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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF CONTRA COSTA**

MARK DUTILLIEUL, individually, and on  
behalf of other members of the general public  
similarly situated,

Plaintiff,

v.

METHODOLOGY, INC., a Delaware  
corporation; and DOES 1 through 100,  
inclusive,

Defendant.

Case No. C22-00759

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

Date: November 14, 2024  
Time: 9:00 a.m.

Judge: Hon. Judge Charles S. Treat  
Dept.: 12

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1 I. INTRODUCTION

2 Plaintiff MARK DUTILLIEUL (hereinafter “Plaintiff”) seeks final approval of the  
3 Stipulation of Settlement of Class Action and PAGA Claims and Release of Claims  
4 (“Agreement”)<sup>1</sup>, which if approved, would provide valuable monetary relief for 368 Settlement  
5 Class Members employed by Defendant METHODOLOGY, INC. (hereinafter “Defendant”).

6 In an order dated July 24, 2024, this Court preliminarily approved the Agreement and  
7 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On  
8 September 10, 2024, the Settlement Administrator delivered notice of the proposed settlement to  
9 the Class. Declaration of Madely Nava (“APEX Dec.”), ¶ 7.

10 ***The Class greeted news of the Settlement with 100% approval.***<sup>2</sup> Thus far, there are zero opt-  
11 outs and zero objections to the Settlement. APEX Dec., ¶¶ 11-13; JCL Dec., ¶ 10. The unanimous  
12 approval by the Settlement Class evidences the clear fairness and reasonableness of the Settlement.

13 An objective evaluation of the proposed settlement of Two Hundred Thousand Dollars and  
14 Zero Cents (\$200,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on  
15 behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of  
16 informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided  
17 over by Judge Mitchel R. Goldberg (Ret.), an experienced judge and mediator of wage and hour  
18 class and representative actions. After deducting any Court-approved attorneys’ fees and costs, class  
19 representative service awards, settlement administration costs, and the payments to the Labor &  
20 Workforce Development Agency (“LWDA”), the net settlement amount shall be distributed to the  
21 Settlement Class based on the number of Workweeks they worked while employed by Defendant  
22 during the Class Period. JCL Dec., ¶ 10.

23 This Settlement provides substantial recovery to Class Members. Plaintiffs estimate that the  
24 Settlement, if approved, would result in a Net Settlement Amount of approximately **\$68,683.34**.  
25 **This will result in an average Individual Settlement Payment of is \$186.64, with the estimated**  
26

27 <sup>1</sup> The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations  
28 to the Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise,  
capitalized terms used herein have the same meaning as those defined by the Agreement.

<sup>2</sup> As of the filing date of this Motion, 7 Notices were deemed undeliverable. Apex Dec., ¶ 10,

1 **highest gross payment being \$1,443.23.** JCL Dec., ¶ 11; APEX Dec., ¶ 15.

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

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

## 11 **II. OVERVIEW OF THE LITIGATION**

12 Defendant operates a gourmet meal preparation business in California that prepares and  
13 delivers meals directly to consumers. This action asserts claims on behalf of Defendant's current  
14 and former non-exempt employees employed in California. Plaintiff was employed by Defendant  
15 in California as a non-exempt employee from approximately March 2019 to approximately  
16 September 2019. At all times during his employment, Plaintiff earned hourly wage, was entitled to  
17 legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours  
18 worked. Throughout his employment, Plaintiff was subject to Defendant's written policies and  
19 procedures. JCL Dec., ¶ 14.

20 Generally, Plaintiff claims that Defendant, among other claims, failed to include non-  
21 discretionary payments into the regular rate of pay for purposes of overtime, failed to provide  
22 compliant meal and rest periods, and failed to reimburse employees for all necessary business  
23 expenses. Defendant denies liability for each of Plaintiff's claims. Further, Defendant asserts that it  
24 fully complied with all applicable employment laws and raised several other significant defenses to  
25 Plaintiff's claims, including but not limited to, facially compliant meal and rest period policies and  
26 compliant wage statements. JCL Dec., ¶ 15.

27 On April 19, 2022, Plaintiff filed a class action complaint in the Contra Costa County  
28 Superior Court, Case No. C22-00759 (the "Action"). The Action alleged ten causes of action

1 against Defendant for: (1) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code §§ 510  
2 and 1198; (2) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7  
3 and 512(a); (3) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7;  
4 (4) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 and 1197.1; (5)  
5 Failure to Provide Wages When Due Upon Termination in Violation of Cal. Lab. Code Sections §  
6 201 and 202; (6) Failure to Provide Wages When Due During Employment in Violation of Cal.  
7 Lab. Code § 204; (7) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal.  
8 Lab. Code § 226; (8) Failure to Keep Requisite Payroll Records in Violation of Cal. Lab. Code §  
9 1174(d); (9) Failure to Reimburse Employees for Necessary Business Expenses in Violation of Cal.  
10 Lab. Code § 2800 and 2802; and (10) Unfair Competition in Violation of California Business and  
11 Professions Code §§ 17200 (“Class Claims”). On May 17, 2024, Plaintiff filed a First Amended  
12 Complaint to add a claim for Violations of the Private Attorney General Act at Lab. Code §§ 2698  
13 et seq, (“PAGA”). JCL Dec., ¶ 16.

