiff YVETTE MOLINA (hereinafter “Plaintiff”) seeks final approval of the Second
3 Amended Stipulation of Class Action Settlement and Release of Claims (“Agreement”)¹, which if
4 approved, would provide valuable monetary relief for 334 Settlement Class Members employed by
5 Defendant HAWAIIAN AIRLINES, INC. (hereinafter “Defendant”) and subject to the collective
6 bargaining agreement between Defendant and the International Association of Machinists and
7 Aerospace Workers (AFL-CIO) (“IAMC”) during the Class Period.

8 In an order dated July 12, 2022, this Court preliminarily approved the Agreement and
9 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On August
10 5, 2022, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
11 Declaration of Lluvia Islas (“ILYM Dec.”), ¶ 7. *The Class greeted news of the Settlement with*
12 *unanimous approval.*² There are zero opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶
13 11-12. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness
14 of the Settlement. JCL Dec., ¶ 7.

15 An objective evaluation of the proposed settlement of Seven Hundred Fifty Thousand Dollars
16 and Zero Cents (\$750,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on
17 behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed,
18 adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Mark
19 Rudy, Esq., a well-respected wage and hour class action mediator. After deducting any Court-approved
20 attorneys’ fees and costs, class representative incentive payments, administration costs, and the
21 payments to the Labor & Workforce Development Agency (“LWDA”), the net settlement fund shall
22 be distributed to the Settlement Class based on the number of Workweeks they worked while employed
23 by Defendant during the Class Period. JCL Dec., ¶ 10.

24 This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates
25 that the Settlement, if approved, would result in a Net Settlement Amount of approximately

26
27 ¹ The Agreement is attached as Ex “A” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to
28 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 4 Notices were deemed undeliverable. ILYM Dec. at ¶¶ 10.

1 **\$415,219.50.** This will result in an average Individual Settlement Payment of **\$1,243.17,** a high
2 payment of **\$4,010.31,** and a low payment of **\$65.39.** Aggrieved Employees will receive an estimated
3 average gross payment of **\$41.84,** a high payment of **\$113.32,** and a low payment of **\$1.27.** JCL Dec.,
4 ¶ 11; ILYM Dec. at ¶ 14.

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

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

14 **II. OVERVIEW OF THE LITIGATION**

15 Defendant operates a fleet of more than sixty (60) commercial airplanes connecting the Hawaiian
16 Islands with sixteen (16) North American and ten (10) international destinations, including eight (8)
17 gateway cities in California. Plaintiff has worked for Defendant since April 2016 as a customer service
18 agent at the Los Angeles International Airport. Throughout her employment, Defendant classified
19 Plaintiff as a non-exempt employee, paid on an hourly basis, eligible to earn certain non-discretionary
20 compensation, and entitled to legally mandated meal and rest periods, minimum wages, and overtime
21 wages. Throughout Plaintiff's employment, Plaintiff has been subject to the collective bargaining
22 agreement between Defendant and the IAMC, the "Ka 'Ike Pono – Hawaiian Airlines Employee
23 Handbook" and the "Hawaiian Airlines California Employee Handbook Supplement." JCL Dec., ¶ 14;
24 Declaration of Yvette Molina ("Molina Dec."), ¶¶ XX.

25 Generally, Plaintiff claims that Defendant miscalculated the regular rate for purposes of overtime
26 compensation and redeemed sick pay, maintained unlawful meal and rest period policies and practices,
27 failed to pay for time spent waiting for and undergoing mandatory security checks, issued inaccurate
28

1 itemized wage statements, and failed to pay all wages when due. Defendant forcefully denies liability
2 for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all applicable
3 employment laws and raised several other significant defenses to Plaintiff's claims, including, but not
4 limited to, compliant compensation policies and practices. JCL Dec., ¶ 15.

