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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ADRIAN CASTRO and RODOLFO GARCIA,
individuals, on behalf of themselves, and on
behalf of all persons similarly situated,

Plaintiffs,

v.

CONVERGEONE, INC., a Minnesota
corporation; AAA NETWORK SOLUTIONS,
INC, a California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No. CIVSB2305464

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

Date: May 12, 2025

Time: 8:30 a.m.

Judge: Hon. Charlie L. Hill, Jr.

Dept.: S-30

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12	§11.41, pp. 11-91.....	7

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I. INTRODUCTION

Plaintiffs Adrian Castro and Rodolfo Garcia (hereinafter “Plaintiffs”) seek final approval of the Stipulation of Settlement of Class and PAGA Claims and Release of Claims (“Agreement”)¹, which if approved, would provide valuable monetary relief for 297 Settlement Class Members employed by ConvergeOne, Inc. and AAA Network Solutions, Inc. (hereinafter “Defendants”) during the Class Period.

In an order dated February 10, 2025, this Court preliminarily approved the Agreement and preliminarily certified the Class. Declaration of Sydney Castillo-Johnson (“SCJ Dec.”), ¶ 4. On March 21, 2025, the Court-approved Class Notice was mailed to all 297 Class Members via U.S. First Class Mail. Declaration of Madely Nava (“Apex Dec.”), ¶ 7. *As of the filing of this motion, the Class greeted news of the Settlement with unanimous approval as, at the time of the filing of this motion, 297 Class Members chose to participate in the Settlement.*² As of the filing of this motion, 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. SCJ Dec., ¶ 7.

An objective evaluation of the proposed settlement of Nine Hundred and Fifty Thousand Dollars and Zero Cents (\$950,000.00) (“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 Steve Rottman, Esq., a respected and experienced mediator of wage and hour class actions. After deducting any Court-approved Class Counsel Award, Service Awards, Claims Administration Expenses, and the PAGA Payment, the Net Settlement Amount shall be distributed to the Settlement Class Members based on the number of Workweeks they worked while employed by Defendants during the Class Period. SCJ Dec., ¶ 7.

This Settlement provides substantial recovery to Settlement Class Members. Plaintiffs estimate that the Settlement, if approved, would result in a Net Settlement Amount of approximately

¹ The Agreement is attached as Ex “1” to the Declaration of Sydney Castillo-Johnson (“SCJ Dec.”) at ¶ 3. All citations to the Agreement incorporate by this reference a citation to the SCJ 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 of this Motion, Zero (0) Notices were deemed undeliverable. Apex Dec. at ¶ 10.

1 **\$526,833.34.** Apex Dec., ¶ 14. This will result in an average Individual Settlement Payment of
2 **\$1,773.85,** a high payment of **\$4,171.64,** and a low payment of **\$2.29.** Apex Dec., ¶ 15. Aggrieved
3 Employees will receive an estimated average Aggrieved Employee Payment of \$60.68, a high payment
4 of **\$98.25,** and a low payment of **\$.95.** Apex Dec ¶ 17.

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

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

14 **II. OVERVIEW OF THE LITIGATION**

15 Defendants provide IT services and technology solutions in the state of California, including in
16 San Bernardino County where Plaintiff Castro worked. This action asserts claims on behalf of all non-
17 exempt employees employed by Defendants in California at any time during the Class Period. Plaintiff
18 Castro worked for Defendants as a non-exempt employee in California from June 2019 to August 2022.
19 Declaration of Adrian Castro (“AC Dec.”) at ¶ 2. Plaintiff Garcia worked for Defendants as a non-
20 exempt employee in California from June 2017 to September 2022. Declaration of Rodolfo Garcia (“RG
21 Dec.”) at ¶ 2. At all times during their employment, Plaintiffs earned an hourly wage and were entitled
22 to legally compliant meal and/or rest periods, and minimum, regular and overtime wages for all hours
23 worked. Throughout their employment, Plaintiffs were subject to Defendants’ written policies and
24 procedures contained in, among other documents, the “Team Member Handbook – California
25 Supplement.” SCJ Dec., ¶ 9; AC Dec., ¶ 3; RG Dec. ¶ 3.

