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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF RIVERSIDE**

JOHN KNEISLY, an individual, on behalf of  
himself and on behalf of all persons similarly  
situated,

Plaintiff,

v.

S R MACHINING, INC., a California  
Corporation; S R MACHINING-PROPERTIES,  
LLC, a California Limited Liability Company; and  
DOES 1-50, Inclusive,

Defendants.

Case No. CVRI2201491

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

Date: October 4, 2023

Time: 8:30 a.m.

Judge: Hon. Harold W. Hopp

Dept.: 1

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1 I. INTRODUCTION

2 Plaintiff JOHN KNEISLY (hereinafter “Plaintiff”) seeks final approval of the Stipulation of  
3 Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement”)<sup>1</sup>, which if  
4 approved, would provide valuable monetary relief for 41 Settlement Class Members employed by  
5 Defendants S R Machining, Inc., and S R Machining-Properties LLC. (hereinafter “Defendants”) during  
6 the Class Period.

7 In an order dated May 30, 2023, this Court preliminarily approved the Agreement and  
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On June 20,  
9 2023, the Court-approved Class Notice was mailed in English and Spanish to all 41 Class Members via  
10 U.S. First Class Mail. Additionally, the notice was sent by email to 20 Class Members for whom email  
11 addresses were included in the Class Data. Declaration of Bryn Bridley (“Atticus Dec.”), ¶ 6. *The Class*  
12 *greeted news of the Settlement with unanimous approval as, at the time of the filing of this motion,*  
13 *all 41 Class Members chose to participate in the Settlement.*<sup>2</sup> As of the filing of this motion, there are  
14 zero opt-outs and zero objections to the Settlement. Atticus Dec., ¶¶ 11-12. The unanimous approval  
15 by the Settlement Class evidences the clear fairness and reasonableness of the Settlement. JCL Dec., ¶  
16 8.

17 An objective evaluation of the proposed settlement of Two Hundred Twenty Thousand Dollars  
18 and Zero Cents (\$220,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on  
19 behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement is a product of informed,  
20 adversarial, and non-collusive negotiations, between experienced counsel, and presided over by Hon.  
21 Steven R. Denton (Ret.), a respected jurist and experienced mediator of wage and hour class actions.  
22 After deducting any Court-approved Class Counsel Award, Class Representative Service Award,  
23 Claims Administration Expenses, and the LWDA Payment, the Net Settlement Amount shall be  
24 distributed to the Settlement Class Members based on the number of Workweeks they worked while  
25 employed by Defendants during the Class Period. JCL Dec., ¶ 8.

27 <sup>1</sup> 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., ¶ 3. Further, unless indicated otherwise, capitalized terms  
used herein have the same meaning as those defined by the Agreement.

<sup>2</sup> One (1) Notice was deemed undeliverable. Atticus Dec. at ¶ 8.

1 This Settlement provides substantial recovery to Settlement Class Members. Plaintiff estimates  
2 that the Settlement, if approved, would result in a Net Settlement Amount of approximately  
3 **\$103,166.67**. Atticus Dec., ¶ 13. This will result in an average Individual Settlement Payment of  
4 **\$2,504.07**, a high payment of **\$6,264.41**, and a low payment of **\$53.54**. Atticus Dec., ¶ 10. PAGA Class  
5 Members will receive an estimated average gross PAGA Class Member Payment of **\$113.64**, a high  
6 payment of **\$139.62**, and a low payment of **\$18.45**. Atticus Dec ¶ 11.

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

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

## 16 II. OVERVIEW OF THE LITIGATION

17 Defendants manufacture and produce CNC machining of plastics, alloys and metals for the  
18 aerospace, industrial, commercial, medical and automotive industries/sectors throughout the county of  
19 Riverside, where Plaintiff worked. Plaintiff worked for Defendants as a non-exempt employee in  
20 California from May 15, 2008 to May 14, 2020. At all times during his employment, Plaintiff was  
21 subject to Defendants' written policies and procedures contained in, among other documents, the "SR  
22 Machining, Inc. Employee Handbook." JCL Dec., ¶ 12; Declaration of John Kneisly ("Kneisly Dec.")  
23 ¶ 3.