14 After engaging in written discovery, the Parties agreed to mediate the Action. To prepare for  
15 mediation, the Parties agreed to informally exchange relevant documents and data points subject to  
16 the mediation privilege. Pursuant to that agreement, Defendant produced a sample of the Class  
17 Members’ time and payroll data. As discussed *infra*, Plaintiffs’ counsel retained the forensic  
18 consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data.  
19 JCL Dec., ¶ 17.

20 On May 16, 2023, the Parties participated in a full day mediation with highly regarded judge  
21 and wage and hour mediator, Judge Mitchel R. Goldberg (Ret.). Defendant raised an inability to  
22 pay defense prior to the Parties’ mediation. Judge Goldberg was selected to mediate the case due to  
23 his experience as a bankruptcy judge specializing in cases where ability to pay is the main issue in  
24 dispute. Plaintiff also retained Creal & Creal, an accountancy corporation that regularly performs  
25 litigation support and forensic accounting services, including providing opinions to solvency.  
26 Kenneth Creal, CPA, reviewed a number of financial documents and conducted an investigation  
27 into the assets owned by Defendant, as well as tax returns, balance sheets, and profit and loss  
28 statements. The mediation concluded without a settlement. However, the Parties continued to

engage in settlement discussions, with the assistance of Judge Goldberg, and reached an agreement after both sides agreed to a Mediator's proposal. The settlement amount and payment terms were recommended to the Parties only after Judge Goldberg completed a comprehensive review of Defendant's financials. The agreement was memorialized in the form of a Memorandum of Understanding. After reaching an agreement in principle, the Parties negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 18.

On July 24, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 6. On September 10, 2024, the Settlement Administrator mailed Notice Packets to all 368 Class Members. APEX Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement thus far has been outstanding – 100% of the Class Members are participating in the Settlement. APEX Dec., ¶¶ 11-13.

### **III. THE SETTLEMENT BEFORE THE COURT**

The Court preliminarily approved an initial Gross Settlement Amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) based on a total of an estimated 12,532 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the Class Counsel Award; (4) to satisfy the PAGA Settlement; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL Dec., ¶ 19.

Defendant will fund the Gross Settlement Amount through a payment plan spanning a 27-month period beginning thirty days after the Parties execute the long-form settlement agreement. Thereafter, Defendant will be responsible for submitting 25 equal payments in the amount of \$7,407.40 every thirty days. The twenty-seventh and final payment will be in the amount of \$7,407.60 and will be submitted thirty days after the twenty-sixth payment. Agreement at ¶ 29(g). Individual Settlement Payments shall be mailed to Settlement Class Members within 15 calendar days of Defendant fully-funding the Settlement. ¶ 29(r). 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

1 member of the Settlement Class by the total Workweeks for the entire Settlement Class, resulting  
2 in a Payment Ratio for each Class Member. Each Settlement Class Member's Payment Ratio is then  
3 multiplied by the Net Settlement Amount to calculate each estimated Individual Settlement  
4 Payment. Agreement, ¶ III(N)(1). The estimated average Individual Settlement Payment is  
5 approximately \$186.64. Apex Dec., ¶ 15.

6 In exchange for the valuable consideration, upon final approval by the court of this Settlement  
7 and Defendant's payment of all sums due pursuant to this Settlement, the Settlement Class Members  
8 will release the Released Parties from the Released Class Claims that accrued during the Class  
9 Period. The Aggrieved Employees, the LWDA, and the State of California will release the Released  
10 Parties from the Released PAGA Claims for the PAGA Period. Agreement at ¶ 40.

11 APEX Class Action, LLC was appointed as the Settlement Administrator for the Class.  
12 Settlement Administration Costs include those expenses of effectuating and administering the  
13 Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the  
14 Class, the costs of administering and disbursing the Individual Settlement Payments, and the fees  
15 of the Settlement Administrator approved for reimbursement by the court. The Settlement  
16 Administrator expenses are \$9,650.00. APEX Dec., ¶ 18. These expenses shall be paid from the  
17 Gross Settlement Amount. Agreement, ¶ 29(f).

