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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

TEVIN BRANDT, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

MOTOR CITY SALES & SERVICE, a
California corporation; MCLB, INC., a California
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. BCV-22-102078

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

Date: March 5, 2024

Time: 8:30 a.m.

Judge: Hon. Bernard C. Barrman, Jr.

Dept.: H

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1 I. INTRODUCTION

2 Plaintiff TEVIN BRANDT (hereinafter “Plaintiff”) seeks final approval of the Stipulation of
3 Settlement of Class and PAGA Action Claims and Release of Claims (“Agreement” or “Settlement
4 Agreement”)¹, which if approved, would provide valuable monetary relief for 299 Settlement Class
5 Members employed by Defendants Motor City Sales & Service d.b.a. Motor City Buick GMC and
6 MCLB, Inc. (hereinafter “Defendant” and/or “Defendants”) during the Class Period.

7 In an order dated September 6, 2023, this Court preliminarily approved the Agreement and
8 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On October
9 4, 2023, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
10 Declaration of Madely Nava (“Apex Dec.”), ¶ 7. *The Class greeted news of the Settlement with nearly*
11 *unanimous approval.*² There are zero objections and only three opt-outs to the Settlement. Apex Dec.,
12 ¶¶ 11-12. The **99.01%** approval by the Settlement Class evidences the clear fairness and reasonableness
13 of the Settlement. JCL Dec., ¶ 7.

14 An objective evaluation of the proposed settlement of Six Hundred Seventy-Five Thousand
15 Dollars and Zero Cents (\$675,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated
16 on behalf of the Settlement Class Members is fair, reasonable, and valuable. The Settlement is a product
17 of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided
18 over by Steven Rottman, Esq. After deducting any Court-approved attorneys’ fees and costs, class
19 representative incentive payments, administration costs, and the payments to the Labor & Workforce
20 Development Agency (“LWDA”), the net settlement fund shall be distributed to Settlement Class
21 Members based on the number of Workweeks they worked while employed by Defendants during the
22 Class Period. JCL Dec., ¶ 8.

23 This Settlement provides substantial recovery for Defendants’ alleged wage and hour violations.
24 Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of
25 approximately **\$341,762.55**. This will result in an average Individual Settlement Payment of **\$1,143.02**,

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., ¶ 3. Further, unless indicated otherwise, capitalized terms
used herein have the same meaning as those defined by the Agreement.

² Two (2) Notices were deemed undeliverable. Apex Dec. at ¶ 10.

1 a high payment of **\$1,729.54**, and low payment of **\$2.51**. JCL Dec., ¶ 9; Apex Dec. at ¶ 15.

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

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

11 **II. OVERVIEW OF THE LITIGATION**

12 On June 7, 2022, Plaintiff filed a Notice of Violations with the LWDA and served the same on
13 Defendants. On August 11, 2022, Plaintiff filed his representative complaint alleging a cause of action
14 for violations of the Private Attorneys General Act at Labor Code Sections 2698, et seq. Plaintiff's
15 complaint alleged that Defendants failed to provide compliant meal and rest periods, failed to allow
16 employees to take duty-free meal and rest periods, failed to pay all minimum, regular and overtime
17 wages, failed to correctly calculate the regular rate of pay, failed to pay for all hours worked, failed to
18 maintain true and accurate records; failed to reimburse employees for required business expenditures,
19 failed to provide accurate itemized wage statements, and failed to timely pay wages due during, and
20 upon termination of employment. JCL Dec., ¶ 12.

21 The Parties agreed to private mediation. Prior to mediation, the Parties agreed to informally
22 exchange documents and information in connection with the Action. As part of this process,
23 Defendants provided time and pay records for 48 employees, approximately 17% of the total Class.
24 Plaintiff's statistician found this to be sufficient to develop a meaningful damages model. Additionally,
25 the 17% sample is statistically reliable, resulting in a confidence level of 85% with a margin of error of
26 9%. In addition to the time and payroll records, Defendants produced their Employee Handbook and
27 various handbook addendums, as well as other relevant policies and agreements. JCL at ¶ 13.

