

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Perssia Razma (State Bar #351398)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

jlapuyade@jcl-lawfirm.com

prazma@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 255-9047

shani@zakaylaw.com

Attorneys for Plaintiff UVALDO CHAVEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

UVALDO CHAVEZ, individually, and on behalf
of other members of the general public similarly
situated;

Plaintiff,

vs.

BORRMANN METAL CENTER, a California
corporation; CONTRACTORS STEEL
HOLDING, LLC, a Delaware corporation;
CONTRACTORS STEEL COMPANY, a
Michigan corporation; UPG ENTERPRISES,
LLC, a Delaware limited liability company; UP
INVESTMENT HOLDINGS, LLC, a Delaware
limited liability company; and DOES 1 through
100, inclusive,

Defendants.

Case No. 22STCV34521

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

Date: February 4, 2025

Time: 10:00 a.m.

Judge: Hon. Elaine Lu

Dept.: 9

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1 I. INTRODUCTION

2 Plaintiff UVALDO CHAVEZ (hereinafter “Plaintiff”) seek final approval of the Class Action and
3 PAGA Settlement Agreement and Class Notice (“Agreement”)¹, which if approved, would provide
4 valuable monetary relief for 213 Participating Class Members employed by Defendant Borrmann Metal
5 Center during the Class Period.

6 In an order dated August 12, 2024, this Court preliminarily approved the Agreement and
7 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade, Esq., (“JCL Dec.”), ¶ 4. On
8 September 9, 2024, the Court-approved Class Notice was mailed to each Class Member via U.S. First
9 Class Mail. Declaration of Katherine Rovertoni (“Apex Dec.”), ¶ 7. There are zero requests for
10 exclusion and zero objections to the Settlement. Apex Dec., ¶¶ 11-12. The unanimous approval by the
11 Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶ 8.

12 An objective evaluation of the proposed settlement of Nine Hundred Thousand Dollars and Zero
13 Cents (\$900,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on behalf of the
14 Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed, adversarial,
15 and non-collusive negotiations, between experienced counsel, and presided over by the Honorable Brian
16 C. Walsh (Ret.), a highly experienced mediator of wage and hour class and representative actions. After
17 deducting any Court-approved attorneys’ fees and litigation costs, class representative incentive
18 payments, settlement administration fees, and the payment to the Labor & Workforce Development
19 Agency (“LWDA”), the net settlement fund shall be distributed to the Settlement Class based on the
20 number of Workweeks they worked while employed by Defendant during the Class Period. *The Class*
21 *greeted news of the Settlement with a 100% approval. There are zero opt-outs and zero objections to*
22 *the Settlement.* JCL Dec., ¶ 8.

23 This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates
24 that the Settlement, if approved, would result in a Net Settlement Amount of approximately **\$512,000**.
25 Apex Dec. at ¶ 14. This will result in an average Individual Class Payment of **\$2,403.76**, and a high
26

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

1 payment of **\$6,394.05**. Apex Dec. at ¶ 15. Aggrieved Employees will receive an average Individual
2 PAGA Payment of **\$91.74** and a high payment of **\$114.19**. JCL Dec., ¶ 9; Apex Dec. at ¶ 17.

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

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

12 **II. OVERVIEW OF THE LITIGATION**

13 Defendant Borrmann Metal Center is a metal distributor in the State of California. Plaintiff was
14 employed by Defendants from November 2019 to approximately April 2020, as a non-exempt employee.
15 Plaintiff alleges that he was denied legally compliant meal and rest periods, and minimum wages and
16 overtime compensation at all times during his employment. Throughout his employment, Plaintiff was
17 subject to Defendants' written policies and procedures contained in, among other documents, the
18 "Employee Manual." JCL Dec., ¶ 12; Declaration of Uvaldo Chavez ("Chavez Dec."), ¶¶ 2-4.

