

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Sydney Castillo Johnson (State Bar #343881)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
scastillo@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

JONATHAN CHEUNG, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

SIGNATURE COMMERCIAL SOLUTIONS,
LLC, a Florida Limited Liability Company; and
DOES 1-50, Inclusive;

Defendants.

Case No. 22STCV13034

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

Date: December 19, 2023

Time: 8:30 a.m.

Judge: Hon. Holly J. Fujie

Dept.: 56

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1 I. INTRODUCTION

2 Plaintiff JONATHAN CHEUNG (hereinafter “Plaintiff”) seeks final approval of the Class Action
3 and PAGA Settlement Agreement (“Agreement”)¹, which if approved, would provide valuable
4 monetary relief for 869 Participating Class Members employed by Defendant Signature Commerical
5 Solutions, LLC (hereinafter “Defendant”) during the Class Period.

6 In an order dated July 31, 2023, this Court preliminarily approved the Agreement and
7 preliminarily certified the Class. Declaration of Jean-Claude Lapuyade (“JCL Dec.”), ¶ 4. On August
8 29, 2023, the Court-approved Class Notice was mailed to each Class Member via U.S. First Class Mail.
9 Declaration of Nicole Bench (“ILYM Dec.”), ¶ 8. *The Class greeted news of the Settlement with*
10 *unanimous approval.*² There are zero opt-outs and zero objections to the Settlement. ILYM Dec., ¶¶
11 12-13. The unanimous approval by the Class evidences the clear fairness and reasonableness of the
12 Settlement. JCL Dec., ¶ 8.

13 An objective evaluation of the proposed settlement of Seven Hundred Fifty Thousand Dollars
14 and Zero Cents (\$750,000.00) (“Gross Settlement Amount”) confirms that the relief negotiated on
15 behalf of the Participating Class Members is fair, reasonable, and valuable. The Settlement is a product
16 of informed, adversarial, and non-collusive negotiations, between experienced counsel, and presided
17 over by Tripper Ortman, Esq. After deducting any Court-approved attorneys’ fees and costs, class
18 representative incentive payments, administration costs, and the payments to the Labor & Workforce
19 Development Agency (“LWDA”), the net settlement fund shall be distributed to Participating Class
20 Members based on the number of Workweeks they worked while employed by Defendant during the
21 Class Period. JCL Dec., ¶ 8.

22 This Settlement provides substantial recovery for Defendant’s alleged wage and hour violations.
23 Plaintiff estimates that the Settlement, if approved, would result in a Net Settlement Amount of
24 approximately \$393,000.00. This will result in an average Individual Class Payment of **\$452.24**, a high
25 payment of **\$2,181.15**, and low payment of **\$10.34**. JCL Dec., ¶ 9; ILYM Dec. at ¶ 17.

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 Nineteen (19) Notices were deemed undeliverable. ILYM Dec. at ¶¶ 11.

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

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

10 II. OVERVIEW OF THE LITIGATION

11 Defendant offers technical, professional, and industrial staffing services for accounting and
12 finance, administrative, architectural, automotive, aviation, call center, and clinical research industries
13 in California, including Los Angeles, where Plaintiff worked. Plaintiff worked for Defendant from
14 July of 2021 until December of 2021. Throughout his employment, Plaintiff was subject to Defendant's
15 written policies and procedures contained in, among other documents, the "Signature Consultants
16 Employee Handbook." JCL Dec., ¶ 12.

17 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to provide
18 compliant meal and rest periods, failed to reimburse for mandatory business expenses, failed to furnish
19 accurate itemized wage statements, and failed to pay all wages upon separation. Defendant denies
20 liability for each of Plaintiff's claims. Further, Defendant asserts that it fully complied with all
21 applicable employment laws and raised several other significant defenses to Plaintiff's claims,
22 including but not limited to, facially compliant meal and rest period policies, compliant wage
23 statements, and timely paid all wages due upon separation of employment. JCL Dec., ¶ 13.

24 On February 8, 2022, Plaintiff served Defendant and the Labor and Workforce Development
25 Agency ("LWDA") with a Notice of Violations ("PAGA Notice"). Plaintiff's PAGA Notice set forth
26 the facts and theories supporting Defendant's alleged violations of various provisions of the California
27 Labor Code and applicable Industrial Welfare Commissions ("IWC") Wage Order and of his intent to
28 pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections

2698 *et seq* (“PAGA”). JCL Dec., ¶ 14.

On April 18, 2023, Plaintiff filed a class action complaint in the Los Angeles County Superior Court, Case No. 21STCV13034 (“Action”). The operative Third Amended Complaint alleges nine causes of action including, unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal and rest periods, failure to provide accurate itemized wage statements, failure to provide wages when due, failure to reimburse required business expenses and violations of the PAGA. JCL Dec., ¶ 15.