26 Generally, Plaintiffs claim that Defendants failed to pay for all time worked, failed to provide
27 compliant meal and rest periods, failed to reimburse for required business expenses, failed to furnish
28 accurate itemized wage statements, and failed to pay all wages upon separation. Defendants forcefully

1 deny liability for each of Plaintiffs' claims. Further, Defendants assert that it fully complied with all
2 applicable employment laws and raised several other significant defenses to Plaintiffs' claims,
3 including but not limited to, asserting that it maintained compliant timekeeping policies and practices,
4 compliant meal and rest period policies, compliant reimbursement policies, maintained issued
5 compliant wage statements, and timely paid all wages due upon separation of employment. SCJ Dec.,
6 ¶ 11.

7 On October 13, 2022, Plaintiff Castro served the Labor and Workforce Development Agency
8 ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff Castro's PAGA Notice set forth
9 the facts and theories supporting Defendants' alleged violations of various provisions of the California
10 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to
11 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections
12 2698 *et seq.* ("PAGA"). On March 1, 2023, Plaintiff Castro filed a representative action for violations
13 of PAGA in the San Bernardino Superior Court ("Action"). SCJ Dec., ¶ 12.

14 On July 17, 2023, Plaintiff Garcia served Defendants and the LWDA with his PAGA Notice. On
15 July 17, 2023, Plaintiff Garcia filed a class action complaint in the Orange Superior Court, Case
16 Number 30-2023-01336727-CU-OE-CXC ("*Garcia* Action"). The *Garcia* Action alleged eight causes
17 of action against Defendants for: (1) Unfair Competition in Violation of Cal. Bus. & Prof. Code §§
18 17200, *et seq.*; (2) Failure to Pay Minimum Wages in Violation Of Cal. Lab. Code §§ 1194, 1197, &
19 1197.1; (3) Failure to Pay Overtime Wages in Violation Of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure
20 to Provide Required Meal Periods in Violation Of Cal. Lab. Code §§ 226.7 & 512 and the Applicable
21 IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation Of Cal. Lab Code §§ 226.7
22 & 512 and the Applicable IWC Wage Order; (6) Failure to Pay Wages When Due in Violation Of Cal.
23 Labor Code §§ 201, 202, and 203; (7) Failure to Provide Accurate Itemized Statements in Violation Of
24 Cal. Lab. Code § 226; and (8) Failure to Reimburse Employees for Required Business Expenses in
25 Violation Of Cal. Lab. Code § 2802. SCJ Dec., ¶ 13.

26 On October 2, 2023, Plaintiff Garcia filed a First Amended Complaint in the *Garcia* Action
27 alleging an additional cause of action for alleged violations of PAGA. SCJ Dec., ¶ 14.

28 On October 5, 2023, Plaintiff Garcia propounded formal written discovery. Prior to responding

1 to discovery, the Parties agreed to mediate the Action. To prepare for mediation, the Parties agreed to
2 informally exchange additional documents and data points subject to the mediation privilege, including
3 but not limited to, employee handbooks, the Class Members’ time data, and certain payroll data points.
4 As discussed *infra*, Plaintiffs’ counsel retained the forensic consultants at Berger Consulting Group
5 (“BCG”) to analyze Defendants’ time and payroll data. SCJ Dec., ¶ 15.

6 On July 11, 2024, the Parties participated in a full day mediation with mediator Steve Rottman,
7 Esq. After arms-length negotiations and bargaining, the Parties reached an agreement to settle and
8 signed a Memorandum of Understanding. After reaching an agreement in principle, the Parties drafted
9 and negotiated a long-form settlement agreement, which is the subject of the instant motion. SCJ Dec.,
10 ¶ 16.