19 Defendants deny liability for each of Plaintiff's claims. Further, Defendants assert that they fully
20 complied with all applicable employment laws and raised several other significant defenses to Plaintiff's
21 claims, including but not limited to, facially compliant meal and rest period policies, compliant wage
22 statements, and compliant reimbursement practices. JCL Dec., ¶ 13.

23 On October 27, 2022, Plaintiff filed a Class Action complaint against defendant Borrmann Metal
24 Center in the Los Angeles Superior Court, Case No. 22STCV34521, alleging ten causes of action for
25 (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California
26 Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor
27 Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197,
28

1 and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 201 and 202 (Final
2 Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During
3 Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements); (8)
4 Violation of California Labor Code § 1174(d) (Failure To Keep Requisite Payroll Records); (9)
5 Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses); (10)
6 Violation of California Business & Professions Code §§ 17200, et seq. On February 6, 2024, Plaintiff
7 filed a Notice of Violations with the Labor and Workforce Development Agency (LWDA) and served
8 the same on defendant Borrmann Metal Center. JCL Dec., ¶ 14.

9 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
10 information in connection with the Action. The Parties conducted informal discovery. As part of this
11 process, Defendant Borrmann Metal Center provided a significant sampling of time and payroll records
12 of the Class, for Class Counsel to review and analyze. Defendant also produced Plaintiff's records and
13 relevant policies, handbooks and a collective bargaining agreement. Plaintiff's statistician found this to
14 be sufficient to develop a meaningful damages model. Plaintiff's counsel retained the forensic
15 consultants at Berger Consulting Group ("BCG") to analyze Defendants' time and payroll data. JCL
16 Dec., ¶ 15.

17 On November 29, 2023, the Parties participated in an all-day mediation presided over by the
18 Honorable Brian C. Walsh (Ret.), a respected jurist and mediator of wage and hour class actions. After
19 arms-length negotiations and bargaining, the Parties reached an agreement to settle and signed a
20 Memorandum of Understanding. Thereafter, the Parties documented the agreement in the form of a
21 Settlement Agreement, which was signed by the Parties and is now the subject of the instant motion.
22 JCL Dec., ¶ 16.

23 On February 7, 2024, to effectuate the Parties' settlement, Plaintiff sent an amended PAGA notice
24 to Defendant Borrmann Metal Center, Inc., along with Contractors Steel Holding, LLC, Contractors
25 Settl Company, UPG Enterprises, LLC and UP Investment Holdings, LLC (collectively "Defendants").
26 On March 20, 2024, Plaintiff then filed an amended complaint and added these entities as Defendants
27 in this Action and to add causes of action alleging a violation of Labor Code Section 221 (unlawful
28

deductions from wages) and violation of the Private Attorneys General Act (“PAGA”). JCL Dec., ¶ 17.

On August 12, 2024, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On September 9, 2024, the Settlement Administrator mailed the Notice Packets to all 213 Settlement 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 is 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 Nine Hundred Thousand Dollars and Zero Cents (\$900,000) based on an estimated 22,881 Workweeks worked by the Class during the Class Period. JCL Dec., ¶ 18.

The Gross Settlement Amount shall be used: (1) to satisfy Individual Class Payments; (2) to satisfy the Class Representative Service Payment; (3) to satisfy the Class Counsel Fees and Litigation Expenses Payment; (4) to satisfy the PAGA Payment; and (5) to satisfy the Administration Expenses incurred in this action. JCL Dec., ¶ 19.

After Final Approval and the Judgment becomes final (the “Effective Date,” as defined in the Agreement), Defendants will fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants’ share of payroll taxes by transmitting the funds to the Administrator no later than 3 calendar days after the Effective Date. Agreement at §III(O). Within fifteen (15) business days after Defendants fund the Gross Settlement Amount, including employer-side payroll taxes, the Administrator will mail on a pro rata basis checks for all Individual Class Payments, all Individual PAGA Payments, the Aggrieved Employee Payments, the LWDA Payment, the Claims Administration Expenses Payment, the Attorneys' Fees Payment, the Attorneys' Expenses Payment, and the Service Award Payment. Disbursements of the pro rata Attorneys' Fees Payment, the Attorneys' Expenses Payment and the Service Award Payments shall not precede disbursement of Individual Class Payments and Individual PAGA Payments. JCL Dec., ¶ 20.