28 On April 27, 2023, the Parties participated in an all-day mediation presided over by Steven

1 Rottman, Esq., a mediator of wage and hour class actions. After arms-length negotiations and
2 bargaining, the Parties reached a settlement of \$675,000, with the understanding that this settlement
3 would also include not only a release of the PAGA claims alleged, but also a release of class claims for
4 the same Labor Code violations, and within the same time period. The Parties thereafter executed a
5 binding Memorandum of Understanding, and subsequently documented the agreement in the form of a
6 Settlement Agreement, which was signed by the Parties and is now presented to this Court for
7 preliminary approval. JCL Dec at ¶ 14.

8 Following the Parties’ successful mediation, Plaintiff filed a First Amended Complaint, which
9 added class claims based on the same violations of the Labor Code as detailed in Plaintiff’s original
10 PAGA complaint. Plaintiff seeks to represent a putative class of all current and former non-exempt
11 employees of Defendants employed in California at any time during the period between June 7, 2021
12 and April 27, 2023 (the “Class Period”). The Action seeks unpaid wages, statutory and PAGA penalties,
13 attorneys’ fees, and litigation costs. Plaintiff also seeks to represent a PAGA group of Aggrieved
14 Employees which is comprised of all current and former non-exempt employees of Defendants
15 employed in California at any time during the period between June 7, 2021 and April 27, 2023 (the
16 “PAGA Period”). JCL Dec at ¶ 15.

17 Although a resolution has been reached, Defendants deny that they have violated any applicable
18 law, committed any wrong against Plaintiff or any other current or former employee, or that they have
19 otherwise damaged Plaintiff or any other current or former employee in any way. Further, Defendants
20 contend that class certification would be inappropriate for any reason other than for settlement. Plaintiff
21 contends that Defendants violated California wage and hour laws. Plaintiff further contends that the
22 Action is appropriate for class certification on the basis that the Plaintiff’s claims meet the requisites
23 for class certification. Without admitting that class certification is proper, Defendants have stipulated
24 that the above Class may be certified for settlement purposes only. Agreement at III(F). The Parties
25 agree that certification for settlement purposes is not an admission that class certification would be
26 proper if the class certification issues were litigated. Further, the Agreement is not admissible in this or
27 any other proceeding as evidence that the Class could be certified absent a settlement. JCL Dec at ¶ 16.

28 ///

1 Class Counsel has conducted a thorough investigation into the facts of the action. Class Counsel
2 has diligently evaluated the Class Members' claims against Defendants. Prior to the mediation, counsel
3 for Defendants provided Class Counsel with access to the necessary data and information as noted above
4 to evaluate the claims by the Class. Class Counsel reviewed the production of documents from the
5 Defendants and conducted an extensive review of a significant sample of time records and data with the
6 assistance of an expert, Berger Consulting Group ("BCG"). Based on the foregoing and their own
7 independent investigation, evaluation and experience, Class Counsel believe that the Settlement is fair,
8 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
9 circumstances, including the risk of significant delay, defenses asserted by Defendants, and potential
10 appellate issues. JCL Dec at ¶ 17.

11 On September 6, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶
12 4. On October 4, 2023, the Settlement Administrator mailed Notice Packets to all 302 Class Members.
13 Apex Dec., ¶ 7. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline
14 for the Class to submit requests for exclusion or objections to the Settlement. The response from the
15 Class to the Settlement was outstanding – 99.01% of the Class Members are participating in the
16 Settlement. Apex Dec., ¶¶ 11-13.

17 **III. THE SETTLEMENT BEFORE THE COURT**

18 The Court preliminarily approved an initial Gross Settlement Amount of Six Hundred Seventy-
19 Five Thousand Dollars and Zero Cents (\$675,000.00) based on a total of an estimated 18,000
20 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used:
21 (1) to satisfy the Individual Settlement Payments; (2) to satisfy the Service Award; (3) to satisfy the
22 Attorneys' Fees and Attorneys' Expenses; (4) to satisfy the PAGA Penalties; and (5) to satisfy the
23 Administration Costs incurred in this action. JCL Dec., ¶ 18.

24 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
25 Settlement Fund within sixty (60) days after the Effective Date. Agreement, § I(O). The Settlement
26 Administrator shall disburse the Individual Settlement Payments to the Settlement Class Member no
27 later than thirty (30) days after Defendant funds the Gross Settlement Amount. Agreement, § III(L)(7).
28 The Settlement Administrator will calculate Individual Settlement Payments by dividing the Net

1 Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during
2 the Class Period and multiplying the result by each Settlement Class Member's Workweeks.
3 Agreement, § III(L)(1). The estimated average Individual Settlement Payment is approximately
4 **\$1,143.02**. Apex Dec., ¶ 17.