After Plaintiff commenced written discovery, the Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to, the Class Members’ time data and certain payroll data points. As discussed *infra*, Plaintiff’s counsel retained the forensic consultants at Berger Consulting Group (“BCG”) to analyze Defendant’s time and payroll data. JCL Dec., ¶ 16.

On April 17, 2023, the Parties participated in a full day mediation with highly regarded wage and hour and PAGA mediator Tripper Ortman. The mediation concluded with a settlement after both sides agreed to a Mediator’s proposal which was subsequently memorialized in the form of a Memorandum of Understanding. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion. JCL Dec., ¶ 17.

On July 31, 2023, this Court granted preliminary approval of the Settlement. JCL Dec., ¶ 4. On August 29, 2023, the Settlement Administrator mailed Notice Packets to all 869 Participating Class Members. ILYM Dec., ¶ 8. The mailing of the Notice Packets triggered a forty-five (45) day Response Deadline for the Class to submit requests for exclusion or objections to the Settlement. The response from the Class to the Settlement was outstanding – 100% of the Class Members are participating in the Settlement. ILYM Dec., ¶¶ 15.

III. THE SETTLEMENT BEFORE THE COURT

The Court preliminarily approved an initial Gross Settlement Amount of Seven Hundred, Fifty Thousand Dollars and Zero Cents (\$750,000.00) based on a total of an estimated 42,609 Workweeks worked by the Class during the Class Period. The Gross Settlement Amount shall be used: (1) to satisfy the Individual Class Payments; (2) to satisfy the Class Representative Service Payment; (3) to satisfy

1 the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment (collectively
2 hereinafter “Class Counsel Fees and Expenses Payment”); (4) to satisfy the PAGA Penalties; and (5) to
3 satisfy the Administration Expenses Payment incurred in this action. JCL Dec., ¶ 18.

4 Defendant will fund the Settlement by transferring the Gross Settlement Amount into a Qualified
5 Settlement Fund within fourteen (14) days after the Effective Date. Agreement, ¶ 4.3. The Settlement
6 Administrator shall disburse the Individual Class Payments to the Participating Class Member no later
7 than fourteen (14) days after Defendant fund the Gross Settlement Amount. Agreement, ¶ 4.4. The
8 Settlement Administrator will calculate Individual Class Payments by dividing the Net Settlement
9 Amount by the total number of Workweeks worked by all Participating Class Members during the Class
10 Period and multiplying the result by each Participating Class Member’s Workweeks. Agreement, ¶
11 3.2.4. The estimated average Individual Class Payment is approximately **\$452.24**. ILYM Dec., ¶ 17.

12 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
13 the Participating Class Member will release the Released Parties from the Released Class Claims that
14 accrued during the Class Period. Agreement, ¶ 5.2.

15 ILYM Group, Inc. was appointed as the Settlement Administrator for the Class. The
16 Administration Expenses Payment include those expenses of effectuating and administering the
17 Settlement, i.e., the costs incurred to the Settlement Administrator, the costs of giving notice to the Class,
18 the costs of administering and disbursing the Individual Class Payments, and the fees of the Settlement
19 Administrator approved for reimbursement by the court. The Settlement Administrator expenses are
20 \$12,000. ILYM Dec., ¶ 16. These expenses shall be paid from the Gross Settlement Amount.
21 Agreement, ¶ 3.2.3.

22 Subject to Court approval, Class Counsel shall seek a Class Counsel Fees and Expenses Payment
23 in the amount of \$275,000.00, comprised of attorneys’ fees equal to one-third of the Gross Settlement
24 Amount estimated to be at least \$250,000.00 and up to \$25,000 for actually incurred litigation expenses.
25 Agreement, ¶ 3.2.2. Plaintiff’s counsel is to split the fees 50% to the JCL Law Firm, APC, and 50% to
26 the Zakay Law Group, APLC. Agreement, ¶ 1.6. The Agreement also provides for a Class
27 Representative Service Payment in the amount of \$10,000 for Plaintiff, in consideration of his time, risk,
28 and efforts as the Class Representative on behalf of the Class and a general release. Agreement, ¶ 3.2.1.

1 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
2 and should be granted final approval. This is evidenced by the unanimous approval of the Settlement by
3 the Class, the absence of any objections to the Settlement and the average Individual Class Payment of
4 **\$452.24**. ILYM Dec., ¶¶ 15, 17; JCL Dec., ¶ 19.

5 **IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
6 **OF CLASS ACTION SETTLEMENTS**

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

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

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

1 Newberg & Conte, *Newberg on Class Actions*, (3d ed. 1992) §11.41, pp. 11-91. Here, all of these factors
2 support a presumption of fairness.