18 Subject to Court approval, Class Counsel shall seek Class Counsel Award in the amount of  
19 \$91,666.66, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount  
20 estimated to be at least \$66,666.66 and up to \$25,000.00 for actually incurred litigation expenses.  
21 Plaintiffs' counsel is to split the fees as follows: 32.5% to the JCL Law Firm, APC, 32.5% to the  
22 Zakay Law Group, APLC, and 35% to Lawyers for Justice, P.C. JCL Dec. at ¶ 20. The Agreement  
23 also provides for a Class Representative Service Award in the amount of \$10,000.00 paid Plaintiff  
24 in consideration of his time, risk, and efforts as the Class Representative on behalf of the Settlement  
25 Class. Agreement, ¶ 29(o).

26 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the  
27 class and should be granted final approval. This is evidenced by the high approval of the Settlement  
28 by the Settlement Class and absence of any objections to the Settlement and the average Individual

Settlement Payment of **\$186.64**. APEX Dec., ¶ 15; JCL Dec., ¶ 21.

**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 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,

1 pp. 11-91. Here, all of these factors support a presumption of fairness.

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

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

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

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

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  
25 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating  
26 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”  
27 *Id.* “Ultimately, the [trial] court’s determination is nothing more than ‘an amalgam of delicate  
28 balancing, gross approximations and rough justice.’ [Citation omitted.]” *Id.*

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

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

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

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

15 On May 16, 2023, the Parties participated in a full-day mediation with Judge Mitchel R.  
16 Goldberg (Ret.), an experienced judge and mediator of wage and hour class and representative  
17 actions. Judge Goldberg helped to manage the Parties' expectations and provided a useful, neutral  
18 analysis of the issues and risks to both sides. The Parties made substantial progress with Judge  
19 Goldberg's assistance. Namely, the Parties exchanged information regarding their respective claims  
20 and defenses, including their respective evaluations of the damages. After more than eight hours  
21 of arm's length and adversarial negotiations, the mediation concluded without a settlement, but  
22 subsequently settled following additional negotiations, after both sides agreed to a Mediator's  
23 proposal. No action would likely have been taken by Class Members individually, and no  
24 compensation would have been recovered for them, but for Plaintiffs' services on behalf of the  
25 Class. JCL Dec., ¶ 23.

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 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar

wage and hour class actions involving similar claims. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout the California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 24-29; Declaration of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3; Declaration of Vartan Madoyan (“Madoyan Dec.”), ¶¶13-17.

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

The reaction of the Settlement Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Settlement Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Settlement Payments. Notably, none of the members of the Settlement Class have opted-out of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement Class has thus far to participate in the Settlement. JCL Dec., ¶ 10; APEX Dec., ¶¶ 11-13.

The high 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.”); *Stoetznner 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 request the Court to follow the high approval of the Settlement Class and grant final approval of the Settlement.

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

The Gross Settlement Amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) 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

1 is within the ‘ballpark’ of reasonableness.” *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-*  
2 *Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985).

3 Here, the Settlement is clearly within the “ballpark” of reasonableness because the Settlement  
4 provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100  
5 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91  
6 Cal.App.4th at 250. While the Gross Settlement Amount of Two Hundred Thousand Dollars and  
7 Zero Cents (\$200,000.00) represents a discount on Defendant’s potential exposure if Plaintiff  
8 established liability on all claims and was awarded the full amount of the estimated damages at trial,  
9 this compromise is reasonable because (1) the formidable defenses raised by Defendant presented  
10 a risk that could award significantly less in damages than Plaintiffs’ estimate and (2) any theoretical  
11 post-trial recovery may require many more years of litigation, resulting in added fees and costs  
12 without any guarantee of recovery for the Class; (3) Defendant’s financial condition, which came  
13 with a risk that even if Plaintiff prevailed on all claims at trial, he may never recover the damages.  
14 JCL Dec., ¶ 31.

15 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and  
16 reasonable considering the nature and magnitude of the claims being settled and the various  
17 potential impediments to recovery. Class Counsel developed varied economic damages models  
18 measuring Defendant’s liability exposure while accounting for the uncertainties of continued  
19 litigation. The various models were informed by Class Counsel’s investigation, including the  
20 analysis of a significant sample of time and payroll data. As detailed in greater depth during the  
21 preliminary approval process, Class Counsel projected a range of Defendant’s liability exposure for  
22 the claims asserted on behalf of the Settlement Class. The Gross Settlement Amount represents  
23 approximately 13.75% of Defendant’s class-wide exposure (excluding PAGA penalties). JCL Dec.,  
24 ¶ 32.