5 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
6 the Settlement Class Member will release the Released Parties from the Released Class Claims that
7 accrued during the Class Period. Agreement, § III(A)(1).

8 Apex Class Action, LLC was appointed as the Settlement Administrator for the Class. The
9 Administration Costs include those expenses of effectuating and administering the Settlement, i.e., the
10 costs incurred to the Settlement Administrator, the costs of giving notice to the Class, the costs of
11 administering and disbursing the Individual Settlement Payments, and the fees of the Settlement
12 Administrator approved for reimbursement by the court. The Administration Costs are \$7,000. Apex
13 Dec., ¶ 16. These expenses shall be paid from the Gross Settlement Amount. Agreement, ¶ § III(L)(12).

14 Subject to Court approval, Class Counsel shall seek Attorneys' Fees and Attorneys' Expenses in
15 the amount of \$255,000.00, comprised of attorneys' fees equal to one-third of the Gross Settlement
16 Amount estimated to be at least \$225,000.00 and up to \$30,000 for actually incurred litigation expenses.
17 Agreement, § III(L)(10). Plaintiff's counsel is to split the fees 50% to the JCL Law Firm, APC, and
18 50% to the Zakay Law Group, APLC. Agreement, § I(F). The Agreement also provides for a Service
19 Award in the amount of \$10,000 for Plaintiff, in consideration of his time, risk, and efforts as the Class
20 Representative on behalf of the Class and a general release. Agreement, § III(L)(9).

21 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
22 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
23 the Class, the absence of any objections to the Settlement and the average Individual Settlement Payment
24 of **\$1,143.02**. Apex Dec., ¶ 15; JCL Dec., ¶ 19.

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

27 Settlements of disputed claims are favored by the courts. *Huens v. Tatum* (1997) 52 Cal.App.4th
28 259, 265. In evaluating settlements, the courts have long recognized that compromise is particularly

appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran. v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation”).

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

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

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

V. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *see also Officers for Justice v. Civil Service Com'n* (9th

1 Cir. 1982) 688 F. 2d 615, 625. The purpose of the requirement is "the protection of those class members,
2 including the named plaintiffs, whose rights may not have been given due regard by the negotiating
3 parties." *Dunk, supra*, at 1801.

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

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

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

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

23 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
24 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
25 assessed the value of the class claims using data and documents provided by Defendant through
26 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
27 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
28 Class Counsel retained BCG to analyze Defendant's time and payroll data to formulate damage models

1 estimating Defendant’s liability exposure. Class Counsel’s investigation, research, experience, and
2 damage models informed and guided the mediated negotiations that resulted in this settlement.
3 Accordingly, Plaintiff’s Counsel fully understood the strengths and weaknesses of the class claims
4 before the parties reached a settlement. JCL Dec., ¶ 19-25.

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

6 On April 27, 2023, the Parties conducted a full day mediation with Steven Rottman, Esq., an
7 experienced wage and hour mediator. Mediator Rottman helped to manage the Parties’ expectations
8 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
9 progress with Mediator Rottman’s assistance. Namely, the Parties exchanged information regarding
10 their respective claims and defenses, including their respective evaluations of the damages. After arm’s
11 length and adversarial negotiations, the mediation concluded with a settlement. The amount of the
12 service awards was not negotiated until after the parties agreed to the Gross Settlement Amount and
13 many other terms. No action would likely have been taken by Class Members individually, and no
14 compensation would have been recovered for them, but for Plaintiff’s service on behalf of the Class.
15 JCL Dec., ¶ 25.

16 **C. 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. JCL Dec., ¶¶ 26-32; Declaration
24 of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3.

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

26 The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after
27 dissemination of the notice to the Class, which provided each class member with the terms of the
28 Settlement, including the specific estimated Individual Settlement Payments. To date, only 3 of the

302 Class Members opted out of the Settlement. Moreover, there are zero objections. Stated differently, 99.01% of the Class chose to participate in the Settlement. JCL Dec., ¶ 8; Apex Dec., ¶¶ 11-13.