11 On December 5, 2024, Plaintiff Castro filed a First Amended Complaint (“Operative
12 Complaint”) in the Action for purposes of adding Plaintiff Garcia as a named Plaintiff and incorporating
13 the claims from the *Garcia* Action into the instant Action. On January 21, 2025, Plaintiff Garcia
14 dismissed the *Garcia* Action from the Orange County Superior Court. SCJ Dec., ¶ 17.

15 On February 10, 2025, this Court granted preliminary approval of the Settlement. SCJ Dec., ¶
16 4. On March 21, 2025, the Settlement Administrator mailed Notice Packets to all 297 members of the
17 Class via U.S. First Class Mail. Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-
18 five (45) day Response Deadline for the Settlement Class to submit requests for exclusion or objections
19 to the Settlement. The response from the Settlement Class to the Settlement was outstanding – as of
20 the filing of this motion, 100% of the Class Members are participating in the Settlement. Apex Dec., ¶
21 13.

22 **III. THE SETTLEMENT BEFORE THE COURT**

23 The Court preliminarily approved a Gross Settlement Amount of Nine Hundred and Fifty
24 Thousand Dollars and Zero Cents (\$950,000.00) based on a total of an estimated 31,473 Workweeks
25 worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy
26 Individual Settlement Payments; (2) to satisfy the Service Awards; (3) to satisfy the Class Counsel
27 Award; (4) to satisfy the PAGA Payment; and (5) to satisfy the Claims Administration Expenses
28 incurred in this action. SCJ Dec., ¶ 17.

1 Defendants will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
2 Settlement Fund within ninety (90) days after the Court enters an order of final approval of the settlement
3 or October 15, 2025, whichever is later. Agreement, ¶ I(O). The Settlement Administrator shall mail
4 the Individual Settlement Payments and Aggrieved Employee Payments to the Settlement Class
5 Members and/or Aggrieved Employee last known mailing address no later than fourteen (14) calendar
6 days after the Funding Date. Agreement, ¶ III(I)(7). Using the Class Data, the Settlement Administrator
7 shall add up the total number of Workweeks for all Class Members. The respective Workweeks for
8 each Class Member will be divided by the total Workweeks for all Class Members, resulting in the
9 Payment Ratio for each Class Member. Each Class Member's Payment Ratio will then be multiplied
10 by the Net Settlement Amount to calculate each Class Member's estimated Individual Settlement
11 Payments. III(I)(1). The average estimated Individual Settlement Payment is \$1,773.85. Apex Dec ¶ 15.

12 In exchange for valuable consideration, as of the funding of the Gross Settlement Amount,
13 Plaintiffs and the Settlement Class Members will release the Released Parties from the Released Class
14 Claims for the Class Period. Agreement at ¶¶ I(EE); III(A)(2). The LWDA, the State of California, the
15 Plaintiffs and the Aggrieved Employees will release the Released Parties from the Released PAGA
16 Claims for the PAGA Period. Agreement at ¶¶ I(FF); III(A)(3).

17 Apex Class Action LLC is the Court-approved Settlement Administrator for this action. Claims
18 Administration Expenses include those expenses of effectuating and administering the Settlement, i.e.,
19 the costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
20 administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
21 Administrator approved for reimbursement by the court. The Claims Administration Expenses are
22 \$6,500.00. Apex Dec, ¶ 14. These expenses shall be paid from the Gross Settlement Amount.
23 Agreement, ¶ I(P).

24 Subject to Court approval, Class Counsel seeks a Class Counsel Award in the amount of
25 \$346,666.66, comprised of attorneys' fees of \$316,666.66 (one-third of the Gross Settlement Amount)
26 and up to \$30,000 for actually incurred litigation expenses. Class Counsel's award for attorney's fees
27 will be divided between Class Counsel as follows: 45% to JCL Law Firm, APC; 45% to Zakay Law
28 Group, APLC; and 10% to The Gould Law Firm. Agreement, ¶ I(H). The Agreement also provides for

1 Service Awards in the amount of \$10,000 for each Plaintiff, in consideration of their time, risk, and
2 efforts as the Class Representatives on behalf of the Settlement Class. Agreement, ¶¶ I(II); III(I)(9).