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

1 *Fin. Corp. Sec. Litig.*) (9th Cir. 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement  
2 representing “roughly one-sixth of the potential recovery.” Given the amount of the settlement here  
3 as compared to potential value of the claims, particularly the strength of Plaintiff’s action, the  
4 settlement is clearly fair and reasonable.<sup>3</sup>

5 The calculation methodology used to compensate the Settlement Class Members for the  
6 alleged damages was negotiated at the time of the Settlement. More importantly, the methodology  
7 is fair, objective, and impartial. The calculation methodology is based on the number of Workweeks  
8 each Settlement Class Member worked for Defendant during the Class Period. The number of  
9 Workweeks for the Settlement Class Members is established through Defendant’s data and  
10 documented compensation records. The Settlement Administrator is responsible for calculating the  
11 Individual Settlement Payments by multiplying the Payment Ratio for each Settlement Class  
12 Member by the Net Settlement Amount. The Settlement Administrator will calculate the Payment  
13 Ratio by dividing the total number of Workweeks for each Settlement Class Member by the total  
14 number of Workweeks for all Settlement Class Members. This process establishes an objectively  
15 fair and reasonable procedure to compensate the Settlement Class. Agreement, ¶29(i).

16 The Settlement also provides significant relief to the Settlement Class Members. After  
17 deductions for the Class Counsel Award, Settlement Administration Costs, the PAGA Settlement,  
18 and the Class Representative Service Award, the Net Settlement Amount is currently estimated to  
19 be **\$68,683.34**. The average settlement payment is approximately \$186.64. APEX Dec., ¶¶ 14-15.  
20 This average net recovery is on par with many wage and hour class action settlements approved by  
21 California state and federal courts. JCL Dec., ¶ 33. Additionally, Defendant must separately fund  
22 its share of any employer side payroll taxes. Agreement, ¶ 29(c).

23 Clearly the goal of this litigation – to obtain redress for the class – has been met by this  
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25 <sup>3</sup> See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at \*3, 7  
26 (approving a California wage and hour settlement where the class received 11.6% of the estimated total liability, or  
27 approximately \$29 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-  
28 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 Settlement. Given the amount of the Settlement, the risks of litigation, and the arm's length  
2 negotiations between experienced counsel, the settlement is fair and reasonable, and is therefore  
3 entitled to final approval. JCL Dec., ¶ 34.

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

5 Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to  
6 ignore the asserted defenses. If successful on any one its defenses, Defendant could defend the  
7 action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 35. As the federal court in  
8 *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to  
9 those in this litigation:

10 ***In light of the above-referenced uncertainty in the law, the risk,***  
11 ***expense, complexity, and likely duration of further litigation***  
12 ***likewise favors the settlement.*** Regardless of how this Court might  
13 have ruled on the merits of the legal issues, the losing party likely  
14 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.

15 With respect to the most immediate challenge, i.e., class certification, the risks attendant to  
16 the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*  
17 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and  
18 remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying  
19 overtime, and directed the trial court to enter judgement in favor of the employer. *See also*  
20 *O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and  
21 hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th  
22 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet*  
23 *Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might  
24 not take their breaks were predominantly individualized questions of fact not susceptible to class  
25 treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of  
26 certification because employees' declarations attesting to having taken meal and rest breaks  
27 demonstrated that individualized inquiries were required to show harm); *Campbell v. Best Buy*  
28 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following *Brinker* and denying

1 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform  
2 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying  
3 certification of driver meal and rest period claims based on the predominance of individual issues).  
4 Collectively, the examples cited above illustrate the uncertain nature of class litigation.  
5 Consequently, the uncertainty of obtaining certification through a contested motion is a significant  
6 risk factor favoring settlement. JCL Dec., ¶ 36.

7 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless  
8 recognizes that Defendant has factual and legal defenses that, if successful, would potentially defeat  
9 or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation  
10 can drastically affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 37.

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

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

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

28 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. Plaintiff also risked an appeal in the event that Defendant faced a large adverse judgment. 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 three or more years in the future. JCL Dec., ¶ 38.

Class Representatives and Class Counsel recognize the expense and length of a trial against Defendant through possible appeals which could take another three years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Moreover, Plaintiff also risked the possibility that due to Defendants' financial condition, even if Plaintiff prevailed on all claims at trial, he may never recover the damages. Class Representatives and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representatives and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final

1 approval. JCL Dec., ¶ 39.

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

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

14 Here, the Parties negotiated a good faith PAGA Settlement in the amount of \$20,000.00  
15 which is 10% of the Gross Settlement Amount. As illustrated above, this amount falls well within  
16 the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Settlement  
17 (\$15,000.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five  
18 percent (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA  
19 penalties approved by courts and should be approved. JCL Dec., ¶ 40.

20 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a  
21 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval  
22 with the LWDA. JCL Dec., ¶¶ 5-6, 41. By not registering an objection with either Class Counsel  
23 or 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  
4 adequate and requests entry of the Final Approval Order and Judgment submitted herewith.

5  
6 DATED: October 21, 2024

**JCL LAW FIRM, APC**

7 By:   
8 Jean-Claude Lapuyade, Esq.  
9 Attorney for Plaintiff