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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TULARE

FIDEL GOMEZ, an individual, on behalf of himself, and on behalf of all persons similarly situated, Plaintiffs, v. KIRBY MANUFACTURING, INC., a California corporation; and DOES 1-50, Inclusive, Defendants.	Case No. VCU308341 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: October 13, 2025 Time: 8:30 a.m. Judge: Hon.Gary Johnson Dept.: 7

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I. INTRODUCTION

Plaintiff FIDEL GOMEZ (hereinafter "Plaintiff") seeks 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 86 Settlement Class Members employed by Defendant KIRBY MANUFACTURING, INC. (hereinafter collectively "Defendant").

In an order dated July 22, 2025, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Jackland K Hom ("JKH Dec."), ¶ 4. On July 30, 2025, the Settlement Administrator delivered notice of the proposed settlement to the Class. Declaration of Karla Nava ("Apex Dec."), ¶ 7.

The Class greeted news of the Settlement with unanimous approval as, at the time of the filing of this motion, <u>all</u> 86 Class Members chose to participate in the Settlement.[2] There are zero opt-outs and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The unanimous approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement.

An objective evaluation of the proposed settlement of Two Hundred Thirty Thousand Dollars and Zero Cents ($230,000.00) ("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 Steven Mehta, Esq., a mediator of wage and hour class and representative actions. After deducting any Court-approved Class Counsel Award, Service Award, Settlement Administration Costs, and PAGA Payment, the Net Settlement Amount shall be distributed to the Settlement Class based on the number of Workweeks they worked while employed by Defendant during the Class Period. JKH Dec., ¶ 7.

This Settlement provides substantial recovery to Class Members. Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of approximately $108,383.34. Apex Dec., ¶ 15. This will result in an average Individual Class Payment of $1,260.27, a high Individual Class Payment of $2,314.08, and a low of $9.16. Apex Dec., ¶ 16. Aggrieved Employees

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[1] The Agreement is attached as Ex "1" to the Declaration of Jackland K. Hom ("JKH Dec.") at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the JKH Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms used herein have the same meaning as those defined by the Agreement.

[2] As of the filing date of this Motion, 0 Notices were deemed undeliverable.

will receive an estimated average Aggrieved Employee Payment of $43.10, with the highest Aggrieved Employee Payment estimated to be $54.51, and a low of $0.57. Apex Dec., ¶ 18.

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

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

II. OVERVIEW OF THE LITIGATION

Months before filing the Action, Class Counsel began their pre-filing investigation into Plaintiff's claims. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, Plaintiff produced documents related to his employment, including, but not limited to, his wage statements. At the conclusion of the interviews and review of documents, Class Counsel determined that Plaintiff's complaints justified further inquiry. JKH Dec., ¶ 10.

Class Counsel subsequently requested Plaintiff's employee file from Defendant. In response, Defendant produced various documents, including but not limited to, copies of Plaintiff's time and payroll records. Class Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate Plaintiff's claim that Defendant failed to, among other things, accurately record time worked, pay for all time worked, issue accurate itemized wage statements, and provide compliant meal and rest periods or else pay premium wages in lieu thereof. JKH Dec., ¶ 11.

Plaintiff commenced written discovery in October of 2024. Subsequently, the Parties agreed to mediate the Action. To prepare for mediation, Defendant produced documents and data points subject to the mediation privilege, including but not limited to, a sample of the Class

Members' time and payroll data, certain payroll data points, and pertinent wage and hour policies. Class Counsel then retained the statisticians and economists at Berger Consulting Group ("BCG") to evaluate the Class Members' payroll and time data. BCG provides data analysis and damage modeling consulting services, specializing in wage and hour class actions. BCG's team of financial and data analysts are credentialed and experienced experts in their fields and have provided their expertise on thousands of cases. Stated differently, the BCG is well-qualified to analyze Defendant's time and payroll data. JKH Dec., ¶ 12.

BCG analyzed Defendant's time and payroll data to assist in the development of various damage models. Among other things, BCG determined the approximate number of work shifts, workweeks, pay periods, and average number of hours worked per workweek and pay periods during the Class Period. BCG also estimated the number of meal and rest period violations, the amount of unpaid wages, the amount of unreimbursed business expenses, and the amount of off-the-clock work performed by the Class Members during the Class Period. JKH Dec., ¶ 13.

In advance of mediation, Class Counsel created several damage models predicated on the BCG analysis. Class Counsel's models calculated Defendant's potential liability exposure while accounting for the uncertainties of continued litigation. These damage models informed and guided Class Counsel during the mediated settlement discussions. JKH Dec., ¶ 14.

During the mediation, Defendant raised the possibility that it would be unable to satisfy a larger class-wide settlement due to its financial condition. Class Counsel retained Certified Public Accountant, Kenneth L. Creal, to review and analyze Defendant's financial records. As detailed in the declaration of Kenneth Creal that Plaintiff submitted in support of his Motion for Preliminary approval, Defendant could not afford a larger settlement than the one contemplated here. Moreover, again as detailed in the prior declaration submitted by Kenneth Creal, the installment plan contemplated by the Agreement is appropriate because it allows Defendant to work toward accumulating the settlement funds. JKH Dec., ¶ 15.

Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining Plaintiff's suitability as a putative class representative through interviews, background investigations, and analysis of his employment file; (2) evaluating all of Plaintiff's potential claims; (3) researching similar wage and hour class actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing the Class Members' time and payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. JKH Dec., ¶ 16.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on their investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay, uncertainty associated with litigation, Defendant's financial condition, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. JKH Dec., ¶ 17.

On February 26, 2025, the Parties conducted a full day of mediation with Steven Mehta, Esq., a mediator of wage and hour class and representative actions. Mediator Mehta helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Mehta's assistance. Namely, the Parties exchanged information regarding their respective claims and defense, including their respective evaluation of the damages. The mediation did not conclude with a settlement. During the mediation, Defendant raised the possibility that it would be unable to satisfy a larger class-wide settlement due to its financial condition. Class Counsel retained Certified Public Accountant, Kenneth L. Creal, to review and analyze Defendant's financial records. Following Mr. Creal's financial analysis, the Parties continued settlement discussions, with Mediator Mehta's assistance. The Parties subsequently reached a settlement via a Mediator's Proposal, the complete and final terms of which are now set forth in the Agreement. Class Counsel submit that the Settlement constitutes a fair, adequate, and reasonable compromise of the claims at issue. JKH Dec., ¶ 18.

On July 22, 2025, this Court granted preliminary approval of the Settlement. JKH Dec., ¶ 4. On July 30, 2025, the Settlement Administrator mailed Notice Packets to all 86 Class Members. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a sixty (60) 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 thus far has been outstanding. To date, 100% of the Class Members are participating in the Settlement. Apex Dec., ¶ 14.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved the Gross Settlement Amount of Two Hundred Thirty Thousand Dollars and Zero Cents ($230,000.00) based on a total of an estimated 11,954 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 Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Payment; and (5) to satisfy the Settlement Administration Costs incurred in this action. JKH Dec., ¶ 19.

Defendant will fund the $230,000.00 Gross Settlement Amount in ten (10) equal installment payments of $23,000.00, on the first of each month, beginning on April 1, 2026, and ending on January 1, 2027. Agreement at § III(A)(3). Once sufficient Installment Payments have been made to fully fund the Net Settlement Amount and PAGA Payment, along with the employer-side payroll taxes, the Class Members will be paid in one lump sum. *Id*. Individual Settlement Payments and Aggrieved Employee Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' and/or Aggrieved Employees' last known mailing address no later than ten (10) calendar days after the Net Settlement Amount and PAGA Payment are fully funded. Agreement, ¶ III(N)(7). Class Counsel anticipates this will occur after Defendant funds the sixth installment payment on September 1, 2026. The Settlement Administrator will calculate Individual Settlement Payments by adding up the total number of Workweeks for all Class Members. The Settlement Administrator will then divide the respective Workweeks for each member of the Settlement Class by the total Workweeks for the entire Settlement Class, resulting in a Payment Ratio for each Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement Payment. Agreement, ¶ III(N)(1). The estimated average Individual Class Payment is approximately $1,260.27. JKH Dec., ¶ 20; Apex Dec., 16.

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

APEX Class Action LLC was appointed as the Settlement Administrator for the Class. Settlement Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of administering and disbursing the Individual Settlement Payments, and the fees of the Settlement Administrator approved for reimbursement by the court. The Settlement Administrator expenses are $4,950.00. Apex Dec., ¶ 19. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ III(N)(12).

Subject to Court approval, Class Counsel shall seek a Class Counsel Award in the amount up to $101,666.66, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount, estimated to be $76,666.66, and up to $25,000 for actually incurred litigation expenses.[3] Class Counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to the Zakay Law Group, APLC. Agreement, ¶ I(G). The Agreement also provides for a Service Award in the amount of $10,000 to Plaintiff Fidel Gomez in consideration of his time, risk, and effort as the Class Representative on behalf of the Settlement Class.[4] Agreement, ¶¶ I(II).

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 Class and absence of any objections to the Settlement and the average Individual Class Payment of $1,260.27. Apex Dec., ¶ 16; JKH Dec., ¶ 21.

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[3] On July 22, 2025, the Court preliminarily approved attorneys' fees in the amount of $101,666.66. JKH Dec., ¶ 4.
[4] On July 22, 2025, the Court preliminarily approved a Service Award in the reduced amount of $5,000. JKH Dec., ¶ 4.

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, 246 (The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial."). In *Wershba*, appellants argued that the settlement was too low given the "clear" liability, however, the Court rejected this argument and held that "the merits of the underlying class claims are not a basis for upsetting the settlement of a class action." *Wershba*, *supra*, at 246; *see also 7-Eleven*, *supra*, at 1150.