24 Generally, Plaintiff claims that Defendants failed to provide legally compliant meal and rest  
25 periods, failed to pay for all time worked, and failed to pay all wages upon separation. Defendants deny  
26 liability for each of Plaintiff's claims. Further, Defendants assert that they fully complied with all  
27 applicable employment laws and raised several other significant defenses to Plaintiff's claims,  
28 including but not limited to, asserting that they maintained facially compliant meal and rest period

1 policies, paid their employees for all hours worked, and timely paid all wages due upon separation of  
2 employment. JCL Dec., ¶ 13.

3 On April 14, 2022, Plaintiff filed a class action complaint in the Riverside County Superior  
4 Court, Case Number CVRI2201491 (“Action”). The Action alleged seven causes of action against  
5 Defendants for: (1) Unfair Competition in Violation of Bus. and Prof. Code sections 17200 *et seq*; (2)  
6 Failure to pay minimum wages in violation of California Labor Code sections 1194, 1197 & 1197.1;  
7 (3) Failure to pay overtime wages in violation of California Labor Code sections 510 *et seq*; (4) Failure  
8 to provide required meal periods in violation of California Labor Code sections 226.7 and 512 and the  
9 applicable IWC wage order; (5) Failure to provide required rest periods in violation of California Labor  
10 Code sections 226.7 and 512 and the applicable IWC wage order; (6) Failure to provide wages when  
11 due in violation of Cal. Lab. Code sections 201, 202 and 203; and (7) Failure to reimburse employees  
12 for required expenses in violation of Cal. Lab. Code section 2802. JCL Dec., ¶ 15.

13 On January 24, 2023, Plaintiff served Defendants and the Labor and Workforce Development  
14 Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth  
15 the facts and theories supporting Defendants’ alleged violations of various provisions of the California  
16 Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to  
17 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections  
18 2698 *et seq* (“PAGA”). JCL Dec., ¶ 14.

19 On January 27, 2023, Plaintiff filed a First Amended Complaint adding an eighth cause of action  
20 for Violation of the Private Attorneys General Action [Labor Code §§ 2698, *et. seq.*] JCL Dec., ¶ 16.

21 After Plaintiff commenced written discovery, the Parties agreed to mediate this action. To  
22 prepare for mediation, the Defendants agreed to informally produce additional documents and data  
23 points subject to the mediation privilege, including but not limited to, employee handbooks, the Class  
24 Members’ time data, and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained  
25 the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll  
26 data. JCL Dec., ¶ 17.

27 On October 10, 2022, the Parties participated in a full day mediation with Hon. Steven R. Denton  
28 (Ret.), a respected jurist and experienced mediator of wage and hour class actions. The mediation

1 concluded with a settlement, after both sides agreed to a Mediator’s proposal, which was subsequently  
2 memorialized in the form of a Memorandum of Understanding (“MOU”). After reaching an agreement  
3 in principle, the Parties drafted and negotiated a long-form settlement agreement, which is the subject  
4 of the instant motion. JCL Dec., ¶ 18.

5 On May 30, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On  
6 June 20, 2023, the Settlement Administrator mailed Notice Packets in English and Spanish to all 41  
7 members of the Class via U.S. First Class Mail. Atticus Dec., ¶ 6. The mailing of the Notice Packets  
8 triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for  
9 exclusion or objections to the Settlement. The response from the Settlement Class to the Settlement  
10 was outstanding – 100% of the Class Members are participating in the Settlement. Atticus Dec., ¶¶ 8.