The Settlement Administrator will calculate Individual Class Payments by dividing the Net

Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and multiplying the result by each Participating Class Member's Workweeks during the Class Period. Agreement, § III(P)(1). The estimated average Individual Class Payment is approximately **\$2,403.76**. JCL Dec., ¶ 21; Apex Dec., ¶ 15.

In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount, the Participating Class Members will release the Released Parties from the Released Class Claims that accrued during the Class Period. The Aggrieved Employees, 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. The Administration Expenses Payment 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 \$8,000. Apex Dec., ¶ 18. These expenses shall be paid from the Gross Settlement Amount. Agreement at § III(P)(12).

Subject to Court approval, Class Counsel shall seek payment of Class Counsel's Fees and Litigation Expenses in the amount of \$330,000 comprised of attorneys' fees equal to one-third of the Gross Settlement Amount estimated to be \$300,000 and litigation expenses in an amount not to exceed \$30,000.00 for actually incurred litigation expenses. Agreement, § 3(P)(10). Plaintiff's counsel is to split the fees between the JCL Law Firm, APC (32.5%), Zakay Law Group, APLC (32.5%) and Lawyers For Justice, PC (35%). The Agreement also provides for a Class Representative Service Payments in the amount of \$10,000.00 for Plaintiff, in consideration of his time, risk, and efforts as the Class Representatives on behalf of the Settlement Class. Agreement, §§ I(HH); III(P)(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 Class

1 Payment of \$2,403.76. APEX Dec., ¶¶ 11-13, 15; JCL Dec., ¶ 22.

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

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

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

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

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

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

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

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

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

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

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

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

12 **B. The Parties Settled at Mediation.**

13 On November 29, 2023, the Parties conducted a full-day mediation with Honorable Brian C.
14 Walsh (Ret.), a respected jurist and mediator of wage and hour class actions. Judge Walsh helped
15 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both
16 sides. The Parties made substantial progress with Judge Walsh's assistance. Namely, the Parties
17 exchanged information regarding their respective claims and defenses, including their respective
18 evaluations of the damages. The mediation concluded with a settlement, and the Parties documented the
19 agreement in the form of a Settlement Agreement. No action would likely have been taken by Class
20 Members individually, and no compensation would have been recovered for them, but for Plaintiff's
21 service on behalf of the Class. JCL Dec., ¶ 24.

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

23 Class Counsel in this matter has extensive class action experience in multiple fields and has
24 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
25 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
26 similar wage and hour class actions throughout the State of California. As such, courts throughout
27 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
28

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. Declaration of Shani O. Zakay (“SOZ Dec”), ¶ 3; JCL Dec., ¶¶ 25-31; Declaration of Vartan Madoyan, ¶¶ 13-18.

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 Class Payments, zero of the 213 members of the Class opted-out of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Class have chosen to participate in the Settlement. JCL Dec., ¶ 32; Apex Dec., ¶¶ 11-13.

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.”); *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 requests the Court to follow the unanimous 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 Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00) 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

1 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the
2 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
3 While the Gross Settlement Amount of Nine Hundred Thousand Dollars (\$900,000.00) represents a
4 discount on Defendants’ potential exposure if Plaintiff established liability on all claims and were
5 awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1)
6 the formidable defenses raised by Defendants presented a risk that could award significantly less in
7 damages than Plaintiff’s estimate and (2) any theoretical post-trial recovery may require many more
8 years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class.
9 JCL Dec., ¶ 33.