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

E. The Gross Settlement Amount is Fair and Reasonable.

The Gross Settlement Amount of Six Hundred Seventy-Five Thousand Dollars and Zero Cents (\$675,000.00) in this case is fair and well within the range of recognized reasonableness. The *Kullar* court acknowledged that "as the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." *Kullar, supra*, at 129; *See Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 499-500 (1985.).

Here, the Settlement is clearly within the "ballpark" of reasonableness because the Settlement provides a sizeable recovery to the Settlement Class Members and need not necessarily obtain 100 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91 Cal.App.4th at 250. While the Gross Settlement Amount of Six Hundred Seventy-Five Thousand Dollars and Zero Cents (\$675,000.00) represents a discount on Defendant's potential exposure if Plaintiff established liability on all claims and was awarded the full amount of the estimated damages at trial, this compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that could award significantly less in damages than Plaintiff's estimate and (2) any theoretical post-trial recovery may require many more years of litigation, resulting in added fees and costs without any guarantee of recovery for the Class. JCL Dec., ¶ 33.

1 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
2 reasonable considering the nature and magnitude of the claims being settled and the various potential
3 impediments to recovery. Class Counsel developed varied economic damages models measuring
4 Defendants' liability exposure while accounting for the uncertainties of continued litigation. The various
5 models were informed by Class Counsel's investigation, including the analysis of a significant sample
6 of time and payroll data. Detailed in greater depth during the preliminary approval process, Class
7 Counsel projected a range of Defendants' liability exposure for the claims asserted on behalf of the
8 Class. The Gross Settlement Amount represents over 26% of Defendants' *class-wide* liability exposure
9 as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 34.

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

17 The calculation methodology used to compensate the Settlement Class Member for the alleged
18 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
19 objective, and impartial. The calculation methodology is based on the number of Workweeks each
20 Settlement Class Member worked for Defendant during the Class Period. The number of Workweeks
21 for the Settlement Class Member is established through Defendant's data and documented compensation
22 records. The Settlement Administrator is responsible for calculating the Individual Settlement Payments
23 by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement
24

25 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
26 a California wage and hour settlement where the class received 11.6% of the estimated total liability, or approximately \$29
27 per work week); *Leverage v. Traeger Pellet Grills, LLC* (N.D. Cal. June 28, 2017, No. 16-CV-00784) 2017 WL 2797811, at
28 *7 (Approving a California wage and hour settlement where the class received 18% of the estimated total liability); see also
In re Newbridge Networks Sec. Litig. (D.D.C. Oct. 23, 1998) 1998 WL 765724, at *2 ("Courts have not identified a precise
numerical range within which a settlement must fall in order to be deemed reasonable; but an agreement that secures roughly
six to twelve percent of a potential trial recovery, while preventing further expenditures and delays and eliminating the risk
that no recovery at all will be won, seems to be within the targeted range of reasonableness.").

1 Class Members during the Class Period and multiplying the result by each Settlement Class Member's
2 Workweeks. Agreement, § III(L)(1). This process establishes an objectively fair and reasonable
3 procedure to compensate the Class. JCL Dec., ¶ 35.

4 The settlement also provides significant relief to the Settlement Class Members. After deductions
5 for Attorneys' Fees and Attorneys' Expense, Administration Costs, the PAGA Penalties, and the Service
6 Award, the Net Settlement Amount is currently estimated to be \$341,762.55. Apex Dec., ¶ 16. The
7 average settlement payment is approximately \$1,143.02, and the highest is approximately \$ 1,729.54.
8 Apex Dec., ¶ 17. This average net recovery is on par with many wage and hour class action settlements
9 approved by California state and federal courts. *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-
10 2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Fukuchi*
11 *v. Pizza Hut*, Case No. BC302589 (LA. County Super. Ct.) (average net recovery of approximately
12 \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average
13 net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018
14 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*,
15 Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately
16 \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (ED. Cal.) (average net recovery
17 of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County
18 Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No.
19 BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20). Additionally, Defendant must
20 separately fund its share of any employer side payroll taxes. Agreement, § III(A)(4).

21 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
22 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
23 experienced counsel, the settlement is fair and reasonable, and is therefore entitled to final approval.
24 JCL Dec., ¶ 36.