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

12 The Court preliminarily approved an initial Gross Settlement Amount of Two Hundred Twenty  
13 Thousand Dollars and Zero Cents (\$220,000.00) based on a total of an estimated 4,914 Workweeks  
14 worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy  
15 Individual Settlement Payments; (2) to satisfy the Class Representative Service Award; (3) to satisfy the  
16 Class Counsel Award; (4) to satisfy the PAGA Payment; and (5) to satisfy the Claims Administration  
17 Expenses incurred in this action. JCL Dec., ¶ 19.

18 Defendants will fund the Settlement by transferring the Gross Settlement Amount into a Qualified  
19 Settlement Fund within sixty five (65) calendar days after the Effective Date. Agreement, ¶ I(M). The  
20 Settlement Administrator shall mail the Individual Settlement Payments and PAGA Class Member  
21 Payments to the Settlement Class Members and/or PAGA Class Member last known mailing address no  
22 later than fifteen (15) calendar days after Defendants fund the Gross Settlement Amount. Agreement, ¶  
23 III(L)(7). The Settlement Administrator calculated Class Members’ Individual Settlement Payments by  
24 dividing the number of Workweeks worked by each Class Member during the Class Period by the total  
25 number of Workweeks for all Class Members to establish each individual Class Member’s “Payment  
26 Ratio.” The Payment Ratio was then multiplied by the estimated Net Settlement Amount to determine  
27 their Individual Settlement Payment. The average estimated Individual Settlement Payments was  
28 \$2,504.07. Atticus Dec ¶ 10.

1 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,  
2 Plaintiff and the Settlement Class Members will release the Released Parties from the Released Class  
3 Claims for the Class Period. Agreement at ¶ III(B). The Plaintiff, the LWDA, and the State of California  
4 will release the Released Parties from the PAGA Released Claims for the PAGA Period. Agreement at  
5 ¶ III(C).

6 Atticus Administration LLC is the Court-approved Settlement Administrator for this action.  
7 Claims Administration Expenses include those expenses of effectuating and administering the  
8 Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class,  
9 the costs of administering and disbursing the Individual Settlement Payments, and the fees of the  
10 Settlement Administrator (“Claims Administration Expenses”) approved for reimbursement by the  
11 court. The Claims Administration Expenses are \$8,500.00. Atticus Dec, ¶ 13. These expenses shall be  
12 paid from the Gross Settlement Amount. Agreement, ¶ I(N).

13 Subject to Court approval, Class Counsel shall seek a Class Counsel Award in the amount of  
14 \$88,333.33 comprised of attorneys’ fees of \$73,333.33 (one-third of the Gross Settlement Amount) and  
15 up to \$15,000 for actually incurred litigation expenses. Class Counsel’s award for attorney’s fees will  
16 be divided equally between Class Counsel (50% to JCL Law Firm, APC and 50% to Zakay Law Group,  
17 APLC). Agreement, ¶ I(D). The Agreement also provides for a Class Representative Service Award in  
18 the amount of \$10,000 for Plaintiff, in consideration of his time, risk, and efforts as the Class  
19 Representative on behalf of the Settlement Class. Agreement, ¶¶ I(H); III(L)(9).

20 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class  
21 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by  
22 the Settlement Class, the absence of any objections to the Settlement and the average Individual  
23 Settlement Payment of \$2,504.07. Atticus Dec., ¶¶ 8-10, JCL Dec., ¶ 20.

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

26 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th  
27 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly  
28 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*

1 v. *Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the  
2 preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

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

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

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

26 The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford*  
27 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *see also Officers for Justice v. Civil Service Com'n* (9th  
28 Cir. 1982) 688 F. 2d 615, 625. The purpose of the requirement is "the protection of those class members,

1 including the named plaintiffs, whose rights may not have been given due regard by the negotiating  
2 parties." *Dunk, supra*, at 1801.