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

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

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

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

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

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

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

A. Class Counsel Conducted a Thorough Investigation.

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

B. The Parties Settled After Mediation.

On February 26, 2025, the Parties conducted a full-day mediation with Steve Mehta, Esq. a mediator of wage and hour class and representative actions. Mediator Mehta helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Mehta's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluations of the damages. The mediation did not conclude with a settlement. During the mediation, Defendant raised the possibility that it would be unable to satisfy a larger class-wide settlement due to its financial condition. Class Counsel retained Certified Public Accountant, Kenneth L. Creal, to review and analyze Defendant's financial records. Following Mr. Creal's financial analysis, the Parties continued settlement discussions, with Mediator Mehta's assistance. The Parties subsequently reached a settlement via a Mediator's Proposal, the complete and final terms of which are now set forth in the Agreement. The amount of the Service Award was not negotiated until after the Parties agreed to the Gross Settlement Amount and many other terms. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's services on behalf of the Class. JKH Dec., ¶ 23.

C. <u>Class Counsel is Experienced in Similar Litigation.</u>

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar claims. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JKH Dec., ¶ 24; Declaration of Jean-Claude Lapuyade at ¶¶ 4-9; Declaration of Shani Zakay at ¶¶ 1-3.

D. <u>The Settlement Class Responded Positively to the Settlement.</u>

The reaction of the Settlement Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Class Members, which provided each Class Member with the terms of the Settlement, including the specific estimated Individual Settlement Payments, none of the 86 Class Members have opted-out of the Settlement to date. Moreover, there are ***<u>zero</u>*** objections. Stated differently, **<u>100%</u>** of the Settlement Class Members chose to participate in the Settlement. JKH Dec., ¶ 25; Apex Dec., ¶¶ 11-14.

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

E. <u>The Gross Settlement Amount is Fair and Reasonable.</u>

The Gross Settlement Amount of Two Hundred Thirty Thousand Dollars and Zero Cents ($230,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar* court acknowledged that "as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." *Kullar*, *supra,* at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250. While the Gross Settlement Amount of Two Hundred Thirty Thousand Dollars and Zero Cents ($230,000.00) represents a discount on Defendant's potential exposure if Plaintiff established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class. JKH Dec., ¶ 26.

As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models measuring Defendant's liability exposure while accounting for the uncertainties of continued litigation. The various models were informed by Class Counsel's investigation, including the analysis of a significant sample of time and payroll data. As detailed in greater depth during the preliminary approval process, Class Counsel projected a range of Defendant's liability exposure for the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents approximately between 13.6% ("Aggressive Model") and 10.2% ("Conservative Model") of Defendant's *class-wide* liability exposure, assuming all of these amounts could be proven at trial. JKH Dec., ¶ 27.

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

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 Class 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(N)(1); JKH Dec., ¶ 28.

The Settlement also provides significant relief to the Settlement Class Members. After deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Payment, and the Service Award, the Net Settlement Amount is currently estimated to be $108,383.34. The average Individual Class Payment is approximately $1,260.27. Apex Dec., ¶¶ 15-16. This average net recovery is on par with many wage and hour class action settlements approved by California state and federal courts. JKH Dec., ¶ 29. Additionally, Defendant must separately fund their share of any employer side payroll taxes. Agreement, ¶ I(O).

Clearly the goal of this litigation to obtain redress for the Class has been met by this

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[5] *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); *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.").

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. JKH Dec., ¶ 30.

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 it's defenses, Defendant could defend the Action or, at least, drastically undercut Plaintiff's claims. JKH Dec., ¶ 31. 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 *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the trial court's denial of class certification because employees' declarations attesting to having taken meal and rest breaks demonstrated that individualized inquiries were required to show harm. *See also 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). JKH Dec., ¶ 32.

Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of Defendant's liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a wage and hour class action. *See also 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."). JKH Dec., ¶ 33.

Finally, even if a class is certified and Defendant is found liable for the class claims alleged, post-certification risks remain, including a reversal of a favorable judgment for Plaintiff and decertification of the class. These post-certification risks 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). JKH Dec., ¶ 34.

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. JKH Dec., ¶ 35.

Although Plaintiff is confident about the strength of his 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. JKH Dec., ¶ 36.

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

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

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

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

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

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

As demonstrated by the decisions in *Magadia, supra,* 999 F.3d 668, *O'Conner v. Uber Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt that if Defendant faced a large adverse judgement, Defendant undoubtedly would have appealed. A post-judgment appeal by Defendant would have required many more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh an uncertain result for three or more years in the future. JKH Dec., ¶ 37.

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

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

Here, the Parties negotiated a good faith PAGA Payment in the amount of $10,000 which is 4.34% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range of approved PAGA Payments. Seventy-five percent (75%) of the PAGA Payment ($7,500) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment ($2,500) to be distributed to the Aggrieved Employees ("Aggrieved Employee Payment"), which is within the range of PAGA penalties approved by courts and should be approved. JKH Dec., ¶ 38.

Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the LWDA. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment. JKH Dec., ¶¶ 5-6, 39.

VII. CONCLUSION

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

DATED: September 16, 2025 **ZAKAY LAW GROUP, APLC**

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