5 On May 12, 2020, Plaintiff filed a Notice of Violations ("PAGA Notice") with the Labor and
6 Workforce Development Agency ("LWDA") and served the same on Defendant. Plaintiff's PAGA
7 Notice set forth the facts and theories supporting Defendant's alleged violations of various California
8 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of her intent to
9 pursue claims under the California Labor Code Private Attorneys General Act, Cal. Lab. Code sections
10 2698, *et seq.* ("PAGA"). JCL Dec., ¶ 16.

11 On July 23, 2020, Plaintiff filed a class action complaint in the Los Angeles Superior Court,
12 Case Number 20STCV28079 for: (1) Unfair Competition in Violation of California Business and
13 Professions Code §§ 17200; (2) Failure to Pay Minimum Wages in Violation of California Labor Code
14 §§ 1194, 1197 and 1197.1.; (3) Failure to Pay Overtime Wages in Violation of California Labor Code
15 §§ 510 *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7
16 and 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation
17 of Cal. Lab. Code §§ 226.7 and 512 and the Applicable IWC Wage Order; (6) Failure to Provide
18 Accurate Itemized Wage Statements in Violation of Cal. Lab. Code §226; (7) Failure to Reimburse
19 Employees for Required Expenses in Violation of Cal. Lab. Code § 2802; and (8) Failure to Provide
20 Wages When Due in Violation of Cal. Lab. Code §§ 201, 202 and 203. JCL Dec., ¶ 17.

21 Subsequently, on November 3, 2020, Plaintiff filed the operative First Amended Complaint
22 alleging a ninth cause of action for violations of the California Labor Code Private Attorney General
23 Act ("PAGA"). Thereafter, Defendant answered the First Amended Complaint. JCL Dec., ¶ 18.

24 Prior to conducting any formal discovery, the Parties agreed to mediate the Action. To prepare
25 for mediation, Defendant agreed to informally produce certain documents and data points subject to
26 the mediation privilege. Pursuant to that agreement, Defendant produced almost 100% of the Class
27 Members' time and payroll data along with relevant policies applicable to Class Members. As discussed
28

1 *infra*, Plaintiff’s counsel retained Eric Lietzow Desmond, Marcello & Amster (“DMA”), to analyze
2 Defendant’s time and payroll data. JCL Dec., ¶ 19.

3 On June 3, 2021, the Parties participated in a full day mediation with Mark Rudy, Esq., a well-
4 respected wage and hour class action and PAGA mediator. While the Parties attended the mediation
5 voluntarily, it was always at arm’s length and adversarial. Without revealing any confidential
6 information about the mediation itself, the Parties believe that a settlement could not have been reached
7 without the specific action of Mediator Rudy at the end of the mediation after approximately eight
8 hours of negotiations. The Parties subsequently executed a binding and enforceable Memorandum of
9 Understanding (“MOU”). After reaching an agreement in principle, the Parties drafted and negotiated
10 a long-form settlement which is the subject of the instant motion. JCL Dec., ¶ 20.

11 On July 12, 2022, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On
12 August 5, 2022, the Settlement Administrator mailed Notice Packets to all 334 Settlement Class
13 Members. ILYM Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response
14 Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The
15 response from the Settlement Class to the Settlement was outstanding – 100% of the Class Members
16 are participating in the Settlement. ILYM Dec., ¶¶ 13.

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

18 The Court preliminarily approved an initial Gross Settlement Amount of Seven Hundred Fifty
19 Thousand Dollars (\$750,000.00) based on a total of an estimated 28,500 Workweeks worked by the
20 Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual
21 Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the Class
22 Counsel Award; (4) to satisfy the PAGA Settlement Payment; and (5) to satisfy the Settlement
23 Administration Costs incurred in this action. JCL Dec., ¶21.