3 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
4 and should be granted final approval. This is evidenced by the unanimous approval by the Settlement
5 Class, the absence of any objections to the Settlement and the average Individual Settlement Payment
6 of **\$1,773.85**. Apex Dec., ¶¶ 11-13, 15, SCJ Dec., ¶ 18.

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

9 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
10 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly
11 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
12 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the
13 preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

25 In these cases, Courts have repeatedly emphasized that there is a strong initial presumption that
26 the compromise is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. Courts should not substitute
27 their judgment for that of the parties who negotiated the settlement. *Id.* At 246. The presumption of
28 fairness exists where: (1) investigation and discovery are sufficient to allow counsel and the court to act

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

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

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

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

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

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

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

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

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

5 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
6 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
7 assessed the value of the class claims using data and documents provided by Defendants through
8 informal discovery. Class Counsel obtained time and payroll records for the Class Members, aggregate
9 meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of
10 applicable handbooks, policies, and agreements. Class Counsel retained Berger Consulting Group
11 ("BCG") to analyze Defendants' time and payroll data to formulate damage models estimating
12 Defendants' liability exposure. Class Counsel's investigation, research, experience, and damage
13 models informed and guided the mediated negotiations that resulted in this settlement. Accordingly,
14 Plaintiffs' Counsel fully understood the strengths and weaknesses of the class claims before the parties
15 reached a settlement. SCJ Dec., ¶¶ 19-24.

16 **B. Class Counsel is Experienced in Similar Litigation.**

17 Class Counsel in this matter has extensive class action experience in multiple fields and has
18 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
19 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
20 similar wage and hour class actions throughout the State of California. As such, courts throughout
21 California have deemed Class Counsel experienced and knowledgeable in this area of law. Class
22 Counsel has participated in every aspect of the settlement discussions and has concluded the settlement
23 is fair, adequate, and reasonable and in the best interests of the Class. Declaration of Jean-Claude
24 Lapuyade ("JCL Dec.") ¶¶ 4-8; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3; Declaration of
25 Michael Gould ("Gould Dec.") ¶¶ 3-6.

26 **C. The Settlement Class Responded Positively to the Settlement.**

27 The reaction of the Settlement Class unequivocally supports approval of the Settlement.
28 Significantly, after dissemination of the notice to the Settlement Class, which provided each class

1 member with the terms of the Settlement, including the specific estimated Individual Settlement
2 Payments. As of the filing of this motion, none of the 297 members of the Settlement Class opted-out
3 of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement
4 Class chose to participate in the Settlement. Apex Dec., ¶ 13; SCJ Dec., ¶ 7.

5 The unanimous approval by the Settlement Class strongly supports a finding that the Settlement
6 is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation* (S.D.N.Y.
7 2000) 80 F.Supp.2d 164, 175 ("If only a small number of objections are received, that fact can be
8 viewed as indicative of the adequacy of the settlement."); *Stoetzner v. U.S. Steel Corp.* (3d. Cir. 1990)
9 897 F.2d 115, 118-119 (29 objections out of 281 member class "strongly favors settlement"); *Laskey*
10 *v. Int'l Union* (6th Cir. 1981) 638 F.2d 954 (The fact that 7 out of 109 class members objected to the
11 proposed settlement should be considered when determining fairness of settlement.). Consequently,
12 Class Counsel respectfully requests the Court to follow the unanimous approval of the Settlement Class
13 and grant final approval of the Settlement.