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

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

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

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

22 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the  
23 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel  
24 assessed the value of the class claims using data and documents provided by Defendants through  
25 informal discovery. Class Counsel obtained time and payroll records for the Class Members, aggregate  
26 meal premiums paid to the Class Members, average hourly rate for the Class Members, and copies of  
27 applicable handbooks, policies, and agreements. Class Counsel retained Berger Consulting Group  
28 ("BCG") to analyze Defendants' time and payroll data to formulate damage models estimating

Defendants' liability exposure. Class Counsel's investigation, research, experience, and damage models informed and guided the mediated negotiations that resulted in this settlement. Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the class claims before the parties reached a settlement. JCL Dec., ¶ 21-27.

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

On October 10, 2022, the Parties conducted a full day of mediation with Hon. Steven Denton (Ret.), retired jurist and highly respected wage and hour mediator. Judge Denton helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Judge Denton's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. After more than eight hours of arm's length and adversarial negotiations, the mediation concluded with a settlement after the Parties agreed to a Mediator's proposal. The amount of the service awards was not negotiated until after the parties agreed to the Gross Settlement Amount and many other terms. No action would likely have been taken by Class Members individually, and no compensation would have been recovered for them, but for Plaintiff's service on behalf of the Class. JCL Dec., ¶ 28.

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

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage and hour class actions involving similar claims. Class Counsel has been approved as class counsel in similar wage and hour class actions throughout the State of California. As such, courts throughout California have deemed Class Counsel experienced and knowledgeable in this area of law. Class Counsel has participated in every aspect of the settlement discussions and has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 29-35; Declaration of Shani Zakay ("Zakay Dec."), ¶¶ 1-3.

**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

1 Payments. As of the filing of this motion, none of the 41 members of the Settlement Class opted-out  
2 of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Settlement  
3 Class chose to participate in the Settlement. Atticus Dec., ¶ 11; JCL Dec., ¶ 8.

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

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

14 The Gross Settlement Amount of Two Hundred Twenty Thousand Dollars and Zero Cents  
15 (\$220,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar*  
16 court acknowledged that "as the court does when it approves a settlement as in good faith under Code  
17 of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within  
18 the 'ballpark' of reasonableness." *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde &*  
19 *Associates*, 38 Cal.3d 488, 499-500 (1985).)

20 Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement  
21 provides a sizeable recovery to the Settlement Class and need not necessarily obtain 100 percent of the  
22 damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250.  
23 While the Gross Settlement Amount of Two Hundred Twenty Thousand Dollars and Zero Cents  
24 (\$220,000.00) represents a discount on Defendants' potential exposure if Plaintiff established liability  
25 on all claims and was awarded the full amount of the estimated damages at trial, this compromise is  
26 reasonable because (1) the formidable defenses raised by Defendants presented a risk that could award  
27 significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may  
28 require many more years of litigation, resulting in added fees and costs without any guarantee of

1 recovery for the Class. JCL Dec., ¶ 36.

2 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and  
3 reasonable considering the nature and magnitude of the claims being settled and the various potential  
4 impediments to recovery. Class Counsel developed varied economic damages models measuring  
5 Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various  
6 models were informed by Class Counsel's investigation, including the analysis of a significant sample  
7 of time and payroll data. As detailed in greater depth during the preliminary approval process, Class  
8 Counsel projected a range of Defendants' liability exposure for the claims asserted on behalf of the  
9 Settlement Class. The Gross Settlement Amount represents between 18.44% and 33.79% of Defendant's  
10 *class-wide* liability exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 37.

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

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

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24 <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 (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 multiplying the Payment Ratio for each Class Member by the Net Settlement Amount. The Settlement  
2 Administrator will calculate the payment ratio by dividing the total number of Workweeks for each  
3 Class Member by the total number of Workweeks for all Class Members. This process establishes an  
4 objectively fair and reasonable procedure to compensate the Settlement Class. Agreement, ¶ III(L)(1).