24 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
25 Settlement Fund within sixty-five (65) calendar days after the Effective Date. Agreement, ¶ I(N). The
26 Settlement Administrator shall disburse the Individual Settlement Payments and Aggrieved Employee
27 Payments to the Settlement Class Members and/or Aggrieved Employees no later than fifteen (15)
28

1 calendar days after Defendant funds the Gross Settlement Amount. Agreement, ¶ III(M)(7). The
2 Settlement Administrator will calculate Individual Settlement Payments by adding up the total number
3 of Workweeks for all Class Members. The Settlement Administrator will then divide the respective
4 Workweeks for each member of the Settlement Class by the total Workweeks for the entire Settlement
5 Class, resulting in a Payment Ratio for each Class Member. Each Settlement Class Member's Payment
6 Ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement
7 Payment. Agreement, ¶ III(M)(1). The estimated average Individual Settlement Payment is
8 approximately **\$1,243.17**. JCL Dec., ¶22; ILYM Dec., ¶ 14.

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

14 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. Settlement
15 Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the
16 costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
17 administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
18 Administrator approved for reimbursement by the court. The Settlement Administrator expenses are
19 \$9,780.50. ILYM Dec., ¶ 15. These expenses shall be paid from the Gross Settlement Amount.
20 Agreement, ¶ III(M)(12).

21 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of
22 \$275,000.00 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated
23 to be at least \$250,000.00 and up to \$25,000 for actually incurred litigation expenses. Plaintiff's counsel
24 is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC.
25 Agreement, ¶ I(E). The Agreement also provides for a Class Representative Service Award in the
26 amount of \$10,000 for Plaintiff, in consideration of her time, risk, and efforts as the Class Representative
27 on behalf of the Settlement Class and a general release. Agreement, ¶¶ I(I); III(D); III(M)(9).

As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by the Settlement Class, the absence of any objections to the Settlement and the average Individual Settlement Payment of \$1,243.17. ILYM Dec., ¶¶ 11-14; JCL Dec., ¶ 22.

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

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

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

In these cases, Courts have repeatedly emphasized that there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not substitute their judgment for that of the parties who negotiated the settlement. *Id.* At 246. The presumption of fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm’s-length bargaining; (3) counsel is experienced

1 in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1801, citing
2 Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here, all of these factors
3 support a presumption of fairness.

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

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

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

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

22 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.
23 Due regard should be given to what is otherwise a private consensual agreement between the parties.
24 *Id.* The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement
25 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
26 settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.* "Ultimately, the
27 [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
28

1 approximations and rough justice.' [Citation omitted.]" *Id.*

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

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

5 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
6 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
7 assessed the value of the class claims using data and documents provided by Defendant through
8 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
9 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
10 Class Counsel retained DMA to analyze Defendant's time and payroll data to formulate damage models
11 estimating Defendant's liability exposure. Class Counsel's investigation, research, experience, and
12 damage models informed and guided the mediated negotiations that resulted in this settlement.
13 Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the class claims
14 before the parties reached a settlement. JCL Dec., ¶ 23-30.

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

16 On June 3, 2021, the Parties conducted a full-day mediation with Mark Rudy, Esq., a well-
17 respected wage and hour class action and PAGA mediator. Mediator Rudy helped to manage the
18 Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The
19 Parties made substantial progress with Mediator Rudy's assistance. Namely, the Parties exchanged
20 information regarding their respective claims and defenses, including their respective evaluations of
21 the damages. After more than eight hours of arm's length and adversarial negotiations, the mediation
22 concluded with a settlement. The amount of the service awards was not negotiated until after the parties
23 agreed to the Gross Settlement Amount and many other terms. No action would likely have been taken
24 by Class Members individually, and no compensation would have been recovered for them, but for
25 Plaintiff's service on behalf of the Class. JCL Dec., ¶ 31.

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

27 Class Counsel in this matter has extensive class action experience in multiple fields and has
28

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

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

9 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
10 Significantly, after dissemination of the notice to the Settlement Class, which provided each class
11 member with the terms of the Settlement, including the specific estimated Individual Settlement
12 Payments. To date, none of the 334 members of the Settlement Class opted-out of the Settlement.
13 Moreover, there are zero objections. Stated differently, 100% of the Settlement Class chose to
14 participate in the Settlement. JCL Dec., ¶ 10; ILYM Dec., ¶¶ 12-13.