14 **D. The Gross Settlement Amount is Fair and Reasonable.**

15 The Gross Settlement Amount of Nine Hundred and Fifty Thousand Dollars and Zero Cents
16 (\$950,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*
17 court acknowledged that "as the court does when it approves a settlement as in good faith under Code
18 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within
19 the 'ballpark' of reasonableness." *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*
20 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

21 Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement
22 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the
23 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.
24 While the Gross Settlement Amount of Nine Hundred and Fifty Thousand Dollars and Zero Cents
25 (\$950,000.00) represents a discount on Defendants' potential exposure if Plaintiffs established liability
26 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is
27 reasonable because (1) the formidable defenses raised by Defendants presented a risk that could award
28 significantly less in damages than Plaintiffs' estimate and (2) any theoretical post-trial recovery may

1 require many more years of litigation, resulting in added fees and costs without any guarantee of
2 recovery for the Class. SCJ Dec., ¶ 26.

3 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
4 reasonable considering the nature and magnitude of the claims being settled and the various potential
5 impediments to recovery. Class Counsel developed varied economic damages models measuring
6 Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various
7 models were informed by Class Counsel's investigation, including the analysis of time and payroll data.
8 As detailed in greater depth during the preliminary approval process, Class Counsel projected a range
9 of Defendants' liability exposure for the claims asserted on behalf of the Settlement Class. The Gross
10 Settlement Amount represents between 24.21% and 87.17% of Defendants' *class-wide* liability
11 exposure as estimated by Class Counsel at the time of mediation. SCJ Dec., ¶ 27.

12 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 4, the District Court
13 for the Northern District of California granted final approval in a wage and hour misclassification action
14 and found that the Gross Settlement Amount representing 10% of the estimated trial award was within
15 the "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000)
16 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing "roughly one-sixth of the
17 potential recovery." Given the amount of the settlement here as compared to potential value of the
18 claims, particularly the strength of Plaintiffs' action, the settlement is clearly fair and reasonable.³

19 The calculation methodology used to compensate the Settlement Class for the alleged damages
20 was negotiated at the time of the Settlement. More importantly, the methodology is fair, objective, and
21 impartial. The calculation methodology is based on the number of Workweeks each Settlement Class
22 Member worked for Defendants during the Class Period. The number of Workweeks for the Settlement
23 Class Members is established through Defendants' data and documented compensation records. The

24 ³ See also *Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, No. 15-CV-02198) 2016 WL 5907869, at *3, 7 (approving
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 Settlement Administrator is responsible for calculating the Individual Settlement Payments by
2 multiplying the Payment Ratio for each Class Member by the Net Settlement Amount. The Settlement
3 Administrator will calculate the payment ratio by dividing the total number of Workweeks for each
4 Class Member by the total number of Workweeks for all Class Members. This process establishes an
5 objectively fair and reasonable procedure to compensate the Settlement Class. Agreement, ¶ III(I)(1).

6 The settlement also provides significant relief to the Settlement Class Members. After deductions
7 for the Class Counsel Award, Claims Administration Expenses, the PAGA Payment, and the Service
8 Awards, the Net Settlement Amount is currently estimated to be \$526,833.34. Apex Dec., ¶ 14. This
9 will result in an average Individual Settlement Payment of **\$1,773.85**, with a high payment of **\$4,171.64**,
10 and a low payment of **\$2.29**. Apex Dec., ¶ 15. This average net recovery is on par with many wage and
11 hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99*
12 *Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of
13 approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net
14 recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
15 County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department*
16 *Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90);
17 *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average
18 net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD
19 (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No.
20 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v.*
21 *Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately
22 \$20). Additionally, Defendants must separately fund its share of any employer side payroll taxes.
23 Agreement, ¶ III(A)(1).

24 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
25 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
26 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
27 SCJ Dec., ¶ 28.