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

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

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

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

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

28 These factors are analyzed seriatim below and all support final approval of the class action

1 settlement before this Court.

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

3 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
4 proposed Class Members' claims, applicable law, and potential defenses. Specifically, Class Counsel
5 assessed the value of the class claims using data and documents provided by Defendant through
6 informal discovery. Class Counsel obtained time, payroll, and policy records, as well as data regarding
7 the number of Class Members, workweeks, and average rate of pay to assess damages before mediation.
8 Class Counsel retained BCG to analyze Defendant's time and payroll data to formulate damage models
9 estimating Defendant's liability exposure. Class Counsel's investigation, research, experience, and
10 damage models informed and guided the mediated negotiations that resulted in this settlement.
11 Accordingly, Plaintiff's Counsel fully understood the strengths and weaknesses of the class claims
12 before the parties reached a settlement. JCL Dec., ¶ 20-26.

13 **B. The Parties Settled Following Mediation.**

14 On April 18, 2023, the Parties conducted a full day mediation with Tripper Ortman, Esq., an
15 experienced wage and hour mediator. Mediator Ortman helped to manage the Parties' expectations
16 and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial
17 progress with Mediator Ortman's assistance. Namely, the Parties exchanged information regarding
18 their respective claims and defenses, including their respective evaluations of the damages. After more
19 than eight hours of arm's length and adversarial negotiations, the mediation concluded a settlement.
20 The amount of the service awards was not negotiated until after the parties agreed to the Gross
21 Settlement Amount and many other terms. JCL Dec., ¶ 27. No action would likely have been taken
22 by Class Members individually, and no compensation would have been recovered for them, but for
23 Plaintiff's service on behalf of the Class.

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

25 Class Counsel in this matter has extensive class action experience in multiple fields and has
26 represented tens-of-thousands of persons in class actions. Counsel has previously litigated similar wage
27 and hour class actions involving similar claims. Class Counsel has been approved as class counsel in
28 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., ¶¶ 28-34; Declaration of Shani Zakay (“Zakay Dec.”), ¶¶ 1-3.

D. The Class Responded Positively to the Settlement.

The reaction of the Class unequivocally supports approval of the Settlement. Significantly, after dissemination of the notice to the Class, which provided each class member with the terms of the Settlement, including the specific estimated Individual Class Payments. To date, none of the 869 Class Members opted out of the Settlement. Moreover, there are zero objections. Stated differently, 100% of the Class chose to participate in the Settlement. JCL Dec., ¶ 9; ILYM Dec., ¶¶ 12-13.

The 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 Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) 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 Participating Class Member and need not necessarily obtain 100

1 percent of the damages sought to be fair, reasonable, and ultimately, meaningful. *Wershba*, 91
2 Cal.App.4th at 250. While the Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars and
3 Zero Cents (\$750,000.00) represents a discount on Defendant’s potential exposure if Plaintiff
4 established liability on all claims and was awarded the full amount of the estimated damages at trial, this
5 compromise is reasonable because (1) the formidable defenses raised by Defendant presented a risk that
6 could award significantly less in damages than Plaintiff’s estimate and (2) any theoretical post-trial
7 recovery may require many more years of litigation, resulting in added fees and costs without any
8 guarantee of recovery for the Class. JCL Dec., ¶ 35.

9 As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and
10 reasonable considering the nature and magnitude of the claims being settled and the various potential
11 impediments to recovery. Class Counsel developed varied economic damages models measuring
12 Defendant’s liability exposure while accounting for the uncertainties of continued litigation. The various
13 models were informed by Class Counsel’s investigation, including the analysis of a significant sample
14 of time and payroll data. Detailed in greater depth during the preliminary approval process, Class
15 Counsel projected a range of Defendant’s liability exposure for the claims asserted on behalf of the
16 Class. The Gross Settlement Amount represents roughly 11% of Defendant’s *class-wide* liability
17 exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 36.

18 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
19 Court for the Northern District of California granted final approval in a wage and hour misclassification
20 action and found that the Gross Settlement Amount representing 10% of the estimated trial award was
21 within the “range of reasonableness.” In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir.
22 2000) 213 F.3d 454, 459, the Ninth Circuit approved a settlement representing “roughly one-sixth of the
23 potential recovery.” Given the amount of the settlement here as compared to potential value of the
24 claims, particularly the strength of Plaintiff’s action, the settlement is clearly fair and reasonable.³

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

1 The calculation methodology used to compensate the Participating Class Member for the alleged
2 damages was negotiated at the time of the Settlement. More importantly, the methodology is fair,
3 objective, and impartial. The calculation methodology is based on the number of Workweeks each
4 Participating Class Member worked for Defendant during the Class Period. The number of Workweeks
5 for the Participating Class Member is established through Defendant's data and documented
6 compensation records. The Settlement Administrator is responsible for calculating the Individual Class
7 Payments by dividing the Net Settlement Amount by the total number of Workweeks worked by all
8 Participating Class Members during the Class Period and multiplying the result by each Participating
9 Class Member's Workweeks. Agreement, ¶ 3.2.4. This process establishes an objectively fair and
10 reasonable procedure to compensate the Class. JCL Dec., ¶ 37.