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

26 Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore
27 the asserted defenses. If successful on any one of its defenses, Defendants could defend the action or,
28 at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 37. As the federal court in *Glass v. UBS*

1 *Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this
2 litigation:

3 ***In light of the above-referenced uncertainty in the law, the risk, expense,***
4 ***complexity, and likely duration of further litigation likewise favors the***
5 ***settlement.*** Regardless of how this Court might have ruled on the merits of
6 the legal issues, the losing party likely would have appealed, and the parties
7 would have faced the expense and uncertainty of litigating an appeal. The
8 expense and possible duration of the litigation should be considered in
9 evaluating the reasonableness of [a] settlement.

10 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
11 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
12 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
13 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
14 trial court to enter judgement in favor of the employer. *See also O’Conner v. Uber Technologies, Inc.*
15 (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also*
16 *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor
17 plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th
18 1077, 1088 (“[T]he reason, if any, that employees might not take their breaks were predominantly
19 individualized questions of fact not susceptible to class treatment.”); *Ali v. U.S.A. Cab Ltd.* (2009) 176
20 Cal.App.4th 1333, 1341 (affirming denial of certification because employees’ declarations attesting to
21 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
22 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
23 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
24 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
25 certification of driver meal and rest period claims based on the predominance of individual issues).
26 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
27 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
28 settlement. JCL Dec., ¶ 38.

Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes
that Defendant has factual and legal defenses that, if successful, would potentially defeat or impair the

1 value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
2 affect the value of Plaintiff's claims and, in fact, already has. JCL Dec., ¶ 39.

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

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

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

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

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

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

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

1 As demonstrated by the decisions in *Magadia*, *supra*, 999 F.3d 668, *O’Conner v. Uber*
2 *Technologies* (N.D. Cal. 2018) 82 F.Supp.3d 1133 and *Duran v. U.S. Bank National Assn.* (2014) 59
3 Cal.4th 1, the complexities and duration of further litigation cannot be overstated. There is little doubt
4 that if Defendant faced a large adverse judgement, Defendant undoubtedly has the resources to post a
5 bond and appeal. A post-judgment appeal by Defendant would have required many more years to
6 resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total, then the case
7 could have dragged on for years after the appeal. The benefits of a guaranteed recovery today outweigh
8 an uncertain result three or more years in the future. JCL Dec., ¶ 40.

9 Class Representative and Class Counsel recognize the expense and length of a trial against
10 Defendant through possible appeals which could take another three years. In arriving at their informed
11 belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome
12 and risk inherent in complex actions such as this one. Class Counsel is also mindful of and recognize
13 the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation.
14 Moreover, post-trial motions and appeals would have been inevitable. Costs would have increased, and
15 recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory.
16 Further, Class Counsel is mindful of and recognize that most, if not all of the Class signed arbitration
17 agreements and that Defendants could have raised these arbitration agreements as a defense to class
18 certification. Class Representative and Class Counsel believe that the Settlement confers substantial
19 monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative
20 and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest
21 of the Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 41.

22 **VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004**
23 **ARE REASONABLE**

24 Where settlements “negotiate a good faith amount” for PAGA penalties and “there is no
25 indication that this amount was the result of self-interest at the expense of class members,” such
26 amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL,
27 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA
28 penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA

1 payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at
2 *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*,
3 No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging
4 that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

5 Here, Plaintiff and Defendant negotiated a good faith PAGA Penalties payment in the amount
6 of \$75,000 which is 11.11% of the Gross Settlement Amount. As illustrated above, this amount falls
7 well within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA
8 Penalties (\$56,250) will be paid to the LWDA ("LWDA Payment") with the remaining twenty-five
9 percent (25%) of the PAGA Penalties (\$18,750) to be distributed to the Aggrieved Employees
10 ("Aggrieved Employee Payment"), which is within the range of PAGA penalties approved by courts
11 and should be approved. JCL Dec., ¶ 42.

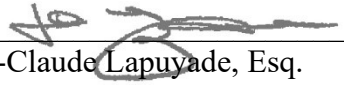
12 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
13 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
14 with the LWDA. JCL Dec., ¶¶ 5-6, 43. By not registering an objection with either Class Counsel or
15 the Court, the LWDA has accepted and approved of the proposed PAGA Penalties.

16 17 **VII. CONCLUSION**

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

21
22 Dated: February 8, 2024

JCL LAW FIRM, APC

23
24 By: 
25 Jean-Claude Lapuyade, Esq.
26 Attorneys for Plaintiff
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