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

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

25 The Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) in this
26 case is fair and well within the range of recognized reasonableness. The *Kullar* court acknowledged
27 that “as the court does when it approves a settlement as in good faith under Code of Civil Procedure
28

1 section 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of
2 reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d
3 488, 499-500 (1985).)

4 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement
5 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100
6 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
7 Cal.App.4th at 250. While the Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars
8 (\$750,000.00) represents a discount on Defendant’s potential exposure if Plaintiff established liability
9 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
10 reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award
11 significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may
12 require many more years of litigation, resulting in added fees and costs without any guarantee of
13 recovery for the Class. JCL Dec., ¶ 39.

14 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
15 reasonable considering the nature and magnitude of the claims being settled and the various potential
16 impediments to recovery. Class Counsel developed varied economic damages models measuring
17 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
18 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
19 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class
20 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the
21 Settlement Class. The Gross Settlement Amount represents between approximately 15% and 54% of
22 Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL
23 Dec., ¶ 40.

24 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
25 Court for the Northern District of California granted final approval in a wage and hour misclassification
26 action and found that the Gross Settlement Amount representing 10% of the estimated trial award was
27 within the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir.
28

2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the potential recovery.” Given the amount of the settlement here as compared to potential value of the claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable³.

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

The settlement also provides significant relief to the Settlement Class Members. After deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement, and the Class Representative Service Award, the Net Settlement Amount is currently estimated to be \$415,219.50 ILYM Dec., ¶14. The average settlement payment is approximately \$1,243.17, the highest is approximately \$4,010.31, and the lowest payment is approximately \$65.39. ILYM Dec., ¶ 14. This average net recovery is on par with many wage and hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (LA. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United*

³ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); see also *In re Newbridge Networks Sec. Litig.* (D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2 (“Courts have not identified a precise numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures roughly six to twelve percent of a potential trial recovery, while preventing further expenditures and delays and eliminating the risk that no recovery at all will be won, seems to be within the targeted range of reasonableness.”).

1 *Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of
2 approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County
3 Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No.
4 CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65);
5 *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of
6 approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super.
7 Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No.
8 BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must
9 separately fund its share of any employer side payroll taxes. Agreement, ¶ I(O).

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

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

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

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

26 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
27 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
28 *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 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest period claims based on the predominance of individual issues). Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 43.

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

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

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

1 **to be a reasonable compromise, in light of the risks of litigation.**

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

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

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

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

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

21 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*
22 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
23 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
24 that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a
25 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
26 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
27 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
28 an uncertain result three or more years in the future. JCL Dec., ¶ 45.

29 Class Representative and Class Counsel recognize the expense and length of a trial against
30 Defendant through possible appeals which could take another three years. In arriving at their informed
31 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome

1 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
2 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
3 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and
4 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
5 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and
6 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class
7 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
8 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 46.

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

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

20 Here, Plaintiff and Defendant negotiated a good faith PAGA Settlement in the amount of
21 \$40,000 which is 5.3% of the Gross Settlement Amount. As illustrated above, this amount falls well
22 within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement
23 (\$30,000) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent
24 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA penalties
25 approved by courts and should be approved. JCL Dec., ¶ 47.

26 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
27 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
28

1 with the LWDA. JCL Dec., ¶¶ 5-6, 48. By not registering an objection with either Class Counsel or
2 the Court, the LWDA has accepted and approved of the proposed PAGA Settlement.

3 **VII. CONCLUSION**

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

7
8 Dated: October 24, 2022

JCL LAW FIRM, APC

9
10 By: 
11 Jean-Claude Lapuyade, Esq.
12 Attorneys for Plaintiff
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28