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1 **E. The Strength of Plaintiffs’ Case and Risks of Continued Litigation**

2 Although Class Counsel believes strongly in Plaintiffs’ claims, it would be misguided to ignore
3 the asserted defenses. If successful on any one of its defenses, Defendants could defend the action or,
4 at least, drastically undercut Plaintiffs’ claims. SCJ Dec., ¶ 29. As the federal court in *Glass v. UBS*
5 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
6 litigation:

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

12 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
13 certification of similar wage and hour claims are demonstrated by *Ali v. U.S.A. Cab Ltd.* (2009) 176
14 Cal.App.4th 1333, 1341. There, the Court of Appeal affirmed the Trial Court’s denial of class
15 certification because employees’ declarations attesting to having taken meal and rest breaks
16 demonstrated that individualized inquiries were required to show harm. *See also Campbell v. Best Buy*
17 *Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following *Brinker* and denying certification
18 of proposed off-the-clock and rest and meal break classes due to lack of uniform policy); *Brown v. Fed*
19 *Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying certification of driver meal and rest
20 period claims based on the predominance of individual issues). SCJ Dec., ¶ 30.

21 Further, even if a class is certified, liability remains uncertain. The risks attendant to the issue of
22 Defendants’ liability in similar wage and hour actions are demonstrated by *Duran v. U.S. Bank National*
23 *Association* (2014) 59 Cal.4th 1, 31. There, the Court reversed a trial verdict in favor plaintiffs in a
24 wage and hour class action. *See also Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077,
25 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
26 individualized questions of fact not susceptible to class treatment. SCJ Dec., ¶ 31.

27 Finally, even if a class is certified and Defendants are found liable for the class claims alleged,
28 post-certification risks remain, including a reversal of a favorable judgment for Plaintiffs and

1 decertification of the class. These post-certification risks are demonstrated by *Magadia v. Wal-Mart*
2 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit vacated reversed and remanded
3 a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and
4 directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber*
5 *Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification
6 action). SCJ Dec., ¶ 32.

7 Collectively, the examples cited above illustrate the uncertain nature of class litigation.
8 Consequently, the uncertainty of obtaining certification through a contested motion is a significant risk
9 factor favoring settlement. SCJ Dec., ¶ 33.

10 Although Plaintiffs are confident about the strength of their claims, Plaintiffs nevertheless
11 recognize that Defendants have factual and legal defenses that, if successful, would potentially defeat
12 or impair the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can
13 drastically affect the value of Plaintiffs' claims and, in fact, already has. SCJ Dec., ¶ 34.

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

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

27 *See also Browning v. Yahoo!, Inc.*, 2007 U.S. Dist. LEXIS 86266, at *30 (N.D. Cal. 2007) ("In
28 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

1 of proving damages, recognize the uncertainty of outcome, and believe
2 defendant would appeal in the event of adverse judgment. A post-judgment
3 appeal would require many years to resolve and delay payment to class
4 members. Plaintiffs believe the benefits of a guaranteed recovery today
5 outweigh an uncertain future result. Accordingly, plaintiffs argue, and the
6 Court agrees, the actual recovery confers substantial benefits on the class
7 that outweigh the potential recovery through full adjudication.

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

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

14 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O'Conner v. Uber*
15 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
16 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
17 that if Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post
18 a bond and appeal. A post-judgment appeal by Defendants would have required many more years to
19 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
20 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
21 an uncertain result for three or more years in the future. SCJ Dec., ¶ 35.

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

1 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
2 Class, is fair, reasonable, and adequate, and should be granted final approval. SCJ Dec., ¶ 36.

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

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

14 Here, Plaintiffs and Defendants negotiated a good-faith PAGA Payment in the amount of
15 \$50,000 which is approximately 5.26% of the Gross Settlement Amount. As illustrated above, this
16 amount falls well within the range of approved PAGA Settlements. Seventy-five percent (75%) of the
17 PAGA Payment (\$37,500) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-
18 five percent (25%) of the PAGA Payment (\$12,500.00) to be distributed to the Aggrieved Employees
19 (“Aggrieved Employee Payment”) which is within the range of PAGA penalties approved by courts
20 and should be approved. SCJ Dec., ¶ 37.

21 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
22 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
23 with the LWDA. SCJ Dec., ¶¶ 6-7, 38. By not registering an objection with either Class Counsel or
24 the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

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1 **VII. CONCLUSION**

2 Plaintiffs respectfully submit 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: April 17, 2025

JCL LAW FIRM, APC

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