10 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
11 reasonable considering the nature and magnitude of the claims being settled and the various potential
12 impediments to recovery. Class Counsel developed an economic damages model measuring
13 Defendants’ liability exposure while accounting for the uncertainties of continued litigation. The
14 economic damage model was informed by Class Counsel’s investigation, including the analysis of a
15 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
16 process, Class Counsel projected a range of Defendants’ liability exposure for the claims asserted on
17 behalf of the Settlement Class. The Gross Settlement Amount represents a recovery of between 12.6%
18 - 18.2% of Defendant’s *class-wide* liability exposure as estimated by Class Counsel at the time of
19 mediation. JCL Dec., ¶ 34.

20 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
21 for the Northern District of California granted final approval in a wage and hour misclassification action
22 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
23 the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
24 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
25 potential recovery.” Given the amount of the settlement here as compared to potential value of the
26 claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable².

27
28 ² See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving

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

10 The settlement also provides significant relief to the Participating Class Members. After
11 deductions for the Class Counsel's Attorneys' Fees and Litigation Expenses, Administration Expenses,
12 the PAGA Penalties, and the Class Representative Service Award, the Net Settlement Amount is
13 currently estimated to be \$512,000. Apex Dec., ¶ 14. The average settlement payment is approximately
14 **\$\$2,403.76**, and the highest is approximately **\$6,394.05**. Apex Dec., ¶ 15. This average net recovery is
15 on par with many wage and hour class action settlements approved by California state and federal courts.
16 *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct)
17 (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (LA. County
18 Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case
19 No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v.*
20 *Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery
21 of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.
22 May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-
23 CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret*

24
25 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
26 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
27 *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); *see also*
28 *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 *Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately
2 \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery
3 of approximately \$20). Additionally, Defendant must separately fund their share of any employer side
4 payroll taxes. Agreement, § III(A)(4).

5 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
6 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
7 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
8 JCL Dec., ¶ 35.

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

10 Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore
11 the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at
12 least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 36. As the federal court in *Glass v. UBS Fin.*
13 *Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

14 ***In light of the above-referenced uncertainty in the law, the risk, expense,***
15 ***complexity, and likely duration of further litigation likewise favors the***
16 ***settlement.*** Regardless of how this Court might have ruled on the merits of
17 the legal issues, the losing party likely would have appealed, and the parties
18 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.

19 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
20 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.*
21 (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million
22 judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court
23 to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir.
24 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S.*
25 *Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage
26 and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he
27 reason, if any, that employees might not take their breaks were predominantly individualized questions
28

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., ¶ 37.

The fast-changing landscape of wage and hour litigation can also drastically affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 38.

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 Plaintiffs’ 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

1 members. Plaintiffs believe the benefits of a guaranteed recovery today
2 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the
3 Court agrees, the actual recovery confers substantial benefits on the class
4 that outweigh the potential recovery through full adjudication.

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

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

11 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber*
12 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
13 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
14 that if Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post
15 a bond and appeal. A post-judgment appeal by Defendants would have required many more years to
16 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
17 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
18 an uncertain result three or more years in the future. JCL Dec., ¶ 39.

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

1 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 40.

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

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

13 Here, Plaintiff and Defendants negotiated a good faith PAGA Payment in the amount of
14 \$40,000.00 which is 4.4% of the Gross Settlement Amount. As illustrated above, this amount falls well
15 within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Payment
16 (\$30,000.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent
17 (25%) to be distributed to the Aggrieved Employees, which is within the range of PAGA Payment
18 approved by courts and should be approved. JCL Dec., ¶ 41.

19 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy
20 of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the
21 LWDA. JCL Dec., ¶¶ 5-6, 42. By not registering an objection with either Class Counsel or the Court,
22 the LWDA has accepted and approved of the proposed PAGA Payment.

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1 **VII. CONCLUSION**

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

5
6 Dated: January 3, 2025

JCL LAW FIRM, APC

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