5 The settlement also provides significant relief to the Settlement Class Members. After deductions  
6 for the Class Counsel Award, Claims Administration Expenses, the PAGA Payment, and the Class  
7 Representative Service Award, the Net Settlement Amount is currently estimated to be \$ 103,166,67.  
8 Atticus Dec., ¶ 13. This will result in an average Individual Settlement Payment of **\$2,504.07**, with a  
9 high payment of **\$6,264.41**, and a low payment of **\$53.54**. Atticus Dec., ¶ 10. This average net recovery  
10 is on par with many wage and hour class action settlements approved by California state and federal  
11 courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super.  
12 Ct.) (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (LA.  
13 County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group,*  
14 *LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120);  
15 *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average  
16 net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx  
17 (C.D. Cal. May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case  
18 No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v.*  
19 *Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery  
20 of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.)  
21 (average net recovery of approximately \$20). Additionally, Defendants must separately fund its share  
22 of any employer side payroll taxes. Agreement, ¶ III(A)(1).

23 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.  
24 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between  
25 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.  
26 JCL Dec., ¶ 38.

27  
28 ///

1           **F.       The Strength of Plaintiff’s Case and Risks of Continued Litigation**

2           Although Class Counsel believes strongly in Plaintiff’s 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 Plaintiff’s claims. JCL Dec., ¶ 39. 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 *Magadia v. Wal-Mart Associates,*  
14 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110  
15 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the  
16 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*  
17 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*  
18 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor  
19 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4<sup>th</sup>  
20 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly  
21 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176  
22 Cal.App.4<sup>th</sup> 1333, 1341 (affirming denial of certification because employees’ declarations attesting to  
23 having taken meal and rest breaks demonstrated that individualized inquiries were required to show  
24 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following  
25 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack  
26 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying  
27 certification of driver meal and rest period claims based on the predominance of individual issues).  
28 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,

1 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring  
2 settlement. JCL Dec., ¶ 40.

3 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes  
4 that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair  
5 the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically  
6 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 41.

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

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

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

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

24 **The potential complexity and possible duration of trial also weigh in**  
25 **favor of granting final approval.** Plaintiffs acknowledge the difficulties  
26 of proving damages, recognize the uncertainty of outcome, and believe  
27 defendant would appeal in the event of adverse judgment. A post-judgment  
28 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).

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

5 As demonstrated by the decisions in *Magadia, supra*, 999 F.3d 668, *O’Conner v. Uber*  
6 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59  
7 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt  
8 that if Defendants faced a large adverse judgement, Defendants undoubtedly have the resources to post  
9 a bond and appeal. A post-judgment appeal by Defendants would have required many more years to  
10 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case  
11 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh  
12 an uncertain result three or more years in the future. JCL Dec., ¶ 42.

13 The Class Representative and Class Counsel recognize the expense and length of a trial against  
14 Defendants through possible appeals, which could take another three years. In arriving at their informed  
15 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome  
16 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognizes  
17 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.  
18 Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and  
19 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.  
20 Class Representative and Class Counsel believe that the Settlement confers substantial monetary and  
21 non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class  
22 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the  
23 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 43.

24 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE**  
25 **REASONABLE**

26 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no  
27 indication that this amount was the result of self-interest at the expense of class members,” such  
28 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,

2009 WL 928133, at \*9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at \*1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at \*6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at \*5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, Plaintiff and Defendants negotiated a good faith PAGA Payment in the amount of \$10,000 which is 4.5% of the Gross Settlement Amount. As illustrated above, this amount falls well within the range of approved PAGA Settlements. Seventy-five percent (75%) of the PAGA Payment (\$7,500) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five percent (25%) of the PAGA Payment (\$2,500.00) to be distributed to the PAGA Class Members which is within the range of PAGA penalties approved by courts and should be approved. JCL Dec., ¶ 44.

Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval with the LWDA. JCL Dec., ¶¶ 5-6, 45. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

## **VII. CONCLUSION**

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

Dated: September 8, 2023

**JCL LAW FIRM, APC**

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