11 The settlement also provides significant relief to the Participating Class Members. After
12 deductions for the Class Counsel Fees and Expenses Payment, Administration Expenses Payment, the
13 PAGA Penalties, and the Class Representative Service Payment, the Net Settlement Amount is currently
14 estimated to be \$393,000.00. ILYM Dec., ¶ 16. The average settlement payment is approximately
15 \$452.24, and the highest is approximately \$2,181.15. ILYM Dec., ¶ 17. This average net recovery is
16 on par with many wage and hour class action settlements approved by California state and federal courts.
17 *See, e.g., Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.)
18 (average net recovery of approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (LA. County
19 Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case
20 No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v.*
21 *Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery
22 of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.
23 May 14, 2007) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-
24 CV-02674-JAM-DAD (ED. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret*
25 *Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately
26 \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery
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28 that no recovery at all will be won, seems to be within the targeted range of reasonableness.”).

of approximately \$20). Additionally, Defendant must separately fund its share of any employer side payroll taxes. Agreement, ¶ 3.1.

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

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

Although Class Counsel believes strongly in Plaintiff's claims, it would be misguided to ignore the asserted defenses. If successful on any one of its defenses, Defendant could defend the action or, at least, drastically undercut Plaintiff's claims. JCL Dec., ¶ 39. As the federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties similar to those in this litigation:

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

With respect to the most immediate challenge, i.e., class certification, the risks attendant to the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the trial court to enter judgement in favor of the employer. *See also O'Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v. Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 ("[T]he reason, if any, that employees might not take their breaks were predominantly individualized questions of fact not susceptible to class treatment."); *Ali v. U.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming denial of certification because employees' declarations attesting to

1 having taken meal and rest breaks demonstrated that individualized inquiries were required to show
2 harm); *Campbell v. Best Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at *11-13 (following
3 *Brinker* and denying certification of proposed off-the-clock and rest and meal break classes due to lack
4 of uniform policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying
5 certification of driver meal and rest period claims based on the predominance of individual issues).
6 Collectively, the examples cited above illustrate the uncertain nature of class litigation. Consequently,
7 the uncertainty of obtaining certification through a contested motion is a significant risk factor favoring
8 settlement. JCL Dec., ¶ 40.

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

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

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

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

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

29 **The potential complexity and possible duration of trial also weigh in**
30 **favor of granting final approval.** Plaintiffs acknowledge the difficulties
31 of proving damages, recognize the uncertainty of outcome, and believe
32 defendant would appeal in the event of adverse judgment. A post-judgment

1 appeal would require many years to resolve and delay payment to class
2 members. Plaintiffs believe the benefits of a guaranteed recovery today
3 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.

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

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

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

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

1 Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 43.

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

3 **ARE REASONABLE**

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

13 Here, Plaintiff and Defendant negotiated a good faith PAGA Penalties payment in the amount
14 of \$60,000 which is 8% of the Gross Settlement Amount. As illustrated above, this amount falls well
15 within the range of approved PAGA settlements. Seventy-Five percent (75%) of the PAGA Penalties
16 (\$45,000) will be paid to the LWDA (“LWDA PAGA Payment”) with the remaining twenty-five
17 percent (25%) of the PAGA Penalties (\$15,000) to be distributed to the Aggrieved Employees
18 (“Individual PAGA Payment”), which is within the range of PAGA penalties approved by courts and
19 should be approved. JCL Dec., ¶ 44.

20 Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a
21 copy of the Settlement, the Motion for Preliminary Approval, and this motion seeking final approval
22 with the LWDA. JCL Dec., ¶¶ 4-5, 45. By not registering an objection with either Class Counsel or
23 the Court, the LWDA has accepted and approved of the proposed PAGA Penalties.

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1 **VII. CONCLUSION**

2 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
3 established in California law and should therefore be finally approved as fair, reasonable, and adequate
4 and requests entry of the Final Approval Order and Judgment submitted herewith.
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6 Dated: November 20, 2023

JCL LAW FIRM, APC

7
8 By: Sydney Castillo-Johnson
9 Sydney Castillo-Johnson, Esq.
Attorneys for Plaintiff
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